



ST. HELENA

GOVERNMENT OF SAINT HELENA

A BILL FOR AN ORDINANCE

THE PORTS ORDINANCE, 2016



ST HELENA

A BILL

FOR

AN ORDINANCE

to provide for the regulation, management and control of ports in St Helena, and of vessels therein; to make provision for enforcement of provisions of the international ship and port facility security code in St Helena; and for purposes connected therewith or incidental thereto.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

*Part 1
Preliminary*

Citation and commencement

1. This Ordinance may be cited as the Ports Ordinance, 2016, and shall come into force on the date of publication.

Interpretation

2. In this Ordinance—

“boat” includes a lighter, barge, hulk, or any open or partly decked craft;

“boat for hire” means a boat let for hire for carrying persons, and includes a passenger boat;

“certificate of competency” means a certificate issued to a person under regulations made pursuant to section 34 authorising him to use a boat or class or description of boats in harbour waters, and “certificate” shall be construed accordingly;

“charges” includes any fee, charge, rate, toll or due of every description which may for the time being, be authorised by this Ordinance or any regulations made hereunder;

“competent authority” means the national authority for St Helena under the International Ship and Port Facility Security Code implemented under the International Convention for the Safety of Life at Sea, 1974;

“customs officer” means any person appointed by the Governor as such by section 4 of the Customs Ordinance, Cap. 145, or any statutory modification to or re-enactment of the same;

“disqualified” means disqualified by reason of an order made under section 26 from holding or obtaining a certificate of competency, and **“disqualification”** shall be construed accordingly;

“goods” includes motor vehicles, and all tangible personal property of any kind;

“Government” means the Government of St Helena;

“Harbour Master” means the person for the time being appointed by the Governor pursuant to section 3 and shall include the deputy and assistants of a person so appointed;

“harbour waters” means the water within any port up to a limit of three miles from the coast, and **“waters”** shall be construed accordingly;

“land” includes land which for the time being may be covered by water, and any interest in land;

“landing place” means wharves and other waterside landing places, piers, jetties and similar installations, and includes approaches from land to such installations;

“lighter” includes a barge or other like craft for carrying goods;

“master”, in relation to a vessel, means any person having or taking the command, charge or management of a vessel for the time being;

“mooring” includes anchorage;

“navigating” in relation to a vessel means any time when the vessel is in motion, and **“navigation”** shall be construed accordingly;

“owner”, in relation to a vessel, includes the charterer;

“passenger boat” means a boat used for carrying passengers, whether or not for reward;

“port” means any area which is declared to be a port under section 4;

“port area” means any area within a port or harbour waters as the Governor in Council may declare to be a port area by notice in the *Gazette*;

“port security officer” means and includes the Harbour Master, deputy harbour master, every assistant harbour master, every port security guard appointed by the Harbour Master, and every customs officer and police officer;

“prescribed” means anything which may be or is provided for by regulations made under section 37;

“road” means any highway or other place to which the public has access, and includes any bridge over which a road passes;

“rowing boat” means a boat capable only of being propelled by oars;

“summarily”, in relation to the recovery of expenses or charges, means proceedings issued by way of complaint to the Magistrates’ Court;

“vessel” means every description of ship or boat, however propelled or moved, and includes anything constructed or used to carry persons or goods by water, and a seaplane on or in the water, a hovercraft and a hydrofoil vessel.

Part 2
Power to appoint Harbour Master and declare Ports

Appointment of Harbour Master

3. (1) The Governor shall from time to time appoint a Harbour Master who, subject to the provisions of this Ordinance and any regulations made thereunder, shall have the control and management of ports in St Helena.

(2) The Governor may appoint a deputy Harbour Master and assistant Harbour Masters whenever he considers it appropriate to do so.

(3) The Governor in Council may from time to time issue policy directions for guidance to the Harbour Master, who shall comply with the same in the exercise of all powers and duties contained in this Ordinance, or any regulations made thereunder.

Power to declare ports

4. The Governor may, by order published in the *Gazette*, declare any area of the coast and waters of St Helena to be a port, subject to final approval by the competent authority.

Part 3
Powers of Harbour Master in relation to vessels

Orders of Harbour Master

5. (1) The Harbour Master may order the owner or master of any vessel within a port—

- (a) to move the mooring of such vessel to such other place as he may specify;
- (b) to make a declaration, in writing, containing information sufficient to answer any query made by the Harbour Master in relation to such vessel, its cargo or crew.

