


EXPLANATORY NOTE to the Law Revision (Miscellaneous Repeals and Amendments) Bill, 2017	Prepared by the Attorney General on 30 August 2017.	
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1 These Explanatory Notes relate to the Law Revision (Miscellaneous Repeals and Amendments) Bill, 2017 and have been prepared to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by a legislative committee, Executive Council or Legislative Council. The Bill contains a number of miscellaneous amendments to Ordinances and the repeal of a whole Ordinance. These Notes explain what each provision of the Bill amends or repeals and the reason for this.

2 In early 2016 Mr John Wilson, an experienced law drafter based in England, was appointed as Law Revision Commissioner under the Revised Edition of the Laws Ordinance, 1999. He has carried out a review and consolidation exercise on all the laws of St Helena and the Revised Edition of the Laws of St Helena, 2017 will be promulgated later in the year.

3. During the scrutiny process it became apparent that in order to bring the laws fully up to date, some changes that go beyond the Commissioner's revising powers are needed. Section 7 of the Revised Edition of the Laws Ordinance contemplates that one or more general amendment Bills will be drafted to meet this need, and this is such a Bill. It is not anticipated that more such Bills will be needed, but there are plans for reform in some areas of the law which might result in substantive amendments being introduced to the Legislative Council at a later stage.

4. The minor amendments proposed in this Bill are to Ordinances and to subsidiary legislation, and are set out in a Schedule. There is also a repeal of one entire Ordinance. The amendments will come into effect on the date of publication. The Revised Edition 2017 will be brought into effect under section 10 of the Revised Edition of the Laws Ordinance, 1999 when the texts have been loaded onto the St Helena Government website.

Clause number	Text	Explanation
1.	Short title and commencement This Ordinance may be cited as the Law Revision (Miscellaneous Repeals and Amendments) Ordinance, 2017 and comes into force on the date of publication.	This clause provides for the name and commencement date of the Bill.
2.	Miscellaneous amendments: Schedule The items of legislation listed in the Schedule are amended as set out in the Schedule.	This clause provides that the Ordinances and items of subsidiary legislation listed in the Schedule are to be amended as set out in the Schedule.

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Ordinance Amended	Provision	Explanation
Census Ordinance, Cap. 159	In section 12, delete “£500” and substitute “£1,000”.	There are many outdated penalty provisions in the laws of St Helena that need increasing and they will be reviewed in a general exercise. Meanwhile, this increase has been asked for by the Census Supervisor and is in line with recent penalty provisions.
Civil Procedure Ordinance, Cap. 32	<p>1. Delete sections 24 to 26.</p> <p>2. In section 41, delete subsection (3) and substitute: “(3) It is a contempt of court for a judgment-debtor wilfully to refuse or neglect to comply with an order under subsection (2).”.</p> <p>3. In section 45, delete everything after the words “as may be” where they first appear and substitute: “treat the judgment-debtor as being in contempt of court and direct that the judgment-creditor or the purchaser, as the case may be, be put in possession of the property.”</p> <p>4. In section 57(a), delete “commit him to prison” and substitute “treat the defendant as being in contempt of court”.</p> <p>5. In section 57(c), delete “commit the person guilty thereof to prison” and substitute “treat the person as being in contempt of court”.</p> <p>6. In section 66(1), delete paragraph (f) and substitute: “(f) an order imposed on a person who is found to be in contempt of court under this Ordinance;”.</p> <p>7. Delete sections 75 and 76.</p>	<p>1. Not needed because there are now equivalent provisions in the Courts (Extension of Jurisdiction) Ordinance, 2016</p> <p>2. Imprisonment for failure to comply with a judgment is no longer the law; committal for contempt is still available, failing distrain on goods etc.</p> <p>3. Same point as above.</p> <p>4. Same point as above.</p> <p>5. Same point as above.</p> <p>6. Same point as above.</p> <p>7. These sections no longer apply as there is no arrest for civil process as such.</p>

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	<p>8. In section 77(3), delete everything after “ordered to attend” and substitute “commits an offence. followed by “Penalty: A fine of £100.”.</p> <p>9. In the Civil Procedure Rules, in the following Orders, delete references to a person being detained in the civil prison or committed to prison and substitute references to the person being in contempt of court: Order 21 rules 10(2) and 12; Order 28 rule 3; Order 29 rule 2(2); Order 32 rules 3(b), 14, 15, 16(1), 19(1), 20(2) and (4) and 21(3) and (5).</p> <p>10. In the Appendix to the Civil Procedure Rules – (a) delete Forms 17, 24, 38 and 39; (b) in Forms 16, 22, 27, 33, 34 and 35, replace references to the Bailiff by references to the Sheriff of St Helena.</p>	<p>8. This converts an outmoded procedure relating to non-attendance of witnesses into a straightforward offence provision. EMs increased the penalty from £25 to £100 on 23.08.2017.</p> <p>9. Same point as in items 2 to 6 above.</p> <p>10. The forms in (a) relate to imprisonment for non-payment, which is no longer the practice, as in items 2 to 6 above. The forms in (b) relate to the Bailiff who is no longer the relevant officer.</p>
Companies Ordinance, 2004	<p>1. Replace the term “foreign company” wherever it appears by the term “overseas company”.</p> <p>2. Before section 184, insert the following new section: “Private companies generally 183A. (1) A company limited by shares or</p>	<p>1. The term ‘foreign company’ is outdated and not used in practice.</p> <p>2. The new section clarifies the nature and status of private companies which at present is not clear in the Ordinance.</p>

