



ST. HELENA

MEDIA STANDARDS ORDINANCE

Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown [Telephone (+290) 2270; Fax (+290) 2454; email pa.lawofficers@legalandlands.gov.sh]¹

Visit our [LAWS page](#) to understand the St. Helena legal system and the legal status of this version of the Ordinance.

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¹ These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

MEDIA STANDARDS ORDINANCE

(Ordinances 18 of 2011 and 3 of 2012)

AN ORDINANCE TO REGULATE MEDIA SERVICES, TO ESTABLISH A MEDIA COMMISSION TO MONITOR AND ENFORCE MEDIA STANDARDS, AND FOR PURPOSES CONNECTED THEREWITH OR INCIDENTAL THERETO.

Commencement

[9 October 2012²]

Part 1 Preliminary

Citation and commencement

1. (1) This Ordinance may be cited as the Media Standards Ordinance, 2011, and shall come into force on such date as the Governor may appoint by notice in the *Gazette*.

(2) A notice or notices issued under subsection (1) may appoint different dates for the purposes of different provisions or for different purposes of the same provision.

Interpretation

2. (1) In this Ordinance—
“broadcaster” means a person who holds a broadcasting licence under the Telecommunications Ordinance, Cap. 106;

“Code” means any Code of Practice issued, or adopted and applied, under section 6;

“Commission” means the St. Helena Media Commission established under section 3;

“media service” has the meaning given in subsection (2), subject to the exceptions in subsection (3).

(2) “Media service” includes, subject to subsection (3), any radio or television broadcast, printed or internet publications and every other activity which constitutes the dissemination of information in a manner capable of being received (whether on payment or otherwise) by the public or by any section of the public.

(3) None of the following activities is a “media service” for the purposes of this Ordinance:—

- (a) any audible or visual dissemination of information which is presented in such a way as to be received only by persons in the same building as, or otherwise in the immediate vicinity of, the person presenting the information;
- (b) the sale or hire (or offering to sell or hire) to members of the public of audio or video tapes or other means of recording sound or visual images, or both;
- (c) anything published on the internet by a person in his private capacity, unconnected with any trade, profession or vocation;
- (d) anything lawfully broadcast in St. Helena by way of a re-broadcast of material lawfully broadcast elsewhere, in circumstances under which the person responsible for the rebroadcast has no effective means of editorial control;
- (e) such other activities (if any) as may from time to time be prescribed:

² Commencement date fixed by L.N. 31 of 2012

Provided that regulations made under section 11 may provide that, in such circumstances as may be prescribed, the activities mentioned in paragraph (b) shall be treated as a media service.

Part 2

Media Commission and Codes of Practice

Constitution of Media Commission

3. (1) There is hereby established a body of persons, to be known as the St. Helena Media Commission, having the functions, powers and duties conferred or imposed upon it by this Ordinance or any other law.

(2) The Commission shall comprise a President and not less than two nor more than four other members.

(3) The Chief Magistrate shall be the President of the Commission: Provided that, if the office of Chief Magistrate is vacant, or the holder thereof is absent or otherwise unable to act, the Governor (acting in his discretion, but after consulting the President of the Judicial Service Commission) may appoint a Justice of the Peace to act as President of the Commission.

(4) Subject to the following provisions of this section, the Governor shall appoint the members other than the President; but he may not appoint any person who is either a member of the Legislative Council or a member of the public service.

(5) Sections 90 to 93 of the Constitution apply to the members appointed to be members of the Commission in accordance with subsection (4), as they apply to judicial officers:

Provided that a member of the Commission shall be deemed to have resigned from the Commission if he becomes a member of the Legislative Council or a member of the public service.

(6) The Governor, acting in his discretion, may appoint a person (not being a public officer or a member of the Legislative Council) to act as Clerk to the Commission: Provided that, at any time when there is no subsisting appointment of a Clerk, the duties of the Clerk may be performed by the Clerk of the Peace.