(2) Any person who without reasonable cause fails to obey any such order, or who fails to make such declaration when requested, or makes any declaration he knows to be false, is guilty of an offence for which the maximum penalty on conviction is imprisonment for a term of three months or a fine of £500, or both.

Boarding of vessels

6. (1) The Harbour Master may board any vessel which is moored in harbour waters for the purpose of granting pratique, and in consideration thereof shall demand of the master payment of the prescribed fee.

(2) If payment of the prescribed fee is not made upon demand, the Harbour Master may—

- (a) refuse to grant pratique until such fee is paid; or
- (b) grant pratique and proceed to recover such fee summarily from the master, the owner or agent of such vessel.

(3) Any person receiving any goods from any vessel, or boarding or leaving, or making fast to any vessel moored in harbour waters before the Harbour Master has boarded, and before such vessel has received pratique, is guilty of an offence for which the maximum penalty on conviction is a fine of £500.

Identity of Master

7. (1) The Harbour Master may require the owner of a vessel to supply, in writing, all information in his possession as to the identity and present whereabouts of the person who at any particular time was the master of such vessel.

(2) Any person to whom a requirement is made under subsection (1) who without reasonable cause fails to comply therewith, or who supplies any information which he knows to be false, is guilty of an offence for which the maximum penalty on conviction is imprisonment for a term of three months or a fine of £500, or both.

(3) In any proceedings relating to the vessel or its master, any written information supplied pursuant to subsection (1) shall be admissible evidence for the purpose of determining the identity of the master of the vessel at a particular time.

Directions to vessels in harbour waters

8. (1) The Harbour Master may give directions applicable to a particular vessel, to all vessels, or to a specified class of vessels in harbour waters for the purpose of ensuring the safety of moored vessels at, or to property at, or forming part of, any landing place, or of securing the efficient conduct of the business of boarding, unloading, arriving at or departing from any landing place, and without prejudice to the generality of the

foregoing, such directions may relate to—

- (a) the movement, berthing or mooring of any vessel;
- (b) the dispatch of its business at any landing place;
- (c) the disposition or use of its appurtenances or equipment;
- (d) the use of its motive power;
- (e) the embarking or landing of passengers;
- (f) the loading or discharging of cargo, fuel, water or ships' stores;
- (g) the use of ballast.

(2) The Harbour Master may give a direction requiring the immediate removal of a vessel from or to any other location within harbour waters if—

- (a) it is on fire;
- (b) it is in a condition where, in his opinion, it is liable to become immobilised or waterlogged, or to sink;
- (c) it is making any unlawful or improper use of harbour waters or any landing place;
- (d) it is wilfully interfering with the use of harbour waters or any landing place by other vessels or the despatch of business therein or thereat;
- (e) the removal is, in the opinion of the Harbour Master, necessary to enable maintenance or repair work to be carried out to any landing place.

(3) Any direction given pursuant to this section may be given verbally or in writing, as the Harbour Master may deem appropriate.

(4) The Harbour Master may issue rules to prohibit or limit any recreational activities during specified times or within certain areas of harbour waters or to regulate the use of any recreational water craft in harbour waters.

(5) Any person who, without lawful authority or reasonable cause, fails to obey any direction given or rules issued by the Harbour Master pursuant to the provisions of this section, is guilty of an offence for which the maximum penalty on conviction is imprisonment for a period of three months or a fine of £500, or both.

Enforcement of directions

9. (1) Without prejudice to any other remedy available to the Harbour Master, if any direction given pursuant to section 8 is not complied with in what, in the opinion of the Harbour Master, is a reasonable time, the Harbour Master may, where practicable, put persons on board the vessel to carry out the direction given, or may otherwise cause the vessel to be handled in accordance with the terms thereof.

(2) If there is no person on board a vessel to attend to any direction given pursuant to section 8, the Harbour Master may proceed as if the direction had been given but not complied with:

Provided that the powers of this subsection shall not be exercised—

- (a) in relation to a vessel other than a lighter, unless after reasonable enquiry has been made the Master or owner cannot be found; or
- (b) in relation to a lighter unless it is obstructing the access to or exit from any landing place or otherwise interfering with navigation.

(3) The expenses incurred by the Harbour Master in the exercise of the powers conferred by this section may be recovered as if they were a charge of the Government in respect of that vessel.

