

EXPLANATORY NOTE to the
Port and Aerodrome (Health)
Ordinance 2017

Prepared by the Attorney General
on 06.12.2017



1. These Explanatory Notes relate to the Port and Aerodrome (Health) Bill 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. The purpose of this Bill is to regulate port and aerodrome health and prevent the spread of infection or contamination which may be potentially introduced by ships or aircrafts arriving in or departing from St Helena.
5. This Bill will give the St Helenian Authorities a range of powers to prevent or stop the spread of an infectious or communicable disease or contamination, on ships, in ports, on aircrafts or at the aerodrome, affecting the population of St Helena. This Bill proposes a number of offences for non-compliance with the requirements in the Bill and gives the court the power to make orders in relation to persons, premises or other things who are, or may be, infected or contaminated.

Policy Background:

6. Currently the provisions of the Port (Health) Ordinance and the associated Regulations give the Health Protection Board powers in relation to hygiene and sanitation on ships. There are no legal authorities for any Public Health personnel to take action in relation to hygiene and sanitation on aircrafts and to prevent the spread of infection or contamination on aircrafts. Therefore, this Bill seeks to update the law in this regard and to add a new range of powers for Public Health personnel, in relation to both ships and aircraft, to curb the spread of infection which are lacking in the current Ordinance.

Clause 1 – Short title:

7. This is the title of the Bill and is cited as the Port and Aerodrome (Health) Ordinance 2017.

Clause 2 – Interpretation:

8. The interpretation clause defines the meaning of a number of words and expressions used in the Bill.
9. Throughout the interpretation section, there are references to International Conventions, International Regulations and international health bodies. This Bill incorporated procedures and definitions from these international sources into St Helenian Ordinance as they reflect the international standards in operation.

Clause 5 – Requirement to notify actual or suspected infection or contamination:

10. This clause applies to inbound international voyages on ships and international flights and sets out the responsibilities of the master of the ship or pilot in command of an aircraft when it is his or her reasonable view, in other words, a view that any master or pilot of his or her experience would reasonably hold, that there may be an infectious or communicable disease or contamination on the ship / aircraft.
11. Once the master / pilot forms a reasonable view, then he or she must ensure that the Health Protection Board of St Helena is notified as soon as reasonably possible. If the master / pilot fails to notify the Health Protection Board without a reasonable excuse, commits an offence (and the penalty is a fine of £5,000).

Clause 6 – Requirement to submit Maritime Declaration of Health

12. This clause creates an obligation for the master of a ship to submit a Maritime Declaration of Health to the Health Protection Board in certain circumstances set out in the clause. Annex 8 of the International Health Regulations establishes what the Maritime Declaration of Health must contain. This clause also allows the proper officer to request a Maritime Declaration of Health from a ship in the circumstances set out in the clause. This clause creates an offence for failure by the master to comply with this clause without a reasonable excuse (penalty a fine of £5,000).

Clause 7 – Requirement to submit Health Part of the Aircraft General Declaration

13. This clause mirrors clause 6. It creates an obligation for the pilot in command of an aircraft to submit the Health Part of the Aircraft General Declaration to the Health Protection Board in certain circumstances which are set out in the clause and are similar to those in clause 6.

14. The Health Part of the Aircraft General Declaration requires details of any person on board with illnesses who may be suffering from a communicable disease, or a number of symptoms which could indicate a communicable disease, and includes those who disembarked at a previous stop. The Declaration also requires details of any removal of insects or sanitary treatment used during the flight, or details of the most recent occasion where there was removal of insects. Any crew member can sign the Declaration, but it must be the pilot in command who submits it to the Health Protection Board (for more information see the International Health Regulations: <http://apps.who.int/iris/bitstream/10665/246107/1/9789241580496-eng.pdf?ua=1>).

15. The Health Part of the Aircraft General Declaration must be received by the Health Protection Board as soon as practicable after the pilot in command is required to make the notification or when a proper officer has requested it. This clause also creates an offence if the pilot in command does not comply with this clause without a reasonable excuse.