Function and duties of Commission

4. (1) The function of the Commission is to oversee media services delivered in or from St Helena, in accordance with the regulatory objectives set out in section 5, and for this purpose the Commission shall—

(a) issue Codes of Practice in accordance with section 6;

(b) monitor compliance with the Codes; and

(c) investigate and adjudicate upon any alleged or suspected breach of the Codes, and may (subject to the provisions of this Ordinance and any other rule of law) do all things which in its opinion are necessary or expedient for any of those purposes.

(2) Without prejudice to the generality of subsection (1), the Commission shall, if so requested by the Governor, and may of its own motion, from time to time advise the Governor in Council in relation to the Codes and their operation, and generally as to issues relating to the regulatory objectives.

Regulatory Objectives

5. (1) The regulatory objectives are—

- (a) protection of vulnerable persons (including, without prejudice to the generality, children and young persons);
- (b) protection of the public from the inclusion in media services of defamatory, discriminatory, offensive or harmful material;
- (c) ensuring accuracy and impartiality in the delivery of factual material, and clear differentiation between material delivered as fact and that delivered as opinion or commentary;
- (d) preventing the inclusion of advertising which is misleading, harmful or offensive;
- (e) preventing the use of techniques which exploit the possibility of conveying a message to the public, or of otherwise influencing members of the public, without their being aware, or fully aware, of what has occurred;
- (f) ensuring compliance with any international obligations of St. Helena relating to media services;
- (g) protection of public safety, public health, public order and public morality.

(2) In applying the regulatory objectives, the Commission shall have regard to the Constitutional rights to freedoms of opinion and of expression, but shall ensure by the Codes and the way they are administered that due regard is had also to the matters mentioned in section 17(3)(b) of the Constitution and to the rights to freedom of conscience, privacy, and freedom from discrimination.

Codes of Practice

6. (1)³ The Commission may issue Codes of Practice calculated to secure the regulatory objectives in relation to media services provided in or from St. Helena.

(2) Every Code of Practice issued by the Commission shall be published by notice in the *Gazette*.

(3) For the avoidance of doubt, the Commission may, instead of issuing a separate Code, declare (by notice in the *Gazette*) that any relevant Code which is from time to time in use in England shall be adopted and applied (with or without amendment) to St. Helena.

(4) A Code of Practice shall not be issued under this section unless, at least 42 days before it is issued, a draft thereof has been published by notice in the *Gazette* and the Commission has considered any comments or objections submitted in writing to the Clerk to the Commission within such period (not being less than 21 days) as may be specified in the notice.

Part 3

Complaints to Commission

Complaints to Commission

7. (1) Any person who is of the opinion that any media service has acted in breach of any Code may submit a written complaint to the Commission, through its Clerk.

(2) A written complaint under subsection (1) shall set out all the relevant particulars relating to the alleged breach of the Code.

(3) Upon receipt of a complaint under subsection (1), the Commission shall investigate such complaint.

(4) In this section 'written' includes fax and email.

Procedure on investigation and findings

³ Codes of Practice issued by Media Standards Commissioner in Gazette Notice No. 22 of 26 March 2014

8. (1) Subject to the provisions of this section, the procedure to be adopted in the investigation of each complaint shall be as prescribed in regulations made under section 11.

(2) The Clerk shall conduct a preliminary investigation into each complaint by—

- (a)** seeking clarification from the complainant of any ambiguity in the complaint; then
- (b)** calling upon the media service provider against whom the complaint is made to respond to the complaint and to provide a recording, transcript or copy (as the case may be) of the particular publication giving rise to the complaint; then
- (c)** inviting the complainant to comment upon the response received from the media service provider,

and shall then submit the papers (together with any recording or other relevant material) to the President.

(3) Upon receiving the papers from the Clerk, the President shall either—

- (a)** order that the complaint be dismissed on the basis that it reveals no issue worthy of further investigation; or
- (b)** convene a meeting of the Commission at which the complaint shall be further investigated and the parties shall have an opportunity to attend, to call witnesses, and to make such representations (if any) as they wish to make.

(4) A meeting of the Commission convened under subsection (3) shall be conducted as a judicial inquiry of an inquisitorial nature, and accordingly—

- (a)** regulations made under section 11 may provide that the Commission shall have powers to summon witnesses or require the production of documents or other exhibits, to require witnesses to take an oath or make an affirmation, and to administer any such oath or affirmation; and
- (b)** the power of the Supreme Court to punish contempt of its authority is extended to include a power to punish contempt of the Commission.

