

2010 No. 244

PITCAIRN ISLANDS

The Pitcairn Constitution Order 2010

Made - - - - *10th February 2010*

Laid before Parliament *17th February 2010*

Coming into force in accordance with section 1(2)

At the Court at Buckingham Palace, the 10th day of February 2010

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by the British Settlements Acts 1887(a) and 1945(b), section 1 of the Judicial Committee Act 1844(c) and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:

Citation and commencement

- 1.—(1) This Order may be cited as the Pitcairn Constitution Order 2010.
- (2) This Order shall come into force on the appointed day.

Interpretation

2. In this Order—

“the appointed day” means such day as may be prescribed by the Governor by proclamation published in such manner as the Governor thinks fit;

“the Constitution” means the Constitution set out in Schedule 2;

“the Governor” means the Governor of Pitcairn and includes any person for the time being lawfully performing the functions of the office of Governor of Pitcairn;

“Pitcairn” means Pitcairn, Henderson, Ducie and Oeno Islands.

Revocations

3. The instruments listed in Schedule 1 are revoked with effect from the appointed day.

(a) 1887 c.54.
(b) 1945 c.7.
(c) 1844 c.69.

Establishment of Constitution

4. The Constitution shall have effect in Pitcairn from the appointed day.

Existing laws

5.—(1) The existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and, so far as possible, shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution

(2) In subsection (1), “existing laws” means laws and instruments (other than Acts of Parliament of the United Kingdom and instruments made under them) having effect as part of the law of Pitcairn immediately before the appointed day.

Existing offices and officers

6.—(1) Except for the office of Legal Adviser, any office established by or under the Pitcairn Order 1970(a) and existing immediately before the appointed day shall on and after that day, so far as consistent with the Constitution, continue as if it had been established by or under the Constitution.

(2) Any person who immediately before the appointed day holds or is acting in an office referred to in subsection (1) shall, on and after that day, continue to hold or act in that office or the corresponding office established by the Constitution as if he or she had been appointed to hold or act in it in accordance with or under the Constitution; but any person who under the law in force immediately before the appointed day would have been required to vacate his or her office at the expiration of any period shall vacate that office at the expiration of that period.

(3) Any person to whom subsection (2) applies who, before the appointed day, has made any oath or affirmation required to be made before assuming the functions of his or her office shall be deemed to have made any like oath or affirmation so required by the Constitution or any other law.

(4) The person who holds the office of Legal Adviser immediately before the appointed day shall, on and after that day, hold the office of Attorney General in accordance with the Constitution.

Island Council

7. Any person who immediately before the appointed day is a member of the Island Council for Pitcairn in accordance with a law in force in Pitcairn shall on that day become a member of the Island Council established by the Constitution, shall be deemed to have taken any oath or affirmation required by law, and shall hold his or her seat in accordance with any such law.

Pending legal proceedings

8.—(1) Any proceedings pending immediately before the appointed day in any court having jurisdiction in or in relation to Pitcairn may be continued on and after that day in the same court or in the equivalent court established by the Constitution.

(2) Any judgment or order of any court having jurisdiction in or in relation to Pitcairn given or made before the appointed day, in so far as it has not been fully executed or enforced, may be executed or enforced on and after that day as a judgment or order of the same court or as if it were a judgment or order of the equivalent court established by the Constitution.

(a) S.I. 1970/1434, amended by S.I. 2000/1340 and 2002/2638.

Appeals to Her Majesty in Council

9. Article 2 of the Pitcairn (Appeals to Privy Council) Order 2000(a) is amended by substituting for the definition of “Court” the following—

““Court” means the Pitcairn Court of Appeal established by the Constitution set out in Schedule 2 to the Pitcairn Constitution Order 2010;”.

Power reserved to Her Majesty

10. There is reserved to Her Majesty full power to make laws from time to time for the peace, order and good government of Pitcairn including, without prejudice to the generality of the foregoing, laws amending or revoking this Order or Schedule 2.

Judith Simpson
Clerk of the Privy Council

SCHEDULE 1

REVOCATIONS

The Pitcairn Order 1970 (S.I. 1970/1434)

The Pitcairn (Amendment) Order 2000 (S.I. 2000/1340)

The Pitcairn (Amendment) Order 2002 (S.I. 2002/2638)

The Pitcairn Court of Appeal Order 2000 (S.I. 2000/1341)

The Pitcairn Court of Appeal (Amendment) Order 2004 (S.I. 2004/2669)

The Instructions issued under the Royal Sign Manual and Signet to the Governor of Pitcairn on 30th September 1970

SCHEDULE 2

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PART 1 PARTNERSHIP VALUES

The partnership values

1.—(1) The partnership between the United Kingdom and Pitcairn shall be based on the following values—

- (a) good faith;
- (b) the rule of law;
- (c) good government;
- (d) sound financial management;
- (e) the impartial administration of justice;
- (f) the impartiality of the Pitcairn Public Service;
- (g) the maintenance of public order;
- (h) compliance with applicable international obligations of the United Kingdom and of Pitcairn; and
- (i) the maintenance of international peace and security and the right of individual or collective self-defence.

(2) In exercising their responsibilities and powers, all organs of government of Pitcairn have a duty to give effect to the partnership values.

(3) Nothing in this section creates any legally enforceable rights or obligations.

PART 2 FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Right to life

2.—(1) Everyone's right to life shall be protected by law.

(2) Deprivation of life shall not be regarded as inflicted in contravention of this section when it results from the use of force which is no more than absolutely necessary—

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Physical and mental integrity

3.—(1) Everyone has the right to respect for his or her physical and mental integrity.

(2) In the fields of medicine and biology, the free and informed consent of the person concerned must be respected, according to the procedures prescribed by law.

Human dignity

4. Everyone has inherent dignity and the right to have his or her dignity respected and protected.

Prohibition of torture

5. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Prohibition of slavery and forced labour

- 6.—(1) No one shall be held in slavery or servitude.
 - (2) No one shall be required to perform forced or compulsory labour.
 - (3) For the purpose of this section the term “forced or compulsory labour” shall not include—
 - (a) any work required to be done in the ordinary course of detention imposed according to section 7 or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.