Clause 8 – Securing safe and convenient location for inbound ship or aircraft

16. This clause gives the proper officer the power to request that the Harbour Master or aerodrome operator ensure that the ship or aircraft is in a part of the port or aerodrome which will limit the risk of spreading any infection or communicable disease which is suspected to be present.

17. This clause also creates an offence for a Harbour Master or aerodrome operator who is reasonably able to comply but fails to comply with the above request of the proper officer (penalty a fine of £5,000).

Clause 9 – Securing of passenger and crew information

18. This clause deals with passenger and crew information in circumstances where a Declaration is required (under clauses 6 and 7). If the proper officer requests that the master of a ship or pilot in command of an aircraft provide information in respect of the passengers or crew who are or were at risk of being infected / contaminated and their contact information, such information must be provided. The master or pilot in command must use best endeavours to secure that information requested by the proper officer, prior to the passengers or crew leaving the ship or aircraft. Best endeavours means that the master or pilot in command must take all steps in their power which are capable of producing the information requested. This is quite a high responsibility on the master or pilot in command and almost equates to an obligation to secure that information.

19. If the master or pilot in command fails to comply with the request of the proper officer he or she commits an offence, unless he had a reasonable excuse for not doing so, the penalty is a fine of £5,000.

Clause 10 – Ship or aircraft to be allowed to carry out embarkation or disembarkation of passengers etc.

20. This clause sets out the circumstances where a proper officer can prevent a ship or aircraft from getting passengers or crew on or off board, discharging or loading cargo, or taking on fuel, water and supplies.

Clause 11 – Compliance with hygiene and sanitation requirements

21. This clause requires the master of a ship on an international voyage to produce a valid ship sanitation certificate if this is requested by a proper officer. A ship sanitation certificate means that the ship has undergone a comprehensive and detailed inspection by personnel who are trained in public health issues.

Clause 12 – Notifying next port of call or destination aerodrome of risk of infection or contamination

22. This clause sets out when a proper officer must notify another authority responsible for preventing the spread of infection or contamination and what the notification should contain.

Clause 13 – Risk assessment of persons by proper officer

23. This clause sets out when a proper officer can carry out a risk assessment. For the risk assessment to take place, the proper officer must have reasonable grounds of believing that a person presents or could present a risk, for instance when the responsible authority (the Health Protection Board) has received a notification from a master of a ship or pilot in command of an aircraft that a passenger or crew member is suffering from, or may be suffering from, an infectious or communicable disease or contamination.

Clause 14 – Detention for purpose of risk assessment

24. This clause deals with the circumstances where detention of a person may be necessary in order to carry out a risk assessment. This clause sets out the procedure and process of detention and sets out the responsibilities of the public health officer and the time limits if detention is necessary.

Clause 15 – Continued detention for purposes of application for order.

25. This clause sets out the provisions for continued detention of a person for a risk assessment, where there is a medical examination as part of that assessment and that risk assessment has been completed. The proper officer can also detain a person where he has reasonable belief that an application under clause 16 is immediately required. This clause also gives powers to any police officer to take a person into custody, or return him or her to the place of detention, if he has absconded from such detention (and the time limit has not elapsed) and creates an offence of absconding.

Clause 16 – Power to make orders in relation to persons

26. This clause gives power to the Chief Magistrate to make an order in relation to persons as long as the Chief Magistrate is satisfied that the grounds in clause 16 (1)(a) – (d) exist. An order can put restrictions on a person if there is a risk that a person might infect or contaminate others.

Clause 18 – Risk assessment by proper officer

27. This clause explains when a proper officer can carry out a risk assessment of a ship, aircraft or anything on board. Reasonable grounds for believing that the ship or aircraft presents a risk of spreading infection can include any notification made to the Health Protection Board by the master of a ship or pilot in command that there may be incidents of infectious or communicable diseases on board.