*Part 4
Obstructions in harbour waters*

Removal of wrecks

10. (1) If, in the opinion of the Harbour Master, any vessel is sunk, stranded or abandoned in harbour waters in such a manner as to be a danger or obstruction to safe navigation, he may—

- (a) take possession of and raise, remove or destroy the whole or any part of the vessel; and
- (b) light or buoy any such vessel or part thereof until it can conveniently be raised, removed or destroyed; and
- (c) deliver to the owner or his agent, on demand, and on payment of all expenses incurred, or in the absence of such demand and payment sell, in such manner as he shall think fit, any vessel or part thereof so raised or removed, and also any other goods recovered in consequence thereof, and out of the proceeds of such sale, deduct all expenses incurred by him, and deposit in the Bank of St Helena the surplus (if any) of such proceeds, in trust for the person or persons entitled thereto.

(2) If the proceeds of sale of any vessel or part thereof raised or removed pursuant to subsection (1) are insufficient to fully reimburse the Harbour Master for all expenses he has incurred in the exercise of such powers, he may recover the balance thereof summarily from the owner.

Removal of obstructions other than vessels

11. (1) Without prejudice to the powers contained in section 10, the Harbour Master may remove—

- (a) any goods, other than a vessel, causing or likely to become an obstruction or impediment to the safety of any vessel navigating or moored in harbour waters, or persons using the same;
- (b) any other goods causing, or likely to become an obstruction or impediment to the proper use of any landing place.

(2) If any goods removed by the Harbour Master under subsection (1)—

- (a) are so marked as to be readily identifiable as the property of a particular person or persons, the Harbour Master shall, within one month of such removal, give written

notice in accordance with subsection (5) to such person or persons, and if possession is not retaken within the period specified in, and in accordance with the terms of such notice; or

- (b) are not so marked, and are not within three months of the date of such removal proved to the reasonable satisfaction of the Harbour Master to belong to any identifiable person or persons,

the ownership of such goods shall thereupon vest in the Government.

(3) The Harbour Master may, at such time and in such manner as he deems appropriate, dispose of any goods referred to in subsection (2)(b) which are of a perishable nature, or the custody of which involves unreasonable expense or inconvenience, notwithstanding that the ownership of such goods has not yet vested in the Government pursuant to this section, and if such goods are sold the proceeds of sale shall be applied in payment of the expenses incurred under this section in relation to such goods, and any balance—

- (a) shall be paid to any person who within three months from the date of removal proves to the reasonable satisfaction of the Harbour Master that he was the owner thereof at that time; or
(b) if within the said period no person proves his ownership at the said time, shall belong to the Government.

(4) If any goods removed under this section—

- (a) are sold by the Harbour Master and the proceeds of sale are insufficient to reimburse the total expenses incurred in the exercise of such powers of removal and sale; or
(b) cannot be sold,

the Harbour Master may recover summarily the deficiency or the whole of the expenses, as the circumstances require, from the person who was the owner at the time such goods were abandoned or lost.

(5) Any notice given under subsection (2)(a) shall specify the goods removed, and state that upon proof of ownership to the reasonable satisfaction of the Harbour Master possession may be retaken at the place named in the notice within the time specified therein, being not less than 14 days after the date of such notice, subject to payment of any expenses incurred in such removal.

(6) In the exercise of his powers under this section the Harbour Master shall not remove anything placed or constructed by the Government or by any person or body of persons exercising statutory functions.

Removal of projections

12. (1) For the purposes of this section, “projection” means anything which projects over any part of harbour waters, and includes rocks, stairs, trees, bushes or other plants, but does not include any such thing authorised by Ordinance or by a works licence granted by the Government to be placed or constructed.

(2) If any projection is, in the opinion of the Harbour Master, a danger to the navigation of harbour waters the Harbour Master may remove it, and may recover the expenses of such removal from the owner or occupier of the land on which the projection was situated.

(3) Before exercising his powers under subsection (2), the Harbour Master shall, if it is reasonably practicable to do so, give notice of such intention to the owner or occupier of the land on which the projection is situated.

(4) If any projection is, in the opinion of the Harbour Master, an obstruction or inconvenience to the navigation of harbour waters but not a danger thereto, the Harbour Master may, by notice in writing, require the owner or occupier of the land on which the projection is situated to remove the projection within such time, not being less than seven days, as may be specified in the notice.