Right to liberty and security

7.—(1) Everyone has the right to liberty and security of person. No one shall be deprived of his or her liberty save in the following cases and in accordance with a procedure prescribed by law—

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him or her before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his or her committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his or her lawful detention for the purpose of bringing him or her before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his or her effecting an unauthorised entry into Pitcairn or of a person against whom action is being taken with a view to deportation or extradition.

(2) Everyone who is arrested shall be informed promptly, in a language which he or she understands, of the reasons for his or her arrest and of any charge against him or her.

(3) Everyone arrested or detained in accordance with subsection (1)(c) shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

(4) Everyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his or her detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.

(5) Everyone who has been the victim of arrest or detention in contravention of this section shall have an enforceable right to compensation.

Right to a fair trial

8.—(1) In the determination of his or her civil rights and obligations or of any criminal charge against him or her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

(3) Everyone charged with a criminal offence has the following minimum rights—

- (a) to be informed promptly, in a language which he or she understands and in detail, of the nature and cause of the accusation against him or her;
- (b) to have adequate time and facilities for the preparation of his or her defence;
- (c) to defend himself or herself in person or through legal assistance of his or her own choosing or, if he or she has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
- (e) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court.

Right of prisoners to humane treatment

9.—(1) All persons deprived of their liberty (in this section referred to as “prisoners”) shall have the right to be treated with humanity and with respect for the inherent dignity of the human person.

(2) Every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his or her status as such.

(3) Every juvenile prisoner shall be treated in a manner appropriate to his or her age and legal status and, if he or she is an unconvicted prisoner and unless he or she is earlier released, shall have any criminal proceedings against him or her pursued with the greatest possible expedition.

(4) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, or the facilities available for the detention of prisoners do not permit, or segregation would be detrimental to the well-being of a prisoner, unconvicted prisoners shall be segregated from convicted prisoners, and juvenile prisoners shall be segregated from adult prisoners.

No punishment without law

10.—(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This section shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Right to respect for private and family life

11.—(1) Everyone has the right to respect for his or her private and family life, his or her home and his or her correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of Pitcairn, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Freedom of thought, conscience and religion

12.—(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his or her religion or belief and freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief, in worship, teaching, practice and observance.

(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Freedom of expression

13.—(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

(3) This section shall not prevent the Government of Pitcairn from requiring the licensing of broadcasting, television or cinema enterprises.

(4) Freedom of information in Pitcairn shall be provided by Ordinance, which shall reflect the freedom of information legislation of the United Kingdom adapted to the circumstances of Pitcairn.

Freedom of assembly and association

14.—(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his or her interests.

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

(3) This section shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of Pitcairn.

Right to marry

15. Men and women of marriageable age have the right to marry and found a family, according to the national laws governing the exercise of this right.

Children's rights

16. Every child has the right to such measures of protection as are required by his or her status as a minor, on the part of his or her family, society and the Government of Pitcairn, and which are appropriate and proportionate to the circumstances of Pitcairn.

Right to education

17.—(1) Every child of the appropriate age, as provided by law, shall be entitled to receive primary education which shall, subject to subsection (2), be free.

(2) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless a law otherwise provides, in a private school (that is to say, a school other than one established by the Government of Pitcairn or a public authority) and, in such a school, to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(3) Nothing contained in or done under the authority of any law shall be held to breach subsection (2) to the extent that the law in question is necessary in a democratic society for the purpose of making provision requiring private schools, as a condition of their being allowed to operate and on terms no more onerous than are applicable to schools established by the Government of Pitcairn or a public authority, to satisfy—

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under that or any other law; and
- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed.

Freedom of movement

18.—(1) Everyone lawfully within Pitcairn shall, within Pitcairn, have the right to liberty of movement and freedom to choose his or her residence.

(2) Everyone shall be free to leave Pitcairn.

(3) The rights mentioned in subsections (1) and (2) shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in this Constitution.

(4) No one who has the right of abode shall be arbitrarily deprived of the right to enter Pitcairn.

(5) Subsections (1) to (4) are subject to the provisions of Pitcairn immigration legislation governing the entry into, stay in and departure from Pitcairn as regards persons who do not have the right of abode.

(6) A person who does not have the right of abode may be expelled from Pitcairn only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit reasons against his or her expulsion and to have his or her case reviewed by, and be represented for the purpose before, the competent authority or a person or persons designated by the competent authority.

(7) In this section, “the right of abode” means the right of abode in Pitcairn under any law.

Protection of the environment

19. Everyone has the right to an environment that is generally not harmful to his or her health or well-being and to have the environment protected, for the benefit of present and future generations, through such laws as may be made under this Constitution including laws to—

- (a) prevent pollution and ecological degradation;
- (b) promote conservation; and

- (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Just administrative action

20.—(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

Protection of property

21.—(1) Every natural or legal person is entitled to the peaceful enjoyment of his or her possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

(2) Subsection (1) shall not, however, in any way impair the right of the Government of Pitcairn to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Protection from arbitrary deprivation of right of abode and of British citizenship

22.—(1) No person with the right of abode in Pitcairn under any law shall be arbitrarily deprived of that right, whether by legislation or otherwise.

(2) As everyone has the right to a nationality, no person shall be arbitrarily deprived of his or her British citizenship, whether by legislation or otherwise.

Prohibition of discrimination

23.—(1) Subject to subsection (4), no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsections (4) and (6), no person shall be treated in a discriminatory manner by any organ or officer of the executive or judicial branches of government or any person acting in the performance of the functions of the Pitcairn Public Service or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons on any ground such as sex, sexual orientation, race, colour, language, religion, age, disability, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(4) Nothing contained in or done under the authority of any law shall be held to breach this section to the extent that it has an objective and reasonable justification and there is a reasonable proportion between the provision of law in question or, as the case may be, the thing done under it and the aim which that provision or the thing done under it seeks to realise.

(5) No person shall be treated in a discriminatory manner in respect of access to any of the following places to which the general public have access, namely, shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of resort; but the proprietor of such a place has a duty to provide amenities and equipment facilitating the access of disabled persons only to the extent provided by a law.

(6) For the purposes of subsection (2), the exercise, in relation to a person, of any discretion to institute, conduct or discontinue criminal or civil proceedings in any court shall not in itself be held to breach this section.

