



**ST HELENA**

**REVISED EDITION OF THE LAWS 2017**

**SECURITY & LAW ENFORCEMENT**

**CONSULAR RELATIONS ORDINANCE, 1972<sup>1</sup>**

*Ordinance 4 of 1972  
In force 24 April 1973*

*Amended by Ordinance 6 of 2016*

*Subsidiary legislation:*

**CONSULAR RELATIONS (MERCHANT SHIPPING) ORDERS**

*Legal Notices 5 to 22/1973, 18/1977, 1/1979*

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**CONSULAR RELATIONS ORDINANCE, 1972**

**ARRANGEMENT OF SECTIONS**

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  3. Restriction of privileges and immunities
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AN ORDINANCE –

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<sup>1</sup> Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

- (a) to give effect in St Helena to the Vienna Convention on Consular Relations;
- (b) to enable effect to be given in St Helena to other agreements entered into by Her Majesty's Government in the United Kingdom concerning consular relations and to make further provision with respect to consular relations in St Helena between the United Kingdom and other countries and matters arising in connection therewith;
- (c) to restrict the jurisdiction of courts in St Helena concerning certain ships, or matters arising on board certain ships;
- (d) to enable diplomatic agents and consular officers in St Helena to administer oaths and do notarial acts in certain cases; and
- (e) for purposes connected with those matters.

### Short title

1. This Ordinance may be cited as the Consular Relations Ordinance, 1972.

### Application of Vienna Convention on Consular Relations

2. (1) Subject to section 3 and to section 4(2), the provisions set out in the First Schedule to this Ordinance (being Articles or parts of Articles of the Vienna Convention on Consular Relations) have the force of law in St Helena and are for that purpose to be construed in accordance with subsections (2) to (9) of this section.

- (2) In those provisions, for purposes of this Ordinance—
- “**authorities of the receiving State**” include any police officer and any person exercising a power of entry to any premises under any enactment;
- “**grave crime**” means any offence punishable (on a first conviction) with imprisonment for a 5 years or more;
- “**Ministry for Foreign Affairs**” means the Foreign and Commonwealth Office of Her Majesty's Government in the United Kingdom;
- “**national of the receiving State**” means a British citizen, a British overseas territories citizen, a British overseas citizen, a British subject or a British protected person, within the meaning of the British Nationality Act, 1981 (UK);
- “**Vienna Convention on Consular Relations**” means the Convention of that name signed at Vienna in 1963;
- “**Vienna Convention on Diplomatic Relations**” means the Convention of that name signed at Vienna in 1961.

(3) The references in paragraph 2 of Article 17 to any privileges and immunities accorded by customary international law or by international agreements are to be construed as references to any privileges and immunities conferred by or under the International Organisations Acts 1968, 1980 and 2005 (UK), as amended or replaced from time to time.

(4) The reference in Article 44 to matters connected with the exercise of the functions of members of a consular post are to be construed as references to matters connected with the exercise of consular functions by consular officers or consular employees.

(5) For the purposes of Article 45 and that Article as applied by Article 58 a waiver is deemed to have been expressed by a State if it has been expressed by the head, or any person for the time being performing the functions of head, of the diplomatic mission of

that State or of the consular post concerned.

(6) Articles 50, 51, 52, 54, 62 and 67 are to be construed as granting any privilege or immunity which they require to be granted.

(7) The reference in Article 57 to the privileges and immunities provided in Chapter II is to be construed as referring to those provided in Section II of that Chapter.

(8) The reference in Article 70 to the rules of international law concerning diplomatic relations are to be construed as a reference to the provisions of the Diplomatic Privileges Acts 1964 and 1971 (UK) as amended or replaced from time to time.

(9) The references in Article 71 to additional privileges and immunities that may be granted by the receiving State or to privileges and immunities so far as these are granted by the receiving State are to be construed as referring to such privileges and immunities as are specified by the Governor by order made with the concurrence of a Secretary of State.

### **Restriction of privileges and Immunities**

3. If it appears to the Governor that the privileges and immunities accorded to a consular post of the United Kingdom in a territory of any State, or to persons connected with such a consular post, are less than those conferred by this Ordinance on a consular post of that State or on persons connected with such a consular post, the Governor may, with the concurrence of a Secretary of State, by order withdraw such of the privileges and immunities so conferred from all or any of the consular posts of that State in St Helena or from such persons connected therewith as appears to the Governor to be proper.

