


<p>EXPLANATORY NOTE to the</p> <p>Welfare of Children (Cruelty to Children and Young Persons) (Amendment) Ordinance</p>	<p>Prepared by the Attorney General on 29.08.2017</p>	
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1. These Explanatory Notes relate to the Welfare of Children (Amendment) Ordinance 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.
2. The Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
3. These Notes might be best read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

Purpose of the Bill:

4. This Bill is proposed in order to strengthen the provisions in the laws of St Helena in relation to cruelty to children.

Policy Background:

5. This Bill will afford more protection to children whenever they are the victim of mistreatment and harm.

Clause 1 – Short title:

6. This is the title of the Bill and is cited as the Welfare of Children (Cruelty of Children and Young Persons)(Amendment) Ordinance 2017.

Clause 2 – Cruelty to children and young people:

7. Currently, section 144 of the Welfare of Children Ordinance 2008 deals with cruelty to children. The proposed amended section introduces the following changes:
 - a. It expands the definition of ill-treatment by including physical or other types of ill-treatment (psychological, emotional, etc.);
 - b. The same extension of the definition of ill-treatment applies where a person causes or procures the child to be ill-treated;
 - c. The penalty remains £2,000 fine or imprisonment for 2 years.

8. The distinction between summary / indictment sentence on conviction is removed as it is no longer needed as section 2 of the Criminal Justice (Sentencing) Ordinance provides that:

“2. Where an Ordinance, or any English Law applied to St Helena by or pursuant to the English Law (Application) Ordinance, 2005, provides for different penalties for an offence according to whether conviction for such offence is summary or on indictment, or according to any other difference of circumstance, such Ordinance or Law shall be read as providing that the maximum penalty that a Court may impose on conviction shall be (subject to any rule of law limiting the powers of courts subordinate to the Supreme Court) the higher or the highest of the penalties so provided.”

9. Paragraph (b) amends section 144(2)(b) which currently states:

“where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of 17 years and was at the time of going to bed **or at any later time before the suffocation**, under the influence of drink or any drug, then that other person shall be deemed to have neglected that infant in a manner likely to cause injury to the infant’s health;”

10. The amendment is to insert the words in **bold** above.

11. The next amendment is an insertion in order to define what constitutes a “bed” for the purposes of the offence:

“(2A) The reference in subsection (2)(b) to the infant being “in bed” with another (“the adult”) includes a reference to the infant lying next to the adult in or on any kind of furniture or surface being used by the adult for the purpose of sleeping (and the reference to the time when the adult “went to bed” is to be read accordingly).”;

Clause 3 – Amendment of legislation

12. This clause amends Section 22 of the Police and Criminal Evidence Ordinance, Cap 24 which currently states:

“Arrest without warrant for arrestable and other offences

22. (1) The powers of summary arrest conferred by the following subsections shall apply—
(a) to offences for which the sentence is fixed by law;
(b) to offences for which a person of 21 years of age or over (not previously convicted) may be sentenced to imprisonment for a term of five years; and
(c) to the offences to which subsection (2) below applies, and in this Ordinance “arrestable offence” means any such offence.

(2) The offences to which this subsection applies are—

- (a) offences for which a person may be arrested under the Customs Ordinance, Cap. 145;
- (b) offences under the Official Secrets Act 1920 that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them;
- (c) offences under any provision of the Official Secrets Act 1989 except section 8(1), (4) or (5);
- (d) offences under section 22 (causing prostitution of women) or 23 (procurement of girl under 21) of the Sexual Offences Act 1956; and
- (e) an offence under section 53 of the Road Traffic Ordinance, Cap. 101 (taking motor vehicle or other conveyance without authority etc.);
- (f) an offence under section 25(1) of the Theft Act 1968 (going equipped for stealing, etc.);
- (g) an offence under section 2 of the Obscene Publications Ordinance, Cap. 27 (publication of obscene matter);
- (h) an offence under section 1 of the Protection of Children Act 1978 (indecent photographs and pseudo-photographs of children);
- (i) an offence under section 17 of the Summary Offences Ordinance, Cap. 24 (incitement to racial hatred)."

13. The Amendment Bill adds the following paragraph to subsection (2):

"(j) offences under section 144 of the Welfare of Children Ordinance, 2008."

14. This to ensure that offences committed under section 144 of the Welfare of Children Ordinance 2008 will be arrestable offences.

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