



Press Release

April 25th 2020

MPs seek input from Statians on Law proposal on restoration of provisions for St. Eustatius (

The government of the Netherlands (State Secretary Knops) recently sent the Law proposal on restoration of provisions for St. Eustatius to the House of Representatives. The MPs from the Kingdom Relations Committee have until the end of April to put written questions to State Secretary Knops about this law proposal.

For the agenda and attachments in Dutch regarding the proposal, please follow this link:

https://www.tweedekamer.nl/debat_en_vergadering/commissievergaderingen/details?id=2020A01565

To allow optimal access, the bill and the explanatory memorandum have been translated into English. Please find said translations underneath.

The MPs would like to know the opinion of the population of Statia. The citizens of Statia are encouraged to share comments through email: cie.kr@tweedekamer.nl

The facebook page of Vaste Kamercommissie Koninkrijksrelaties can be used to comment as well:

<https://www.facebook.com/108367230847289/posts/108424127508266/?d=n>

For more information, please contact Marijn Hilbrands, policy officer Kingdom relations on Marijn.Hilbrands@minbzk.nl.

Note for the Editor: for information Communication & Information (GIS) Tel: +599-3128-2745.



Restoration of the provisions for the administration of the public body of St Eustatius (St Eustatius Administrative Provisions (Restoration Act))

We, Willem-Alexander, by the grace of God King of the Netherlands, Prince of Orange-Nassau, etc., etc., etc.

Greetings to all who see or hear these presents! Be it known:

Whereas We have considered that it is desirable, in accordance with articles 129, paragraph 4 and article 132, paragraphs 2 and 5, in conjunction with article 132a, paragraph 2, of the Constitution, as well as section 232 of the Public Bodies (Bonaire, St Eustatius and Saba) Act, to extend the temporary provisions on account of neglect of duty in St Eustatius for a determinate period and to lay down rules for a gradual restoration of the provisions for the administration of the public body of St Eustatius.

We, therefore, having heard the Advisory Division of the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Chapter 1. General provisions

Section 1 (Definitions)

For the purposes of this Act, the following definitions apply: island executive, clerk to the island council, island authorities, secretary to the island executive, island council, members of the island executive, members of the island executive, clerk's office and governor: island executive, clerk to the island council, island authorities, secretary to the island executive, island council, members of the island executive, clerk's office and governor as referred to in the Public Bodies (Bonaire, St Eustatius and Saba) Act, of the public body of St Eustatius; Our Minister: Our Minister of the Interior and Kingdom Relations; government commissioner: the government commissioner referred to in section 2; deputy government commissioner: the deputy government commissioner referred to in section 2.

Chapter 2. Organisation and composition of the administrative organs

Section 2 (Government commissioner and deputy government commissioner)

1. Notwithstanding chapter III of the Public Bodies (Bonaire, St Eustatius and Saba) Act, the public body of St Eustatius has no members of the island executive and no governor. 2. Notwithstanding chapter III of the Public Bodies (Bonaire, St Eustatius and Saba) Act, a government commissioner and deputy government commissioner are to be appointed for the public body of St Eustatius on the recommendation of Our Minister by Royal Decree, in accordance with the views of the cabinet, for a term ending on the day on which the governor is appointed by Royal Decree. If the government commissioner or deputy government commissioner is replaced during their term of office, this is to be done on the recommendation of Our Minister by Royal Decree, in accordance with the views of the cabinet. 3. The task of the deputy government commissioner is to assist the government commissioner and, at his request, deputise for the government commissioner. 4. Sections 74, 75, 77 to 80, 82 to 87 and 89 of the Public Bodies (Bonaire, St Eustatius and Saba) Act and the provisions



based upon it apply mutatis mutandis to the government commissioner and deputy government commissioner. 5. Our Minister must determine the remuneration referred to in section 78, subsection 1 of the Public Bodies (Bonaire, St Eustatius and Saba) Act and allowances, payments and other benefits as referred to in subsection 2 of that section for the government commissioner and deputy government commissioner.

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Section 3 (Election of island council)

1. In the public body of St Eustatius, members of the island council are elected. On the recommendation of Our Minister, nomination day is to be determined by Royal Decree, in accordance with the views of the cabinet, in which connection it is possible to derogate from section Ya 13 in conjunction with section F 1, subsection 1 of the Elections Act and the periods for the registration of the appellations of political groupings as referred to in section Ya 13 in conjunction with section G 1, subsection 8, section G 3, subsection 1, section G 4, subsection 3 and section G 5, subsection 1 (c) of that Act. 2. After the election of the members of the island council, the credentials of the appointed members must be examined by those members, notwithstanding section V 4 of the Elections Act. 3. Notwithstanding section 19 of the Public Bodies (Bonaire, St Eustatius and Saba) Act, the island council is to meet for the first time on the eighth day after polling day.

Section 4 (Term of office of members of the island council)

1. The term of office of the members of the island council elected pursuant to section 3 ends, notwithstanding section Ya 13 in conjunction with section C 4 of the Elections Act, at the same time as the term of office of the members of the island councils of the public bodies of Bonaire and Saba who hold office on polling day. 2. If the date on which the appointees are admitted as members of the island council in accordance with section 3, subsection 2 is less than two years before the date of the regular island council elections, no such election is to be held in the public body of St Eustatius. In that case, the term of office of the members of the island council ends at the same time as the next term of office of the members of the island councils of the public bodies of Bonaire and Saba. 3. In the case referred to in subsection 2, notwithstanding section Ya 24 of the Elections Act, one or more polling stations and a principal polling station must be established in the public body of St Eustatius for the election of the members of the electoral college for the Senate, as referred to in § 3a of chapter Ya of that Act.

Section 5 (Appointment of clerk to the island council)

1. After the day on which the appointees are admitted to the island council in accordance with section 3, subsection 2, the island council must appoint a clerk to the island council as quickly as possible. Until such time as the clerk to the island council has been appointed, the countersigning referred to in section 34 of the Public Bodies (Bonaire, St Eustatius and Saba) Act must be dispensed with and the secretary to the island executive must perform the task referred to in section 94f of that Act. 2. Notwithstanding section 135 of that Act, decisions concerning the appointment, promotion, suspension or dismissal of the clerk to the island council require the approval of the



government commissioner. The approval may be withheld only on the grounds referred to in section 135 of that Act.

Chapter 3. Tasks and powers

Section 6 (Tasks and powers of the government commissioner)

1. In addition to the tasks and powers referred to in sections 7 and 8, the government commissioner for the public body of St Eustatius has the tasks and powers conferred on the island executive or the governor by or pursuant to the Public Bodies (Bonaire, St Eustatius and Saba) Act or any other laws. 2. Decisions taken by the government commissioner in place of the island executive or the governor are deemed to originate from those organs.

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3. If the cooperation of the island executive or the governor is required for the implementation of laws or other regulations adopted by central government, this is done in the public body of St Eustatius by the government commissioner. 4. Without prejudice to his other statutory tasks and powers, the government commissioner is responsible for helping to create the conditions in which the authorities of the public body of St Eustatius will be able to function properly in the future, for example by passing on his knowledge of the organisation and operation of local democracy to those who wish to contribute to the administration of the public body. 5. At the request of the government commissioner, the island authorities and the departments and civil servants coming under them must cooperate in the performance of the tasks and exercise of the powers conferred on him.

Section 7 (Tasks and powers of the clerk's office and civil service organisation)

1. Notwithstanding section 134 of the Public Bodies (Bonaire, St Eustatius and Saba) Act, the government commissioner, in place of the island council, must arrange for the exercise of the powers referred to in that section. 2. Notwithstanding section 168, subsection 1, points c and d and subsection 2 of that Act, the government commissioner, in place of the island executive, must arrange for the exercise of the powers referred to in those points and that subsection. 3. Notwithstanding articles 16 and 16d of Book 1, Title 4, Part 1 of the Civil Code for Bonaire, St Eustatius and Saba, the government commissioner, in place of the island executive, must arrange for the performance of the tasks referred to in those articles. 4. Notwithstanding section 4 of the BES Government Personnel Act, the government commissioner is the competent authority in relation to civil servants in the employ of the public body of St Eustatius, the clerk to the island council and the civil servants employed in the clerk's office. The government commissioner also takes the place of the island executive in the performance of the tasks and exercise of the powers of the island executive regulated by or pursuant to the BES Government Personnel Act. 5. Decisions taken by the government commissioner in place of the island council and the island executive are deemed to originate from those organs. Section 8 (Financial tasks and powers)



1. The government commissioner for the public body of St Eustatius must perform the tasks and exercise the powers conferred on the island council or the island executive by or pursuant to the Public Bodies (Bonaire, St Eustatius and Saba) Finances Act. 2. Decisions taken by the government commissioner in place of the island council or the island executive are deemed to originate from those organs. 3. In so far as sections 9, 10, 18 to 36, 38 and 39 of the Public Bodies (Bonaire, St Eustatius and Saba) Finances Act do not serve to implement section 17, they do not apply to the public body of St Eustatius. 4. Before adopting the budget, the government commissioner must arrange for the draft budget and the advice of the Financial Supervision Authority referred to in section 1, subsection 1 (e) of the Public Bodies (Bonaire, St Eustatius and Saba) Finances Act to be deposited for one month for public inspection and for copies to be generally available. Public notice must be given of the deposit for inspection and the availability.

Section 9 (Limitation of the island council's power of inquiry)

Notwithstanding section 160 of the Public Bodies (Bonaire, St Eustatius and Saba) Act, the island council is not competent to institute an inquiry into the administration conducted by the island executive or the governor. Sections 161 to 165 do not apply to the public body of St Eustatius.

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Section 10 (Supervision by the government commissioner)

1. Island ordinances, with the exception of those passed under the Public Bodies (Bonaire, St Eustatius and Saba) Finances Act, require the approval of the government commissioner. Such approval may be withheld only if the island ordinance conflicts with the law, or if the government commissioner considers that implementation of the ordinance: a. would cause disproportionate harm to the residents of the public body St Eustatius in the light of the objectives served by the ordinance; b. would impose an unreasonable administrative or financial burden on the public body of St Eustatius; c. would frustrate the proper functioning of the island authorities in the future. 2. Part 10.2.1 of the General Administrative Law Act applies mutatis mutandis to the approval. 3. Exemption as referred to in section 16, subsection 2 of the Public Bodies (Bonaire, St Eustatius and Saba) Act may be granted by the government commissioner in place of the Kingdom representative. 4. Sections 220 and 223 to 229 of the Public Bodies (Bonaire, St Eustatius and Saba) Act apply mutatis mutandis to written and unwritten decisions of the island council which are intended to have any legal consequence, provided always that the words 'the Kingdom representative' in section 223 are read as: the government commissioner. Parts 10.2.2 and 10.2.3 of the General Administrative Law Act apply mutatis mutandis to the suspension and annulment of decisions of island authorities.

Section 11 (Accountability of the government commissioner)

1. The government commissioner is accountable to Our Minister. 2. Our Minister may issue general and special instructions to the government commissioner regarding his tasks and powers. 3. The government commissioner must, on request, supply Our Minister with all information. 4. The previous subsections apply mutatis mutandis to the deputy government commissioner.



Section 12 (Tasks and powers of the Kingdom representative)

1. The Kingdom representative may not perform his tasks and exercise his powers under the Public Bodies (Bonaire, St Eustatius and Saba) Act in respect of the public body of St Eustatius. Approval as referred to in section 126, subsection 2 and section 168, subsections 3 and 4 of that Act is not required in respect of the public body of St Eustatius. 2. The government commissioner and deputy government commissioner must swear the oath or make the affirmation referred to in section 77 of that Act in the presence of Our Minister. 3. For the application mutatis mutandis of section 16, subsection 2, sections 49 to 52, section 85, subsection 2 and section 86 of that Act to the government commissioner and deputy government commissioner, the term 'Kingdom representative' is to be read as: Our Minister.