(5) Upon conclusion of its inquiry the Commission shall declare whether it is satisfied on the balance of probabilities that the media service committed a breach of a Code and, if it is so satisfied, shall—

- (a)** specify the nature of the breach and the Code which has been breached; and
- (b)** make such one or more of the orders or recommendations mentioned in section 9 as are in the opinion of the Commission appropriate in the circumstances.

Sanctions when Code is breached

9. (1) The orders and recommendations referred to in section 8 are—

- (a)** in the case of a complaint against a broadcaster, a recommendation to the Governor that its broadcasting licence be revoked or restricted;
- (b)** in the case of any ongoing publication, an order that such publication be discontinued;
- (c)** in any case, an order that—
 - (i)** a retraction or apology, or both, be published;
 - (ii)** any owner or manager of the media service take such other remedial action as is appropriate in the circumstances;
 - (iii)** any owner or manager of the media service take such steps as are in the opinion of the Commission reasonable to prevent a recurrence of the breach;
 - (iv)** the Clerk refer the matter to the Attorney General for consideration whether any criminal proceedings should be initiated.

(2) The Commission may not make a finding that any publication—

- (a)** amounted to an actionable defamation (nor may it assess compensation on that basis);

- (b) constituted a criminal offence; or
- (c) violated any person's fundamental human rights under sections 5 to 25 of the Constitution.

Right of appeal

10. (1) Subject to the provisions of this section, any person aggrieved by a decision, order or recommendation of the Commission under section 9 may appeal to the Supreme Court.

(2) An appeal under this section may not be made unless an application for leave to appeal is made to the Chief Justice within 28 days of the date of the decision, order or recommendation of the Commission, and the Chief Justice has granted such leave.

(3) Rules of court may provide that notice shall be given to the Commission of any application for leave pursuant to subsection (2) and for the Commission to have an opportunity to make representations before a decision is made on the application for leave:

Provided that any such rules of court must also provide that the person seeking leave to appeal shall have an opportunity to respond to any representations made by the Commission.

(4) The decision of the Chief Justice upon any application for leave to appeal shall be final and conclusive.

Part 4 **Miscellaneous**

Regulations

11. (1) The Governor in Council may make regulations generally for carrying into effect the provisions of this Ordinance.

- (2)** Without prejudice to the generality of subsection (1), regulations may—
- (a) provide for forms to be used and fees to be paid for or in connection with the operation of this Ordinance;
 - (b) prescribe the procedures to be adopted by the Commission;
 - (c) prescribe any other matter which may be prescribed under this Ordinance.

Offences

12. Any person who—

- (a) fails to comply with any order made under section 9; or
- (b) knowingly gives any false information to the Commission,

shall be guilty of an offence for which the maximum penalty upon conviction is imprisonment for 12 months or a fine of £2,500, or both.

Amendment of legislation

13. The legislation listed in the first column of the Schedule is amended to the extent indicated in the second column thereof.

Transitional provisions

14. (1) The Codes mentioned in subsection (2) shall, until replaced by Codes issued under section 6, have effect (with such modifications, if an, as are necessary to make them

consistent with this Ordinance, and otherwise to make them suitable to the circumstances of St. Helena) in St. Helena as if they were Codes so issued.

- (2) The Codes referred to in subsection (1) are—
- (a) The Ofcom Broadcasting Code (as updated from time to time) issued under the Communications Act 2003; and
- (b) The Editors' Code of Practice issued by the Press Complaints Commission of the United Kingdom.

