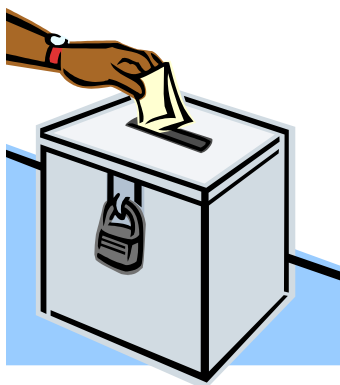




St Helena

# Improving Democracy and Accountability



A Discussion Document

## Table of Contents

1	Foreword by HE The Governor	Page	3
2	Introduction	Paragraphs	1-13
3	Executive Council		14-26
4	Council Committees		27-31
5	Public Accounts Committee		32-40
6	Consultation		41-45

# **Foreword**

by His Excellency the Governor

This proposal to adjust our 2009 Constitution arose from concerns among Councillors, the electorate and public servants, driven primarily by what appeared to be blurred lines of responsibility and accountability within Government. We have seen and heard those frustrations aired in the media by some Councillors and by members of the public. I have no doubt that the current arrangements contributed in part to the low turnouts we have seen at recent by-elections.

For my part, after one year of trying to make the over complicated and clunky system work, I too have concluded that the system could be improved, especially now that St Helena has entered an era of unprecedented change linked to air access. The electorate must be able to see, clearly, where responsibility rests for the decisions taken on their behalf by their Elected Members. It is an essential element of good government that those elected to represent the interests of the people should operate within a structure in which they are readily accountable to the people: to explain, to justify, and to stand by decisions taken by them on behalf of the people.

It is important to note that these proposed changes do not give the Governor additional powers and nor do they give Councillors additional powers. This is about simplifying the way government operates while making it more readily accountable by ensuring that there is more specific ownership of decisions taken by the Elected Members through a more cohesive and sharply focused Executive Council.

I am pleased that, in keeping with the spirit of the new White Paper on the Overseas Territories, the UK Government is content that we should now take forward to public consultation these proposals to adjust our Constitution. At the end of this process we stand to gain a model that I hope will generate greater public confidence in Government and in the role of Elected Members. I am grateful to our Attorney General and to Councillors for their work on shaping these proposals and now look forward to a lively public debate of the issues.

Mark Capes  
Governor  
January 2013.

## INTRODUCTION

1. In 2009, after lengthy consultation and debate, a new Constitution was adopted for St Helena (and for Ascension and Tristan da Cunha). It brought many changes, which seem generally to be thought to have been improvements upon the previous provisions, which dated from 1988.
2. The changes included a chapter about fundamental rights and freedoms, provisions to protect the impartiality of the courts, a Public Accounts Committee, and a significant shift in the balance of power away from the Governor and towards Councillors. The Chief Secretary and the Financial Secretary no longer have a vote in either the Executive Council or the Legislative Council, so only the Elected Members may vote.
3. The Speaker and Deputy Speaker, the five Elected Members of the Executive Council, and the Chairmen of the Council Committees are all elected by the twelve Elected Members of the Legislative Council.
4. But some of the changes have perhaps been less successful in their implementation and effect; they have led to questions about democratic accountability.
5. Under the previous Constitution, the five Elected Members of the Executive Council were the Chairmen of the five Council Committees. This linkage was removed in 2009, and the limit of five on the number of Committees was removed.
6. Eight Committees were established, and it is theoretically possible to have eight Chairmen, with only one of them on the Executive Council (if the four who are not Chairmen are all elected to Executive Council, that leaves one remaining seat which would inevitably be filled by one of the eight Chairmen). At the other end of the spectrum of possibilities, five Committees might have Chairmen who have seats in Executive Council, while the other three have not.
7. Lines of accountability have thus become tangled; the vision of democracy has become blurred. It is possible for members of the Executive Council, and Committee Chairmen, to serve on the Public Accounts Committee – scrutinizing themselves! Collective responsibility (and, thus, democratic accountability) seems to have been lost.
8. In September, 2012, the Legislative Council passed a resolution:  
**That this House requests Her Majesty's Government to undertake minor adjustments to the St Helena Constitution 2009, in order to provide improvements to section 36 (Election of Elected Members of Executive Council) and section 69 (Public Accounts Committee) thereby to further the practice of good governance on St Helena.**
9. Her Majesty's Government has signaled willingness to address this issue, and has asked for more detailed proposals to be developed for consideration. This Discussion Document elaborates on the issues underlying the Resolution passed in September, and sets out specific proposals for furthering **the practice of good governance on St Helena.**
10. The driver for change is a widely-held belief that experience since the last General Election (which was the first under the 2009 Constitution) reveals that the Constitution creates a political system which is not conducive to-
  - a. collective leadership and responsibility;
  - b. clear lines of authority; or