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	<p>guarantee whose articles prohibit any invitation to the public to subscribe for any shares or debentures of the company or to become guarantors is a private limited company.</p> <p>(2) A private limited company is bound by the provisions of this Ordinance to the extent applicable, unless it is exempted under section 184.</p> <p>(3) A private limited company may by special resolution cease to be a private company and if it does so must amend its articles accordingly.”.</p> <p>3. In section 223, delete “a photostatic” and substitute “an electronic”.</p> <p>4. In section 244, delete everything after “apply to the court” and substitute: “in writing and, subject to subsection (1A), must cause a copy of the application to be served on the company at its registered office.</p> <p>(1A) The court may, upon sufficient cause shown, dispense with the service of an application under subsection (1) on the company.”.</p> <p>5. In section 251, add the following new paragraph: “(l) respecting the procedure for inclusion of a company on the Companies Register.”.</p>	<p>3. This modernises the means by which notice can be given for purposes of the Companies Ordinance</p> <p>4. This replaces a requirement for a summons by the Registrar by a requirement for an application in writing, as is the modern practice. Subsection (1A) replaces the proviso (and the word ‘summons’) in line with practice throughout the Revised Edition.</p> <p>5. This makes explicit an implied function in the registration process.</p>
Criminal Damage	1. In section 3 – (a) in subsection (1) add	1. This states the penalties for criminal damage and arson more clearly, and removes arson to a new section as in

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Ordinance, Cap. 25	<p>after the full stop “Penalty: Imprisonment for 7 years.”; (b) in subsection (2), add after the full stop “Penalty: Imprisonment for life.”; (c) delete subsection (3).</p> <p>2. Insert after section 3 the following new section: “Arson 3A. A person who commits an offence under section 3(1) or (2) by destroying or damaging property by fire commits the offence of arson. Penalty: (a) if the related offence is under section 3(1) - imprisonment for 7 years; (b) if the related offence is under section 3(2) – imprisonment for life.</p> <p>3. Delete section 6 and substitute: “Punishment of offences 6. Notwithstanding section 19 of the Magistrates’ Court Ordinance, 2011, an offence under this Ordinance punishable by imprisonment for more than 7 years is triable only on indictment.”.</p>	<p>item 2.</p> <p>2. This creates arson as a separate offence which is has always been in practice.</p> <p>3. This gives the Magistrates’ Court jurisdiction over less serious criminal damage or arson offences.</p>
Criminal Procedure Ordinance, Cap. 23	<p>1. In section 55(1) delete “such person or officer” and substitute “a person authorised under subsection (1).”.</p> <p>2. In section 71, delete the words in brackets and substitute “but subject to Part V of the Police and Criminal Evidence Ordinance, 2003 as to</p>	<p>1. This clarifies that the powers are given to a person appointed by the Crown Prosecutor as well as to the Crown Prosecutor.</p> <p>2. This replaces the outmoded reference to security by a reference to the PACE Ordinance 2003 provisions on detention.</p>

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	detention”.	
	3. After section 164, insert the following new section: “Offences triable summarily or on indictment 164A. Unless otherwise specified in the provision creating it – (a) an offence for which a person is liable to be sentenced to a term of imprisonment of 14 years or more is triable only on indictment; (b) an offence for which a person is liable to be sentenced to a term of imprisonment of less than 14 years is triable either summarily or on indictment as provided by section 165.”.	3. This gives statutory expression to the practice about ‘either way’ offences currently observed in the courts.
	4. In section 165(2), after “5 years,” insert “or to an unlimited fine,”.	4. This makes it clear that an accused person can elect trial by jury if the penalty is an unlimited fine.
	5. In section 212, delete subsection (5) and substitute: “(5) If it appears to the court that the jury have had a period of time for deliberation that the Trial Judge thinks reasonable having regard to the nature and complexity of the case, and the jury is unable to agree upon a unanimous verdict, section 15 of the Juries Ordinance, 1979 applies as to a majority verdict.”.	5. This is required in view of the change in the unanimous verdict rule made by the Juries (Amendment) Ordinance 2015.
	6. In section 225(1)(c)(i), delete the words “or to which he may be liable under a commutation of sentence”.	6. Commutation of sentence is no longer available in St Helena.
	7. In section 226(1), delete the words “or inquiry”.	7. There is no longer such a form of enquiry.

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Drugs (Prevention of Misuse) Ordinance, 2003	<p>1. Delete section 28 and substitute: “Prosecution and punishment of offences 28. (1) Apart from offences which carry a sentence of life imprisonment (and are therefore triable only on indictment) – <i>(a)</i> an offence under this Ordinance for which the maximum penalty is imprisonment for 3 years or more is triable either on indictment or summarily; <i>(b)</i> all other offences are triable summarily only; <i>(c)</i> the limits on sentencing in section 19 of the Magistrates’ Court Ordinance, 2011 do not apply on a summary conviction under this Ordinance. (2) An offence under section 21 or 22 is triable according to whether the substantive offence is triable on summary conviction, on indictment or in either way, and the penalty which may be imposed on a person convicted of an offence under section 21 or 22 is the same as that which may be imposed on a person convicted of the substantive offence. (3) In subsection (2), the “substantive offence”— <i>(a)</i> in relation to an offence under section 21 - means the offence under this Ordinance to which the attempt or the incitement, as the case may be, is directed; <i>(b)</i> in relation to an offence under section 22 consisting of the doing of an</p>	<p>1. This clarifies the nature of indictable, summary and either-way offences under this Ordinance and removes the need for a schedule of penalties.</p>

