



ST HELENA

REVISED EDITION OF THE LAWS, 2017

**COURTS AND JUSTICE**

**MAGISTRATES' COURT ORDINANCE, 2011<sup>1</sup>**

*Ordinance 17 of 2011  
In force 1 January 2012*

*Amended by Ordinances 11 of 2013 and 7 of 2016*

*No subsidiary legislation to 1 November 2017*

Notes:

1. For procedure in summary trials, see Part VI of the Criminal Procedure Ordinance, 1975
2. For the Magistrates' Court Fees Rules, 1984 see the Superior Courts (Appeals and Rules) Ordinance

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**MAGISTRATES' COURT ORDINANCE, 2011**

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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.

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AN ORDINANCE to provide for the constitution in St Helena of a Magistrates' Court, and for connected or incidental matters.

**PART I  
PRELIMINARY**

## Citation

1. This Ordinance may be cited as the Magistrates' Court Ordinance, 2011.

## Interpretation

2. In this Ordinance, unless the context otherwise requires—
  - “**action**” means a civil proceeding commenced in a manner prescribed by rules of court, and includes a suit;
  - “**cause**”, as a noun, means—
    - (a) any action, suit or other original civil proceeding between a plaintiff and a defendant; and
    - (b) any criminal proceeding;
  - “**Chief Justice**” means the Chief Justice appointed under section 90 of the Constitution;
  - “**Chief Magistrate**” means the person appointed to be the Chief Magistrate in accordance with section 7;
  - “**civil**”, in relation to matters of jurisdiction, comprehends all such matters as are regulated by or under the provisions of any written law relating to civil procedure;
  - “**Clerk**” means the Clerk of the Peace appointed under section 12;
  - “**Court**” means the Court established by this Ordinance, including the St Helena Juvenile Court;
  - “**criminal**” includes quasi-criminal, and in relation to matters of jurisdiction, comprehends all such matters as are regulated by or under the provisions of any written law relating to criminal procedure;
  - “**judgment**” and “**decree**” are to be deemed synonymous terms;
  - “**Justice**” means a Justice of the Peace appointed under section 8 and includes an *ex officio* Justice of the Peace;
  - “**matter**” includes every proceeding in a court not in a cause;
  - “**police service**” means the St Helena Police Force Service established by the Police Force Service Ordinance, 1975;
  - “**rules of court**” means rules of court made under section 89 of the Constitution or under any similar power conferred by any other written law;
  - “**Sheriff**” means the Sheriff of St Helena appointed under section 3 of the Sheriff of St Helena Ordinance, 1969;
  - “**Supreme Court**” means the St Helena Supreme Court constituted by section 82(1) of the Constitution.

## PART II CONSTITUTION OF THE COURT

### Magistrates' Court

3. (1) There shall continue to be, in St Helena, a court of summary jurisdiction subordinate to the Supreme Court which—
  - (a) is to be styled the St Helena Magistrates' Court; and
  - (b) is to be constituted in the manner provided by this section,
 and such court shall exercise such jurisdiction as is conferred upon it by the provisions of this or any other Ordinance or under any other law for the time being in force in St Helena.

(2) Subject to subsection (2A), the Court is duly constituted when it is held before—

- (a) the Chief Magistrate, either sitting alone or with one or more Justices; or
- (b) 2 or more Justices:

(2A) If, by virtue of any law in force in St Helena, a trial or hearing may take place before a single Justice, the Court is for the purpose of that trial or hearing duly constituted when composed of one Justice.

(3) At any sitting of the Court, if all Justices present and constituting the Court so agree, they may select from amongst themselves the Justice to preside as chair.

(4) If it proves impossible to select a Justice to preside as chair under subsection (3), the senior Justice of those present and constituting the Court, having regard to their respective dates of appointment, must preside as chair.

(5) If the Court is composed of an equal number of members, the most senior Justice has a second or casting vote on any issue upon which the opinion is equally divided.

(6) Subsections (3), (4) and (5) do not apply when the Court is held before the Chief Magistrate; and, when the Court is so held, the Chief Magistrate (unless he or she directs otherwise) presides as chair and has a casting vote on any issue as to which opinion is equally divided.

### **Territorial limits of jurisdiction**

4. The Court has and may exercise jurisdiction throughout St Helena. subject to any other laws extending the jurisdiction of the Court, territorial, personal or otherwise.”.