Chapter 4. Restoration of provisions

Section 13 (Restoration of provisions concerning members of the island executive)

If circumstances have changed in such a way that the island executive can itself be expected to properly perform the tasks under the Public Bodies (Bonaire, St Eustatius and Saba) Act, with the exception of those relating to the civil service organisation of the public body, as referred to in section 168, subsection 1 (c) of that Act, chapters 2 and 3 of this Act are to be amended as follows on the recommendation of Our Minister, in accordance with the views of the cabinet, at such time as is determined by Royal Decree: 1. In section 2, subsection 1 the words 'has no members of the island executive and'' are deleted. 2. Section 6 is amended as follows:

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a. In subsection 1 the words 'the island executive or' are deleted. b. In subsection 2 the words 'the island executive or' are deleted and the words 'those organs' are replaced by 'that organ'. c. In subsection 3 the words 'the island executive or' are deleted. 3. Section 10 is to read as follows:

Section 10 (Supervision by the government commissioner)

1. In the cases referred to in section 35, subsection 4, section 105, subsection 2, section 123, subsection 2 and section 168, subsection 3 of the Public Bodies (Bonaire, St Eustatius and Saba) Act, approval must be granted, notwithstanding those subsections, by the government commissioner in place of the Kingdom representative. Approval may be withheld only on account of conflict with the law or on the grounds referred to in those sections. 2. Decisions of the island executive, with the exception of those referred to in section 5, subsection 2 and sections 7 and 8, require the approval of the government commissioner. Such approval may be withheld only if the decision conflicts with the law, or if the government commissioner considers that implementation of the decision: a. would cause disproportionate harm to the residents of the public body of St Eustatius in the light of the objectives served by the decision; b. would impose an unreasonable administrative or financial burden on the public body of St Eustatius; c. would frustrate the proper functioning of the island authorities in the future. 3. Part 10.2.1 of the General Administrative Law Act applies mutatis mutandis to the approval. 4. Exemption as referred to in section 16, subsection 2 of the Public Bodies (Bonaire, St Eustatius and Saba) Act may be granted by the government commissioner. 5. Sections 220 and 223 to 229 of the Public Bodies (Bonaire, St Eustatius and Saba) Act apply mutatis



mutandis to written and unwritten decisions of the island council and the island executive which are intended to have any legal consequence, provided always that the words 'the Kingdom representative' in section 223 are read as: the government commissioner. Parts 10.2.2 and 10.2.3 of the General Administrative Law Act apply mutatis mutandis to the suspension and annulment of decisions of island authorities.

4. The second sentence of section 12, subsection 1 is deleted. Section 14 (Restoration of provisions concerning the clerk's office and the civil service organisation)

If the circumstances have changed in such a way that the island council and the island executive can themselves properly perform their tasks and exercise their powers in relation to the clerk's office and the civil service organisation under the Public Bodies (Bonaire, St Eustatius and Saba) Act, section 7 of the present Act is to be repealed on the recommendation of Our Minister, in accordance with the views of the cabinet, on a date to be determined by Royal Decree.

Section 15 (Restoration of responsibility for financial tasks)

If the circumstances have changed in such a way that the island council and the island executive can themselves properly perform their tasks and exercise their powers under the Public Bodies (Bonaire, St Eustatius and Saba) Finances Act, the present Act is to be amended as follows on the recommendation of Our Minister, in accordance with the views of the cabinet, on a date to be determined by Royal Decree: 1. Article 8 is repealed. 2. In section 10, subsection 2, as amended by section 13, the words 'sections 5, subsection 2 and sections 7 and 8' are replaced by 'section 5, subsection 2 and section 7'. 3. The following section is inserted after section 10:

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Section 10a (Approval of decisions having financial consequences and of the budget)

1. The approval of decisions having financial consequences and of the budget, as referred to in chapter III, parts 1 and 2 of the Public Bodies (Bonaire, St Eustatius and Saba) Finances Act may be withheld only if the decision conflicts with the law, on the grounds referred to in those parts or if Our Minister considers that the decision or budget: a. would cause disproportionate harm to the residents of the public body of St Eustatius in the light of the objectives served by that decision or budget; b. would impose an unreasonable administrative or financial burden on the public body of St Eustatius; c. would frustrate the proper functioning of the island authorities in the future. 2. The adoption of the quarterly budget reviews referred to in section 22 of the Public Bodies (Bonaire, St Eustatius and Saba) Finances Act, the annual accounts and the annual report referred to in section 29 of that Act, the island ordinances referred to in sections 34 and 38 of that Act, and the tax ordinances referred to in section 40 of that Act requires the approval of Our Minister. The approval may be withheld only on the grounds referred to in subsection 1. 3. Without prejudice to the Public Bodies (Bonaire, St Eustatius and Saba) Finances Act, the Financial Supervision Authority is charged



with advising Our Minister on the application of the supervision provided for in subsections 1 and 2.

Section 16 (Reinstatement of governor)

After the Royal Decrees referred to in sections 13 to 15 have been issued and if it may be expected that the governor can himself properly perform his tasks and exercise his powers, this Act is to be amended as follows on the recommendation of Our Minister, in accordance with the views of the cabinet, on a date to be determined by Royal Decree: 1. Section 2, subsection 1 is repealed, and subsections 2 to 5 are renumbered as subsections 1 to 4. 2. Section 5, subsection 2 and sections 6, 9, 10, 10a and 11 are repealed. 3. Section 12 is to read as follows:

Section 12 (Tasks and powers of the Kingdom representative)

1. The Kingdom representative performs the tasks and exercises the powers conferred on him by or pursuant to section 73 of the Public Bodies (Bonaire, St Eustatius and Saba) Act. 2. In keeping with instructions contained in a code of conduct drawn up by the government, the Kingdom representative is charged with providing advice and mediation in cases where there has been a breakdown in administrative relations in the public body of St Eustatius and the integrity of public administration there is in jeopardy. To that end, he is authorised to attend all meetings of the island authorities and to take cognisance of all records at their disposal which, in the reasonable opinion of the Kingdom representative, he needs to see in order to perform his task.

Chapter 5. Other provisions and final provisions

Section 17 (Preliminary parliamentary scrutiny procedure)

The recommendation for a Royal Decree to be issued pursuant to sections 13 to 16 must not be made earlier than four weeks after the draft of the Royal Decree has been presented to both Houses of the States General.

Section 18 (Transitional provision)

Sections 3 and 5 of the Temporary Act on Neglect of Duty in St Eustatius, as they read immediately before the date on which this Act enters into force, are to remain in force up to and

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including the date on which the appointees are admitted to the island council in accordance with section 3, subsection 2.

Section 19 (Repeal of Temporary Act on Neglect of Duty in St Eustatius)

The Temporary Act on Neglect of Duty in St Eustatius is repealed.



Section 20 (Entry into force)

This Act enters into force on a date to be determined by Royal Decree, which may vary for the different sections or points thereof, with the exception of: a. sections 6 to 10, which enter into force on the day following that on which the appointees are admitted to the island council in accordance with section 3, subsection 2 of this Act; b. section 16, subsection 3, which enters into force on the day on which the governor is appointed by Royal Decree.

Section 21 (Repeal)

1. This Act is repealed with effect from 1 September 2024. 2. If the Royal Decree referred to in section 16 has not been issued by 1 February 2024, the operation of this Act may be extended once, before the date referred to in subsection 1, by Royal Decree, on the recommendation of Our Minister, for a maximum of one year if, in accordance with the views of the cabinet, Our Minister has submitted beforehand a position on the intention to extend the operation of this Act, or a Bill to that effect, to the States General. 3. If the Bill referred to in subsection 2 is withdrawn within the extended period or is rejected by either House of the States General, this Act will be repealed with effect from a date to be set by Royal Decree.

Section 22 (Short title)

This Act may be cited as the St Eustatius Administrative Provisions (Restoration) Act.

We order and command that this Act be published in the Bulletin of Acts and Decrees and that all ministries, authorities, bodies and officials whom it may concern diligently implement it.

Done

Minister of the Interior and Kingdom Relations



EXPLANATORY MEMORANDUM

1. Introduction

The aim of this Bill is to extend the administrative intervention in St Eustatius and gradually phase out the current provisions introduced in the Temporary Act on Neglect of Duty in St Eustatius ('the Temporary Act').

Following the report of the Committee of Wise Persons, which stated that there had been gross neglect of duty by the island authorities of St Eustatius,¹ the legislature responded by intervening in the administration of St Eustatius in February 2018. Under the Temporary Act, the island council was dissolved and the island executive relieved of its duties. A government commissioner was appointed and has since administered the affairs of St Eustatius. The administrative intervention was intended to end the gross neglect of duty and create the conditions for good governance on a lasting basis so that future island authorities can perform their tasks properly themselves. Although the intervention was intended to last no longer than necessary, the government, like the Committee of Wise Persons, did not exclude the possibility that a period of more than two years might be required.

In a letter to the Senate and the House of Representatives of 24 September 2019,² the State Secretary for the Interior and Kingdom Relations assessed the progress in St Eustatius as of 1 September 2019 in the light of 12 criteria set out in the second progress report of 14 November 2018. On the basis of this assessment, it was concluded that a great deal of work had been done since the start of the intervention and that the improvements that still needed to be made had been clearly identified, but despite all the steps that had been taken, the situation was not expected to improve to such an extent in the short term that new authorities would have an adequate basis to properly fulfil their tasks. More time was also needed to put the island's financial management and civil service organisation in order. In brief, since the gross neglect of duty had not yet been sufficiently remedied by the government commissioner in certain fields, it would not be safe to assume that completely local island authorities could function properly, and ending the intervention in the near future would not be a responsible course of action.

The Temporary Act specifies a deadline of 17 March 2021 for island council elections, after which the Act will be repealed. In view of the present situation in St Eustatius and given the rate at which lasting improvements are being achieved, extension of the intervention is necessary. Only then will it be possible to sustain the improvements made to date and achieve further improvements. Preventing a recurrence of the pre-intervention situation once normal administrative relations are restored is absolutely essential. At the same time, it is of great importance for the people of St Eustatius that local democracy is restored as quickly as possible. Elections are essential for the local population; they are the means by which the people choose who will represent them. In the above-mentioned letter of 24 September 2019, the State Secretary expressed confidence that by the



autumn of 2020 there would be sufficient institutional stability to hold elections for the island council.

While the government considers it desirable for the island council to resume a substantial part of its tasks, it also believes it necessary for the government commissioner to remain responsible for the other duties of the island council for some time, as well as the duties of the island executive and the governor. This Bill extends the present provisions, while at the same time introducing a transitional arrangement to facilitate a gradual transition to normal administrative relations. The

1 Parliamentary Papers, House of Representatives, 2017/18, 34 877, no. 3, pp. 3-4. 2 Parliamentary Papers, House of Representatives, 2019/20, 35300-1V, no. 6.

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appointment of the island council is the first step in this transitional arrangement towards phasing out the administrative intervention.

The next section describes the background to the administrative intervention, the progress made over the past 18 months and the current situation. Section 3 deals with the main features of the Bill and the planned support measures for further phasing out the administrative intervention. Section 4 explains how the Bill relates to existing and future law, and section 5 discusses the consequences.

2. Background

2.1. Background to the administrative intervention

On 24 May 2017, the then Minister of the Interior and Kingdom Relations, in response to the ongoing concerns about the governance of the public body of St Eustatius, asked a Committee of Wise Persons ('the Committee') to investigate the functioning of the public body and present him with a report, including conclusions and recommendations. The Committee presented its report on 5 February 2018.³ The Committee established that in both socioeconomic and physical terms, St Eustatius was in a state of gross neglect and that there had been a serious breakdown in administrative relations and its enterprise and investment climate was unfavourable and characterised by certain arbitrary practices.