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	<p>act preparatory to, or in the furtherance of, the commission in a place outside St Helena of an act (the “overseas act”) which, if committed in St Helena, would constitute an offence under this Ordinance – means the offence which the overseas act would constitute if committed in St Helena.</p> <p>(4) Notwithstanding anything contained in any other Ordinance, the Magistrate’s Court may try a charge for an offence under this Ordinance in respect of which the Magistrates’ Court has jurisdiction if the charge was laid at any time within 12 months after the commission of the offence.</p> <p>(5) If the Magistrates’ Court or a judge or a jury is not satisfied that a defendant charged with an offence under this Ordinance is guilty of that offence, but is guilty of another offence under this Ordinance which has not been charged, the defendant may be convicted of that other offence and punished accordingly.”.</p> <p>2. Delete Schedule 2.</p>	<p>2. This is a consequence of replacing section 28 as above.</p>
Drugs (Trafficking) Ordinance, 2003	<p>In section 18(2), delete paragraph (b) and substitute:</p> <p>“(b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed in the bankruptcy.”</p>	<p>The reference to “section 28(2) of that Ordinance” is meaningless.</p>
Electricity Ordinance, Cap. 107	<p>In section 5(2) delete “so”.</p>	<p>The offence of preventing a meter from giving a correct reading should not require negligence as for injuring a meter etc.</p>
Firearms	<p>1. In section 10, delete</p>	<p>1. This simplifies section 10(2) by removing the reference</p>

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Ordinance, Cap. 138	<p>subsection (2) and substitute: “(2) It is not an offence under section 6(2) for a person (‘A’) to return to another person (‘B’) a shot gun which A has lawfully undertaken to repair or test for B, if B is entitled by virtue of this Ordinance to possess the shot gun.”.</p> <p>2. In section 32(7) add after “an offence” the words “for which the maximum penalty is a fine of £200.”.</p> <p>3. Delete section 41 and substitute: “Prosecution and punishment of offences 41. (1) Apart from an offence which is declared by this Ordinance to be triable only on indictment – <i>(a)</i> an offence under this Ordinance for which the maximum penalty is imprisonment for 3 years or more is triable either on indictment or summarily; <i>(b)</i> all other offences are triable summarily only; <i>(c)</i> the limits on sentencing in section 19 of the Magistrates’ Court Ordinance, 2011 do not apply on a summary conviction under this Ordinance.</p> <p>(2) If the Magistrates’ Court or a judge or a jury is not satisfied that a defendant charged with an offence under this Ordinance is guilty of that offence, but is guilty of another offence under this Ordinance which has not been charged, the defendant may be convicted of that other offence and punished</p>	<p>to a contract of hire etc. (which adds nothing) and the reference to lawful possession, which is already covered by section 6(2).</p> <p>2. This provides a penalty for the offence of failing to surrender a certificate of registration as a firearms dealer.</p> <p>3. This clarifies the nature of indictable, summary and either-way offences under this Ordinance and removes the need for a schedule of penalties.</p>

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Ordinance Amended	Provision	Explanation
	<p>“Grounds for refusal of a permit or permission to enter</p> <p>13. The Board or an Immigration Officer, as the case may be, may refuse an application for an entry permit or may refuse an immigrant permission to enter St Helena, if—</p> <p>(a) the immigrant fails to make a declaration confirming that he or she is of good character or the Board or Immigration Officer is satisfied on the balance of probabilities that the immigrant could not truthfully make this declaration;</p> <p>(b) the Governor has declared the person to be a prohibited immigrant under section 42(1);</p> <p>(c) the Board or Immigration Officer has reason to believe that the immigrant—</p> <p>(i) has an adverse immigration history in St Helena or elsewhere;</p> <p>(ii) is a terrorist, has links to any terrorist organisation, supports or encourages terrorist activity or has ever expressed views that justify or glorify terrorist activity;</p> <p>(iii) has been involved in or associated with war crimes, crimes against humanity or genocide;</p> <p>(iv) has an infectious disease which he or she was aware of but failed to inform an Immigration Officer about;</p> <p>(v) has a conviction for an offence under section 38 of the Ordinance; or</p> <p>(vi) has committed crimes that are multiple or serious in nature.</p>	section 42(1).

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	<p>Grounds for revocation of entry permit or permission 14. The Board or an Immigration Officer, as the case may be, may revoke an entry permit or other permission of a person –</p> <p>(a) on any of the grounds mentioned in regulation 13(b) or (c) as justifying the refusal of an entry permit or permission to enter;</p> <p>(b) if the person is unable to show that he or she has financial means to adequately maintain and accommodate himself or herself and any dependants for the duration of their intended stay in St Helena and pay for their repatriation (including in a medical emergency);</p> <p>(c) the person fails to notify an Immigration Officer as soon as is reasonably practicable of any change in circumstances which may affect the person's permit or permission to stay in St Helena.”.</p> <p>3. In regulation 15(2) and (4) and regulation 18(1) of the Immigration Regulations, 2012, delete “prescribed form” and substitute “approved form”.</p>	<p>3. This enables administrative forms to be approved, without the need to make regulations to prescribe them.</p>
<p>Interpretation Ordinance, Cap. 3</p>	<p>1. In section 2(3) add at the end: “; but the Interpretation Acts, 1889 and 1978 apply for the interpretation of Adopted English Laws or any other Acts of Parliament mentioned in an Ordinance, to the extent appropriate.”.</p>	<p>1. This makes it clear that the UK Interpretation Acts apply for the interpretation of UK Acts that apply to St Helena.</p> <p>This adds definitions of various terms that are commonly</p>