### **Seal**

5. The Court must have and use a seal of a nature and pattern approved by the Governor.

### **Contempt of Court**

6. (1) The powers of the Supreme Court to deal with any contempt of its authority extends to upholding the authority of the Court; and if any contempt is committed in the face of the Court, the Court may commit the person guilty of it immediately to prison pending an Order of the Supreme Court on the matter.

(2) Upon committing a person to prison in accordance with subsection (1), the Court must cause a copy of the warrant of commitment (together with a written statement by the Chief Magistrate or chair concerning the circumstances thereof) to be forwarded to the Registrar of the Supreme Court within 24 hours.

(3) The Court may revoke an order made under subsection (1) if (at any time within 12 hours of the making of it) it appears that the contempt has been purged; and

thereupon the person committed must be forthwith released, but without affecting subsection (2).

### **PART III MAGISTRATES AND OFFICERS OF THE COURT**

#### **Appointment of Chief Magistrate**

7. (1) The Governor may, subject to section 90(4) of the Constitution, appoint a suitably qualified and experienced person to be the Chief Magistrate.

(2) The Chief Magistrate may be appointed to hold other offices of a judicial or quasi-judicial nature, but the Judicial Service Commission must be consulted before any such appointment is made.

(3) The person appointed as Chief Magistrate may be appointed until he or she reaches an age that exceeds the age at which he or she was appointed by 5. Thereafter, the person may be reappointed as Chief Magistrate until he or she reaches an age that exceeds the age at which he or she was first appointed as Chief Magistrate by 10 years. On attaining this age, a person may again be reappointed as Chief Magistrate until he or she reaches the age of 60 if he or she has not already attained that age.

#### **Appointment of Justices of the Peace**

8. (1) The Governor may, subject to section 90(4) of the Constitution, appoint any person to be a Justice of the Peace in and for St Helena.

(2) The Chief Justice and the Chief Magistrate are *ex officio* Justices of the Peace.

(3) The Governor may appoint an officer of the public service to be a Justice of the Peace if, but only if:

- (a) the Judicial Service Commission has certified that it is satisfied that such appointment would be consistent with the independence of the judiciary; and
- (b) the Governor is satisfied that such appointment would be consistent with the efficiency of the public service.

(4) A person appointed under subsection (3) is (unless the Governor, on the advice of the Judicial Service Commission, orders otherwise) deemed to have resigned as a Justice of the Peace if the person is appointed to a public office different from that which he or she held at the time of the appointment as a Justice of the Peace.

#### **The Roll**

9. (1) The Clerk must maintain a Roll, in a form approved by the Chief Justice, in which must be recorded the names (together with any other particulars prescribed by rules of court) of all persons appointed to hold the office of Chief Magistrate or Justice of the Peace.

- (2) The Roll must be separated into 3 parts, namely:
  - (a) the Roll of Chief Magistrates;

- (b) the Roll of Justices of the Peace; and
- (c) the Supplemental Roll of Justices of the Peace.

**(3)** Upon a Justice attaining the age of 70 years, unless the Governor (acting on the advice of the Judicial Service Commission) for special reason orders otherwise—

- (a) the name of that Justice must be placed upon the Supplemental Roll referred to in subsection (2)(c); and
- (b) the entry relating to that Justice in the Roll referred to in subsection (2)(b) must be marked with a note to the effect that his or her name has been placed on the Supplemental Roll.

### **Powers of Justices**

**10. (1)** Subject to this or any other Ordinance, and any exceptions which may be contained in the appointment, every Justice—

- (a) has all the rights, powers and duties of a magistrate under the provisions of this or any other Ordinance or under any other law in force in St Helena, to issue—
  - (i) summonses and warrants for the purpose of compelling the attendance of any accused persons or witnesses before any court; and
  - (ii) search warrants;
- (b) has any other powers and rights conferred on a Justice by this or any other Ordinance or any other law in force in St Helena or by rules of court; and
- (c) must perform any other duties so imposed .

**(2)** A Justice whose name is on the Supplemental Roll maintained in accordance with section 9(2)(c) may exercise any judicial and quasi-judicial functions prescribed in the Code of Conduct approved in accordance with section 11(5).

### **Annual Meeting of Justices, and Code of Conduct**

**11. (1)** In the month of July each year (or as soon thereafter as is practicable), the Clerk must convene a meeting of all the Justices, to be known as the Annual Justices' Meeting.

**(2)** At the Annual Justices' Meeting, the Justices must elect one of their number to serve as Chair of the Bench from the date of election until the election of a successor.

**(3)** Additional Justices' Meetings may be convened as often as the Chair of the Bench considers necessary or convenient for the purpose of discussing matters of common interest to members of the Bench.