Derogation in time of emergency

24.—(1) Nothing contained in or done under the authority of any law shall be held to breach any of the provisions of this Part other than sections 2, 3, 4, 5, 6(1), 8(2) and 10 to the extent that the law in question authorises the taking during a period of public emergency of measures that are

strictly required by the exigencies of the situation that exists in Pitcairn during that period, provided that such measures are not inconsistent with the obligations of the United Kingdom in respect of Pitcairn under international law.

(2) Where any person who is lawfully detained in pursuance only of a law referred to in subsection (1) so requests at any time during the period of that detention (but if he or she has already made such a request during that period, not earlier than six months after he or she last made such a request during that period), his or her case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice.

(3) On any review by a tribunal under subsection (2) of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his or her detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with such recommendations.

Enforcement of protective provisions

25.—(1) If any person alleges that any of the provisions of this Part has been, is being or is likely to be breached in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a breach in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and
- (b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (7),

and may make such declarations and orders, issue such writs and give such directions as it considers appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Part.

(3) The Supreme Court may decline to exercise its powers under subsection (2) if it is satisfied that adequate means of redress for the breach alleged are or have been available to the person concerned under any other law.

(4) Without prejudice to the generality of subsection (2), where, in exercise of its powers under that subsection, the Supreme Court determines that one of the provisions of this Part has been breached in relation to any person, it—

- (a) may order the award to that person of such damages as the Supreme Court considers just and appropriate; or
- (b) may direct the court which made the reference to it under subsection (7) (“the referring court”) to order the award to that person of such damages as that court considers just and appropriate, within such limits (if any) as the Supreme Court declares.

(5) An award of damages may not be made in pursuance of subsection (4) in respect of the making of any law but such an award may be made in respect of anything done by any organ or officer of the executive or judicial branches of government or any person acting in the performance of the functions of the Pitcairn Public Service or any public authority.

(6) Subsection (4) is without prejudice to section 7(5).

(7) If in any proceedings in a subordinate court any question arises as to the breach of any of the provisions of this Part, the person presiding in that court may refer the question to the Supreme Court unless, in his or her opinion, the raising of the question is merely frivolous or vexatious.

(8) If the effect of a provision of this Part is in issue in proceedings before the Supreme Court, the Court of Appeal or Her Majesty in Council, to which the Crown is not a party—

- (a) the Attorney General may intervene; and

- (b) the presiding judge must not hear and determine the proceedings until satisfied that the Attorney General has received notice of the proceedings and has had sufficient time to decide whether or not to intervene.

(9) Where any question is referred to the Supreme Court in pursuance of subsection (7), the Supreme Court shall give its decision on the question and the referring court shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(10) An appeal shall lie as of right to the Court of Appeal from any final determination of any application or question by the Supreme Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case; but no appeal shall lie from a determination by the Supreme Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(11) The Governor may by Ordinance confer on the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred on it by this section.

(12) The Chief Justice or the President of the Court of Appeal, as the case requires, may make Rules of Court with respect to the practice and procedure—

- (a) of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this section;
- (b) of the Supreme Court or the Court of Appeal in relation to appeals under this section from determinations of the Supreme Court or the Court of Appeal; and
- (c) of subordinate courts in relation to references to the Supreme Court under subsection (7),

including provisions with respect to the time within which any application, reference or appeal shall or may be made or brought.

(13) In determining any question which has arisen in connection with the interpretation or application of any of the foregoing provisions of this Part, every court shall take into account any—

- (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights;
- (b) decision of the European Commission of Human Rights (“the Commission”) given in a report adopted under Article 31 of the Convention;
- (c) decision of the Commission in connection with Article 26 or 27(2) of the Convention;
- (d) decision of the Committee of Ministers of the Council of Europe (“the Committee of Ministers”) taken under Article 46 of the Convention;
- (e) judgment, decision or declaration of a superior court in the United Kingdom on the interpretation or application of the Convention,

whenever made or given, so far as, in the opinion of the court, it is relevant to the proceedings in which that question has arisen.

(14) In subsection (13), references to the Convention are references to it as it has effect for the time being, except that—

- (a) the references in subsection (13)(b) and (c) to Articles 31, 26 and 27(2) are references to those Articles as they respectively had effect immediately before the coming into force of the Eleventh Protocol;
- (b) the reference in subsection (13)(d) to Article 46 includes a reference to Articles 32 and 54 as they had effect immediately before the coming into force of the Eleventh Protocol; and
- (c) the references in subsection (13) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).

(15) In subsections (13) and (14)—

- “the Convention” means the European Convention on Human Rights;
- “the Eleventh Protocol” means the protocol to the Convention (restructuring the control machinery established by it) agreed at Strasbourg on 11 May 1994; and
- “a superior court in the United Kingdom” means any of the following—
- (a) the High Court or the Court of Appeal in England;
 - (b) the High Court of Justiciary or the Court of Session in Scotland;
 - (c) the High Court or the Court of Appeal in Northern Ireland;
 - (d) the House of Lords or the Supreme Court; and
 - (e) the Judicial Committee of the Privy Council.

Interpretation of legislation

26. So far as it is possible to do so, legislation of Pitcairn must be read and given effect in a way which is compatible with the rights and freedoms set forth in this Part.

PART 3

THE GOVERNOR

The Governor

27.—(1) There shall be a Governor of Pitcairn, who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty’s pleasure.

(2) The Governor shall have such functions as are conferred or imposed on him or her by this Constitution or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him or her through a Secretary of State.

(3) Subject to the provisions of this Constitution and of any other law by which any functions are conferred or imposed on the Governor, the Governor shall do and execute all things that belong to his or her office according to such instructions, if any, as Her Majesty may from time to time see fit to give him or her through a Secretary of State; but no court shall enquire whether or not the Governor has complied with any such instructions.

(4) A person appointed to the office of Governor shall, before assuming the functions of that office, make oaths or affirmations of allegiance and for the due execution of that office in the forms set out in the Schedule.

Acting Governor

28.—(1) During any period when the office of Governor is vacant or the Governor is for any reason unable to perform the functions of that office those functions shall, during Her Majesty’s pleasure, be assumed and performed by such person as Her Majesty may designate for that purpose by instructions given through a Secretary of State (“the person designated”).