### **Agreements providing for additional or reduced privileges and immunities**

4. (1) If any agreement made, whether before or after the commencement of this Ordinance, between the United Kingdom and any other State provides for according to consular posts and person connected with them privileges and immunities not accorded to them by the other provisions of this Ordinance, the Governor may, with the concurrence of a Secretary of State, by order exercise, with respect to the consular posts of that State in St Helena and persons connected with them, the powers specified in the Second Schedule to this Ordinance so far as may be necessary to give effect to that agreement.

(2) If any agreement made, whether before or after the commencement of this Ordinance, between the United Kingdom and any other State provides for according to consular posts and persons connected with them some but not all of the privileges and immunities accorded to them by the other provisions of this Ordinance, the Governor may, with the concurrence of a Secretary of State, by order provide for excluding, with respect to consular posts of that State in St Helena and persons connected with them, any of those privileges and immunities which are not provided for by the agreement.

### **Civil jurisdiction concerning service on board ship**

5. The Governor may by order make provision for excluding or limiting the jurisdiction of any court in St Helena to entertain proceedings relating to the remuneration or any contract of service of the master or a member of the crew of any ship belonging to a State

specified in the order, except where a consular officer of that State has been notified of the intention to invoke the jurisdiction of that court and has not objected within a time specified by or under the order.

### **Jurisdiction over offences committed on board ship**

**6. (1)** The Governor may by order make provisions for securing that, where an offence is alleged to have been committed on board any ship by the master or a member of the crew and the ship belongs to a State specified in the order, proceedings for the offence instituted otherwise than at the request or with the consent of a consular officer of that State are not entertained by any court in St Helena unless—

- (a) the offence is alleged to have been committed by or against a person who comprised in the definition of “national of the receiving State” in section 2(2), or against a person other than the master or a member of the crew; or
- (b) the offence is one involving the tranquillity or safety of a port, or the law relating to safety of life at sea, public health, oil pollution, wireless telegraphy, immigration or customs, or is of any other description specified in the order; or
- (c) the offence is one comprised in the definition of “grave crime” in section 2(2).

**(2)** For the purposes of this section, an offence which affects the property of any person is deemed to have been committed against the person.

**(3)** For the purposes of this section, any document purporting to be signed by or on behalf of a consular officer and stating that the officer has requested or consented to the institution of any proceedings is sufficient proof of that fact unless the contrary is shown.

### **Detention on board ship for disciplinary offences**

**7.** The Governor may by order designate any State for the purposes of this section; and where a State is so designated a member of the crew of a ship belonging to that State who is detained in custody on board for a disciplinary offence is not deemed to be unlawfully detained unless—

- (a) his or her detention is unlawful under the laws of that State or the conditions of detention are inhumane or unjustifiably severe; or
- (b) there is reasonable cause for believing that his or her life or liberty will be endangered for reasons of race, nationality, political opinion or religion in any country to which the ship is likely to go.

### **Ship belonging to a State**

**8.** For the purposes of section 5, 6 or 7, a ship is to be treated as belonging to a State in circumstances specified by an order made under the respective section; and different circumstances may be so specified with respect to different States and different classes of ship.

### **Authorised refund of duties paid on hydrocarbon oils**

**9. (1)** The Governor may authorise the Collector of Customs and Excise to make any arrangements the Governor thinks fit for securing the refund of duties imposed on hydrocarbon oils under the Customs and Excise Ordinance, 1999, if such hydrocarbon oils

are—

- (a) imported into St Helena; and
- (b) used for such purpose that, had they been imported for that use, exemption from customs duty would have been required to be granted under—
  - (i) Article 50 in the First Schedule to this Ordinance; or
  - (ii) an order made under section 4(1) of this Ordinance.

(2) Any arrangements made under this section may impose conditions subject to which any refund is to be made.

(3) Any amount of money refunded under arrangements made under this section must be paid from the Consolidated Fund.