In the Committee's opinion, the island's public administration was characterised by lawlessness, financial mismanagement, disregard for other lawful authority, discrimination, intimidation and the pursuit of personal power. Relations between the coalition and the opposition and between the Dutch and Stavian authorities were severely damaged or had broken down almost entirely. The island council passed a motion to the effect that the Public Bodies (Bonaire, St Eustatius and Saba) Act (WOLBES) and the Public Bodies (Bonaire, St Eustatius and Saba) Finances Act (FINBES) would no longer be applied on the island. The Committee observed that the authorities of St Eustatius had abandoned the existing legal and constitutional order and were no longer prepared to relinquish the autonomy they had appropriated. Members of the public indicated that politicians and government officials were soliciting support by making promises and job offers and disparaging the Netherlands. What is more, according to members of the public and the business community, a culture of legal inequality, arbitrariness and exclusion was being maintained by a small group.



The Committee concluded that the scope for improving the situation through use of the normal instruments had been exhausted. Given the disorder that permeated virtually every area of public administration and the prevailing state of lawlessness, the Committee made a finding of gross neglect of duty on the island. In its opinion, allowing the situation to continue unchanged would be disastrous for the people and the island. There was, in the Committee's view, only one possible response: administrative intervention by the Netherlands. In its response to the Committee's report, the government said that the picture the Committee had sketched of the administrative situation in St Eustatius had exceeded its worst suspicions.⁴ The government shared the Committee's view that it was inconceivable for an administrative body in the Netherlands to turn its back on the existing legal and constitutional order. It endorsed the Committee's view that, in the interests of the people, the situation of disorder could not be allowed to continue. The situation was having far-reaching consequences in people's daily lives; after all, delays in projects to improve roads, water supply, housing and waste management have a direct impact on the Statian people.

³ Committee of Wise Persons, *Nabijheid of distantie, een wereld van verschil (Proximity or Distance: A World of Difference)*, 5 February 2018. ⁴ Parliamentary Papers, House of Representatives, 2017/18, 31 568, no. 196.

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The purpose of the Temporary Act was to regulate the administrative intervention and introduce provisions designed to end the gross neglect of duty. On 6 February 2018 both Houses of the States General unanimously passed the Bill introducing the Temporary Act on Neglect of Duty in St Eustatius.⁵ Under the Temporary Act, the island council was dissolved and the members of the island executive and the acting governor were relieved of their duties. In addition, a government commissioner was appointed to administer St Eustatius and perform all the tasks and exercise all the powers of the island authorities. The purpose of the intervention was to enable the island's administration to be put in order and to create the conditions for lasting improvement.

Although the special provisions should not last longer than necessary, it is important to avoid the need to consider a fresh intervention soon after normal administrative relations are restored. Section 8, subsection 1 of the Temporary Act provides that elections to the island council should be held when circumstances have changed to such an extent that the authorities of the public body of St Eustatius are themselves capable of properly performing their tasks in the long term. Once that is the case, provision will be made by Royal Decree for elections to the island council to be held in St Eustatius. Under the Temporary Act, the deadline for nomination of candidates is 1 February 2021, which means that elections must take place by 17 March 2021 at the latest.⁶ The Temporary Act and the provisions it contains will then be repealed one day after the new members are admitted to the island council (section 13, subsection 3).



2.2. Assessing progress

The aim of the government commissioner's activities is to create as soon as possible the circumstances in which the authorities of St Eustatius can properly carry out their tasks themselves. When the Temporary Act was introduced, it was noted that it would not be easy to know in advance what steps would have to be taken to warrant the conclusion that the authorities of St Eustatius were once again able to perform their tasks adequately themselves. It was also stated that the initial experiences and findings of the government commissioner would be decisive for the further follow-up and that the government, together with the government commissioner, would define the criteria for terminating the intervention. However, it was already noted at that time that in any event the financial position and civil service organisation of St Eustatius would have to have been raised to an acceptable standard. In other words, this would in any event require a sound personnel policy, lawful, efficient and verifiable financial management, and policy frameworks within which the tasks of the authorities are carried out. Moreover, the civil servants would need to have a reasonable level of knowledge and expertise to do their work. There should be proper procedures in place for promoting transparent and objective communication (civil servants should feel free to speak out and serve as a counterbalance to the authorities), and the public body's financial, population and personnel records should also be in order. It was also noted that other possibilities would include sorting out the system of ordinances and licensing, together with an appropriate enforcement and monitoring regime.

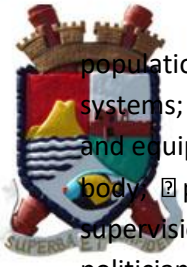
The House of Representatives has received periodic reports on the progress of all the different projects in St Eustatius. This concerns not only the projects mentioned above, but also projects in the socioeconomic and physical domains and all activities related to the island's reconstruction after hurricanes Irma and Maria in September 2017. This is discussed at greater length in section 3.3. At the start of the intervention, the situation in St Eustatius turned out to be even more serious than expected and, as time passed, new issues arose about which the House of Representatives was informed. The progress reports of 31 May 2018, 14 November 2018 and 29 May 2019 show that a vigorous approach to the wide range of different projects has been taken by the government commissioner, his deputy, the support team and local civil servants.⁷ At the same

⁵ Bulletin of Acts and Decrees 2018, no. 26. ⁶ Subject to section J 1, subsection 1 of the Elections Act. ⁷ Parliamentary Papers, House of Representatives, 2017/18, 34 775-IV, no. 41, Parliamentary Papers, House of Representatives, 2018/19, 35 000-IV, no. 29 and Parliamentary Papers, House of Representatives, 2018/19, 35 000-IV, no.57.

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time, it is becoming apparent that, given the small size of the island, it is often difficult to mobilise sufficient knowledge, manpower, materials and resources to complete projects on time.

In the second progress report of 14 November 2018, the State Secretary undertook to assess the situation in St Eustatius on 1 September 2019 in the light of a dozen criteria in order to make clear when elections to the island council could be held there. These criteria were: ☐ clean up the



population register; ☐ efficiently manage the tax records, land registry and other administrative systems; ☐ amend inaccurate or outdated ordinances; ☐ reorganise the civil service organisation and equip it with correct procedures and work instructions; ☐ define policy frameworks of the public body; ☐ put supervisory and enforcement instruments in order; ☐ equip the public body to perform supervision and enforcement; ☐ introduce a multiannual training programme for civil servants and politicians; ☐ digitalise and centralise financial processes; ☐ set up a planning and control cycle in accordance with the FINBES; ☐ implement activities set out in the financial management action plan; ☐ set up a court of audit function.

To enable new local authorities to perform their tasks properly, the administrative structure, including the civil service and financial management, must not only be in good order but also reorganised with a view to long-term continuity. It will then be up to the island's future administrators to maintain the system and restore the local population's trust in democracy and the legal order.

2.3. Current situation

It is evident from the letter from the State Secretary to the House of Representatives of 24 September 2019⁸ that over the past 18 months much work has been done, the issues have been clearly identified and it has become apparent what improvements are still necessary. The annexe to that letter provides a detailed account of the current situation, and indicates wherever possible the date on which the various measures are expected to be completed. The letter also notes that many problems still remain, more than initially anticipated, and that the current island authorities, and the civil service in particular, have a heavy workload. It is no small challenge to rectify the severe neglect of duty that has occurred in St Eustatius over the course of many years and to create a situation that enables future island authorities to perform their functions adequately and reduces backlogs to a manageable level.

In the government's opinion, the remaining administrative tasks are still so substantial and labourintensive that a decision to restore full democracy and normal administrative relations would not yet be a responsible course of action. Given the current state of affairs and despite all the steps that have already been taken, the government does not anticipate that in the short term the situation will improve to such an extent that a new island executive will have an adequate basis to properly performing its tasks. It follows that the gross neglect of duty in respect of the administrative tasks, including financial management, is not expected to have ended by the election deadline currently prescribed by law.

Administrative processes The island council can properly carry out its scrutinising and legislative tasks with the aid of a well-equipped clerk's office. The establishment of a court of audit would also be of major assistance to the island council in its scrutinising role. The Rotterdam Court of Audit is prepared to set up and support a court of audit in St Eustatius. The ordinance required for this purpose is expected to be



8 Parliamentary Papers, House of Representatives, 2019/20, 35300-1V, no. 6.

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passed in the first half of 2020. Finally, training programmes for prospective politicians will be provided from the first half of 2020 onwards. Members of the island executive will be able to perform their administrative tasks properly once the local laws and regulations, records and registers, and civil service work processes have been put in order. The public body has over 100 ordinances and accompanying decisions, many of which were no longer relevant at the time of the intervention. Some ordinances that have ceased to be relevant have now been repealed and others have been amended, for example because they contain provisions that conflict with other laws. This is expected to be completed in early 2021. The systems for issuing permits and exemptions, awarding grants and levying taxes are being updated. The population register, which is also relevant to the electoral register and other types of records and users (in the care, education and social services sectors), is being cleaned up. This is a time-consuming and labourintensive project since newcomers and people leaving the island frequently fail to register or deregister with the local authorities. The review of personal records, including the presence of source documents, will continue into the first half of 2020. The electoral register will then be ready in time for the elections.

The work of drawing up administrative process descriptions to assist the civil service has now been completed with the development of a new model for a decision-making memorandum and the decision list of the island executive. This has helped to establish a clear decision-making hierarchy. As regards the supervision and enforcement function, a new manager of the Permits, Supervision and Enforcement Unit has been appointed. Working in cooperation with this unit manager, the Ministries of the Interior & Kingdom Relations, Infrastructure & Water Management, and Economic Affairs & Climate Policy are currently drafting a plan to support the public body in establishing a new and simpler supervision and enforcement policy. In addition, 15 staff of the public body and various other organisations have now been trained as special police officers. Supervision and enforcement are expected to be operating effectively by early 2021

Financial management Good financial management is the foundation of good governance. The government commissioner's October 2018 financial management action plan contained a large number of projects aimed at virtually complete professionalisation of the island's financial management. Around half the planned measures have been launched, one third have begun in part, and the remaining 20% have yet to be started. Ultimately the parties are working towards obtaining an unqualified audit opinion on the 2021 accounts. Improving the ICT facilities and digitalising the financial processes are playing a major role in this. The government is making available a sum of €3.5 million from the regional fund to strengthen the ICT facilities, in particular computerisation. This will benefit financial management as well.

The measures will take longer to complete than originally expected. This is partly due to the need to implement so many projects and activities simultaneously at a time when the island is facing a shortage of qualified financial staff. The measures can only be considered fully implemented once the island's future administrators have adopted and internalised the new working methods.



Civil service organisation and clerk's office The support of a qualified civil service organisation is also necessary for the proper performance of administrative tasks. After a process lasting over a year, a new organisational structure was introduced on 1 September 2019, based on the principles of the division of responsibilities and pooling of knowledge. Some job vacancies are still being filled. The procedures and work instructions for the public body are expected to be completed in the summer of 2020. Working in a public service context that pursues professional standards requires setting aside habits and customs that have become entrenched over the years. For this to happen, adequate training programmes are essential, especially given the absence of such programmes (including in-service training) in recent years. To improve effectiveness and quality in the long term, the training programme that started in 2018 will run for a number of years.

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2.4. Background to the extension of the intervention and to the provisions for its gradual phasing out

The government has thus concluded that it is necessary for the government commissioner to remain in office for longer than provided for in the current Temporary Act. To ensure that all improvements are long-lasting, it is imperative that the government does not relinquish this task before all activities have been completed and there is confidence that St Eustatius will not relapse into its old ways.

The government is of the opinion that a gradual return to normal administrative relations is desirable in order to successfully complete the administrative intervention. In its advisory opinion on the Temporary Act, the Advisory Division of the Council of State pointed out that the Act made no provision for a gradual transition from the situation in which all tasks are performed by the government commissioner to the normal situation.⁹ The Advisory Division thought it conceivable that a gradual transition would be less disruptive than an abrupt return to the normal situation. One possibility, according to the Advisory Division, was a situation in which the island council would have been wholly or partly reinstated, but the government commissioner would continue for some time to perform the tasks and exercise the powers of the island executive and the governor. This would make it possible for the new island authorities to be introduced step by step. Moreover, this could ensure the gradual growth of institutional stability, which the Advisory Division believed would also be desirable from a financial perspective. The government subsequently explicitly stated that it was conceivable that a transitional arrangement of this kind would be introduced for the period after the gross neglect of duty had ended, in order to ensure a smooth return to normal relations.