(2) Before assuming the functions of the office of Governor, the person designated shall make the oaths or affirmations directed by section 27(4) to be made by the Governor.

(3) The person designated shall not continue to act in the office of Governor after the Governor has notified him or her that the Governor is about to assume or resume the functions of that office.

(4) In this section “the Governor” means the person holding the office of Governor.

Powers of pardon, etc

29. The Governor may, in Her Majesty’s name and on Her Majesty’s behalf—

- (a) grant to any person convicted of any offence under the law of Pitcairn a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for such an offence; or
- (d) remit the whole or part of any punishment imposed on any person for such an offence or of any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

Power to dispose of Crown land

30. Subject to this Constitution and any other law, the Governor or any person duly authorised by him or her in writing under his or her hand may, in Her Majesty's name and on Her Majesty's behalf, make and execute grants and other dispositions of any land or other immovable property in Pitcairn that is vested in Her Majesty in right of the Government of Pitcairn.

Official stamp

31.—(1) There shall be an Official Stamp for Pitcairn.

(2) The Governor shall keep and use the Official Stamp for stamping all such documents as may by law require to be stamped with it.

Constitution of offices

32. Subject to this Constitution and any other law, the Governor, in Her Majesty's name and on Her Majesty's behalf, may constitute offices for Pitcairn.

PART 4

THE EXECUTIVE

Executive authority

33.—(1) The executive authority of Pitcairn is vested in Her Majesty.

(2) Subject to this Constitution, the executive authority of Pitcairn shall be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to the Governor.

(3) Nothing in this section shall preclude persons or authorities other than the Governor from exercising such functions as are or may be conferred on them by any law.

Island Council

34.—(1) There shall be an Island Council for Pitcairn, which shall be composed, and shall have such functions in relation to the government of Pitcairn, as may be prescribed by any law.

(2) The members of the Island Council shall be elected to office in free and fair elections held at regular intervals in such manner as may be prescribed by any law.

Attorney General

35.—(1) There shall be an Attorney General of Pitcairn who shall be the principal legal adviser to the Government of Pitcairn.

(2) The Attorney General shall be an officer of the Pitcairn Public Service appointed by the Governor, acting with the approval of a Secretary of State.

(3) The Attorney General shall be appointed—

- (a) for a term ending when the appointee reaches any retiring age fixed by law; or
 - (b) whether or not the appointee has attained that age or will attain it during his or her term of office, for a term specified in the instrument of appointment.
- (4) The Attorney General may, in any case in which he or she considers it desirable to do so—
- (a) institute and undertake criminal proceedings against any person before any court in respect of an offence against any law;
 - (b) take over and continue any such criminal proceedings that have been instituted by any other person or authority; and
 - (c) discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.
- (5) The powers of the Attorney General under subsection (4) may be exercised by him or her in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.
- (6) The powers conferred on the Attorney General by subsection (4)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority; but where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.
- (7) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings to any other court, shall be deemed to be part of those proceedings.
- (8) In the exercise of the powers conferred on him or her by this section, the Attorney General, and any person acting under his or her authority, shall act independently and shall not be subject to the direction or control of the Governor, the Island Council or any other person or authority.
- (9) The remuneration of the Attorney General shall be determined by the Governor and shall be charged on the public funds of Pitcairn.
- (10) The remuneration and allowances and other terms and conditions of the Attorney General shall not be altered to the disadvantage of the Attorney General during his or her continuance in office.
- (11) The Attorney General may be removed from office only for inability to discharge the functions of the office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (12).
- (12) The Attorney General shall be removed from office by the Governor if the question of his or her removal from office has been referred to a tribunal appointed under subsection (13) and the tribunal has advised the Governor that he or she should be removed from office for inability as aforesaid or for misbehaviour.
- (13) If the Governor considers that the question of removing the Attorney General from office for inability as aforesaid or for misbehaviour ought to be investigated, then—
- (a) the Governor shall appoint a tribunal, which shall consist of a convenor and two other members, selected by the Governor from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in one or more Commonwealth countries or in Ireland or a court having jurisdiction in appeals from any such court; and
 - (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether the Attorney General should be removed from office for inability as aforesaid or for misbehaviour.
- (14) The Commissions of Inquiry Ordinance shall apply *mutatis mutandis* in relation to a tribunal appointed under subsection (13) and the expenses of any such inquiry shall be charged on the public funds of Pitcairn.

(15) If the question of removing the Attorney General from office has been referred to a tribunal under subsection (13), the Governor may suspend the Attorney General from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor and shall in any case cease to have effect if the tribunal advises the Governor that the Attorney General should not be removed from office.

(16) References in subsections (11), (12), (13) and (15) to the Attorney General do not include references to a person appointed to act in the office of Attorney General during any period when it is vacant or the holder of that office is unable to perform the functions of that office; and the appointment of such a person may be revoked by the Governor at any time before the expiration of that period.

PART 5

THE LEGISLATURE

Power to make laws

36.—(1) Subject to this Constitution, the Governor, acting after consultation with the Island Council, may make laws for the peace, order and good government of Pitcairn.

(2) The Governor shall not be obliged to act in accordance with the advice of the Island Council in exercising the power conferred by subsection (1), but in any case where the Governor acts contrary to the advice of the Council any member of the Council shall have the right to submit his or her views on the matter to a Secretary of State.

(3) The Governor may exercise the power conferred by subsection (1) without consulting the Island Council whenever he or she is instructed to do so by Her Majesty through a Secretary of State.

Rules for the making of laws

37.—(1) In the making of laws for Pitcairn the Governor shall observe, so far as is practicable, the following rules.

(2) All laws shall be styled “Ordinances” and the words of enactment shall be “Enacted by the Governor of the Islands of Pitcairn, Henderson, Ducie and Oeno”.

(3) Matters having no proper relation to each other shall not be provided for by the same law.

(4) No law shall contain anything foreign to what the title of the law imports.

(5) No provision having indefinite duration shall be included in any law expressed to have limited duration.

(6) All laws shall be distinguished by titles, and shall be divided into successive sections consecutively numbered, and to every section there shall be annexed a short indication of its contents.

(7) All laws shall be numbered consecutively in a separate series for each year commencing with the number one, and the position of each law in the series shall be determined with reference to the day on which the Governor made the law.