### **Right of diplomatic agents and consular officers to administer oaths and do notarial acts**

10. (1) A diplomatic agent or consular officer of any State may, if authorised to do so under the laws of that State, administer oaths, take affidavits and do notarial acts—

- (a) required by a person for use in that State or under its laws; or
- (b) otherwise required by a national of that State but not for use in St Helena except under the laws of some other country.

(2) The Governor may by order exclude or restrict the provisions of subsection (1) in relation to the diplomatic agents or consular officers of any State in St Helena if it appears to the Governor that in any territory of that State diplomatic agents or consular officers of the United Kingdom are not permitted to perform functions corresponding in nature and extent to those authorised by that subsection.

(3) In this section “**diplomatic agent**” has the same meaning as in the Diplomatic Privileges Act 1964 (UK) as amended or replaced from time to time.

### **Evidence**

11. If any question arises whether or not any person is entitled to any immunity or privilege under this Ordinance, a certificate issued by the Governor with the concurrence of a Secretary of State stating any fact relating to that question is conclusive evidence of that fact.

### **Privileges and immunities of official representatives of Commonwealth countries, etc.**

12. (1) The Governor may by order direct that any person in the service of a Commonwealth country or of the Republic of Ireland or in the service of a state or province of any such country holding the office or class office specified in the order, being an office or class of office that appears to the Governor to involve the performance of duties substantially corresponding to those which, in the case of a sovereign foreign State, would be performed in St Helena by a consular officer within the meaning of this Ordinance, has all the immunities and privileges that are or may be conferred upon a consular officer by or under this Ordinance.

(2) If the Governor has made an order under subsection (1) in respect of any person—

- (a) the members of the staff of the person have the immunities and privileges conferred upon the staff of a consular officer by or under this Ordinance; and
- (b) the provisions of Articles 31 to 39 and 51 in the First Schedule to this Ordinance apply with necessary changes in relation to the premises, official archives, communications, documents and personal property of the person.

(3) An order made by the Governor under subsection (1) may exclude from any immunity or privilege conferred under it any person who is permanently resident in St Helena or is within the definition of “national of the receiving State” in section 2(2).

(4) An order made by the Governor under subsection (1) may apply to the persons specified in the order and to the premises, residences and communications of such persons the provisions of the Second Schedule to this Ordinance.

### **Application of specified Articles in the Vienna Convention on Diplomatic Relations**

13. For the purposes of paragraphs 4, 5 and 6 of the Second Schedule to this Ordinance, paragraphs 1, 2, 3, 4 and 5 of the Third Schedule to this Ordinance (being Articles 29, 31, 22 paragraph 1 of Article 30 and paragraphs 1, 2, 3, 4, 5 and 6 of Article 27, respectively, of the Vienna Convention on Diplomatic Relations have the force of law in St Helena.

### **Orders of the Governor**

14. The power to make an order conferred upon the Governor by section 2(9), section 3, and section 4(1) and (2), of this Ordinance includes power to vary or revoke such an order by a subsequent order made with the concurrence of a Secretary of State.

## **FIRST SCHEDULE**

(Section 2(1))

### **PROVISIONS OF VIENNA CONVENTION ON CONSULAR RELATIONS HAVING THE FORCE OF LAW IN ST HELENA**

#### **Article 1** *Definitions*

1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them—

- (a) “consular post” means any consulate general, consulate, vice-consulate, or consulate agency;
- (b) “consular district” means the area assigned to a consular post for the exercise of consular functions.
- (c) “head of consular post” means the person charged with the duty of acting in that capacity;
- (d) “consular officer” means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;
- (e) “consular employee” means any person employed in the administrative or technical service of a consular post;

- (f) “member of the service staff” means any person employed in the domestic service of a consular post;
- (g) “members of the consular post” means consular officers, consular employees and members of the service staff;
- (h) “member of the consular staff” means consular officers, other than the head of a consular post, consular employees and members of the service staff;
- (i) “member of the private staff” means a person who is employed exclusively in the private service of a member of the consular post;
- (j) “consular premises” means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;
- (k) “consular archives” includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indices and any articles of furniture intended for their protection or safekeeping.

2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers; the provisions of Chapter III govern consular posts headed by honorary consular officers.

3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by Article 71 of the present Convention.