While the government commissioner has been in office, the government has examined whether a transitional arrangement would be necessary and how this could best be organised. The government considers that the proper restoration and functioning of democracy and governance are vital for the people of St Eustatius. A key advantage of a phased approach is that the island council can be swiftly reinstated as a representative body. It also enables the island executive to gradually resume its role within the new constellation. And the same applies to the governor as part of the island executive. The gradual transition to a full restoration of the normal situation will not only facilitate a smooth transfer of power, including greater scope for hands-on administrative experience, but will also



allow the necessary activities to be carried out so as to enable the island's future authorities to perform their tasks in accordance with the standards of good governance, without any loss of momentum and under the direction of the government commissioner.

The Bill provides for the gradual phasing out of the administrative intervention while at the same time extending the current administrative provisions. The provisions can then be phased out once the required results have been achieved. The Bill arranges for a return to normal administrative relations in four phases, along the lines of the WOLBES and FINBES. These phases are described in the following section.

3. Outline of the Bill

The Bill regulates the extension of the administrative intervention in St Eustatius and the gradual phasing out of the provisions. In view of the background to the problem and the arrangement introduced by the Temporary Act, it is not possible to provide for an instantaneous restoration of the normal situation. The aim of phasing out the intervention gradually is to ensure that the measures in place remain proportionate to the current administrative situation and offer the prospect of restoration and normalisation. That is why the government is adopting a proportionate approach to achieving its end goal of restoring administrative normalcy in St Eustatius.

9 Parliamentary Papers, House of Representatives, 2017/18, 34 877, no. 4.

AVT20/BZK130642 14 Auteursrecht vertalingen voorbehouden. Ministerie van Buitenlandse Zaken, Directie Vertalingen (AVT) guarantee good governance, the Bill also provides for supervision of the exercise of the public body's tasks to be restored and tightened up during the gradual phasing out of the provisions.

The government feels it is important to note that the primary purpose of the legal provisions regulated by this Act, which are designed to prevent a recurrence of the pre-intervention situation, such as the additional power to approve decisions as described below, is to serve as a safety net. Of greater importance is the willingness of the future members of the island council and island executive to engage in constructive cooperation and communication with one another and with the government commissioner, and their willingness to perform their tasks and exercise their powers in the collective interest of the public body and people of St Eustatius. The government commissioner therefore aims to carry out his duties transparently and in close consultation with future officials, residents and civil society organisations and to work with them to achieve good governance in St Eustatius.

This section explains the four phases of the gradual return to normal administrative relations and the structure of the Bill. Although the phases follow a logical sequence, some provisions, such as the responsibility for financial management and for the civil service and the clerk's office, can be restored in parallel. This depends on the situation and what progress has been made at the time in question. As soon as possible, tasks and powers will be returned to the normal administrative organs, while at the time keeping a tight grip on the situation.



3.1 Continuation of present provisions

As indicated above in sections 2.3 and 2.4, the government considers it necessary to extend the administrative intervention, while at the same time introducing a transitional arrangement. As a result of the extension, the derogation from the normal administrative structure provided for in the Constitution will be continued for longer. Under article 132a of the Constitution, read in conjunction with article 132, paragraph 5 of the Constitution, the extension has to be regulated by Act of Parliament. This Bill adopts the provisions introduced by the Temporary Act in such a way that the administrative intervention can be continued on the same basis until the elections have taken place and the island council is once again in office. The Temporary Act will be repealed when this Bill becomes law.

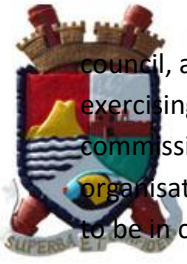
An important difference between this Bill and the Temporary Act concerns the moment when the island council elections can be called. The reason for the change is to allow the island council to be reinstated without terminating the administrative intervention.

Under the current section 13, subsection 3 of the Temporary Act, the termination of the administrative intervention is linked to the reinstatement of the island council, which is why the elections can currently take place only if all the island authorities are capable of properly performing their tasks. The aim of this Bill is to allow the island council to resume functioning while the government commissioner remains responsible for some of the tasks of the island council, the island executive and the governor as well as for the further development of the island. This is provided for in sections 2 to 12 of the Bill. Sections 2, 6, 7 and 8 of the Bill provide for the administrative intervention to be continued only with regard to the tasks and powers of the island executive and the governor and with regard to the clerk's office, the civil service organisation and financial management.

Moreover, it is no longer necessary to arrange for the governor to take all measures needed to prevent the destruction of documents in the possession of the island authorities. When it was introduced, this provision was intended to prevent local administrators or civil servants from destroying paper documents and digital records after the Temporary Act became public. This provision is no longer necessary.

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The provisions of section 10 of the Temporary Act have not therefore been included in the Bill. Once the island council has been reinstated, the civil society advisory council too will no longer be needed to advise the government commissioner and ensure public support for his actions. The government commissioner will instead be able to gauge the level of public support from the reaction of the island



council, and the latter can take a position on the actions of the government commissioner by exercising its right to ask questions and call for an emergency debate. The government commissioner will also maintain the dialogue with the people of the island and civil society organisations, in addition to the island council. As it is important for the public body of St Eustatius to be in close touch with the general public, the government commissioner has devised a strategic communication plan. An important element of this plan, which is currently being implemented, is the establishment of a citizen participation council to replace the current civil society advisory council when the new island council takes office. The citizen participation council can be of particular value in ensuring that the public body is aware of what issues exercise the residents of St Eustatius.

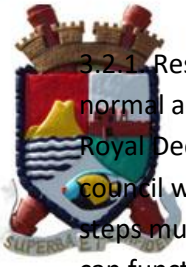
In addition, a body known as the Central Dialogue Statia ('Central Dialogue') has been established. This provides a forum for structured consultation between the local administration, the Chamber of Commerce and representatives of employers and employees, and will focus in particular on socioeconomic themes that play a role on the island. The Central Dialogue can also provide advice to central government, for example when draft legislation is submitted for consultation.

Some other changes which chapters 1, 2 and 3 of the Bill make to the situation under the Temporary Act are of a technical nature and are explained in the notes on individual sections below.

3.2. System underlying gradual restoration

As noted, chapters 2 and 3 of the Bill provide for the reinstatement of the island council while the government commissioner remains responsible for some of the tasks of the island council, the island executive and the governor as well as for the further development of the island. Chapter 4 of the Bill introduces the transitional arrangements for the island executive and the governor.

Sections 7 and 8 of the Bill regulate the responsibilities in respect of the civil service organisation and financial management separately to ensure that these tasks can be carried out by the government commissioner for longer. That is why provision has been made in the Bill for the phasing described in section 2.4 of this explanatory memorandum. The transition between the different phases is always marked by the issuing of a Royal Decree setting the date on which the next phase will take effect. On that date the Bill is amended to enable the members of the body concerned to be appointed and allow the body to perform its statutory tasks and exercise its statutory powers itself. The transition to the next phase depends on the fulfilment of certain conditions, namely the criteria referred to in section 2.2. If the Minister of the Interior and Kingdom Relations decides that the improvements made are sufficient to allow the next phase to start, it is not necessary for all the conditions to be met. The States General is expressly involved in every transition because the draft Royal Decrees regulating the entry into force of the separate sections are sent to both Houses of Parliament in the course of a preliminary parliamentary scrutiny procedure, together with notes explaining the date chosen for the start of a new phase.



3.2.1 Restoration of provisions regarding the island council As a first step towards full restoration of normal administrative relations, the deadline for nomination of candidates will be determined by Royal Decree as soon as possible after the entry into force of this Bill, and the elections for the island council will then take place on the 44th day after nomination day. Before this can be done, certain steps must have been taken to enable elections to be held and ensure that the new island council can function properly. The electoral register needs to be ready before the elections. The island council is expected to be able to properly perform a large part of its tasks itself if the clerk's office has been provided with the

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correct work instructions and the court of audit has been established before this Bill becomes law. To this end, the reorganisation must have been completed, including official procedures and work instructions. Training programmes for prospective politicians should also be available to enable future members of the island council to acquaint themselves with their additional tasks and powers. A general public information campaign about the elections will be conducted in the near future. The focus will be on providing information about the run-up to the island council elections and the steps to be taken by those wishing to stand for election.

After its reinstatement, the island council will have the task of scrutinising the executive, in particular by exercising its right to ask questions and call for an emergency debate.(section 159 of the WOLBES). The island council can also make provision in the rules of procedure for the introduction of motions (section 17 of the WOLBES). In this phase there is still no island executive and no governor. The members of the island council can exercise their right to ask questions. Any such questions can be put to the government commissioner, who will still be carrying out the tasks of the island executive and the governor in this phase. The basic principle of section 11 of the Bill (presently section 4 of the Temporary Act) is that the government commissioner acts on behalf of the government and is accountable to the Minister of the Interior and Kingdom Relations. This means that he follows the minister's instructions and supplies all information the minister requires. Despite being accountable to the minister, the government commissioner is still obliged, once the island council has taken office, to answer the questions of its members and provide them with information about his policy, within the limits set by the WOLBES. This enables the island council to inform the government commissioner what policy proposals are desirable and what support exists for his actions. However, the island council cannot dismiss the government commissioner, as this power is vested solely in the government, on the recommendation of the Minister of the Interior and Kingdom Relations.

A second task of the island council is to adopt island ordinances, both autonomous ordinances which it deems necessary in the interests of the public body and ordinances that implement the legislation on delegated competences (section 149 in conjunction with section 152 of the WOLBES). In performing the tasks of the island executive, the government commissioner is authorised to prepare and implement the decisions of the island council (section 6, subsection 1 of the Bill in conjunction with section 168, subsection 1 (b) WOLBES) and can thus make proposals for the adoption of island ordinances. The island council also has the right to amend and initiate legislation (section 151, subsection 1 and section 150, subsection 1 of the WOLBES).



To ensure that the exercise of these powers does not worsen the situation in St Eustatius, the government commissioner has been given the power to approve the island council's decisions, in addition to its normal supervisory powers. The ordinances passed by the island council are thus subject to the approval of the government commissioner (section 10 of the Bill). He may withhold approval only if the ordinance conflicts with a higher law, would be contrary to the interests of the people of St Eustatius, would impose a disproportionate administrative burden, is financially impracticable or would frustrate the proper functioning of the island authorities in the future. This can prevent the island council from exercising its powers in a way that would be detrimental to the interests of St Eustatius and its people and prevent any improvements made from being reversed. It should be noted here that, where a prospective decision may conflict with these criteria, the government commissioner, as chair of the island council, has the opportunity to raise the matter with the members of the island council before the motion is put on the agenda. The additional power of approval is intended as a safety net that can legally safeguard the progress and positive developments on the island. The government commissioner makes that decision. If an island ordinance nevertheless enters into force but is later found to be contrary to the law or the public interest, the government commissioner may, as a last resort, submit it for annulment under section 223 of the WOLBES. If the island council fails to perform tasks resulting from the legislation on delegated competences (or fails to perform them properly), the government commissioner may, in the course of discharging the tasks of the island executive, also act in place of the island council pursuant to section 230 of the WOLBES.