Certain laws not to be made without instructions

38. The Governor shall not, without having previously obtained instructions through a Secretary of State, make any law within any of the following classes, unless such law contains a clause suspending its operation until the signification of Her Majesty’s pleasure on it—

- (a) any law whereby any grant of land or money, or other donation or gratuity, may be made to the Governor;
- (b) any law affecting the currency of Pitcairn or relating to the issue of banknotes;

- (c) any law the provisions of which shall appear to the Governor to be inconsistent with obligations imposed on the United Kingdom by treaty;
- (d) any law of an extraordinary nature and importance whereby Her Majesty's prerogative, or the rights or property of Her subjects not residing in Pitcairn, or the trade, transport or communications of any territory under Her Majesty's sovereignty may be prejudiced;
- (e) any law containing provisions which have been disallowed by Her Majesty;

but the Governor may, without such instructions and although the law contains no such suspending clause, enact any such law (except a law of the class referred to in paragraph (c)) if the Governor is satisfied that an urgent necessity exists requiring that law to be brought into immediate operation; and in any such case the Governor shall forthwith transmit a copy of the law to a Secretary of State together with his or her reasons for so enacting it.

Publication and commencement of laws

39.—(1) All laws made by the Governor shall be published in such manner and at such place or places in Pitcairn as the Governor may from time to time direct.

(2) Every such law shall come into force on the date on which it is published in accordance with subsection (1) unless it is provided, either in such law or in some other enactment, that it shall come into force on some other date, in which case it shall come into force on that date.

Laws to be sent to a Secretary of State

40. When any law has been made, the Governor shall at the earliest convenient opportunity transmit to a Secretary of State a transcript in duplicate of the law, duly authenticated under the Official Stamp and by his or her own signature, together with an explanation of the reasons and occasion for the making of the law.

Disallowance of laws

41.—(1) Any law made by the Governor may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever a law has been disallowed by Her Majesty the Governor shall, as soon as practicable, cause notice of such disallowance to be published in such manner and in such place or places in Pitcairn as the Governor may from time to time direct, and the law shall be annulled with effect from the date of the publication of that notice.

(3) Section 16(1) of the Interpretation Act 1978(a) shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

PART 6

THE ADMINISTRATION OF JUSTICE

Application of English law

42.—(1) Subject to subsection (2), the common law, the rules of equity and the statutes of general application as in force in and for England for the time being shall be in force in Pitcairn.

(2) All the laws of England extended to Pitcairn by subsection (1) shall be in force in Pitcairn so far only as the local circumstances and the limits of local jurisdiction permit and subject to any existing or future Ordinance, and for the purpose of facilitating the application of the said laws it

(a) 1978 c.30.

shall be lawful to construe them with such formal alterations not affecting the substance as to names, localities, courts, offices, persons, moneys, penalties and otherwise as may be necessary to render those laws applicable to the circumstances.

The courts of Pitcairn

43.—(1) The courts of Pitcairn shall be the Pitcairn Supreme Court, the Pitcairn Court of Appeal, and such courts subordinate to the Supreme Court as may be established by law.

(2) The Pitcairn (Appeals to Privy Council) Order 2000(a) (as amended by this Order) shall continue to apply in relation to appeals to Her Majesty in Council from judgments of the Court of Appeal.

(3) Without prejudice to the generality of the power conferred by section 36(1), the Governor may by any law constitute courts for Pitcairn with such jurisdiction, and make such provisions and regulations for the proceedings in such courts and for the administration of justice, as the Governor may think fit.

(4) Subject to any law, a court established under subsection (3) shall sit in such place in Pitcairn as the Governor, acting in accordance with the advice of the Chief Justice, may appoint; but it may also sit in the United Kingdom, or in such other place as the Governor, acting in accordance with the advice of the Chief Justice, may appoint.

(5) Where a court sits, by virtue of subsection (4), in some place other than Pitcairn, it may there exercise its jurisdiction and powers in like manner as if it were sitting within Pitcairn, but anything done there by virtue of this subsection shall have, and shall have only, the same validity and effect as if done in Pitcairn.

(6) The references in subsections (4) and (5) to a court sitting and exercising its jurisdiction and powers in any place include references to a judge or judicial officer or officer of the court exercising in that place any jurisdiction or powers or other functions vested in him or her as such by any law.

Independence of the judiciary

44. The judges and judicial officers appointed to preside or sit in any court of Pitcairn shall exercise their judicial functions independently from the legislative and executive branches of government.

SUPREME COURT

Constitution of Supreme Court

45.—(1) There shall be a Supreme Court for Pitcairn which shall be a superior court of record and shall be styled the Pitcairn Supreme Court.

(2) Subject to this Constitution, the Supreme Court shall have and may exercise all such jurisdiction in and in relation to Pitcairn as is necessary to administer the law of Pitcairn.

(3) Without prejudice to the generality of subsection (2), the Supreme Court shall possess and may exercise in and in relation to Pitcairn, subject to this Constitution and to any other law, all the jurisdiction which is vested in, or is capable of being exercised by, Her Majesty's High Court of Justice in and in relation to England.

(4) The Supreme Court shall have and use a seal bearing the style of the Court and a device approved by the Chief Justice.

(a) S.I. 2000/1816, amended by SI 2009/224.

Sittings of Supreme Court

46.—(1) The Supreme Court may sit in Pitcairn or, in such circumstances as may be prescribed by Ordinance, outside Pitcairn.

(2) The Chief Justice when outside Pitcairn may exercise such powers of revision, variation, confirmation or setting aside of any sentence or order made by a subordinate court as are conferred on him or her by any law.

Judges of Supreme Court

47.—(1) The judges of the Supreme Court shall be a Chief Justice and such number of other judges (if any) as may be prescribed by law.

(2) If the office of Chief Justice is vacant, or the Chief Justice has not assumed, or is for any reason unable to perform the functions of, that office, those functions may be performed by—

- (a) the next most senior judge of the Supreme Court in terms of the date of his or her appointment; or
- (b) if there is no such judge, or if for any reason no such judge is able to perform the functions of the office of Chief Justice, then, unless this Constitution otherwise provides, those functions may be performed by an acting judge of the Supreme Court authorised to perform those functions by the Governor.