(5) A person aggrieved by a notice served under subsection (4) may appeal to the Magistrates' Court.

(6) If a person to whom notice is given under subsection (4) fails to comply with its terms within the time specified therein, or if he appeals and the appeal is not allowed, within the time specified in the notice or such other time as the Court may substitute therefor, the Harbour Master may in either case exercise the powers contained in subsection (2).

(7) Any notice given under subsection (4) shall refer to the right of appeal provided for by subsection (5).

(8) In any proceedings to recover expenses pursuant to subsection (2), the Magistrates' Court may enquire whether the Harbour Master might reasonably have proceeded alternatively under subsection (4), and if the Court so determines, shall decline to award such expenses.

Cargo and other items lost

13. (1) The master of a vessel from which any anchor, cable, cargo, apparel or other goods have slipped or become lost in harbour waters shall immediately buoy the spot, and cause to be delivered to the Harbour Master a full report, in writing, of such loss and of the position of such buoy.

(2) All expenses incurred by the Harbour Master in locating, raising and removing any goods lost in harbour waters may be recovered summarily from the master of the vessel to which they belonged.

(3) If the master has left St Helena before repaying any and all expenses for which he is liable under subsection (2), the owner, agent and consignee of such vessel at the time of such loss shall be jointly and severally liable for payment of such expenses.

(4) Any person being the master of any vessel liable to comply with the provisions of subsection (1) who—

- (a) fails without reasonable cause to buoy the spot where any anchor, cable, cargo, apparel or other goods have slipped or become lost in harbour waters; or
- (b) fails to supply a report thereof; or
- (c) supplies a report containing any information he knows to be false,

is guilty of an offence for which the maximum penalty on conviction is imprisonment for a term of three months or a fine of £500, or both.

Abandoned equipment of vessels

14. (1) Any person who finds or otherwise comes into possession of any abandoned rowing boat or anchor, chain or other equipment which, from its appearance, can be reasonably concluded to have formerly belonged to any vessel, shall notify the Harbour Master of the location thereof.

(2) Any person liable to comply with the provisions of subsection (1) who fails without reasonable cause to do so within seven days of such find or possession, is guilty of an offence for which the maximum penalty on conviction is a fine of £500.

Part 5 Liability for damage and interference

Damage by a vessel

15. (1) There shall be absolute liability to pay to the Harbour Master the full cost of making good any damage caused by any means whatsoever by any vessel, or by any person employed on or in connection with any vessel, to any landing place or to any goods on the same or in harbour waters which belong to the Government.

(2) The Harbour Master may recover summarily the cost of making good any such damage from either the master or the owner of such vessel.

(3) Without prejudice to any other remedy available, the Harbour Master may detain and exercise the right of lien upon any vessel causing such damage until the cost of making good such damage has been paid or security therefor, acceptable to the Harbour Master, has been given.

Interference with port equipment

16. Any person who, without lawful authority, removes, tampers with, or otherwise interferes with any item of equipment, property, structure or part of a structure within the port area, or attempts to commit such an act, is guilty of an offence for which the maximum penalty on conviction is a fine of £2,000 or imprisonment for a term of six months, or both.

Part 6
Offences relating to vessels

Taking a vessel without consent

17. Any person who, without the consent of the owner or other lawful authority, takes, causes to be taken, or uses any vessel in harbour waters, or allows himself to be carried on any such vessel, is guilty of an offence for which the maximum penalty on conviction is imprisonment for a period of three years or a fine of £10,000, or both:

Provided that it shall be a defence for a person so charged to prove that he believed on reasonable grounds that he had lawful authority, or that the owner would, if asked, have consented to the taking or use of such vessel.

Stowaways

18. Any master of a vessel who permits, suffers or facilitates in any way the landing in St Helena of any person who is or has been a stowaway on such vessel, without the permission, in writing, of the Governor, is guilty of an offence for which the maximum penalty on conviction is imprisonment for a period of six months or a fine of £2,000, or both, in respect of each person who was a stowaway on such vessel.