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	<p>2. In section 3(1) insert in their respective alphabetical positions the following new definitions:</p> <p>“Adopted English Law” has the meaning given that term by section 2 of the English Law (Application) Ordinance, 2005;</p> <p>“alien” means a person other than a person who has St Helenian status under the Immigration Ordinance, 2011;</p> <p>“arrestable offence” has the meaning given to that term by section 2(4) of the Police and Criminal Evidence Ordinance, 2003;</p> <p>“Cap.” refers to an Ordinance given a Chapter number in the 2001 Revised Edition of the Laws of Saint Helena;</p> <p>“Chair”, “Chairman” and “Chairperson” in relation to a meeting each mean the person appointed to preside at the meeting;</p> <p>“Chief Auditor” means the person appointed as such under section 110 of the Constitution;</p> <p>“Chief Justice” means the person holding the office of Chief Justice for the time being by virtue of the Constitution;</p> <p>“Chief Magistrate” means the person appointed as such under section 7 of the Magistrates’ Court Ordinance, 2011;</p> <p>“Clerk of the Peace” means the public officer appointed as such under section 12 of the Magistrates’ Court Ordinance, 2011;</p> <p>“Code of Management” means a Code of Management for the Public Service contemplated by</p>	<p>used in St Helena statutes. Some are defined in various Ordinances, in which case those definition have been removed from the Ordinance, unless needed for ease of reference. Other terms are ones that are generally understood but that should have statutory authority. Terms defined in the Constitution are not repeated unless they have a different meaning (and see item 4 below.).</p>

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	<p>sections 96, 164 and 227 of the Constitution;</p> <p>“Commissioner for Oaths” means a person appointed as such under the Commissioners for Oaths Ordinance, 1968;</p> <p>“Committee’ or “Council Committee” in relation to any matter means the Legislative Council Committee to which responsibility for the matter in question Ordinance has been assigned under section 58(2) of the Constitution;</p> <p>“Consolidated Fund” means the Fund established by section 98 of the Constitution;</p> <p>“Commonwealth” means the Commonwealth of Nations;</p> <p>“Court of Appeal” means the Court of Appeal for St Helena established by section 86 of the Constitution;</p> <p>“Crown Prosecutor” has the meaning given to that term by section 51A of the Criminal Procedure Ordinance, 1975;</p> <p>“Customs” and “customs officer” have the meaning given to those terms by the Customs and Excise Ordinance, 1999;</p> <p>“enactment” means a law made by a legislature in and for St Helena or an Adopted English Law;</p> <p>“entered”, in relation to a judgment or order, means included in the records of the court;</p> <p>“financial regulations” mean regulations made under section 5 of the Public Finance Ordinance, 2010;</p> <p>“Government” means the Government of St Helena;</p> <p>“Government Printer”</p>	

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	<p>means any person or body authorised from time to time to print the <i>Gazette</i> and other official publications of the Government;</p> <p>“Harbour Master” means the person appointed as such under section 3 of the Ports Ordinance, 2016;</p> <p>“infectious disease” has the meaning given to that term by section 32 of the Public Health Ordinance, 1939;</p> <p>“Islander” has the meaning given to that term by Schedule I to the Immigration Ordinance, 2011;</p> <p>“judge” means the Chief Justice and any other judge or acting judge of the Supreme Court;</p> <p>“judgment” includes a decree, order, ruling or finding of a court or tribunal and a refusal to make any order;</p> <p>“justice of the peace” (or “Justice of the Peace”) means a person appointed as such under section 8(1) of the Magistrates’ Court Ordinance, 2011, or a person who under section 8(2) of that Ordinance is <i>ex officio</i> a justice of the peace;</p> <p>delete the definition “life partner” and substitute: “life partner” of a person (‘A’) means the partner (‘B’) of A to whom B is not married, but with whom B lives in a heterosexual or homosexual relationship which is akin to marriage and which is intended by A and B to be permanent, as evidenced by their having lived together for at least 12 months or in such other way as is</p>	<p>This amendment to the definition of “life partner” says that in order to say that 2 people are “life partners” there must be evidence which is living together for at least a year or other other evidence. The reason to refine the definition is not to prejudice anyone who may be in a life partnership in good faith but have not lived together for 12 months.</p> <p>By doing this, no injustice would be made to, for example, an “interested person” in relation to the deceased under the Coroners and Presumption of Deaths Ordinance. Someone could have lived with the deceased and during that time also had a child together, but because they had been living together for less than 12 months, the partner is not regarded as having an interest with respect to the coroner’s reports, investigations etc. The same applies to the Mental Health provisions where there are certain rights and responsibilities of life partners.</p> <p>In the Elections Ordinance a person is also not counted as being off-island when they are away for medical treatment of a life partner. So if they have lived together less than 12 months, they will then not be able to attend for example medical treatment of the partner without being penalised for those days.</p>

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	<p>appropriate in the circumstances;”;</p> <p>“magistrate” means a justice of the peace;</p> <p>“mental disorder” has the meaning given to that term by section 2 of the Mental Health and Mental Capacity Ordinance, 2016;</p> <p>“police” or “police service” means the St Helena Police Service established by the Police Service Ordinance, 1975;</p> <p>“police officer” means a person who is a member of, or seconded to, the police service, and includes a special constable and a constable under probation;</p> <p>“public prosecutor” means a person appointed as such under section 52 of the Criminal Procedure Ordinance, 1975;</p> <p>“Public Solicitor” means the person appointed as such under section 21 of the Legal Aid, Assistance and Services Ordinance, 2017;</p>	<p>The other provision where it is used is in the Liquor Ord where it grants a defence in the case of an offence where the spouse, life partner or child supplies liquor to a person with a restriction order, but which is done under duress.</p> <p>So this is the reason for the 12 month requirement and the inclusion of “or in such other way as is appropriate in the circumstances;”</p>