(3) If—

- (a) in the circumstances described in subsection (2), there is no judge who can perform the functions of the office of Chief Justice; or
- (b) the state of the business of the Supreme Court makes it desirable that an additional person should be appointed by whom the Supreme Court may be held,

the Governor may decide that an acting judge should be appointed to hold the Supreme Court.

(4) A person shall not be qualified for appointment as the Chief Justice or any other judge or acting judge of the Supreme Court unless—

- (a) he or she is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in Ireland, or a court having jurisdiction in appeals from any such court; or
- (b) he or she is entitled to practise as an advocate in such a court and has been entitled for not less than seven years to practise as an advocate or solicitor in such a court.

(5) For the purposes of subsection (4), a person shall be regarded as an advocate or a solicitor if he or she has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—

- (a) he or she holds or acts in any office the holder of which is, by reason of his or her office, precluded from practising in a court; or
- (b) he or she does not hold a practising certificate or has not satisfied any other like condition of being permitted to practise.

Exercise of jurisdiction of Supreme Court

48.—(1) The Chief Justice or any other judge or acting judge of the Supreme Court may hold the Supreme Court.

(2) A judge holding the Supreme Court has, in exercise of the jurisdiction of that Court, all the powers and authority of the Court, and, if not the Chief Justice, has the jurisdiction, powers, authority, privileges and immunities conferred on the Chief Justice.

(3) If, at any time, there are two or more judges who may hold the Supreme Court, each of them may hold sittings of the Court simultaneously.

(4) In this section “Chief Justice” means the person holding the office of Chief Justice.

COURT OF APPEAL

Constitution of Court of Appeal

49.—(1) There shall be a Court of Appeal for Pitcairn which shall be a superior court of record and shall be styled the Pitcairn Court of Appeal.

(2) The judges of the Court of Appeal shall be—

- (a) a President and two or more Justices of Appeal; and
- (b) the Chief Justice, who shall be a member of the Court *ex officio*.

(3) A person shall not be qualified for appointment as the President of the Court of Appeal or a Justice of Appeal unless—

- (a) he or she is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in Ireland, or a court having jurisdiction in appeals from any such court; or
- (b) he or she is entitled to practise as an advocate in such a court and has been entitled for not less than seven years to practise as an advocate or solicitor in such a court.

(4) For the purposes of subsection (3), a person shall be regarded as an advocate or a solicitor if he or she has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—

- (a) he or she holds or acts in any office the holder of which is, by reason of his or her office, precluded from practising in a court; or
- (b) he or she does not hold a practising certificate or has not satisfied any other like condition of being permitted to practise.

(5) At any time when the office of President of the Court of Appeal is vacant or the person holding that office is for any reason unable to perform the functions of that office, those functions shall be performed by such one of the Justices of Appeal or such other person qualified for appointment as a Justice of Appeal as may from time to time be designated for that purpose by the Governor or, in the absence of such designation, by the Justice of Appeal who is the senior Justice of Appeal in terms of date of appointment.

(6) The Court of Appeal shall have and use a seal bearing the style of the Court and a device approved by the President of the Court.

Jurisdiction of Court of Appeal

50.—(1) The Court of Appeal shall have jurisdiction to hear and determine such appeals from the courts of Pitcairn as may be prescribed by this Constitution or any other law.

(2) In connection with any appeal from a court of Pitcairn, the Court of Appeal shall, subject to this Constitution and any other law, have all the powers and jurisdiction that are possessed by that court under any law; and decisions of the Court of Appeal in respect of any appeal from a court of Pitcairn shall, subject as aforesaid, be enforced in Pitcairn in the same way as decisions of that court.

(3) The Court of Appeal may, in accordance with any directions issued from time to time by the President of the Court, sit in Pitcairn or elsewhere for the purpose of exercising any jurisdiction and powers conferred on it by or under this Constitution or by any rule made under section 51; but anything done elsewhere than in Pitcairn by virtue of this subsection shall have, and have only, the same validity and effect as if done in Pitcairn.

Practice and procedure on appeals

51.—(1) Subject to this Constitution, the President of the Court of Appeal may make rules for regulating the practice and procedure of the Court of Appeal with respect to appeals from the courts of Pitcairn and, in connection with such appeals, for regulating the practice and procedure in any court of Pitcairn from which such appeals are brought.

(2) Without prejudice to the generality of subsection (1), rules of court may be made for the following purposes—

- (a) for regulating the sittings of the Court of Appeal, whether in divisions or otherwise, and the selection of judges for any purpose;
- (b) for regulating the right of practising before the Court of Appeal and the representation of persons concerned in any proceedings in the Court;
- (c) for prescribing cases in which, and conditions on which, an appellant in a criminal appeal to the Court of Appeal shall be entitled to be present at the hearing of the appeal;
- (d) for providing for the summary determination of any appeal which appears to the Court of Appeal to be frivolous or vexatious or to be brought for the purposes of delay;
- (e) for prescribing the forms and fees in respect of proceedings in the Court of Appeal and regulating the costs of and incidental to any such proceedings;
- (f) for prescribing and regulating the powers and duties of registrars and officers of the Court of Appeal;
- (g) for prescribing the time within which any requirement of the rules is to be complied with;
- (h) for providing for a reference to the Court of Appeal from a decision of a single judge.

(3) Rules made under this section may fix the number of judges of the Court of Appeal who may sit for any purpose; but—

- (a) an uneven number shall sit, which, for the purposes of any final determination by the Court other than the summary dismissal of an appeal, shall not be fewer than three; and
- (b) any determination by the Court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit for the purpose of determining that matter.

GENERAL

Appointment of judges and judicial officers

52.—(1) The Governor, on instructions from Her Majesty given through a Secretary of State, shall appoint—

- (a) the Chief Justice and any other judges of the Supreme Court; and
- (b) the President of the Court of Appeal and the Justices of Appeal.

(2) The Governor, acting in accordance with the advice of the Chief Justice, shall appoint any acting judge of the Supreme Court.

(3) The Governor shall appoint any judicial officers.

(4) Every person appointed under this section shall, subject to this Constitution, hold office on such terms and conditions as the Governor may prescribe.

(5) Before entering upon the functions of the office, every holder of a judicial office referred to in this section shall make an oath or affirmation of allegiance and the judicial oath or affirmation in the forms set out in the Schedule.