Unauthorised presence on board ship

19. (1) A person who, not being a person who is either engaged in Her Majesty's service or has lawful authority to do so or other reasonable excuse,—

- (a) goes on board any relevant ship without the consent of the master or of any other person authorised to give it; or

- (b) remains on board any relevant ship after being requested to leave by the master or a port security officer, is guilty of an offence for which the maximum penalty on conviction is imprisonment for a period of 12 months or a fine of £5,000, or both.
- (2) In this section, “relevant ship” means any ship, lighter, boat, raft, or similar vessel which is within the port area.

Part 7

Provisions relating to navigation by persons affected by alcohol

Definitions

20. For purposes of this Part—
“approved device” means either an approved screening device or an approved measuring device;
“approved measuring device” or “approved screening device” means a device approved as such under section 42(1) of the Road Traffic Ordinance, Cap. 101;
“prescribed limit” has the meaning provided in section 24.

Alcohol offences

21. (1) A person who navigates or attempts to navigate any vessel in harbour waters, having consumed so much alcohol that the proportion thereof in his breath, blood or urine exceeds the prescribed limit, is guilty of an offence for which the maximum penalty on conviction is imprisonment for a term of 18 months, or a fine of £2,500, or both.

(2) A person who is in charge of any vessel in harbour waters, having consumed so much alcohol that the proportion thereof in his breath, blood or urine exceeds the prescribed limit, is guilty of an offence for which the maximum penalty on conviction is imprisonment for a term of 12 months, or a fine of £2,000, or both.

(3) Without prejudice to subsection (1), a person who navigates or attempts to navigate a vessel in harbour waters when he is unfit to do so through drink or drugs is guilty of an offence for which the maximum penalty on conviction is imprisonment for a term of three years, or a fine of £5,000, or both.

(4) Without prejudice to subsection (2), a person who is in charge of a vessel in harbour waters when he is unfit to navigate through drink or drugs is guilty of an offence for which the maximum penalty on conviction is imprisonment for a term of 12 months, or a fine of £2,000, or both.

(5) In this section “unfit to navigate through drink or drugs” means under the influence of drink or drugs to such an extent as to be incapable of having proper control of a vessel.

Breath tests and other specimens

22. (1) If a police officer has reasonable cause to suspect that any person—

- (a) has committed or is committing an offence under this Ordinance; or
- (b) was navigating or in charge of a vessel at a time when such vehicle was involved in an accident,

such police officer may require that person to supply a specimen of breath for analysis using an approved screening device.

(2) If an approved screening device is not readily available to a police officer who is entitled to make such a requirement as is mentioned in subsection (1), such officer may require the person of whom he is entitled to make the requirement to accompany such officer to a police station or other place where an approved screening device or an approved measuring device is available for use.

(3) If the result of an analysis of breath under subsection (1) leads a police officer to suspect that the person who supplied the specimen might be guilty of an offence against this Part, such officer may arrest that person; and whether or not he arrests that person, may require such person to supply a further two specimens of breath for analysis using an approved measuring device.

(4) A police officer who is entitled to require a person to provide a specimen of breath for analysis using an approved screening device may, if an approved measuring device is available for use at the location where that requirement would otherwise be made, instead of making that requirement, require the person to supply two specimens of breath for analysis using an approved measuring device.

(5) If it appears to any police officer who is entitled to require any person to supply a specimen of breath for the purposes of this section that, by reason of—

- (a) the inability of the person to comply with such a requirement; or
- (b) the unavailability of an approved device or a reliable approved device; or
- (c) any other cause,

it is not practicable to require such a specimen to be provided, such officer may require such person to accompany the officer to a police station or hospital, and there to provide either a specimen of blood or a specimen of urine (the decision as to which type of specimen to require being made by the officer) for analysis.

(6) A specimen of blood shall not be taken for the purposes of this section except by or under the direct supervision of a public officer employed at the General Hospital in Jamestown who is qualified to take blood samples.

(7) Where it appears to a police officer of the rank of Inspector or above (in this subsection called “the senior officer”) that a person whom a police officer has power to require to provide a specimen of breath under subsection (1)(b), arising out of an accident in which injury was caused to any person other than the

suspect, is in any building, vehicle or other closed place, and that access to that place cannot be gained by any other means without allowing an opportunity for the ends of justice to be defeated, the senior officer may order the use of such force as is reasonably necessary in order to gain access to such closed place.

Failure to provide specimen

23. (1) Any person who without reasonable cause fails to supply any specimen of breath, blood or urine which he has been required to provide under section 22, or fails to accompany a police officer to a police station, hospital, or other place when required to do so under that section, is guilty of an offence for which the maximum penalty on conviction is imprisonment for a term of 18 months, or a fine of £2,500, or both.