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The Bill also makes three exceptions for some tasks and powers which normally belong to the island council, but are not immediately among the provisions that will be restored. The first exception is the right of inquiry, which is regulated in sections 160 to 165 of the WOLBES (section 9 of the Bill). The reason for this exception is that a right of inquiry is an onerous power which makes considerable demands on the organisation of the public body and entails a number of far-reaching duties to cooperate. The process of achieving administrative stability could possibly be harmed by the exercise of this right to institute an inquiry. Moreover, the use of this means of scrutiny would be hard to reconcile with the fact that the government commissioner is still performing many administrative tasks. Second, the government commissioner will continue for the time being to perform the tasks and exercise the powers that the island council has under the FINBES, including the right to approve and amend the budget and to adopt the annual accounts (section 8 of the Bill). In support of the government commissioner and in view of the fact that the provision of advice on the budget is an elementary part of the budgeting and financial management process, the Bonaire, St Eustatius and Saba Financial Supervision Authority (CFT BES) is to resume its advisory function as described in section 17 of the FINBES. A third exception concerns the island council's power to make decisions affecting the legal status of civil servants employed by the clerk's office (section 7 of the Bill). However, the island council will itself appoint a clerk to the council. As noted in section 2.3 above, more time is likely to be needed to make lasting improvements to financial management and the civil service organisation. The separate arrangement for the restoration of these tasks and



powers will give the government commissioner the opportunity to continue to carry out his activities in these fields even after the island council takes office.

3.2.2. Restoration of provisions regarding the island executive In the second phase, the island council will acquire the power to appoint and dismiss the members of the island executive. The start of this phase is conditional on all island ordinances having been adopted and having entered into force, the procedures and work instructions of the island executive being in order and the systems for the issuing of permits and exemptions, the award of grants and the land registry being in place.

Moreover, supervision and enforcement must be in order, as regards both enforcement policy and the adequate appointment and training of staff.

Once appointed by the island council, the members of the island executive, together with the government commissioner, who continues to perform the duties of the governor, constitute the island executive. The relationship between the government commissioner and the members of the island executive, like the relationship between him and the island council, as described above, remains unchanged, once again subject to his duty of accountability to the Minister of the Interior and Kingdom Relations.

The possibility of not appointing a governor remains open under the Bill (section 16 of the Bill), notwithstanding the WOLBES. The government commissioner is, in that capacity, a member of the island executive and its chair. To support him in this role, the island executive will appoint a secretary to the island executive. For as long as the present Act remains in force after it becomes law, the island executive will not be able to dismiss the secretary to the island executive. In view of the pre-intervention situation, it is important to ensure that the secretary to the island executive cannot be dismissed for improper reasons. The power of the government commissioner to approve decisions of the island executive also applies to the decision to appoint the secretary to the island executive.

In this phase, the island council can exercise its right to ask questions of the island executive and call for an emergency debate and has the power to dismiss members of the island executive, for example after passing a resolution of no confidence in the member concerned (section 60 of the WOLBES).

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The island executive conducts the day-to-day administration of the public body and is responsible for exercising the autonomous and delegated competences, including supervision of compliance with laws and regulations and enforcement in the event of breaches relating to the statutory tasks and powers of the island executive. In this phase, the autonomous and delegated competences that would normally be vested in the governor are still performed by the government commissioner. The government commissioner also takes the place of the island executive in performing the tasks and exercising the powers under the FINBES and in relation to the civil service organisation and decisions affecting the legal status of civil servants in the employ of the public body (sections 7 and 8 of the Bill).



The second phase will start only when the progress of projects and the functioning of the island council are such that the government expects the members of the island executive to be able to perform their duties as good administrators and take decisions that meet the statutory requirements. The government commissioner, as chair of the island executive, and the secretary to the island executive also have an important role in ensuring good governance through the preparation of decisions. It will benefit the administrative process and the cooperation between the members of the island executive and the government commissioner if, in the preparation of decisions, sufficient account is taken of the statutory requirements they must meet. The government commissioner is also responsible for the legislative agenda and oversees the quality of the decisions. To ensure that decisions of the island executive cannot worsen the situation in St Eustatius, they are first subject to approval by the government commissioner (section 13 of the Bill in conjunction with section 10 (new)). As in the case of the restoration of the island council, this is an important safety net in order to exercise preventive supervision and is additional to the normal scrutiny of the island executive. The government commissioner may withhold approval only if the decision conflicts with a higher law, would be contrary to the interests of the people of St Eustatius, would impose an disproportionate administrative burden, is financially impracticable or would frustrate the proper functioning of the island authorities in the future. If an island ordinance nevertheless enters into force but is subsequently found to be contrary to the law or the public interest, the government commissioner may submit it for annulment under section 223 of the WOLBES. If the island executive fails to perform tasks resulting from the legislation on delegated competences (or fails to perform them properly), the government commissioner may, in the course of discharging the tasks of the governor, also act in place of the island executive pursuant to section 231 of the WOLBES.

3.2.3. Responsibility for the clerk's office and the civil service organisation As noted above, the exceptions for the tasks and powers of the island council and the island executive relating to the setting of rules for the clerk's office and the civil service organisation as a whole and decisions on the appointment, suspension and dismissal of civil servants are to be extended. These tasks and powers will continue to be vested in the government commissioner until the political office holders and civil servants have completed the training programme and the personnel policy is in order. Once these powers and tasks are again vested in the island council and the island executive, the normal powers of approval will be exercised by the government commissioner rather than by the Kingdom representative (section 13 of the Bill: section 10 of the Bill (new)).

3.2.4. Responsibility for financial management As noted above, the exception for the tasks and powers vested in the island council and the island executive under the FINBES is to be extended, and the government commissioner will remain responsible for them. The separate arrangement for the right to approve and amend the budget and the right to make other financial decisions means that they can be restored along the lines of the FINBES at a later stage. This will give the government commissioner the opportunity to devise a lasting solution for these activities and ensure that the supporting measures have the intended results. The financial tasks will be returned to the island council and the island executive once the financial processes have been digitalised and centralised, the planning and audit cycle meets the requirements set by the FINBES, and all measures provided for in the Financial Management



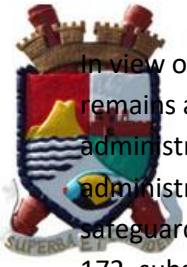
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Action Plan are in place (section 15 of the Bill).

The decisions of the island executive will be subject to the approval of the government commissioner until the start of the next phase. It follows that this also applies to decisions of a financial nature. The FINBES also contains various powers of approval relating to the adoption and amendment of the budget and other decisions of the island council that have financial consequences. In such cases, approval may be withheld by the Minister of the Interior and Kingdom Relations, after obtaining the advice of the Financial Supervision Authority. The Bill provides that in the second phase approval may be withheld not only on the grounds stated in the FINBES but also if the decision would be contrary to the interests of the people of St Eustatius, would impose a disproportionate administrative burden, is financially impracticable or would frustrate the proper functioning of the island authorities in the future. Besides the normal preventive supervision under the FINBES, provision is made for the adoption of the quarterly budget reviews, annual accounts, annual reports, tax ordinances and island regulations on the auditing of financial management and the organisation of the financial system to be subject to approval by the Minister of the Interior and Kingdom Relations. The Financial Supervision Authority plays an advisory role in these matters, and takes into account not only financial interests and practicability but also the interests of the people of St Eustatius, the administrative burden and the future functioning of the island authorities. While the administrative intervention is gradually scaled back in this phase, the requirement of approval for decisions with financial consequences serves as a safety valve to guarantee orderly financial management and the improvements made to achieve this.

3.2.5. Reinstatement of the governor and the role of the Kingdom representative after the provisions on account of gross neglect of duty have been phased out The third phase will start when all aspects of the gross neglect of duty have ended. All supporting measures in the areas of financial management, the administrative structure and the civil service organisation will by then have been fully implemented.

This is therefore the phase in which normal administrative relations are fully restored. In this phase, the island council and the island executive are once again responsible for all their normal tasks, such as the right to approve and amend the budget, and can exercise their powers under the WOLBES and FINBES in the normal way. The Kingdom representative is authorised to approve decisions regarding the appointment, suspension and dismissal of civil servants. Subject to section 73 of the WOLBES, a governor is appointed who performs all tasks and exercises all powers vested in him by law. Before the governor is appointed, it must be apparent that the island executive is functioning properly and in accordance with the WOLBES and FINBES, and that the governor too is expected to be able to perform his tasks and exercise his powers properly. Only then is transition to this phase deemed a responsible course of action. Once the governor has been appointed by Royal Decree, the situation will be in line with the WOLBES and the government commissioner can be relieved of his duties. When all the tasks and powers described above are once again carried out by the relevant administrative organs, the situation will no longer derogate from articles 125 and 127 in conjunction with article 132a of the Constitution.



In view of the background to the situation in St Eustatius, as described in section 2.1 above, there remains a real risk that after the normal provisions have been restored in keeping with this Bill, the administrative situation will deteriorate again and problems with the integrity of public administration will resurface. The governor has primary responsibility for promoting and safeguarding the integrity of public administration in St Eustatius. This has been regulated in section 172, subsection 2 of the WOLBES since 2016. Given his position as a local politician, the governor may be constrained from performing this task properly, or the situation may escalate to the point where he loses control. If that happens, the governor may need the assistance of a public office holder who has authority and knowledge as well as a certain distance from the parties involved. Under this Bill, the office-holder responsible for fulfilling this duty of care is the Kingdom representative. The Kingdom representative is charged with providing advice and mediation in the

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event of a breakdown in administrative relations in St Eustatius and when the integrity of public administration on the island is in jeopardy. A comparable role is played in the European part of the Netherlands by the King's Commissioner. This constitutes normal supervision within the meaning of article 132, paragraph 2 of the Constitution, in conjunction with article 132a, paragraph 2 of the Constitution.

When all normal tasks are once again being performed by the relevant administrative organs, it would also be desirable to have a means of keeping a finger on the pulse, for example by making good use of approval, annulment and substitution as standard instruments of supervision. During this phase, both the Kingdom representative and the governor can again submit decisions for annulment. If the island authorities fail to exercise their delegated competences (or fail to do so properly), the Kingdom representative may do so instead. To carry out intensified supervision, the Kingdom representative needs to have sufficient information about the policy of the island authorities. There is currently no formal reason why the Kingdom representative, like anyone else, should not take cognisance of documents and what is being discussed in the public meetings of the island council. The decisions of the island executive are also public, but this does not apply to the meetings of the island executive, which take place behind closed doors. The island council too may decide to exercise the power to keep information out of the public domain or exclude the public from meetings. This Bill grants the Kingdom representative the right to attend the meetings of the island council and the island executive, even if they take place behind closed doors. The Kingdom representative is also given the right to inspect all documents available to the island authorities (section 16 of the Bill in conjunction with section 12 (new)). The Kingdom representative thus acts as an extra link in the supervision system with a view to safeguarding long-term improvements and compliance with the conditions for good governance.

3.2.6. Final phase: full restoration of the provisions The fourth phase marks the end of the administrative intervention. In view of the temporary nature of the administrative intervention, the Act will be repealed on 1 September 2024. This means that the Kingdom representative will retain his additional powers for a further 18 months after the next regular elections in March 2023. When the Act is repealed, the Kingdom representative will once again be responsible for all his normal tasks and powers, as provided for in the WOLBES.



However, the Act can be extended by Royal Decree (until 1 September 2025) if the third phase has not started by 1 February 2024 and the government commissioner is still performing some or all of the tasks of the island executive and the governor. Before this happens, Our Minister, in keeping with the wishes of the cabinet, will submit a statement to both Houses of the States General about the intention to extend the Act or will present a Bill to this effect. If the Bill to extend the Act is withdrawn or defeated, the Act whose period of operation was extended will be repealed immediately by Royal Decree (section 21 of the Bill). If no Bill is presented during the extension period, the Act will cease to apply upon the expiry of the extension period. No further extension is possible.

3.2.7 Phasing-out safeguards As the administrative intervention is phased out, various safeguards, sometimes referred to as safety valves, have been built into the first, second and third phases to ensure that the exercise of the restored powers does not have a detrimental effect on St Eustatius and its inhabitants or jeopardise the progress that has been made. In summary, the transition to the next phase can take place only if concrete results have been achieved and the powers concerned are expected to be exercised properly in the longer term. Moreover, the powers of the island council and the island executive are initially limited as the tasks involving financial management, the organisation of the clerk's office and the civil service organisation are conferred only at a later stage. Besides the normal powers of supervision, the government commissioner has the authority to approve decisions of the island council in the first phase and of the island executive in the second phase,

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with the interests of the inhabitants and good governance being expressly taken into account.