SCHEDULE⁴

| Legislation | Extent amended |
|--|---|
| Telecommunications Ordinance, Cap. 106 | <p>Section 6 is amended by repealing subsection (4).</p> <p>Section 45 is amended—</p> <p>(a) by deleting the words “broadcasting licence or a” in subsection (1);</p> <p>(b) by adding the following subsection: “(3) A broadcasting licence may, notwithstanding anything contained therein or anything contained in any agreement between the Government and the licensee, be revoked by the Governor upon recommendation of the St. Helena Media Commission as contemplated in section 9(1)(a) of the Media Standards Ordinance, 2011.”.</p> <p>Section 46 is amended by deleting the words “broadcasting licence or” wherever it occurs in subsections (1) and (3).</p> |
| | <p>Section 47 is amended by deleting the words “broadcasting or” wherever it occurs in subsections (1) and (2).</p> <p>Section 48 other than the heading is repealed and the following is substituted therefor: “48. The Governor may, in accordance with any leave granted by the Supreme Court or on recommendation of the St. Helena Media Commission as contemplated in section 9(1)(a) of the Media Standards Ordinance, 2011, determine any licence to which such leave or recommendation relates by causing to be served upon the licensee at its principal place of business in St. Helena a notice in writing revoking such licence.”.</p> |
| St Helena News Media Ordinance, Cap. 160 | Section 10 is amended by repealing subsection (2) and by repealing paragraph (d) of subsection (1) and substituting the following therefor: |

⁴ Schedule amended by Ord. 3 of 2012

| | |
|--|--|
| | “(d) ensure that the programmes broadcast by the radio comply with the Media Standards Ordinance, 2011”. |
|--|--|

MEDIA STANDARDS COMMISSION REGULATIONS – SECTION 11

(Legal Notice 30 of 2012)

Citation, commencement and application

1. (1) These Regulations may be cited as the Media Standards Commission Regulations, 2012, and shall come into force with effect from the date on which the Ordinance comes into force.

(2) These Regulations shall apply to all inquiries under the Media Standards Ordinance 2011.

Interpretation

2. In these Regulations—

“**complaint**” means a complaint to the Commission by any person under section 7 of the Ordinance;

“**complainant**” means any person who submits a complaint;

“**controls**” means has authority or the ability to manage or direct;

“**provider**” means any person who controls a media service;

“**provider’s complaints procedure**” means any internal procedure of a provider for the investigation and resolution of complaints alleging a breach of any Code by such provider.

Provider’s Complaints Procedure

3. (1) The complainant shall, unless the President otherwise directs, follow the provider’s complaints procedure (if any) before the Commission will proceed to inquire into a complaint.

(2) If a complainant is not satisfied with the provider’s response to their complaint, or the provider has not responded within 14 days of the making of such complaint, the complaint may be inquired into by the Commission.

Form of complaint

4. (1) Complaints shall, unless the President otherwise directs, be submitted to the Commission in writing (which includes fax or email):

Provided that where the President so otherwise directs, the Clerk shall reduce any verbal complaints to writing.

(2) Unless the President otherwise directs, the Commission will only inquire into a complaint if it is submitted through the completion of the Commission’s complaint form in accordance with Schedule 1.

(3) All complaints should include, where known—

(a) the complainant’s full contact details (including email address where appropriate);

(b) the provisions of the relevant Code which it is alleged have been breached;

(c) the name and address of the provider;

(d) the name or title of the media service;

(e) the date and time of the media service;

(f) the channel, publication, internet site or other media on which the media service was broadcast or printed;

(g) the nature of the complaint and the particular parts of the media service complained about;

- (h) whether (and, if so, when) the complainant made a complaint to the provider (and details thereof);
- (i) any supporting material or evidence which the complainant considers relevant to the substance of the complaint;
- (j) any explanation for the complaint not being made within the prescribed period; and
- (k) any connected proceedings in a court in St Helena or elsewhere.

Time limits

5. (1) The President may, after considering all relevant factors (including the complainant's explanation for any delay in submitting the complaint), refuse to inquire into a complaint if it appears not to have been submitted to the Commission within—

- (a) 28 days after the last occasion when the media service was broadcast or printed; or
- (b) 42 days after such last occasion if the complainant complained directly to the provider within such 28 day period before submitting a complaint to the Commission.

(2) Where a complaint is made to the provider and submitted to the Commission simultaneously, the Commission will not normally proceed to inquire into the complaint until the provider has first had a period of 14 days to resolve the complaint under the provider's complaints procedure.

(3) A provider shall retain all recordings or publications and any related material, for a period of six months from the last occasion when the relevant media service was broadcast or printed or until the final determination of any subsisting complaints, whichever is later.