## **CHAPTER I CONSULAR RELATIONS IN GENERAL**

### **Article 5** *Consular functions*

Consular functions consist in:

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;

- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession *mortis causa* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
- (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;
- (l) extending assistance to vessels and aircraft mentioned in sub-paragraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorised by the laws and regulations of the sending State;
- (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

### **Article 15**

#### *Temporary exercise of the functions of the head of a consular post*

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.
2. The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The

receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.

3. The competent authorities of the receiving State shall afford assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.

4. When, in the circumstances referred to in paragraph 1 of this Article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State designated by the sending State as an acting head of post, he shall, if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

### **Article 17**

#### *Performance of diplomatic acts by consular officers*

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorised to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.

2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organisation. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

## **CHAPTER II**

### **FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CONSULAR POSTS, CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST**

#### **SECTION I**

#### **FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO A CONSULAR POST**

### **Article 31**

#### *Inviolability of the consular premises*

1. Consular premises shall be inviolable to the extent provided in this Article.
2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of a designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in the case of fire or other disaster requiring prompt protective action.

3. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for the purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

### **Article 32**

#### *Exemption from taxation of consular premises*

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or occupier shall be exempt from all national, regional or municipal dues and taxes whoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with a person acting on its behalf.

### **Article 33**

#### *Inviolability of the consular archives and documents*

1. The consular archives and documents shall be inviolable at all times and wherever they may be.

### **Article 35**

#### *Freedom of communication*

1. The receiving State shall permit and protect freedom of communication in the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorised representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State, its diplomatic missions and its consular posts may designate consular couriers ad hoc. In such cases the provisions of paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

### **Article 39**

#### *Consular fees and charges*

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.

2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges shall be exempt from all dues and taxes in the receiving State.

## SECTION II

### FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

### **Article 41**

#### *Personal inviolability of consular officers*

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

2. Except in the case specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

### **Article 43**

#### *Immunity from jurisdiction*

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either:

- (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
- (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle or vessel.

#### **Article 44**

##### *Liability to give evidence*

1. Members of a consular post may be called upon to attend as witnesses during the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.

2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.

3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

#### **Article 45**

##### *Waiver of privileges and immunities*

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43 and 44.

2. The waiver shall in all cases be express, except as provided in paragraph of this Article, and shall be communicated to the receiving State in writing.

3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

#### **Article 48**

##### *Social security exemption*

1. Subject to the provisions of paragraph 3 of this Article, members of the consular post with respect to services rendered by them for the sending State, and members of their families

forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this Article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:
  - (a) that they are not nationals of or permanently resident in the receiving State; and
  - (b) that they are covered by the social security provisions which are in force in the sending State or a third State.
3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.
4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

#### **Article 49**

##### *Exemption from taxation*

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:
  - (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
  - (b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32;
  - (c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of Article 51;
  - (d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;
  - (e) charges levied for specific services rendered;
  - (f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.
2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.
3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

#### **Article 50**

##### *Exemption from Customs duties and inspection*

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the consular post;
- (b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.

2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.

3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in subparagraph (b) of paragraph 1 of this Article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

### **Article 51**

#### *Estate of a member of the consular post or of a member of his family*

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State:

- (a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;
- (b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

### **Article 52**

#### *Exemptions from personal services and contributions*

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

### **Article 53**

#### *Beginning and end of consular privileges and immunities*

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.

2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and

immunities in accordance with paragraph 1 of this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.

**3.** When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the person referred to in paragraph 2 of this Article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

**4.** However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.

**5.** In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

#### **Article 54**

##### *Obligations of third States*

**1.** If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

**2.** In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of the families forming part of their households.

**3.** Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.

**4.** The obligation of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official

communications and to consular bags, whose presence in the territory of the third State is due to force majeure.

### **Article 55**

#### *Respect for the laws and regulations of the receiving State*

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3. The provisions of paragraph 2 of this Article shall not exclude the possibility of officers of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

### **Articles 57**

#### *Special provisions concerning private gainful occupation*

2. Privileges and immunities provided in this Chapter shall not be accorded:
- (a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;
  - (b) to members of the family of a person referred to in sub-paragraph (a) of this paragraph or to members of his private staff;
  - (c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

## **CHAPTER III**

### **REGIME RELATING TO HONORARY CONSULAR OFFICERS AND CONSULAR POSTS HEADED BY SUCH OFFICERS**

### **Article 58**

#### *General provisions relating to facilities, privileges and immunities*

1. Articles 35 and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 60, 61 and 62.

2. Articles 43, paragraph 3 of Article 44, Articles 45 and 53 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles 66 and 67.