Remuneration

53.—(1) There shall be paid to every judge or judicial officer such remuneration as may be agreed between the Governor and the judge or judicial officer immediately before his or her appointment, and such remuneration shall be charged on the public funds of Pitcairn.

(2) The remuneration and allowances and other terms and conditions of a judge or a judicial officer shall not be altered to the disadvantage of the judge or judicial officer during his or her continuance in office.

Tenure of office of judges

54.—(1) Subject to the following provisions of this section, the Chief Justice, any other judge of the Supreme Court, the President of the Court of Appeal and any Justice of Appeal shall hold office until he or she attains the age of 75 years; but the Governor may permit any such person who has attained the age of 75 years to remain in office for such fixed period, not exceeding two years, as may have been agreed between that person and the Governor.

(2) An acting judge of the Supreme Court shall be appointed either—

- (a) for a term specified in the instrument of appointment; or
- (b) if the appointee is acting in the place of a Chief Justice or other judge whose office is vacant, or who has not assumed, or is for any reason unable to perform the functions of, that office, for a term expiring on the assumption or resumption by the Chief Justice or other judge of the functions of the office.

(3) A judge may, when his or her appointment expires, continue so to act for the purposes of giving judgment or otherwise in relation to any proceeding commenced before him or her while his or her appointment was subsisting.

(4) A judge may at any time resign from office by writing under his or her hand addressed to the Governor.

(5) Nothing done by a judge shall be invalid by reason only that the judge has attained the age at which he or she is required by or under this section to retire from office.

(6) The office of a judge shall not be abolished during the continuance in office of the judge without his or her consent.

(7) A judge may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be removed except in accordance with subsection (8).

(8) A judge shall be removed from office by the Governor by instrument stamped with the Official Stamp if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (9), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833^(a) or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge should be removed from office for inability as aforesaid or for misbehaviour.

(9) If the Governor considers that the question of removing a judge from office for inability as aforesaid or for misbehaviour ought to be investigated, then—

- (a) the Governor shall appoint a tribunal, which shall consist of a convenor and two other members, selected by the Governor from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in one or more Commonwealth countries or in Ireland or a court having jurisdiction in appeals from any such court;
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly.

(10) The Commissions of Inquiry Ordinance shall apply *mutatis mutandis* in relation to a tribunal appointed under subsection (9) and the expenses of any such inquiry shall be charged on the public funds of Pitcairn.

(11) If the question of removing a judge from office has been referred to a tribunal under subsection (9), the Governor may suspend the judge from performing the functions of that office,

(a) 1833 c. 41.

and any such suspension may at any time be revoked by the Governor and shall in any case cease to have effect—

- (a) if the tribunal advises the Governor that he or she should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge should not be removed from office.

Tenure of office of judicial officers

55.—(1) A judicial officer shall be appointed for life, or until the appointee reaches such an age as may be prescribed by Ordinance.

(2) A judicial officer may, when his or her appointment expires, continue so to act for the purposes of giving judgment or otherwise in relation to any proceeding commenced before him or her while his or her appointment was subsisting.

(3) A judicial officer may at any time resign from office by writing under his or her hand addressed to the Governor.

(4) A judicial officer may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be removed except in accordance with subsection (5).

(5) The Governor may remove a judicial officer from office if the Governor, after such enquiries as he or she considers appropriate, determines that the judicial officer concerned should be removed from office for inability as aforesaid or for misbehaviour.

(6) A person who has been removed from office as a judicial officer by the Governor may apply to the Supreme Court for redress on the ground that any finding of fact or law on which the Governor based his or her decision was unjustified or wrong; and, for the purpose of affording such redress, the Supreme Court may make such declarations and orders, issue such writs and give such directions as it considers appropriate.

PART 7

PUBLIC SERVICE

Appointments etc of officers of Pitcairn Public Service

56.—(1) The Governor may make appointments to any office in the Pitcairn Public Service, and any person so appointed, unless otherwise provided by law, shall hold his or her office during Her Majesty's pleasure.

(2) The Governor may, subject to any law and to such instructions as may from time to time be given to him or her by Her Majesty through a Secretary of State, upon sufficient cause to the Governor appearing—

- (a) remove from office or suspend from performing the functions of his or her office any officer of the Pitcairn Public Service; or
- (b) take such other disciplinary action as may seem to the Governor desirable in relation to any such officer.

(3) The Governor may by directions in writing delegate the powers conferred on him or her by subsections (1) and (2) to any officer or officers of the Pitcairn Public Service to such extent, and subject to such conditions, as may be specified in the directions.

(4) The Governor may, whenever he or she thinks fit, require any officer of the Pitcairn Public Service to make an oath or affirmation of allegiance in the form set out in the Schedule, together with such other oaths or affirmations as may from time to time be prescribed by any law in the

form prescribed by any such law; and the Governor shall administer such oaths or affirmations or cause them to be administered by some officer of the Pitcairn Public Service.

(5) This section is without prejudice to section 35.

Terms and conditions of employment

57.—(1) The Governor shall approve (and may from time to time amend) a Code of Management by or under which the terms and conditions of employment of officers of the Pitcairn Public Service, or any branch of it, shall be determined.

(2) Subject to any such Code of Management, the terms and conditions of the employment of an individual officer of the Pitcairn Public Service shall be as agreed in that officer's contract of employment or implied by any rule of law.

PART 8

AUDIT

Audit

58.—(1) The Governor shall make appropriate arrangements for the audit of the public accounts of Pitcairn and of all courts of Pitcairn and all authorities and offices of the Government of Pitcairn; and any person or authority conducting such an audit shall have access to all books, records, reports and other documents relating to those accounts.

(2) Any person or authority conducting an audit pursuant to subsection (1) shall act independently and shall not be subject to the direction or control of the Governor, the Island Council or any other person or authority.

PART 9

OMBUDSMAN

Ombudsman

59.—(1) The Governor may from time to time appoint an Ombudsman to investigate, in accordance with any Ordinance enacted under section 36, any complaint of maladministration in the government of Pitcairn or such other matters as may be prescribed by Ordinance.

(2) No person shall be qualified to be appointed as an Ombudsman if he or she is a member of the Island Council or an officer of the Pitcairn Public Service.