(2) In this section “fails” includes “refuses”.

(3) A person fails to provide a specimen if he fails to supply it in a manner and quantity suitable for the purpose for which it is required.

Prescribed limit

24. The prescribed limit referred to in section 21 is whichever is appropriate of the following limits, namely—

- (a) 35 microgrammes of alcohol per hundred millilitres of breath; or
- (b) 80 milligrammes of alcohol per hundred millilitres of blood; or
- (c) 107 milligrammes of alcohol per hundred millilitres of urine.

Evidence

25. (1) In every case of an offence alleged to have been committed against section 21, evidence of the result of any analysis of any specimen of breath, blood or urine taken under section 22 shall be admissible in evidence, and the court shall presume that the proportion of alcohol in the defendants breath, blood or urine at the time of the alleged offence was not less than the proportion revealed by such analysis:

Provided that the said presumption shall not be made if the court is satisfied (by evidence on oath) that the defendant consumed such an amount of alcohol, after he ceased to navigate or be in charge of the vessel, as would be likely to account for the amount by which the result of such analysis exceeded the prescribed limit.

(2) Evidence of the proportion of alcohol in a specimen of breath may be given by the police officer who operated the approved device by which the specimen was analysed or by the production of a certificate of the kind described in subsection (3)(a), but a person shall not be convicted unless it is proved—

- (a) that two separate specimens of breath were analysed by an approved measuring device; and
- (b) that the lower of the two results disclosed a proportion of alcohol in the specimen which exceeded the prescribed limit.

(3) Evidence of the proportion of alcohol or drug in a specimen of breath, blood or urine may, subject to subsections (5) and (6), be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say—

- (a) a statement automatically produced by the approved measuring device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a police officer (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the accused at the date and time shown in the statement; or
- (b) a certificate signed by an approved analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.

(4) Subject to subsections (5) and (6), evidence that a specimen of blood was taken from the accused by a public officer referred to in section 22(6) may be given by the production of a document purporting to certify that fact and to be signed by such public officer.

(5) Subject to subsection (6) a document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in subsection (3)(a) is admissible in evidence on behalf of the prosecution in pursuance of this section.

(6) A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the accused, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed.

(7) In this section “approved analyst” means a person appointed as such under section 44 of the Road Traffic Ordinance, Cap. 101.

Further provisions as to specimens

26. (1) Every specimen of blood or urine provided by a person under this Part shall be divided into two approximately equal parts, and—

- (a) subject to paragraph (b), only one part thereof shall be analysed, and the other part (“the retained part”) shall be preserved until the conclusion of all proceedings for any offence in connection with which the specimen was provided;
- (b) the court which tries any alleged offence upon the trial of which the prosecutor relies upon evidence of the result of the analysis of a specimen of blood or urine provided under this Part, may (if it appears to be in the interest of justice so to do) order that the retained part shall be analysed, and adjourn the hearing to enable such analysis to be carried out;
- (c) a court which makes an order under paragraph (b) may order that the analysis be carried out by or under the supervision of such medical officer as the court may think fit, and a medical officer to whom such an order is addressed shall comply therewith and send a report of the result of the analysis, as soon as practicable, to the clerk of the court.

(2) A specimen of urine shall be provided within one hour of being required, and after the provision of a previous specimen of urine (such previous specimen being discarded).

Hospital patients

27. Where a person is at a hospital as a patient, it shall not be lawful for a police officer to require such a person to provide any specimen of breath, blood or urine for the purposes of this

Part unless the medical officer in charge of the patient's treatment has been notified of the officer's intention to require the specimen and has confirmed that such a requirement would not be prejudicial to the health or treatment of the patient.

Power of Arrest

28. A police constable may arrest without warrant a person who he reasonably suspects of committing an offence against section 21(3), 21(4), or 23(1).

Disqualification provisions

29. (1) Where a person is convicted by either the Magistrates Court or the Supreme Court of any offence contrary to sections 17, 21 or 23, the provisions of this section shall apply with respect to the making of an Order that such person may or shall be disqualified from using or operating any vessel in harbour waters, or a particular class or description of vessel.