In the second phase, financial decisions of the island council also require the commissioner's approval. If the commissioner withholds approval, the decisions do not enter into force. As the commissioner will remain in office even after the island council and the island executive have been reinstated, he will continue to have first-hand knowledge of the functioning and decisions of both bodies and be well placed to take timely action, in close and quick consultation with the Ministry of the Interior and Kingdom Relations. As already noted in section 3.1 of this explanatory memorandum, the government views these safeguards as a safety net. This Bill aims to provide the government commissioner with a legal basis for action if the situation so requires. However, good governance is not something that can be achieved just by passing a law; it also requires input from the future members of the island council and island executive. It is important for the government commissioner to continue to serve the collective interests of the island and its inhabitants in a transparent manner and in proper consultation with the future island council and island executive. To prevent any recurrence of the pre-intervention situation and maximise the chances of having island authorities that make decisions in the interests of the island and its people, the members of the island council and island executive must be prepared to work together and communicate effectively both among themselves and with the government commissioner. The training courses provided for members of the island council and island executive are also designed to achieve this.



As the combined effect of these safeguards is to ensure that a situation cannot occur in which it becomes desirable to withdraw powers in the first and second phases when the administrative intervention is gradually being scaled back, no provision need be made for the possibility of scaling back powers in the first and subsequent phases. In the third phase, when the neglect of duty has been terminated and the government commissioner has departed, the Kingdom representative will gain access to all information and can attend all meetings, private and otherwise. This addition will enable the Kingdom representative to make intensive use of the regular powers of supervision in relation to St Eustatius. The safety valves described above also complement the current statutory system of supervision. If there is a recurrence of the situation of gross neglect of duty by the island authorities, necessitating removal of powers from the island council, the island executive or the governor, it will be up to the legislature to make whatever new provisions are necessary pursuant to article 132, paragraph 5 in conjunction with article 132a of the Constitution. The gradual way in which the administrative intervention is to be phased out and the safeguards proposed in the present Bill are designed to ensure that such a situation does not arise.

The government shares the view of the Council of State that sufficient attention must be paid to making the necessary structural changes to preclude the possibility of fresh intervention becoming necessary after the existing administrative intervention ends. In its response, the government has explained how it proposes to organise the coordination of policy in The Hague and improve cooperation between the European and Caribbean parts of the Netherlands. The development of these measures will have to be completed in the near future, under the direction of the Ministry of the Interior and Kingdom Relations. One aspect will involve devising a form of intervention that comes somewhere between the forms of normal supervision described above and an administrative intervention. Intervention of the latter kind is very drastic, but the normal types of supervision may not always be sufficiently effective to prevent a recurrence of the neglect of duty. This will require a carefully crafted response, which also takes account of other amendments to the WOLBES. The present Act will not therefore anticipate this. In the meantime, policy frameworks are being drawn up to support and implement existing supervisory powers. As noted in the previous sections of this explanatory memorandum, the choices made by the government and explained above, such as the restoration of the position of Kingdom representative, do not prejudice any future changes, for example to the WOLBES, as indicated in the government's

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response to the advisory opinion of the Council of State and the Interministerial Policy Research Committee on Kingdom Relations.¹⁰

The process of amending the WOLBES may coincide with the gradual phasing out of the administrative intervention, as provided for in the present Act. This may mean that the second half of the phasing out takes place at the same time as the new WOLBES is entering into force or that it is no longer necessary to press ahead with the present Bill because the phasing out can be continued under the new WOLBES. The requisite concurrence provisions will be included in the Bill to amend the WOLBES.



3.2.8 Phasing-out table

Step Action Completion CONDITIONS 1

- Electoral register ready - Reorganisation of civil service organisation ready - Procedures and work instructions for civil service organisation and clerk's office ready - Court of audit established - Training programme for prospective politicians starts

Prior to phase 1

PHASE 1 (entry into force of the St Eustatius Administrative Provisions (Restoration) Act)

2 - Royal Decree setting nomination day (section 3) - Island council elections Restored powers of island council: - Right to ask questions and call for an emergency debate - Provision for introduction of motions in rules of procedure - Adoption of ordinances (autonomous and delegated competences) - Right to amend legislation - Right to initiate legislation Exceptions: - Right of inquiry (section 9) - Powers and tasks under the FINBES - Decisions affecting the legal status of civil servants employed by the clerk's office Government commissioner's role: - Continues to act in the place of the island executive and the governor (section 6) - Continues to exercise the powers of the island council and the island executive under the FINBES and in relation to the civil servants in the clerk's office (sections 7 and 8) - Approval of all ordinances of the island council (section 10), in addition to the commissioner's normal enforcement powers in relation to the island council under the WOLBES

At the start of and during phase 1

CONDITIONS 3 - Island executive procedures and work instructions completed - Ordinances adopted and in force - Permit and exemption system, grants system and land registry operational - Supervision and enforcement (policy + appointment and training of staff) operational

During phase 1, prior to phase 2

PHASE 2 (Royal Decree for section 13) 4 - Island council appoints members of island executive Restored powers: At the start of and during phase 2

10 Parliamentary Papers, House of Representatives, 2019/20, 35 300 IV, no. 11.

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- All autonomous and delegated competences of the island executive - Including powers to supervise compliance with and enforcement of laws and regulations Exceptions: - Tasks/powers under FINBES - Tasks/powers in relation to the civil service organisation and decisions on the legal status of civil servants Government commissioner's role - Continues to act in the place of the governor (section 6) - Continues to exercise the powers of the island council and the island executive under the FINBES and in relation to the civil servants in the clerk's office (sections 7 and 8) - Standard approval of island council ordinances in the place of the Kingdom representative (section 10, subsection 1) - Approval of all decisions of the island executive (section 10, subsection 2), in addition to the



commissioner's normal enforcement powers in relation to the island council and the island executive under the WOLBES

CONDITIONS 5 - Completion of skills training programme for civil servants - Completion of training programme for members of the island council and island executive - Personnel policy operational and adoption of amended legal status rules

During phase 2, prior to phase 2.1

PHASE 2.1 (Royal Decree for section 14) 6 Restored powers: - Tasks/powers in relation to civil service organisation and legal status decisions of the island council and the island executive (appointment, suspension and dismissal of civil servants) Government commissioner's role: - Standard approval of decisions about personnel, in place of the Kingdom representative (section 10)

During phase 2

CONDITIONS 7 - Digitalise and centralise financial processes - Set up a planning and control cycle in accordance with the FINBES - All measures in the financial management action plan ready

During phase 2.1, prior to phase 2.2

PHASE 2.2 (Royal Decree for section 15) 8 Restored powers: - Tasks/powers of island council and island executive under the FINBES Government commissioner's role - Approval of all decisions under the FINBES, in place of Kingdom representative (section 10)

During phase 2.1

CONDITIONS 9 - All the above conditions have been fulfilled and all supporting measures implemented: gross neglect of duty ended and new governor expected to consolidate the progress made

During phase 2, prior to phase 3

PHASE 3 (Royal Decree for section 16) 10 - Complete restoration of normal administrative relations in line with the WOLBES and FINBES - Start of procedure for the appointment of the governor in accordance with section 73 of the WOLBES

At the start of and during phase 3

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11 PHASE 3.1 Day on which the governor is appointed (Royal Decree under section 73 of the WOLBES)



During phase 3

Restored powers: - Governor's tasks/powers - Kingdom representative's tasks/powers
Additional arrangement: - Kingdom representative advises on administrative relations and has the right to inspect documents and attend meetings
Government commissioner's role - Appointment ended, no further tasks and powers

PHASE 4 (1 September 2024, unless extended) 12 - Additional powers ended.

Final phase

3.3. Implementation of the Bill and supporting measures

Besides the measures to regulate the administrative domain, the civil service organisation and financial management, as described in section 2.3, supporting measures have been and are being taken in other areas as well. These are described in the letter of 24 September 2019 and the progress reports. This explanatory memorandum is therefore limited to providing a concise, nonexhaustive list of the measures and parties involved.

In the social domain, the government has taken substantial steps to improve the position of the inhabitants of the Caribbean part of the Netherlands by fixing the reference points required for socioeconomic security (also known as the 'social minimum') and taking accompanying measures. The government is thus committed to reducing the cost of living and raising the income levels of the inhabitants. As part of the BES(t) 4 kids programme, training courses have been launched for childcare workers in St Eustatius. Other measures include tackling domestic violence and combating poverty. There is now a shelter for victims of domestic violence. Poverty reduction is another area where there is an unmistakable need for action by the public body. Support is being provided by the Ministry of Social Affairs and Employment.

To reduce housing costs, it is important for sufficient good-quality social housing to be available in Bonaire, St Eustatius and Saba. Woonlinie – a housing association based in the European part of the Netherlands – and the public body of St Eustatius have therefore submitted a joint proposal to find a structural solution for the renovation, maintenance and construction of social housing. Work has started on the first pilot project.

Various projects are also in full swing in the physical domain. As erosion is threatening the island in certain vital places, various projects are under way as part of a comprehensive plan drawn up by Rijkswaterstaat to tackle erosion. For example, work to stabilise the cliff under Fort Oranje is well advanced, and improvements are being made to the roads on the island, which have suffered from erosion caused by rainwater drainage and lack of maintenance. Preparations are also being made to protect the coastline. As regards waste management, the Ministry of Infrastructure and Water Management has made resources available to acquire a new waste incineration plant. In addition,



the State Secretary for Infrastructure and Water Management and the government commissioner have signed a declaration of intent to tackle the litter problem.

As regards the reconstruction work following hurricanes Irma and Maria in September 2017, many of the projects have now reached or are approaching completion. This is true, for example, of the repair of hurricane-damaged homes, water supplies for agriculture and various nature management projects. A few projects such as reforestation and coral restoration have a longer lead time.

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4. Relationship to higher law and other national legislation

4.1. Relationship to the Constitution and international law

St Eustatius is a public body within the meaning of article 132a of the Constitution. Provision has been made in the WOLBES for the establishment, organisation, composition and powers of the administrative organs of the public bodies within the meaning of this article. The relevant constitutional provisions on municipalities have been declared applicable *mutatis mutandis* to the public bodies (article 132a, paragraph 2 of the Constitution), including the provisions on supervision.

Under article 132, paragraph 5 of the Constitution, in conjunction with article 132a, paragraph 2 of the Constitution, provisions may be made by Act of Parliament in the event of gross neglect of duty by the administrative organs of a public body. These provisions may derogate from the normal division of powers within the public body, as laid down in articles 125 and 127 (in conjunction with article 132a, paragraph 2) of the Constitution and specified in more detail in the WOLBES.

The Constitution provides the framework for assessing provisions related to the gross neglect of duty. Provisions on account of gross neglect of duty should be regulated by Act of Parliament and meet the requirements of necessity and proportionality. No additional requirements arise from article 3 of Protocol no. 1 to the European Convention on Human Rights or article 25 of the International Covenant on Civil and Political Rights. The Constitution does not specify the nature of the provisions to be made. The aim of a statute dealing with neglect of duty is, by definition, to provide for a resumption of the normal discharge of duties. Under the Temporary Act, all tasks and powers of the island authorities are performed by a government commissioner during the period when the gross neglect of duty is being rectified. The legislature has also provided that the administrative intervention should end on 17 March 2021. As the present Bill is intended to extend the term of the administrative intervention on account of neglect of duty, the derogation from the normal administrative organisation and powers enshrined in the Constitution is to be continued. The provisions made to tackle the gross neglect of duty are to be gradually phased out, but as only the island council is to be reinstated for the time being, the administrative intervention will be partly continued. The extension and amendment of the provisions must be regulated by Act of Parliament pursuant to article 132, paragraph 5 of the Constitution, in conjunction with article 132a, paragraph 2 of the Constitution. This Bill provides for this. In the event of an unforeseen and exceptional situation which necessitates the suspension or even dissolution of the island council following its restoration, this will once again be submitted to the legislature in accordance with the Constitution.