Assessing whether to inquire into a complaint

6. (1) Where a complainant submits a complaint to the Commission, the Clerk shall, unless otherwise directed by the President, conduct a preliminary inquiry into the complaint in accordance with section 8(2) of the Ordinance.

- (2)** If it appears to the Clerk that—
 - (a) the matter complained of is the subject of proceedings in any court of law in St Helena, or is a matter in respect of which the complainant has a remedy by way of proceedings in any court of law in St Helena; and
 - (b) in the particular circumstances it is not appropriate for the Commission to inquire into the complaint,

the Clerk shall seek a direction from the President who may dismiss or stay any inquiry until such time as the President directs.

(3) The Clerk shall require the complainant to clarify any ambiguity in the complaint or invite the complainant to comment upon any response received from the provider in terms of section 8(2)(a) or (c) of the Ordinance within 14 days.

(4) The Clerk shall provide a copy of the complaint to the provider, and require such provider to respond thereto and to specify the full legal title and address of the provider and provide a recording, transcript or copy (as the case may be) of the particular broadcast or publication in terms of section 8(2)(b) of the Ordinance, within 14 days.

(5) On receipt of any written responses of the complainant or provider at any stage in the inquiry, the Clerk shall provide a copy thereof to all other parties.

(6) The Clerk shall, on being satisfied that all preliminary inquiries have been completed, submit the papers together with any recording or other relevant material to the President in accordance with section 8(2) of the Ordinance.

Decision of President

7. (1) On receipt of the papers from the Clerk, the President shall act as provided for in section 8(3) of the Ordinance and may dismiss all or part only of a complaint and convene a meeting of the Commission in relation to all or the remaining part of such complaint not so dismissed.

(2) If any facts become apparent to the President in the course of inquiring into a complaint, such that in his judgement there is no issue worthy of further investigation, or in his opinion that actions under these Regulations would have been otherwise had such facts been known at a previous time, the President may cease to proceed with inquiring into all or part of the complaint or take such other action as in his judgment is appropriate to achieve the regulatory objectives of the Commission.

(3) The Clerk shall provide the complainant and the provider with a copy of the President's decision in terms of section 8(3) of the Ordinance or otherwise in terms of these Regulations indicating whether (and to what extent) the Commission will be inquiring into a complaint.

Hearings

8. (1) A complaint determined to be worthy of inquiry and submitted to the Commission, shall be inquired into at a meeting of the Commission convened under section 8(3) of the Ordinance.

(2) The Commission shall give at least 14 days' notice to the parties of such a Commission meeting date, unless all parties agree to a shorter period of notice.

(3) Hearings shall be held in private and the following persons shall be given an opportunity to attend, to call witnesses with the permission of the President, and to make representations:

(a) the complainant or his authorised representative;

(b) the provider or his authorised representative;

(c) any other person who the President considers might be able to assist at the hearing.

(4) The President may at any time, either of his own or on the application of any party, make such orders as may be necessary or reasonable in all matters relating to—

(a) the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) the joinder or separation of complaints, complainants or providers;

(c) adding or removing parties to the complaint;

(d) the amendment of a complaint or response;

(e) issuing summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(f) proving any fact by affidavit;

(g) such other procedural orders as may be competently made by the Magistrates Court.

(5) Subject to paragraph (4), evidence given by a witness at any hearing shall be on oath or affirmation of that witness, unless the President otherwise directs.

Issue of Findings

9. (1) Once the Commission has heard representations from the parties, the Commission shall conclude its inquiry into a complaint by issuing its findings setting out

whether the complaint is upheld, not upheld, or upheld in part and such further particulars, orders or recommendations, if any, as are provided for by section 8(5) of the Ordinance.

(2) The President shall have a discretion, whether in the inquiry or in any findings, to protect the anonymity of a complainant or provider where he considers such is required in order to enable the Commission to fulfil its regulatory objectives in terms of section 5 of the Ordinance.

Non Disclosure

10. (1) Subject to paragraph (2), the parties to a complaint should not disclose any correspondence, documents and other material concerning the complaint received during the course of the inquiry unless required to do so in due course of law:

Provided that this requirement of non disclosure does not limit what the Commission, with due regard to its regulatory objectives, may disclose during the inquiry or in its findings at the end of the inquiry.