3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.

### **Article 60**

#### *Exemption from taxation of consular premises*

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

#### **Article 61**

##### *Inviolability of consular archives and documents*

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books and documents relating to their profession or trade.

#### **Article 62**

##### *Exemption from customs duties*

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

#### **Article 66**

##### *Exemption from taxation*

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

#### **Article 67**

##### *Exemption from personal services and contributions*

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

### **CHAPTER IV GENERAL PROVISIONS**

#### **Article 70**

##### *Exercise of consular functions by diplomatic missions*

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.
2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.
4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

### **Article 71**

#### *Nationals or permanent residents of the receiving State*

1. Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44.
2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State.

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## **SECOND SCHEDULE**

(Sections 4(1) and 12(4))

### **PROVISIONS FOR GIVING EFFECT TO OTHER AGREEMENTS**

1. The like exemption from dues and taxes may be extended to the residence of any member of a consular post as is accorded under Article 32 in the First Schedule to this Ordinance to the residence of the career head of a consular post.
2. Paragraph 1 of Article 49 in that Schedule may be extended to members of the service staff.
3. Paragraph 2 of Article 50 in that Schedule may be applied as if it were among the Articles mentioned in paragraph 2 of Article 58 in that Schedule, as if the reference to consular employees included members of the service staff and also such members of the families of consular employees or of members of the service staff as form part of their households, and as if the words “in respect of articles imported at the time of first installation” were omitted.

4. Paragraphs 1 and 2 of the Third Schedule to this Ordinance (inviolability and immunity from jurisdiction and arrest of diplomatic agents and exemption from duty to give evidence) may be extended to members of a consular post and members of their families forming part of their households.
5. Paragraph 3 of that Third Schedule (inviolability and protection of mission) may be extended to consular premises; and paragraph 4 of that Schedule (inviolability of private residence) may be extended to the residences of consular officers.
6. Paragraph 5 of that Third Schedule (freedom of communications) may be extended to the communications of a consular post.

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**THIRD SCHEDULE**  
(Section 13)

**APPLIED ARTICLES OF THE VIENNA CONVENTION  
ON DIPLOMATIC RELATIONS**

1. The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.
2. (1) A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of—
  - (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
  - (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
  - (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.
- (2) A diplomatic agent is not obliged to give evidence as a witness.
- (3) No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.
- (4) The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending States.
3. (1) The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

(2) The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

(3) The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

4. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

5. (1) The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

(2) The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

(3) The diplomatic bag shall not be opened or detained.

(4) The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

(5) The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

(6) The sending State or the mission may designate diplomatic couriers ad hoc. In such cases the provisions of paragraph (5) of this Article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

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## **CONSULAR RELATIONS ORDINANCE, 1972**

### **CONSULAR RELATIONS (MERCHANT SHIPPING) ORDERS<sup>2</sup>** (Sections 5, 7 and 8)

The following Orders have been made to establish when a ship belongs to a certain state and to what extent the jurisdiction of the Courts of St Helena are limited, and for related matters—

<u>Country</u>	<u>Legal Notice</u>	<u>Operative date</u>
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<sup>2</sup> The list is not up to date and will be revised appropriately

Kingdom of Norway	5/1973	24/4/73
Spain	6/1973	"
Kingdom of Sweden	7/1973	"
Kingdom of Greece	8/1973	"
Yugoslavia	9/1973	"
Mexico	10/1973	"
Japan	11/1973	"
Italy	12/1973	"
Germany	13/1973	"
Kingdom of Denmark	14/1973	"
Kingdom of Belgium	15/1973	"
Austria	16/1973	"
U.S.S.R.	17/1973	"
Bulgaria	18/1973	"
Romania	19/1973	"
United States of America	21/1973	"
France	22/1973	"
Czechoslovak Republic	18/1977	8/77
Hungary	18/1977	"
Poland	1/1979	1/2/79

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