The Constitution also requires the provisions to be necessary and proportionate. As noted above in sections 2.3 and 2.4, an extension of the provision is necessary to ensure that all improvements are long-lasting and prevent a recurrence of the gross neglect of duty. In the government's view, the fact that this extension provides for a gradual phasing out of the administrative intervention rather than its continuation in full is in keeping with these principles of proportionality and necessity. During the preparation of the Temporary Act, the government indicated that the period during which the island council remains dissolved should be kept as short as possible. The government considers that, in view of the results already achieved and the progress still expected to be made while this Bill is under consideration, the island council can be reinstated, thereby ending the derogation from the Constitution.

It follows that the derogation from articles 125 and 127 of the Constitution will cease from the third phase. As explained above, this third phase can start once the gross neglect of duty has ceased, because all measures will have been completed and in such circumstances the island authorities are expected to be able to perform their duties properly. Pursuant to article 132, paragraph 2 of the Constitution, supervision is regulated by Act of Parliament. The Constitution

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provides for two ordinary forms of supervision (i.e. disregarding cases of neglect of duty), namely approval of decisions and quashing of decisions in the event of conflict with the law or the public interest. In the case of public bodies in the Caribbean part of the Netherlands, more detailed provisions for these forms of supervision are set out in the WOLBES. Approval too is already required for a number of specific decisions under the WOLBES and FINBES and the legislation on delegated competences. Other forms of supervision can be regulated by Act of Parliament, including provision for delegation. Such supervision may not go beyond the limits set by the constitutional framework. The temporary additional task and powers for the Kingdom representative proposed in this Bill for the phase after termination of the gross neglect of duty (section 16, subsection 3 of the Bill amends section 12) can be regarded as supervision within the meaning of article 132, paragraph 2 of the Constitution. The government considers this additional supervision to be necessary for St Eustatius to ensure that normal administrative relations are restored on a lasting basis and avoid any recurrence of the pre-intervention situation. Differentiation of this kind between the public bodies is in keeping with section 137 of the WOLBES, which allows for such a distinction.

4.2. Relationship with the WOLBES and FINBES

The organisation of the public bodies, their composition and the powers of their authorities are regulated in the WOLBES. Under the Bill, the government commissioner will perform all tasks and exercise powers that have been conferred on the island council, the island executive or the governor, particularly the autonomous tasks and powers under the WOLBES. In so far as the Bill does not provide otherwise, this does not affect the other provisions of the WOLBES. Some of these provisions will not be relevant while the government commissioner is in office. Examples are the provisions on the position of members of the island executive and the governor in the period before



their appointment. Finally, chapter 3 indicates which administrative organ will perform the tasks and powers regulated in the WOLBES and FINBES in the various phases.

5. Consequences

5.1. General consequences

The general consequence of this Bill is that the provisions in force under the Temporary Act will continue for longer than is possible under the current legislation. This should make it possible to put the island's administration in proper order on a lasting basis. Efforts must be made to prevent a recurrence of the pre-intervention situation after resumption of normal administrative relations. As already noted, this will need more time, as provided for in this Bill. However, the difference here is that the organs and powers of the local authorities will be restored step by step, so that the administrative intervention is not continued in its entirety but is gradually phased out.

This means that all parties involved will have the prospect of a transition to the normal situation. Members of the public will once again have the right to vote and stand for election, and businesses and individuals will, in due course, be able to deal with an island executive whose members have been appointed by their elected representatives. The transitional arrangement will give the island council and the island executive the opportunity to grow into their role gradually, thereby increasing the likelihood of having an administrative system in St Eustatius that functions properly in the long term. Naturally, stable governance would benefit the people of the island. Moreover, governance will continue to be closely monitored to ensure that the general public, the business community and also the environment are not confronted with the consequences of its failures.

5.2. Financial consequences

As noted above, the purpose of extending and then gradually phasing out the administrative intervention in St Eustatius is to restore good governance and ensure that the island is administered properly in the long term. It is necessary to avoid any recurrence of the pre

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intervention situation after resumption of normal administrative relations. Investment in the island therefore remains absolutely essential.

Given the scale of the task in St Eustatius, the government commissioner and his deputy need support, particularly in certain key functions in various areas of the civil service. Depending on how long the present Act remains in force and the different phases take to be completed, allowance is made for the presence of the government commissioner and his deputy. The same is true of the support provided for them. When the support is provided by staff from the European part of the Netherlands, every effort will be made to ensure that they pass on their knowledge to local personnel. Where possible, knowledge and expertise available in the region will be deployed.

Besides the salary costs for the government commissioner, his deputy and the necessary support staff, the government will continue to invest in the education and training of civil servants. It is also investing in training prospective politicians and, when in office, members of the island executive and



island council. This will involve total annual expenditure of €1.8 million in the period from 2020 to 2023.

The coalition agreement provides for regional funds, which can also be made available to the Caribbean part of the Netherlands. Under the coalition agreement, resources are also systematically made available through the infrastructure fund for projects to improve the infrastructure.

6. Advice and consultation

The Bill has been submitted to the government commissioner of St Eustatius for consultation. In his response, the government commissioner has stated that he concurs with the Bill and has no further observations about either the extension or the phasing out of the intervention.

The government commissioner has also discussed the Bill with the civil society advisory council in St Eustatius. The function of this council, whose composition is representative of the island population, is to provide solicited and unsolicited advice to the government commissioner about the views of the local community on administrative matters. The majority of members have expressed support for the Bill. However, some comments and criticisms have been expressed. For example, the Bill has given rise to questions about the planned timeline, since it provides for the phases to follow each other when certain criteria have been fulfilled rather than when a deadline is reached. The council members suggest that the transition from one phase to another should take place on a given date, with criteria serving as an aid.

And it should be clear in advance how and by whom the criteria will be – objectively – assessed. The majority of the members have also expressed the view that the plan to hold island council elections in the autumn of 2020 is overly ambitious. Starting training for prospective politicians in the near future is therefore seen as a necessary step towards achieving good governance. The majority would also prefer to strengthen the position of the governor in order to expand his scope for action. A minority of the members indicated that the public were keenly looking forward to the restoration of their democratic rights. They stated that some groups in the community feel robbed of their right to vote. Any delay would therefore be too long.

Notes on individual sections

Section 1 Section 1 of the Bill corresponds to the current section 1 of the Temporary Act. The Bill adds 'island authorities' to the list of defined terms. Reference is made to the definition of the term in section 1, subsection 1 (b) of the WOLBES.

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Section 2 For the reasons given in section 2.4 of the general part of the explanatory memorandum, the government considers it desirable for the provisions made in the Temporary Act in response to the gross neglect of duty to be phased out in relation to the island council. Section 2, subsection 1 of the Bill modifies the administrative intervention under section 2, subsection 1 of the Temporary Act by providing for the situation where no members of the island executive and no governor yet hold office in St Eustatius to continue. The government commissioner will continue for the time being to perform the tasks and exercise the powers of the island executive and the governor and in that



capacity will also chair the island council. Subsections 2 to 5 correspond to the same subsections of the current section 2 of the Temporary Act. The appointment of the government commissioner and deputy government commissioner will end on the date when the governor is appointed. As regards this point, see the commentary on sections 16 and 21 below.

Sections 3 and 4 Section 3 of the Bill largely corresponds to the current section 8, subsections 2 and 4 of the Temporary Act, which regulates when elections for the island council can be held. Section 3, subsection 1 of the Bill provides that nomination day is to be determined by Royal Decree. As this is based on section J 1 of the Elections Act, polling will take place on the 44th day after nomination day. To enable elections to be held quickly, it is possible to derogate from some deadlines specified in the Elections Act for the registration of appellations of political groupings (section 3, subsection 1 of the Bill).

As a rule, the sitting members of the island council decide on the admission of newly elected members (section V 4 of the Elections Act). As St Eustatius does not currently have a functioning island council and no island council members are in office, the Bill provides for the appointed members to examine their own credentials (section 3, subsection 2 of the Bill). For the purposes of section H 4, subsection 8 and sections H 14 and I 14 of the Elections Act, the last election of the members of the island council of St Eustatius is deemed to be that which took place on 18 March 2015.

The references to the provisions of the Elections Act include a reference to section Ya 13 of that Act. This stipulates that the relevant sections of the Elections Act also apply to the island councils.

Section 4, subsections 1 and 2 of the Bill corresponds to the current section 9 of the Temporary Act, and regulates the term of office of the island council. The term of office of the new members of the island council of St Eustatius will end, in principle, at the same time as the term of office of the members of the island councils of Bonaire and Saba after the next regular island council elections. However, it is not desirable for the newly elected island council of St Eustatius to have only a short term of office. Section 4, subsection 2 of the Bill therefore provides that the regular island council elections of 15 March 2023 will be skipped in St Eustatius if the new members are admitted to the island council less than two years before those elections. This will ensure that the newly elected island council holds office for a minimum of two years (and a maximum of about six years). Under the current section 8, subsection 5 of the Temporary Act, independent polling stations are to be established for the election of the members of the electoral college if the regular island council elections of 15 March 2023 do not go ahead in St Eustatius. This provision is adopted in section 4, subsection 3 of the Bill.

Section 5 Since the island council is not in office at present, the acting clerk to the island council has been honourably discharged in accordance with section 2, subsection 6 of the Temporary Act (and no new appointment made), and documents have not been countersigned, as required under section 34 of the WOLBES. Once the island council has been reinstated, it will appoint a new clerk to the council as quickly as possible pursuant to section 130 of the WOLBES. The Bill also proposes that the decision on the appointment of the clerk to the island council requires the approval of the



government commissioner rather than the Kingdom representative. Approval may be withheld if the appointment would be contrary to the law or in conflict with the rules adopted by the

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government commissioner for the appointment, promotion, suspension and dismissal of the clerk to the island council under section 134 of the WOLBES, in conjunction with section 3 of the Temporary Act and, after the entry into force of this Bill, section 7 of the Bill.

Section 6 Section 6, subsections 1 to 4 of the Bill largely correspond to the current section 3 of the Temporary Act, save for the fact that the government commissioner no longer acts in place of the island council. The government commissioner will continue to perform the tasks and exercise the powers of the governor and in that capacity will also chair the island council. With a view to the gradual phasing out of the administrative intervention, separate provision is made in sections 7 and 8 of the Bill for the island council's tasks and powers in relation to the clerk's office and the civil service organisation and its tasks and powers under the FINBES.

Provision for the duty to cooperate has been made in section 6, subsection 5 of the Bill. The purpose of this provision is to ensure the cooperation of all civil servants, so that once the island council and, in due course, the island executive have been reinstated, the government commissioner can still perform those parts of his job that relate to the restoration of the provisions.

Section 7 Under the current section 3, subsection 1 of the Temporary Act, the government commissioner presently performs all tasks and exercises all powers of the island council and the island executive, including tasks relating to the organisation of the clerk's office, the rest of the civil service organisation and the legal status of civil servants working for the public body. Section 3.2.3 of the general part of this explanatory memorandum explains that the government considers it desirable that responsibility for personnel policy relating to the civil servants who work in the clerk's office should remain with the government commissioner even after the reinstatement of the island council. Section 7, subsection 1 of the Bill therefore provides that the government commissioner must arrange for the exercise of the powers referred to in section 134 of the WOLBES.

Subsections 2 and 3 of section 7 of the Bill provide for the government commissioner's responsibility for the civil service organisation to be continued (section 168, subsection 1 (c) and (d) and subsection 2 of the WOLBES and articles 16 and 16d of Book 1, Title 4, Part 1 of the Bonaire, St Eustatius and Saba Civil Code). They therefore provide that, notwithstanding section 4 of the BES Government Personnel Act, the government commissioner is deemed to be the competent authority in relation to civil servants in the employ of the public body of St Eustatius, including the clerk to the island council and the civil servants employed in the clerk's office. Similarly, the government



commissioner will continue to perform the tasks and exercise the powers vested in the island executive by or pursuant to the BES Government Personnel Act.

