



Ministry of the Interior and  
Kingdom Relations

# Provisions Restoration Act

## **Act of 8 July 2020 concerning the 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.

#### *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.
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 of that Act, 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.

#### 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:
  - 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:

#### *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 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 at The Hague on 8 July 2020*

*Willem-Alexander*

*R.W. Knops*

*State Secretary for the Interior and Kingdom Relations*

*F.B.J. Grapperhaus*

*Minister of Justice and Security*

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