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	<p>“rules of court” means rules made by the Chief Justice under section 89 of the Constitution or section 8 of the Superior Courts (Appeals and Rules) Ordinance, 2017, or any other relevant power;</p> <p>“Secretary of State” means Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs;</p> <p>“Sheriff” means the person appointed as such under section 4 of the Sheriff of St Helena Ordinance, 1969;</p> <p>“Speaker” means the person elected as such under section 55 of the Constitution;</p> <p>“St Helenian status” has the meaning given by Part 3 of the Immigration Ordinance, 2011;</p> <p>“statutory body” means a body incorporated by or under an enactment;</p> <p>“Supreme Court” means the Supreme Court of St Helena.</p> <p>3. In section 3(2), in the definition of “writing”, add after “visible form” the phrase “, including in electronic form”.</p> <p>4. In section 3 add the following new subsections: “(3)” A term defined in section 115 of the Constitution has the same meaning in an Ordinance, unless the Ordinance otherwise expressly provides. “(4)” A reference to a written law is a reference to it as amended or replaced from time to time and a reference to an Act of Parliament is to it as applied to St Helena. “(5)” The terms ‘attorney’ ‘advocate’, ‘barrister’,</p>	<p>3. This enables e-mail, website or texting to be used for creating written documents, unless a statute expressly provides otherwise.</p> <p>4. These are supplementary provisions about the interpretation of terms which are self-explanatory.</p> <p>5. This increases the maximum penalty that can be prescribed by regulations for offences created by them.</p> <p>6. This makes it clear that a change of title has to be effected by the Governor, before being published in the</p>

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	<p>‘counsel’ ‘legal practitioner’, ‘solicitor’ and ‘legally represented’ are to be construed by reference to the term ‘legal representative’ as defined in section 115 of the Constitution.”.</p> <p>5. In section 13(b) delete “£2,000” and substitute “£5,000”.</p> <p>6. In section 18, delete “When any change of title occurs in any public office,” and substitute: “When the Governor decides to change the title of any public office, other than one constituted by a written law,”.</p> <p>7. In section 21: (a) renumber the text as subsection (1); and (b) add the following new subsection: “(2) Unless otherwise provided, the making of an appointment under an Ordinance does not need to be by order, but notice of any such appointment must be published in the Gazette.”.</p> <p>8. After section 21 add the following new section: “Gazette as evidence 21A. If notice of the exercise of a statutory power, whether of appointment or otherwise, is published in the <i>Gazette</i>, the notice is sufficient evidence of the lawful exercise of the power unless it is shown not to have been lawfully exercised.”.</p> <p>9. In section 31, add the following new subsection: “(3) The delegation,</p>	<p>Gazette.</p> <p>7. This displaces the common expression ‘may appoint by notice in the Gazette’, so the appointment will be made and then published in the Gazette.</p> <p>8. This makes it clear that judicial notice is to be taken of notice in the Gazette, so that the maker of the notice does not need to be called to prove it.</p> <p>9. This provision, commonly found in Interpretation Ordinances, makes it clear that a delegator of a power can exercise the power if the delegation is withdrawn.</p> <p>10. Indent (a) provides a simpler way of stating a penalty, now adopted by many Commonwealth jurisdictions, and used in the Revised Edition.</p> <p>Indent (b) restates the general penalty for contravening an Ordinance but makes it clear that the contravention must</p>

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	<p>under a power conferred by a written law, of a power or duty to another person does not prevent the person who made the delegation from exercising the power or performing the duty upon the withdrawal or expiration of the delegation.”.</p> <p>10. In section 39: (a) add after subsection (1) the following new subsection: “(1A) If a penalty is set out at the foot of a section or subsection of an Ordinance it means that a contravention of the section or subsection, whether by act or omission, is an offence punishable by a fine or term of imprisonment not exceeding the amount or period stated.”;</p> <p>(b) delete subsection (2) and substitute: “(2) If – (a) a person contravenes a provision of an Ordinance the contravention of which constitutes an offence and (b) no penalty is provided in the Ordinance, the person is liable on conviction to a fine of £2,000.”;</p> <p>(c) in subsection (3) delete “£200” and substitute “£2,000”.</p>	<p>create an offence. The penalty is increased to £2,000.</p> <p>Indent (c) increases the general penalty for obstructing a person in the performance of statutory duties.</p>
Juries Ordinance, 1979	<p>1. In section 2(1), after “who is” delete the words “good and sufficient person”.</p> <p>2. In Part I of the Schedule, delete group D and substitute: “Group D - The mentally disordered</p>	<p>1. This removes an otiose and outdated term in relation to potential jurors.</p> <p>2. Thus updates the language of the law in relation to persons suffering from insanity, in line with the Mental Health etc. Ordinance, 2015.</p>

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	<ul style="list-style-type: none"> - A person who suffers or has suffered from mental disorder and on account of that condition either— <ul style="list-style-type: none"> (a) is resident in a hospital or other similar institution; or (b) regularly attends for treatment by a medical practitioner. - A person who under the Mental Health and Mental Capacity Ordinance, 2015 has been determined to suffer from mental disability so as to be unable to perform the duties of a juror.”. 	
Land Planning and Development Control Ordinance, 2013	<p>In section 66, delete subsection (1) and substitute—</p> <p>“(1) It is an offence for a public officer who is by virtue of his or her office involved in the planning process, or in the determination of a planning application, for fee or reward, or in the expectation of any fee or reward, payable to himself or herself or any person associated with him or her, to –</p> <p style="padding-left: 40px;">(a) assist any person who is applying for development permission or any other consent, by drawing or aiding in the drawing of plans or preparing any document or particulars which the officer knows or has reason to suspect will or may be used in the application; or</p> <p style="padding-left: 40px;">(b) apply on behalf of a person who is so applying.”</p>	<p>The offence of preparing plans for a fee, etc, is only relevant to persons who are involved in the planning process and would not extend to someone who for instance works at ENRD but is not involved in the planning process.</p>
Liquor Duty Ordinance, 2014	<p>1. In section 8, add the following new subsection:</p> <p>“(3) Liquor duty payable under this Ordinance, and not</p>	<p>These two amendments make clear how liquor duty is to be paid, which is only implied at present.</p>