Section 7, subsection 5 of the Bill corresponds to section 3, subsection 2 of the Temporary Act; decisions taken by the government commissioner in place of the island council and the island executive in relation to personnel matters are deemed to originate from those organs. This guarantees continuity of governance and ensures that the normal regulations and procedures will continue to apply even after the provisions introduced by this Act have ended.

Section 8 Under section 3, subsection 1 of the Temporary Act, the government commissioner, since the start of the administrative intervention, has replaced the island council and the island executive in performing the tasks and exercising the powers under the FINBES. This arrangement for the financial tasks is specifically regulated in section 8, subsection 1 of the Bill. Section 8, subsection 2 of the Bill corresponds to the current section 3, subsection 2 of the Temporary Act. Decisions taken by the government commissioner in place of the island council or the island executive under the FINBES are deemed to originate from those organs.

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Section 8, subsection 3 of the Bill corresponds to the current section 7, subsection 1 of the Temporary Act. Like section 3, subsection 1 of the Temporary Act, section 8, subsection 3 of the Bill provides that a number of the FINBES provisions do not apply to St Eustatius during the period in which the government commissioner holds office. This concerns rules governing public finances, decisions (and approval of decisions) having financial consequences, the budget and the annual accounts, as well as the role of the BES Financial Supervision Authority and the Minister in the context of financial supervision. However, the Bill does amend the current section 7, subsection 1 of the Temporary Act, in that the BES Financial Supervision Authority resumes its advisory role with regard to the draft budget under section 17 of the FINBES. Some rules on loans, the current account and responsibility for the bank accounts also apply to the public body of St Eustatius (sections 11, 12 and 37 of the FINBES respectively) even during the period in which the government commissioner is responsible on the government's behalf for putting the finances of St Eustatius in order. As there is no reason to apply the other rules currently excluded in section 7 of the Temporary Act, these exclusions will be continued. Moreover, the government commissioner is required to deposit the draft budget and the advice of the Financial Supervision Authority for public inspection and to ensure that copies are generally available. In keeping with section 7, subsection 3 of the Temporary Act, as currently applicable, section 8, subsection 4 of the Bill provides for public notice to be given of the deposit for inspection and the availability of copies.



Section 9 As stated in section 3.2.1 of the general part of this explanatory memorandum, the island council will not, in principle, have a right of inquiry. Provision for this is made in section 9 of the Bill.

Section 10 Once the island council has been established, it will be competent to pass ordinances, with the exception of ordinances under the FINBES, as these are still adopted by the government commissioner rather than the island council (see section 8 of the Bill). As explained in section 3.2.1 of the general part of this explanatory memorandum, it is desirable for the government commissioner to be able to intervene quickly in the initial period if island ordinances are contrary to the law or have adverse consequences for the public body. A power of approval has been proposed for this purpose in section 10, subsection 1. Besides conflict with the law, various other grounds for withholding approval are specified. The first ground is if the government commissioner considers that implementation of the ordinance would cause disproportionate harm to the residents of the public body of St Eustatius, in the light of the objectives served by the ordinance. The government commissioner may also withhold approval if implementation of the ordinance would lead to unreasonable administrative or financial burdens for the public body of St Eustatius. A relevant factor in this decision is whether the projected benefits are proportionate to the anticipated administrative and financial burdens. Finally, the government commissioner can withhold approval if the ordinance would frustrate the proper functioning of the island authorities in the future. This last criterion is connected with the government commissioner's responsibility for promoting conditions that will enable the authorities of the public body of St Eustatius to function in the future. This responsibility, which is currently regulated in section 3, subsection 4 of the Temporary Act, is now provided for in section 6, subsection 4 of the Bill. Part 10.2.1 of the General Administrative Law Act applies *mutatis mutandis* to approval.¹¹

The Bill also provides for the government commissioner, rather than the Kingdom representative, to have the power to grant exemption in cases where members of the island council are barred from carrying out certain acts under section 16 of the WOLBES. As part of his normal enforcement powers, the government commissioner may also decide to submit decisions of the island council for annulment, without going through the Kingdom representative, in accordance with section 223 of the WOLBES.

¹¹ Cf. section 217, subsection 2 of the WOLBES.

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Section 11 Section 11 of the Bill corresponds to the current section 4 of the Temporary Act.

Section 12 Just as is now the case under the current section 6, subsection 1 of the Temporary Act, the Bill provides that the Kingdom representative will not perform his duties under the WOLBES in respect of St Eustatius during the period in which the government commissioner is responsible for performing the tasks of the island authorities. This is because the government commissioner, like



the Kingdom representative, acts on behalf of the government and is now functioning temporarily as a link between the island authorities and the Minister of the Interior and Kingdom Relations. In so far as the government commissioner continues to perform tasks and exercise powers, such decisions require no approval. And in so far as decisions of the island council require approval, this power is to be exercised by the government commissioner under section 10 of the Bill.

Section 12, subsections 2 and 3 of the Bill correspond to the current section 6, subsections 2 and 3 of the Temporary Act.

Section 13 As soon as circumstances have changed in such a way that the members of the new island executive can be expected once again to properly exercise the autonomous and delegated competences of the public body, as explained in section 3.2.2 of the general part of this explanatory memorandum, this Act will be amended, at a time to be determined by Royal Decree, to enable the island council once again to appoint members of the island executive. The island executive will then resume its normal tasks and powers, with the exception of those relating to the civil service organisation and public finances. The latter tasks and powers are regulated separately in sections 14 and 15 of the Bill. The opening words of section 13 of the Bill provide that, for the purposes of the Royal Decree, it is not necessary to have an expectation that the island executive can properly carry out the tasks relating to the civil service organisation of the public body, as referred to in section 168, subsection 1 (c) of the WOLBES. This is because these tasks are regulated separately in section 14 of the Bill; the government commissioner may continue to perform these tasks after the reinstatement of the island executive until such time as the Royal Decree referred to in section 14 has been issued. The wording of the proposed sections 14 and 15 is such that these Royal Decrees can be issued at the same time as the decision referred to in section 13 is taken.

Section 13, subsection 1 of the Bill amends section 2, subsection 1 of the Bill in such a way that, contrary to the WOLBES, it remains possible not to appoint a governor. The government commissioner will continue to perform the tasks and exercise the powers of the governor and is, in that capacity, a member of the island executive and its chair. Moreover, the decisions of the island executive require the approval of the government commissioner, for which purpose sections 10 and 12 of the Bill are amended.

Section 14 Section 3.2.3 of the general part of this explanatory memorandum describes what must be done to ensure that the civil service organisation and clerk's office can function properly again in the long term, before responsibility for the civil service can be returned to the island executive and for the clerk's office to the island council. This means that the island executive must either already have been reinstated under section 13 of the Bill or that this occurs simultaneously. As soon as it is thought that the island council and the island executive are capable of carrying out these duties properly, this Act will be amended, at such time as is determined by Royal Decree, to ensure that these organs themselves can once again set rules for the civil service organisation and decide on the



appointment, suspension and dismissal of civil servants and their legal status. To this end, section 7 of the Bill will then be repealed.

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Section 15 Section 3.2.4 of the general part of the explanatory memorandum describes what must be done to put financial management in order on a lasting basis, before responsibility for the financial tasks and powers can be vested once again in the island council and the island executive. This means that the island executive must either already have been reinstated under section 13 of the Bill or that this occurs simultaneously. As soon as the island executive is expected to be able to properly perform its financial tasks, this Act will be amended, at such time as is determined by Royal Decree, to provide for the repeal of the exception contained in section 8 of the Bill. The Bill also provides for a new section 10a to ensure that after proper financial management has been restored, all decisions and island ordinances having financial consequences, the budget, quarterly budget reviews, annual accounts, annual reports and tax ordinances are approved by the Minister of the Interior and Kingdom Relations, who receives advice on this from the Financial Supervision Authority. Besides the grounds for withholding approval specified in the FINBES, the Bill also adopts the grounds already mentioned in section 10, namely a disproportionate burden affecting the interests of the population of St Eustatius, a disproportionate administrative burden, financial impracticability and frustration of the proper functioning of the island authorities in the future.

Sections 16 and 20 (b) If the tasks and powers of the island council and the island executive have been restored pursuant to sections 13 to 15 of the Bill, this means that the gross neglect of duty will have ceased and there will no longer be any derogations from articles 125 and 127 of the Constitution. Section 16, opening words and subsection 1 of the Bill provides that section 2 of the Act will then be amended by Royal Decree in such a way as to enable the governor to be appointed. This Royal Decree is issued on the recommendation of the Minister of the Interior and Kingdom Relations, in accordance with the views of the cabinet. As a result, the position of government commissioner will cease to exist. This means that sections 6, 9, 10 and 11 will be repealed (see section 16, subsection 2 of the Bill).

Section 12 of the Bill (new) sets out the tasks and powers of the Kingdom representative in greater detail. This is because under section 12 of the Bill, as in force at that time, the Kingdom representative does not yet perform his tasks and exercise his powers under the WOLBES. However, section 12, subsection 1 of the Bill (new) does provide that the Kingdom representative is authorised to perform his role in appointing the governor.

As noted in section 3.2.5 of the general part of the explanatory memorandum, after the termination of the administrative intervention pursuant to article 132, paragraph 5 in conjunction with article 132a, paragraph 2 of the Constitution, it is desirable for the Kingdom representative to be given an additional task, namely providing advice and mediation in the event of a breakdown in



administrative relations in the public body of St Eustatius that threatens the administrative integrity of the public body.

A comparable role is played in the European part of the Netherlands by the King's Commissioner. This constitutes normal supervision within the meaning of article 132, paragraph 2 of the Constitution, in conjunction with article 132a, paragraph 2 of the Constitution. This additional task is regulated by section 12, subsection 2 (new) of the Bill. For example, powers are conferred for the performance of this task, namely the right to attend the meetings of the island council and the island executive, even if they take place behind closed doors, and the right to inspect all documents which the island government has in its possession and to which the government commissioner reasonably believes he needs access for the discharge of his duties, even if these documents are covered by the duty of secrecy. This proposed amendment to section 12 will enter into force on the day the governor is appointed (see section 20 (b) of the Bill).

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Section 17 The transition between the different phases is always marked by the issuing of a Royal Decree setting the date on which the next phase is to take effect. Section 17 of the Bill determines the preliminary parliamentary scrutiny procedure.

Sections 18, 19 and 20, opening words and (a) This Bill (section 19) repeals the Temporary Act with effect from the date on which it enters into force. The date of entry into force will be determined by Royal Decree (section 20, opening words of the Bill). After its entry into force, elections to the island council will be held under section 4 of the Bill. During the period between the entry into force of this Bill and the admission of the new members to the island council, sections 3 and 5 of the Temporary Act will remain in force, thereby ensuring that the government commissioner remains competent to act in place of the island council. These transitional arrangements are regulated in section 18 of the Bill. At the same time, the entry into force of sections 6 to 10 of the Bill will also be postponed until that time (section 20 (a) of the Bill).

Section 21 The administrative intervention in St Eustatius is of a temporary character and the repeal of the Bill is scheduled to occur on 1 September 2024.

Section 21, subsection 2 of the Bill provides for the possibility that the date of repeal will be extended by Royal Decree (until 1 September 2025 at the latest) if the Royal Decree referred to in section 16 of the Bill has not been issued by 1 February 2024. Before this happens, Our Minister, in keeping with the wishes of the cabinet, will submit a statement to both Houses of the States General about the intention to extend the Act or will present a Bill to this effect. If the extension Bill is withdrawn or defeated during the period of extension, the present Act, whose period of operation has been extended, will be immediately repealed (section 21, subsection 3). This will be arranged by Royal Decree, which will determine the date of repeal.

R.W. Knops Minister of the Interior and Kingdom Relations