- c. transparent accountability.
11. Against that background, this paper proposes changes which will create an environment that promotes further development of democratic institutions and good governance. Specifically, the proposals will-
    - a. enhance both responsibility and accountability; and
    - b. create an environment for vibrant and effective democratic processes.
  12. The next three sections describe specific proposals, under the headings **Executive Council**, **Council Committees**, and **Public Accounts Committee**.
  13. The publication of this paper signals the start of a period of public consultation, which will end on Friday 25<sup>th</sup> January, 2013. Details of the consultation process are set out in the final section, starting on page 8.

## EXECUTIVE COUNCIL

### *The need for change*

14. The removal of the link between Committee Chairmanship and Membership of the Executive Council seems to have blurred lines of democratic accountability. Prior to 2009, the Council Committees had their own Constitutional status but were similar in the way they operated to sub-committees of the Executive Council.
15. Each of the Chairmen was a member of the Executive Council, so there was a clear channel of communication between each Committee and the Executive Council. The attempt to maintain this communication line by appointing Deputy Chairmen (and ensuring that every Committee has a voice in Executive Council through either its Chairman or its Deputy Chairman) is widely thought to have been a failure.
16. The Executive Council, our equivalent of a Cabinet in a Ministerial system, needs to have effective oversight of the whole spectrum of government policy; otherwise, accountability is diluted – leaving the electorate unsure who is responsible for what. Just as, in a Ministerial system, the individual Ministers have to act in accordance with Cabinet policy, so our Council Committees need to act in accordance with Executive Council policy.
17. The corollary of that is that each Committee needs to have an equal voice in influencing Executive Council policy – just as Ministers have equal voices to present their departmental preferences in a Cabinet.
18. Currently, the five Elected Members are elected by the 12 Elected Members of the Legislative Council, from amongst themselves. The 2009 Constitution introduced a requirement for mid-term re-election for the Executive Council (two years after the General Election) and a further re-election a year later. Although, in practice, there has been a substantial level of continuity, the uncertainty created by this process has been found to disrupt the business of Government; not least in the indirect impact it has upon membership of Council Committees.

### ***The Proposal***

19. It is proposed that the Executive Council should comprise the three Ex Officio (non-voting) members, plus five of the Elected Members of the Legislative Council. That is as it is now and as it has been since 1966 (except that, until 2009, two of the Ex Officio members were able to vote).
20. The Executive Council would be led by a Chief Councillor, who would be elected by the Elected Members of the Legislative Council from amongst themselves.
21. The other four Elected Members would be appointed by the Governor, acting in accordance with the advice of the Chief Councillor.
22. The Chief Councillor would be elected as soon as practicable after a General Election, and would serve until the next General Election unless he or she earlier resigns or is removed. He or she could be removed by a vote of no confidence in the Legislative Council.
23. The Chief Councillor would therefore be personally and directly accountable to the Legislative Council for the business of Government. It would be his or her responsibility to build a coherent and reliable team to make up (with him or her) the Executive Council. He or she would know that removal was an ever-present threat; he or she would need to carry a majority of the whole Council in order to remain in office.
24. The other four Elected Members of the Executive Council would also remain in office until the next General Election, or until earlier resignation or removal. They would be removed by the Governor in any of the following situations:
  - a. if the Chief Councillor advised the Governor to remove him or her;
  - b. if the Legislative Council passed a vote of no confidence in the Chief Councillor;
  - c. if the Legislative Council passed a vote of no confidence in an individual Member.
25. The first is necessary because the Chief Councillor is liable to removal if his team, as a whole, is not performing to the satisfaction of the Legislative Council; he must therefore have control over the membership of that team. The second reflects a principle that no confidence in the Chief Councillor calls for a fresh start under a new Chief Councillor – who must be able to assemble his or her own team. The third ensures that the majority in Legislative Council could remove an individual member of the Executive Council who no longer held the confidence of the majority.
26. The Elected Members of the Executive Council would thus be fully accountable to the Legislative Council, and would need to work together in a coherent way to deliver a programme of government business which commands the support of a majority of the Elected Members of the Legislative Council.