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	paid, may be recovered by action against the person liable to pay it.”.	
	2. In section 12, insert after paragraph (d) the following: “(da) fail to pay liquor duty as required by section 8;”.	
Medical Practitioners Ordinance, Cap.50	1. In section 2(1), delete paragraph (b) and substitute: “(b) in a place specified in regulations (which the Governor in Council is hereby empowered to make); and”.	1. This gives the Governor express power to make regulations, which is only implied at present.
	2. In section 4, delete “in a civilised country”.	2. This deletes an unnecessary and offensive term.
Mental Health and Mental Capacity Ordinance, 2015	1. In section 2, in the definition of “hospital”, delete “by order”.	These amendments remove the requirement for an order approving a hospital, etc. Approval is an administrative act and should not require a formal order, which is legislative.
	2. In section 4 delete “by Order” from all 3 subsections.	
	3. In section 5, delete “by Order” from subsections (1) and (3).	
Money Laundering Ordinance, 2008	In section 15, delete subsection (8) and substitute: “(8) Notice of an order made under subsection (2) must be given to persons affected by it.”.	The present wording of section 15(8) requires an order to provide for notice. This amendment imposes the obligation directly.
Motor Vehicles (Third Party Insurance) Ordinance, Cap. 103	In section 3(3) delete “or of the Government of the United States of America”.	The exemption for the US Government is directed at Ascension, rather than St Helena; the Ascension version will retain it.
Petroleum Ordinance, Cap. 139	In section 3 – (a) Number the existing text as subsection (1); (b) add the following new subsection:	This makes it clear that importation of petroleum contrary to the ordinance is an offence and provides a penalty.

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	<p>“(2) A person who imports into St Helena any petroleum in contravention of this section commits an offence. Penalty: As provided in section 14.”.</p>	
Pharmacy and Poisons Ordinance, Cap. 53	<p>1. In section 10(1)(c)(ii), delete the phrase “, or any local authority requiring the article in connection with the exercise by the authority of any statutory powers”.</p> <p>2. In section 14(6), delete “Governor” where it twice appears and substitute “Attorney General”.</p>	<p>1. The reference to a local authority is no longer appropriate in St Helena.</p> <p>2. Proceedings are not instituted by the Governor but by the AG.</p>
Police and Criminal Evidence Ordinance, 2003	<p>1. In section 2(1) - (a) delete the definition “designated police station”; (b) insert in their appropriate alphabetical positions the following new definitions: “designated detention centre” means a detention centre designated by the Director of Police under section 29 of the Police Service Ordinance, 1975; “imprisonable offence” means an offence on conviction of which a person may be sentenced to imprisonment (other than for non-payment of a fine) in addition to, or instead of, a fine; “juvenile” means a person under the age of 17 years;”.</p> <p>2. Delete sections 22 and 23 and substitute the following: Arrest without warrant: police officers 22. (1) A police</p>	<p>1. Indent (a) is because there is only one police station in St Helena.</p> <p>Indent (b) adds definitions of terms used in the Ordinance that are not defined elsewhere.</p> <p>2. Sections 22 and 23 are outdated and do not reflect the practice in the UK under the Criminal Justice Act, 2003, which applies to St Helena by virtue of the English Law (Application) Ordinance, 2005. The new sections are in line with the UK law and practice and are wanted urgently by the police service.</p> <p>The new provisions about arrests etc. are based on sections 24 and 24A and other provisions of Part III of the PACE Act 1984 as amended by the Serious Organised Crime and Police Act, 2005 see:</p> <p>http://www.legislation.gov.uk/ukpga/2005/15/contents</p>

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	<p>officer may arrest without a warrant anyone—</p> <p>(a) who is about to commit an offence;</p> <p>(b) who is in the act of committing an offence;</p> <p>(c) whom the officer has reasonable grounds for suspecting to be about to commit an offence;</p> <p>(d) whom the officer has reasonable grounds for suspecting to be committing an offence.</p> <p>(2) If a police officer has reasonable grounds for suspecting that an offence has been committed, he or she may arrest without a warrant anyone whom he or she has reasonable grounds to suspect of being guilty of it.</p> <p>(3) If an offence has been committed, a police officer may arrest without a warrant anyone—</p> <p>(a) who is guilty of the offence;</p> <p>(b) whom the officer has reasonable grounds for suspecting to be guilty of it.</p> <p>(4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the police officer has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.</p> <p>(5) The reasons are—</p> <p>(a) to enable the name of the person in question to be ascertained (in the case where the officer does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his or her name is his or her real</p>	

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	<p>name);</p> <p>(b) correspondingly as regards the person's address;</p> <p>(c) to prevent the person in question—</p> <p>(i) causing physical injury to himself or herself or any other person;</p> <p>(ii) suffering physical injury;</p> <p>(iii) causing loss of or damage to property;</p> <p>(iv) committing an offence against public decency (subject to subsection (6)); or</p> <p>(v) causing an unlawful obstruction of the highway;</p> <p>(d) to protect a child or other vulnerable person from the person in question;</p> <p>(e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;</p> <p>(f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.</p> <p>(6) Subsection (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question.</p> <p>Arrest without warrant: other persons</p> <p>23. (1) A person other than a police officer may arrest without a warrant anyone—</p> <p>(a) who is in the act of committing an indictable offence;</p> <p>(b) whom the person has reasonable grounds for suspecting to be committing an indictable offence.</p> <p>(2) If an indictable offence has been committed,</p>	