(2) The Court may order that any person convicted of an offence under section 17 shall be disqualified from obtaining or holding a certificate of competency in respect of the use of vessels generally, or vessels only of the class or description to which such offence relates, for such period as the Court deems appropriate.

(3) Subject to subsection (4), where a person is convicted of any offence contrary to either sections 21 or 23, the Court shall order him to be disqualified from holding or obtaining a certificate of competency in respect of all vessels—

- (a) on a first conviction, for a period of not less than one year;
- (b) on a second or subsequent conviction, for a period of not less than three years.

(4) Where any person is convicted of an offence contrary to either sections 21 or 23, or subsection (6), and there is evidence, given upon oath which, in the opinion of the Court, is sufficient to establish special reasons, as defined by subsection (5), the Court may either refrain from making any order of disqualification, or may order disqualification for a shorter period.

(5) For the purposes of subsection (4), no fact or circumstance shall be held to be a special reason unless it or they relate to the commission of the offence, as distinct from relating to or concerning the offender.

(6) Any person who acts as coxswain of or otherwise uses, manages or controls a vessel in harbour waters during the subsistence of an order made under this section disqualifying him from holding or obtaining a certificate of competency in respect of any vessel, or of a class or description of vessel of the same type is guilty of an offence for which the maximum penalty on conviction is imprisonment for a period of three years or a fine of £10,000, or both and, subject to the provisions of subsections (4) and (5), shall be disqualified for a further period of

not less than one year, consecutive to the period of disqualification subsisting at the time of such offence.

Part 8
Access to port area

Trespass in the port area

30. A person who, without the consent of a port security officer or other lawful authority, enters the port area or remains in the port area when requested to leave by a port security officer is guilty of an offence for which the maximum penalty on conviction is imprisonment for a period of 12 months or a fine of £5,000, or both:

Provided that a person is not guilty of an offence under this subsection unless it is proved that he entered the port area or remained in the port area when requested to leave by a port security officer at a time when the Harbour Master has caused a sign to be prominently displayed at the entrance to the wharf to the effect that a person is guilty of an offence if he enters the port area without the consent of a port security officer or remains in the port area when requested to leave by a port security officer.

Power to question and search

31. (1) Every person entering the port area shall answer such questions as any port security officer may put to him with respect to the purpose of his entry, or concerning any baggage or other property carried with him, and shall, if so required by the port security officer produce that baggage or other property for examination at such place and in such manner as the officer may direct.

(2) A person who makes a false statement to a port security officer, in relation to the purpose of his entry, or concerning any baggage or other property carried with him or refuses to produce any baggage or other property carried with him when requested to do so in accordance with section 28(1) is guilty of an offence for which the maximum penalty on conviction is imprisonment for a period of 12 months or a fine of £5,000, or both.

Part 9
Safety and security

Regulation of crowds

32. (1) The Director of Police, after consultation with the Harbour Master, with a view to maintaining order and securing the safety of the public, may give such orders as he considers expedient for the purpose of regulating the passage of vessels in harbour waters, or for regulating the number of persons permitted access to any landing place, on any occasion when he has reason to believe crowds of persons are likely to assemble.

(2) The Harbour Master or any police officer may board a vessel, the Master of which refuses or neglects to comply with any order given pursuant to subsection (1), for the purpose of taking such measures as he or they deem necessary for carrying into effect the objects of such order.

(3) Any person who refuses or neglects to obey any order given pursuant to subsection (1), or any person who impedes the right of access to a vessel thereunder, or who otherwise obstructs the Harbour Master or any police officer in the exercise of their powers under this section is guilty of an offence for which the maximum penalty on conviction is imprisonment for a period of three months or a fine of £500, or both.

Power of arrest without warrant

33. The Harbour Master, his deputy, any assistant harbours master or any police officer or customs officer may arrest, without warrant, any person whom he has reasonable grounds to suspect is guilty of committing or attempting to commit an offence under this Ordinance which carries a term of imprisonment.

Part 10
Other offences

Impersonation of Harbour Master

34. Any person who, with intent to deceive, impersonates the

Harbour Master, or makes any statement or does any act calculated falsely to suggest that he is acting under the authority of or on behalf of the Harbour Master, is guilty of an offence for which the maximum penalty on conviction is imprisonment for a period of six months or a fine of £2,000, or both.

Obstructing Harbour Master in execution of duty

35. Any person who assaults, resists, or obstructs any port security officer in the lawful execution of duty is guilty of an offence for which the maximum penalty on conviction is a fine of £10,000 or imprisonment for a term of five years, or both.