(3) An Ombudsman shall vacate office—

- (a) at the expiration of the period specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes a member of the Island Council or an officer of the Pitcairn Public Service; or
- (d) if the Governor directs that he or she shall be removed from office for inability to discharge the functions of the office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour.

Functions of Ombudsman

60.—(1) An Ombudsman shall have such functions, powers and jurisdiction as may be prescribed by Ordinance.

(2) In the investigation of any complaint or other matter, an Ombudsman shall act independently and shall not be subject to the direction or control of the Governor, the Island Council or any other person or authority.

PART 10 MISCELLANEOUS

Interpretation

61. In this Constitution, unless it is otherwise provided or required by the context—

“breach”, in relation to any provision of this Constitution, includes a failure to comply with that provision, and cognate expressions shall be construed accordingly;

“court” means any subordinate court, the Supreme Court or the Court of Appeal, and includes Her Majesty in Council;

“Court of Appeal” means the Pitcairn Court of Appeal established by section 49;

“functions” includes powers and duties;

“Island Council” means the Island Council of Pitcairn established by section 34;

“judge” means the Chief Justice or another judge of the Supreme Court, the President of the Court of Appeal, a Justice of Appeal, or an acting judge of the Supreme Court;

“judicial officer” means a magistrate, an island magistrate, a judge of a subordinate court or any other person who is authorised to exercise the powers of such a judge, a registrar of the Supreme Court or a registrar of the Court of Appeal;

“law” means law in force in Pitcairn, and “lawful” and “lawfully” shall be construed accordingly;

“minor” means a person who has not attained the age of eighteen years or such other age as may be prescribed for the purposes of this Constitution by any other law;

“officer of the Pitcairn Public Service” means the holder of any office in the Pitcairn Public Service and any other employee of the Public Service (except a casual worker), and includes a person appointed to act as an officer of the Pitcairn Public Service;

“Ordinance” means a law made by the Governor in respect of Pitcairn;

“period of public emergency” means any period during which—

(a) there is, in or affecting Pitcairn, a war or other public emergency threatening the life of the nation; and

(b) a proclamation of a state of emergency is in force under a law;

“Pitcairn” means Pitcairn, Henderson, Ducie and Oeno Islands;

“Pitcairn Public Service” means the service of the Crown in a civil capacity in respect of the government of Pitcairn, and includes service as a member of any police force, prison service or fire service of Pitcairn; but does not include service as a judge or judicial officer or service as a member of the Island Council, any committee of the Council or, unless otherwise provided by a law, of any other public authority;

“subordinate court” means a court of Pitcairn subordinate to the Supreme Court that has been established by law;

“Supreme Court” means the Pitcairn Supreme Court established by section 45.

References to the holder of an office to include a person acting in the office

62. In this Constitution, unless it is otherwise provided or required by the context, a reference to the holder of an office by the term designating his or her office shall be construed as including a

reference to any person acting in that office or, to the extent of his or her authority, otherwise performing the functions of that office.

Power to amend and revoke instruments, etc

63.—(1) Any power conferred by this Constitution to make any subsidiary instrument or to give any instructions or directions shall be construed as including a power exercisable in like manner to amend or revoke any such instrument, instructions or directions.

(2) In subsection (1), “subsidiary instrument” means any proclamation, regulation, order, rule or other like instrument having the force of law.

Appointments

64.—(1) Where any person has vacated any office established by this Constitution, he or she may, if qualified, again be appointed or elected or otherwise selected to hold that office in accordance with this Constitution.

(2) Where a power is conferred by this Constitution on any person to make any appointment to any office, a person may be appointed to that office even though some other person may be holding that office, when that other person is on leave of absence pending relinquishment of that office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred on the holder of that office, the person last appointed to that office shall be deemed to be the sole holder of the office.

(3) In this Constitution, unless it is otherwise provided or required by the context, any reference to power to make appointments to an office shall be construed as including reference to power to make appointments on promotion and transfer to that office and power to appoint a person to act in that office during any period when it is vacant or the holder of it is unable (whether by reason of absence or infirmity of body or mind or any other cause) to perform the functions of that office.

(4) Where by this Constitution any person is directed, or power is conferred on any person or authority to appoint a person, to act in an office if the holder of it is unable to perform the functions of that office, the validity of any performance of those functions by the person so directed or of any appointment made in exercise of that power shall not be called into question in any court on the grounds that the holder of the office is not unable to perform the functions of the office.

Removal from office

65. References in this Constitution to the power to remove an officer of the Pitcairn Public Service from his or her office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the Public Service and to any power or right to terminate a contract on which a person is employed in the Public Service and to determine whether any such contract shall or shall not be renewed.

Resignations

66.—(1) Any person who is appointed to any office established by or under this Constitution may resign from that office by writing under his or her hand addressed to the person or authority by whom he or she was appointed.

(2) The resignation of any person from any office established by or under this Constitution takes effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any other person authorised by that person or authority to receive it.

SCHEDULE TO THE CONSTITUTION

FORMS OF OATHS AND AFFIRMATIONS

1. Oath of allegiance

I.....do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. Oath for due execution of office of Governor

I.....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of Governor in accordance with the Constitution and other laws of Pitcairn. So help me God.

3. Judicial Oath

I.....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of.....and I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God.

4. Affirmations

In the forms above respectively set forth, for the word “swear” there shall be substituted the words “solemnly and sincerely affirm and declare”, and the words “So help me God” shall be omitted.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes a new Constitution for Pitcairn, Henderson, Ducie and Oeno Islands. The Constitution provides for partnership values as the basis of the relationship between the United Kingdom and the Islands, and for enforceable fundamental rights and freedoms of the individual. The Governor, to be appointed by Her Majesty, has executive and legislative power, assisted by an Island Council. Judicial authority is conferred on a Supreme Court, a Court of Appeal, and such subordinate courts as may be established by the law of the Islands. Final appeal to the Privy Council remains regulated by the Pitcairn (Appeals to Privy Council) Order 2000 (S.I. 2000/1816, as amended by S.I. 2009/224) as amended by this Order. The Constitution also makes provision for the Pitcairn Public Service, for the independent audit of the public accounts of Pitcairn, and for an Ombudsman.

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