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	<p>a person other than a police officer may arrest without a warrant anyone—</p> <p>(a) who is guilty of the offence;</p> <p>(b) whom the person has reasonable grounds for suspecting to be guilty of it.</p> <p>(3) But the power of summary arrest conferred by subsection (1) or (2) is exercisable only if—</p> <p>(a) the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person in question; and</p> <p>(b) it appears to the person making the arrest that it is not reasonably practicable for a police officer to make it instead.</p> <p>(4) The reasons are to prevent the person in question—</p> <p>(a) causing physical injury to himself or herself or any other person;</p> <p>(b) suffering physical injury;</p> <p>(c) causing loss of or damage to property; or</p> <p>(d) making off before a police officer can assume responsibility for him or her.”.</p> <p>3. In section 28, delete subsection (2).</p> <p>4. In section 31(3) delete everything after “custody officer” and substitute: “at the police station or a designated detention centre where his or her detention was authorised.”.</p>	<p>3. to 6. The reference to a designated police station is not appropriate or required. The equivalent is now any police station or a designated detention centre.</p> <p>4. to 8. The custody officer and review officer will be based at Jamestown police station and these sections are amended accordingly.</p>

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	<p>5. In section 32(1) and (2), delete “for a designated police station”.</p> <p>6. In section 32(4) delete “at a designated police station”.</p> <p>7. In section 35(1) and section 44(2) delete the words “at a police station”.</p> <p>8. In section 36(11), delete everything except the full stop after “or above”.</p> <p>9. In section 37(2), delete paragraph (a).</p> <p>10. In section 38(1) delete the words “is responsible for the designated police station at which a person is detained”.</p> <p>11. In section 42(3) delete the words “for the designated police station at which he was charged”.</p> <p>12. In section 43(1) delete the words “at the designated police station”.</p> <p>13. In section 44(8)(a) and (9) delete “designated police station” and substitute “designated detention centre”.</p> <p>14. In section 50(7)(b), delete “any chief officer of police” and substitute “a police officer”.</p> <p>15. In section 66(2), delete everything before “the court shall treat” and substitute: “In any summary trial, or a trial on indictment without a</p>	<p>9. The reference to ‘a person to whom the section applies’ is meaningless as there is no such person stated.</p> <p>10. to 13. Same comment as for 4. to 8. above</p> <p>14. The reference to a chief officer is inappropriate.</p> <p>15. The court directs itself about such confessions whether it consists of a judge or the Chief Magistrate or lay justices.</p>

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	jury, of a person for an offence it appears to the court that a warning under subsection (1) would be required if the trial were on indictment with a jury,”.	
Police Service Ordinance, Cap. 132	<p>1. In section 53, delete all references to fingerprints.</p> <p>2. In regulation 40 of the Police Regulations, delete “Chief of Police” wherever it appears and substitute “Promotions Board”.</p>	<p>1. The taking of fingerprints is now governed by section 25 of the PACE Ordinance, 2003.</p> <p>2. All aspects of promotions exams should be conducted by the Board, not the Chief of police.</p>
Port Health Ordinance, Cap. 62	<p>In the Port (Health) Regulations, delete regulation 36 and substitute: “Penalty for non-compliance with regulations 36. (1) It is an offence for a person to contravene any of regulations 14(2), 21 or 22. Penalty: A fine of £500.”. (2) It is an offence for a person to contravene any of regulations 5(3), 24, 25, 27, 29 or 30. Penalty: A fine of £5000.”.</p>	<p>The offence is phrased too widely, as not all obligations create an offence. This amendment identifies those that do.</p> <p>On 23.08.2017 EMs decided that certain contraventions should attract higher penalties and divided the provisions in two groups, one attracting a penalty of £500 and another attracting a penalty of £5000.</p>
Public Health Ordinance, Cap. 49	<p>1. Delete sections 5 and 6.</p> <p>2. Delete section 9.</p> <p>3. In sections 31(1), and 41, delete “a medical officer” and substitute “the Senior Medical Officer or an Inspector”.</p> <p>4. In sections 39(1) and 40(1) delete “a medical officer as testified by a</p>	<p>1. The requirement to provide privy accommodation is outmoded, and replaced by the Land Planning & Development Control Regulations, 2000.</p> <p>2. The prohibition on defecting is inappropriate and is covered by other legislation.</p> <p>3. to 5. and 7. There is no ‘medical officer’ as such.</p>

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	<p>certificate signed by him” and substitute “an Inspector, as testified by a certificate signed by the Inspector”.</p> <p>5. In section 44 delete “the medical officer” and substitute “the Senior Medical Officer”.</p> <p>6. In section 45, delete “Committee” and substitute “Board” where it twice appears.</p> <p>7. In section 58(1) delete “, a medical officer”.</p>	<p>6. Gives the power relating to burial to the Board rather than the Committee.</p>
Road Traffic Ordinance, 2016	<p>1. In section 2, delete the definition “driving” and substitute: ““driving”, in relation to a vehicle, means a person has control over the vehicle’s movement and direction;”.</p> <p>2. In section 3, delete subsection (3) and substitute: “(3) It is an offence for a person to— (a) obstruct a person designated by or appointed under this section and exercising functions conferred by or under this Ordinance; or (b) fail to comply with a requirement of this Ordinance.. Penalty: A fine of £5,000 or imprisonment for 12 months, or both.”.</p> <p>3. In section 20(1) delete “, as may be specified in the form,”.</p> <p>4. In section 29(3), delete “prescribe” and</p>	<p>1. This corrects the syntax of the existing definition.</p> <p>2. This clarifies the nature of the offence, which relates to any functions conferred on an officer by the Ordinance.</p> <p>3. The deleted words limit the types of disability etc. and are unnecessary.</p>