Part 11 Miscellaneous

Service of documents

36. Any notice or other document required or authorised by or under this Ordinance to be given to or served upon a person—

- (a) being a corporate body, society or association, may be duly given to or served upon the secretary, manager or other officer of that corporate body, society or association;
- (b) being a partnership, may be duly given or served by addressing the same to the partnership, identifying it by the name or style under which its business is carried on;
- (c) being an individual may be duly given or served by delivering it to him or by leaving it at or posting it to his last known address.

Regulations

37. The Governor in Council, may make regulations for the further and better execution of this Ordinance and, without prejudice to the generality of this power, such regulations may provide for—

- (a) anything which by this Ordinance is required or permitted to be prescribed;
- (b) for the repair, maintenance and preservation of any land or landing place, road or goods, and for the maintenance of good order and safe navigation of vessels;
- (c) for the safety of persons entering upon any landing place or road adjacent thereto for any purpose, including the disembarking from or boarding of any vessel;
- (d) the mooring, removal and general navigation of vessels of all descriptions, and the packing, landing, deposit or removal of firearms and ammunition, gunpowder, explosives or other dangerous goods;

- (e) the watering, ballasting, loading and general discharging of the cargo of vessels, whether within harbour waters or on any landing place;
- (f) the management and control generally of all vessels, or any particular class of vessel, in harbour waters, including any requirements pertaining to the arrival in or departure therefrom, and the raising, removal and destruction of wrecks or other obstructions;
- (g) the licensing of vessels, or any class thereof permitted to operate in harbour waters, and the fees to be charged for and the conditions attached to such licences;
- (h) the renewal of such licences, and their suspension or revocation;
- (i) tests of competence to be undertaken by applicants for certificates, and conditions which may be attached to certificates issued;
- (j) the condition and examination of vessels, or any class of vessel, the fees to be charged for such examination, and the numbering or marking of such vessels;
- (k) the number of persons permitted to be carried as passengers in any boat or class thereof, the lights and safety equipment to be carried on board, and provisions for the safety of passengers carried on such vessels;
- (l) the establishment of a Port Authority, the appointment, resignation, and dismissal of members thereof, and the powers, duties and remuneration of members of the Board;
- (m) provisions authorising any person or class of persons to sell, buy or exchange any goods, including the boarding of any vessel moored in harbour waters for that purpose, and the fees to be charged for such authorisation;
- (n) provisions authorising the Harbour Master or the Chief of Police to permit or prohibit any person boarding or disembarking from any vessel moored in harbour waters, in such circumstances as may be deemed appropriate, and conditions which may be attached to any permission granted;
- (o) provisions for the order of precedence between different classes of vessels, whether moored or navigating in harbour waters;
- (p) provisions for circumstances which will constitute an offence, and the respective penalties for such offences, not exceeding a penalty of six months imprisonment and/or a fine £2,000 on summary conviction for any particular offence;
- (q) the documents necessary and the procedure for the making, determination and notification of the result of appeals by persons aggrieved by any decision or determination of the Harbour Master or Chief of Police under the provisions of this Ordinance;
- (r) the exemption by such authority as may be specified from all or any of the provisions of this Ordinance in respect of any person, vessel, or of any respective class thereof, for such period and in such circumstances as may be deemed appropriate.

Crown exemption

38. With the exception of the provisions of this Ordinance relating to dangerous projections and the removal of obstructions, nothing in this Ordinance shall affect prejudicially any estate, interest, right, power, privilege or exemption of the

Crown and, in particular, nothing in this Ordinance shall authorise the Harbour Master to take, use or interfere with any land, goods or rights therein belonging to the Crown in right of the Government or used for the purposes of any Government department.

Repeal and transitional provisions

- 39.** (1) The Harbours Ordinance, Cap. 41, and the Port Security Ordinance, 2006, are repealed.
- (2) Notwithstanding the repeal of the Harbours Ordinance, Cap. 41 by subsection (1), any person appointed immediately before such repeal as Harbour Master, deputy harbour master or assistant harbour master under section 3 of that Ordinance, shall be deemed to have been respectively appointed as such under section 3 of this Ordinance.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

The purpose of this Ordinance is to review and re-enact the provisions relating to ports and port security in St Helena.