(2) The complainant or the provider may make public the fact that a complaint has been submitted to the Commission or that the Commission is inquiring into a case.

(3) During the inquiry the identity of a complainant or provider may only be disclosed by the complainant or provider to those with a direct interest in the matter complained of and for the purposes of assisting in the inquiry or otherwise as required by law.

(4) Once a complaint has been submitted to the Commission, no party should take any steps which could, whether intentionally or not, compromise, or risk compromising, a fair decision on the matter by the Commission or otherwise constitute, in the Commission's opinion, an abuse of process.

(5) Failure to follow this Regulation may result in the Commission ceasing to inquire into the party's representations without prejudice to the power to refer any contempt of the Commission to the Supreme Court in terms of section 8(4)(b) of the Ordinance.

Service on parties

11. Service of any document on any party shall be made as provided for in the Civil Procedure Ordinance, Cap. 32, and may be carried out by email or fax.

Discretion of President

12. (1) The President may consider it appropriate (in the interests of fairness or properly to inquire into a complaint) to amend or adapt the time limits set out in these Regulations in a particular complaint.

(2) Any complainant or provider seeking an extension of a time limit should explain in writing to the President why it believes it is appropriate and the President will decide if an extension is appropriate and inform all parties accordingly.

(3) The President may direct that there be a departure from these Regulations in any material respect in a particular case for reasons of fairness or in order for the Commission properly to inquire into a complaint:

Provided that the President shall canvas such departure with the parties present at any meeting of the Commission or otherwise write to the parties who are not so present setting out the nature and extent of such departure, his reasons for doing so and seeking the relevant parties' response.

(4) For the avoidance of doubt, where the Commission considers it necessary in order to fulfil its regulatory objectives under section 5 of the Ordinance, it may initiate an inquiry in the absence of a complaint and in those circumstances the Commission will follow similar

procedures to such where there is a complaint but adapted as appropriate to ensure that they are fair and appropriate in the particular circumstances.

SCHEDULE 1**MEDIA STANDARDS COMMISSION****COMPLAINT FORM****1. Complainant**

| | |
|-------------------|--|
| 1.1 Title | |
| 1.2 First Name(s) | |
| 1.3 Surname | |
| 1.4 Address | |
| 1.5 Telephone | |
| 1.6 Fax | |
| 1.7 Email | |

2. Complainant's Representative (if any)

| | |
|-------------------|--|
| 2.1 Title | |
| 2.2 First Name(s) | |
| 2.3 Surname | |
| 2.4 Address | |
| 2.5 Telephone | |
| 2.6 Fax | |
| 2.7 Email | |

3. Provisions of Code(s) alleged to have been breached

| |
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4. Name & Address of the Media Service Provider

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|--|
| |
|--|

5. Name/Title of the Broadcast/Article

| |
|--|
| |
|--|

6. Date & Time of the Broadcast/Publication

| | |
|--------------|--------------|
| Date: | Time: |
|--------------|--------------|

7. Channel/ Publication/Internet Site etc. on which broadcast/published

| |
|--|
| |
|--|

8. Nature of Complaint & Parts of Broadcast/Publication complained about

| |
|--|
| |
|--|

9. Previous complaint to the Media Service Provider

When:

Details:

10. List and attach any supporting material/evidence relevant to the complaint

11. Explanation for late submission of complaint (if applicable)

12. Any connected proceedings in a court of law in St Helena or elsewhere

13. Declaration

I understand that on receipt of this complaint the Commission will provide a copy of this complaint form and any accompanying information to the relevant Media Service Provider.

I understand that the inquiry into this complaint falls under the Commission's jurisdiction and undertake to abide by all the Commission's regulations and procedures.

Signature of Complainant

Date of Complaint.....

**Return to: The Clerk, St Helena Media Standards Commission, The Castle, Jamestown,
St Helena STHL 1ZZ**

Telephone Tel: +290 2340 Fax: +290 2598 E-mail: judicial.manager@sainthelena.gov.sh