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	<p>substitute “approve”.</p> <p>5. In section 30 – (a) in subsection (1), delete the penalty provision and substitute: “Penalty: A fine, or imprisonment for life, or both.”; (b) in subsection (2), delete “of 10 years” and substitute “not exceeding 10 years”; (c) add the following new subsection: “ (4) An offence under this section may be tried either summarily or on indictment, at the election of the person accused.”.</p> <p>6. In section 31(4) delete “of 5 years” and substitute “not exceeding 5 years”.</p> <p>7. In section 32(3) delete “of 3 years” and substitute “not exceeding 3 years”.</p> <p>8. In section 33(2) and (3) replace references to “the jury” by references to “the court (or jury, if there is one)” and adapt the text accordingly.</p> <p>9. In section 41(3), insert “, either as driver or passenger,” after “this section”.</p> <p>10. In section 42(2) delete indents (a) and (b) and substitute “an offence under this Ordinance”.</p> <p>11. In section 45(1), add after the full stop: “Penalty: A fine of £5,000 or imprisonment for 18 months,</p>	<p>4. Speed measuring devices do not need to be prescribed but only approved, as with breathalysers in section 49.</p> <p>5. This rationalises the penalty for causing death by driving. The fine is unlimited, to match life imprisonment and make it an indictable offence. The disqualification is for a maximum of 10 years and no other power need be mentioned.</p> <p>6. and 7. The disqualification periods are maxima, and no other power needs to be mentioned.</p> <p>8. This allows for the fact that a trial might or might not be with a jury, at the election of the accused.</p> <p>9. This clarifies the nature of the offence of riding an overloaded motor bike.</p> <p>10. This removes the anomaly of having imprisonable offences and all offences mentioned in the same provision.</p> <p>11. This provides a penalty for the offence of driving while unfit through drink or drugs.</p>

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	<p>or both.</p> <p>12. In section 75, delete the reference to traffic signs and indent (b).</p> <p>13. In section 80(1), delete “Save as otherwise expressly provided” and substitute “Except for the offence under section 30 (Causing death by driving)”.</p> <p>14. In section 85(5), delete “fails to comply with an order under subsection (3)(a)” and substitute: “obstructs a police officer in the lawful exercise of his or her powers under subsection (3)”.</p> <p>15. In section 86(2) add after the full stop: “Penalty: A fine of £500.”.</p> <p>16. In section 91(1) replace “31st March 2017” by “1st^t April 2017”.</p> <p>17. In section 91(2), delete indents (a) and (b) and substitute: “by repealing sections 7 and 8”.</p>	<p>12. The offence relating to traffic signs is in section 78, so this offence can be limited to directions by a police officer.</p> <p>13. This makes it clear what the exception is.</p> <p>14. This clarifies the nature of the offence, which is to obstruct a police officer. The offence of not obeying a direction is in section 75 as above.</p> <p>15. This provides a penalty for the offence of preventing the removal of a vehicle.</p> <p>16. This corrects the anomaly of having the 1985 RT Ordinance repealed before the new one comes into force.</p> <p>17. This reinstates sections 10(2) and 11 of the Motor Vehicles (Third Party Insurance) Ordinance, 1962, which are still needed.</p>
St Helena National Trust Ordinance, 2001	<p>In the St Helena National Trust Regulations, add to regulation 11 the following new sub-regulation:</p> <p>“(4) The operations and management plan for a property must be published and is binding on members of the public visiting the property to which it relates.”</p>	<p>This gives the management plans teeth, which they do not have at present, although section 12 gives officers enforcement powers.</p>
Summary Offences	<p>In section 6(1) delete “£40” and substitute “£100”.</p>	<p>This increases the penalty for drunk in a public place from £40 to £100 and the penalty for behaving in a riotous or</p>

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Ordinance	<p>In section 6(2) delete “£100” and substitute “£150”.</p> <p>In section 19, delete subsection (1) and the number and brackets “(2)”.</p>	disorderly manner is increased from £100 to £150.
Stamp Duties Ordinance, Cap. 152	In section 14(1), delete the words “on indictment” after “on conviction”.	The offence carries 3 years imprisonment and should not be indictable-only.
Summary Offences Ordinance, Cap. 24	In section 19, delete subsection (1) and the number and brackets “(2)”.	There is no longer any reason for offences under this Ordinance to be made indictable.
Weights and Measures Ordinance, Cap. 123	In section 3, delete “in the office of the Registrar of the Magistrates’ Court” and substitute “at the police station, Jamestown,”.	The standard weights and measures are kept at the police station, not the Magistrates’ Court.
Welfare of Children Ordinance, 2008	<p>1. In the Ordinance and any regulations or rules made under it and in all the laws of St Helena, replace references to the “Safeguarding Children’s Board” by references to the “Safeguarding of Children Board”.</p> <p>2. Delete section 126 and substitute: “Construing other laws 126. Section 120 does not apply for construing— <i>(a)</i> the prohibited degrees of consanguinity or affinity in the law of St Helena; or <i>(b)</i> an offence of sexual activity with a child family member or inciting a child family member to engage in sexual activity.”</p> <p>3. In sections 145(1),</p>	<p>1. This corrects an anomaly in the title of the Board when it was set up.</p> <p>2. This allows for the fact that consanguinity is mentioned in other Ordinances as well as the Marriage Ordinance, and that the concept of a family member might appear elsewhere also.</p>

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	<p>146(1) and 149(2), add after the full stop: “Penalty: Imprisonment for 2 years.”.</p> <p>4. In section 147, delete “2 years” and substitute “5 years”.</p> <p>5. In section 159, delete subsection (1) and substitute: “(1) If it appears to the court that a child concerned in any family proceedings is not, but should be, represented in those proceedings, the court may direct the Attorney General to instruct an advocate to represent the child in the proceedings. (1A) If it appears to the Attorney General that a child should be represented as mentioned in subsection (1), the Attorney General may instruct an advocate as provided in that subsection.”.</p>	<p>3. This provides a penalty for the offences created by the sections.</p> <p>4. This increases the conviction for encouraging a child into prostitution from 2 years to 5.</p> <p>5. This clarifies the relationship between a request by the court and the appointment of an advocate, which is the role of the AG.</p>

Any questions about the Bill or this Explanatory Note should be addressed to the Attorney General.

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