### **COUNCIL COMMITTEES**

#### ***The need for change***

27. The number of Council Committees was increased from 5 to 8 after the last General Election. A number of areas of government business which had not previously fallen under a Committee were allocated to a Committee.
28. But experience with this experiment has revealed a number of practical problems, including:

- a. impossibility of matching Committees with Directorates (previously ‘Departments’), leaving some Committees with no ‘secretariat’ to support them;
- b. fragmented reporting from Committees to the Executive Council;
- c. membership of the Public Accounts Committee (see paragraph 7 in the Introduction).

### ***The Proposal***

- 29. It is proposed to limit the number of Committees to five, and restore the link between Committee Chairmanship and membership of the Executive Council. This will clarify lines of responsibility and accountability, establishing direct and consistent links between Committees (through their Chairmen) and the Executive Council; thence to the Legislative Council.
- 30. The practice of appointing a Deputy Chairman would be discontinued, as the only purpose of it (at its inception after the last General Election) was to ensure that each Committee had a voice in the Executive Council.
- 31. The Members of each Committee should be appointed (as they are now) by the Governor after consulting the Chairman; and similarly for removal from office.

## **PUBLIC ACCOUNTS COMMITTEE**

### ***The need for change***

- 32. Prior to 2009, the Constitution contained no provision for a Public Accounts Committee (‘PAC’). However, since 2005, the Standing Orders of the Legislative Council had provided for a PAC, which comprised those members of the Legislative Council who were not members of the Executive Council.
- 33. Thus there was an established mechanism for scrutiny of the financial affairs of government by a committee whose members were not themselves members of the government. The membership would include Councillors who served as members of Council Committees, but not members of the Executive Council; and, by definition, not Committee Chairmen.
- 34. The 2009 Constitution provides for a PAC which comprises:
  - a. A Chairman and one other member who are not members of the Legislative Council, and are appointed by the Governor after consulting the Legislative Council; and
  - b. Three of the Elected Members of the Legislative Council, elected by the Council.
- 35. At the same time, the Executive Council was de-linked from the 5 Committee Chairmen and the number of Committees was increased to 8; thus it became difficult to find 3 members who were neither on the Executive Council nor Committee Chairmen. It was possible, indeed likely, that a Member of the PAC might also be a member of the Executive Council and/or a Chairman of a Council Committee.
- 36. Elected Members have accepted the principle of separation of duties; and, following the mid-term and then a later election to the Executive Council, two established and respected PAC members resigned their seats on the PAC.

37. The Constitution also provides an elaborate and slow procedure for appointing a temporary member to replace a member who has a conflict of interest.

### ***The Proposal***

38. It is proposed that members of the Executive Council should be ineligible for election to the PAC; subject to that restriction, the Elected Members of Legislative Council would elect four of their number to serve on the PAC, along with the two appointed members.
39. A member who has a conflict of interest would be required to declare it and, as in the other Council Committees, the Chairman would then have a discretion whether to require the member to leave the room, or allow him or her to remain but not to vote, or allow him or her to participate fully in the proceedings.
40. Having 4 Elected Members, instead of the current 3, would ensure that the Elected Members still had a majority if one of them declared a conflict and was required to leave or to abstain from voting.

### **CONSULTATION**

41. Amendments to the Constitution of an Overseas Territory can only be made by an Order of Her Majesty in Council. Usually, this is only done if Her Majesty's Government in the UK is satisfied that the amendments are widely supported in the Territory.
42. So the first step towards having amendments made is to explore public opinion here in St Helena; that is the purpose of this Consultation document.
43. During the consultation period, which will end on Friday 25<sup>th</sup> January, there will be a series of radio and television discussions (including phone-ins), newspaper articles, and public meetings, with the aim of ensuring that members of the public understand what is being proposed – and why.
44. Members of the public are encouraged to listen, read, and attend meetings, and to make their opinions known. Comments can be made in the meetings, or in the radio phone-ins; they can also be made directly to Councillors, or sent in writing (or by email) to address below.
45. Written (or emailed) comments must arrive by Friday 25<sup>th</sup> January, 2013 and may be sent to:

Miss Cilla Isaac,  
Secretary to the Home, Civil Society, and International Committee,  
The Castle,  
Jamestown  
Email: [pa.lawofficers@sainthelena.gov.sh](mailto:pa.lawofficers@sainthelena.gov.sh).

Derek Thomas MLC  
Chairman of the Home, Civil Society, and International Committee  
2<sup>nd</sup> January, 2013.