Clause 19 – Inspection as part of carrying out a risk assessment

28. This clause sets out what a proper officer can do and look at as part of the risk assessment when on board the ship or aircraft. Where the proper officer enters the ship or aircraft because of a warrant, or under his powers to enter premises, the proper officer may seize, detain or remove things that may spread infection or can help to establish the cause of the infection. The clause also sets out the notification requirements if the risk assessment concerns a ship in port or an aircraft at the aerodrome.

Clause 20 – Power to enter premises

29. This clause allows the proper officer to enter into any premises at all reasonable hours to do the things set out in the clause. The power to enter premises does not include those parts of a premises which are used as someone's home, unless there is a warrant authorised by the Chief Magistrate to allow this. This clause also sets out what the Chief Magistrate must consider when deciding to make a warrant, or to do away with notification requirements.

Clause 21 – Supplementary provisions as to entry

30. If the proper officer is authorised under clause 20 to enter premises, this clause allows the proper officer to carry out all of the actions listed in the clause. Warrants issued under clause 20 remain in force until the purpose for which they were created has been carried out or satisfied.

Clause 22 – Power to require master or aircraft operator to carry out health measures

31. This clause gives the proper officer the power to require the master or aircraft operator to carry out health measures in respect of that ship or aircraft. If the master or aircraft operator fails to comply with the notice issued by the proper officer, he or she commits one or more offences.

Clause 23 – Power to charge in connection with health measures

32. This clause gives the Health Protection Board (the responsible authority) the ability to charge the master or aircraft operator if the proper officer carries out the health measures in clause 22, where the health measure does not relate to a passenger's baggage. The Executive Council may prescribe tariffs for such charges and the payment of that charge should be made before the start of the health measure.

Clause 26 – Power to carry out health measures in respect of people, things or premises on request

33. This clause deals with circumstances where a person requests a proper officer to carry out health measures in relation to the matters listed in the clause. The Health Protection Board as responsible authority may charge for any health measure carried out as long as that person is aware of the charge and agrees to it, before the health measures are carried out.

Clause 27 – Power to request information

34. Where a proper officer has reasonable grounds to believe that a person, ship, aircraft or other thing could present a risk of spreading infection, the proper officer may request information if there are reasonable grounds to believe that there is information to assess, remove or reduce the level of risk presented. This clause details the information that the proper officer can request in relation to a person, ship, aircraft or other thing. If a person does not comply with the request, without a reasonable excuse, that person commits an offence.

Clause 29 – Duty to inform officer of Revenue and Customs

35. This clause imposes a duty on the proper officer to inform a customs officer when the proper officer carries out any of the following in relation to a person or thing which would affect the customs officer's duties or functions:
- Securing a safe and convenient location for inbound ship or aircraft,
 - Notifying next port of call or destination aerodrome of risk of infection or contamination,
 - Risk assessment of a person by the proper officer,
 - Risk assessment of a ship, aircraft or any thing on board,
 - Inspection as part of that risk assessment of a ship, aircraft or any thing on board,
 - Entering premises at reasonable hours, whether under the power given to the proper officer under clause 20 or by a warrant issued by the Chief Magistrate
 - Requiring a master or aircraft operator to carry out health measures,
 - Carrying out health measures in respect of people, things or premises on request.

Clause 30 – False or misleading information

36. This clause creates an offence for a person who intentionally or recklessly provides false or misleading information to a proper officer carrying out a function under this Bill. A person provides false information recklessly if that person provides the information carelessly. The maximum penalty is a fine of £20,000.

Clause 31 – Obstruction

37. This clause creates an offence where a person wilfully obstructs a proper officer carrying out a function under this Bill. Wilful obstruction will include intentionally stopping or preventing the proper officer from performing any actions authorised by the Ordinance, for example, by physically blocking an entrance to an aircraft so that the proper officer cannot carry out a risk assessment.

Clause 33 – Regulations

38. This clause allows the Executive Council to make regulations in order to bring about some of the provisions in this Bill. This clause lists the likely subjects that the Executive Council may make regulations on and these may include procedures and processes.

Clause 34 – Repeal of legislation

39. This clause repeals the Port (Health) Ordinance of 1905.

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