**(4)** A Justices' Meeting may approve (and from time to time amend) a Code of Conduct for the guidance of Justices of the Peace as to the standards of conduct, both when acting judicially and in their private lives, which are to be expected of Justices of the Peace.

**(5)** A Code of Conduct (or any amendment of it) cannot take effect unless it has been approved by the Chief Justice.

### **Clerk of the Peace and other officers**

**12.** (1) The Governor must appoint a public officer to be the Clerk of the Peace.

**(1A)** The duties of the Clerk of the Peace are—

- (a) to attend at any sessions of the Court the Justices direct;
- (b) to prepare or cause to be prepared for signature all summonses, warrants, orders, convictions, recognisances, writs of execution and other documents;
- (c) to issue civil processes in accordance with the rules of court;
- (d) to make or cause to be made copies of proceedings when required so to do, and to record the judgments, convictions and orders of the Court;
- (e) to receive or cause to be received all fees, fines, penalties and other money paid or deposited in respect of proceedings in the Court, and to keep or cause to be kept accounts of the same; and
- (f) generally to perform or cause to be performed any other duties imposed upon the Clerk of the Peace by rules of court or assigned by the Court.

(2) The Governor may from time to time appoint any other officers necessary for the proper exercise of the jurisdiction of the Court.

#### **PART IV SITTINGS OF THE COURT**

##### **Place and time for sittings of Magistrates' Court**

**13.** (1) The Court must ordinarily be held at a place the Chief Justice directs, but should necessity arise it may be held at any other place within the limits of its jurisdiction.

(2) Subject to any directions of the Chief Justice, the Court must be held at a time the Justices exercising the jurisdiction of the Court consider most expedient for the despatch of the business of the Court.

##### **Nature of business at any sitting**

**14.** At any sitting of the Court both civil and criminal causes and matters may be heard and determined.

#### **PART V JURISDICTION OF THE MAGISTRATES' COURT**

##### **Powers of the Court**

**15.** (1) The Court has and may exercise the jurisdiction in civil and criminal matters that is provided, in this Ordinance or that is provided under any other law in force in St Helena.

(2) Without limiting subsection (1), the Court has and may exercise the jurisdiction conferred by any law in force in St Helena upon a juvenile court.

(3) When exercising the jurisdiction conferred by subsection (2), the Magistrates'

Court is to be styled the St Helena Juvenile Court and must be held *in camera*.

(4) Subject to subsection (5), all proceedings in the Magistrates' Court under the Welfare of Children Ordinance, 2008, or in which any person under the age of 17 years (in this section called “a juvenile”) is charged with or otherwise accused of any criminal offence must be heard by the St Helena Juvenile Court.

(5) Subsection (4) does not apply to any proceedings in which a juvenile is charged or accused of a criminal offence jointly with a person who is not under the age of 17 years.

### **Law to be applied**

16. (1) Subject to this Ordinance or any other law in force in St Helena and to subsection (1A), the jurisdiction of the Court must be exercised in conformity with the laws with which the Supreme Court is required to conform in the exercise of its own jurisdiction:

(1A) The Court must not exercise any jurisdiction which is by the provisions of any law in force in St Helena conferred exclusively on the Supreme Court or on a court of record.

(2) For the purposes of this Ordinance, any reference in the laws applied by this section to—

- (a) a county court; or
- (b) a court of summary jurisdiction,

is to be construed as a reference to the Court.

### **Civil jurisdiction**

17. (1) In civil causes and matters, the Court, in addition to any other jurisdiction conferred on it by any other Ordinance or law in force in St Helena, has and may exercise jurisdiction—

- (a) in all personal suits, whether arising from tort or contract or both, where the value of the property, the debt or the damage claimed, whether as the balance of an account or otherwise, does not exceed £5,000;
- (b) in all suits between landlord and tenant for possession of any premises claimed under an agreement or refused to be delivered up, where the annual value or the rent of the premises does not exceed £5,000;
- (c) to grant in any suit instituted in the Court injunctions or orders to stay waste or alienation or for the detention and preservation of any property the subject of the suit, or to restrain any wrongful act or breach of contract;
- (d) in all claims for relief by way of interpleader in respect of land or other property attached in execution of a decree of the Court; but the jurisdiction conferred by this paragraph must not be exercised, unless the parties consent, in respect of land or other property exceeding £5,000 in value;
- (e) to enforce by attachment any order made by the Court;
- (f) to commit to prison for a term not exceeding 3 months, or until payment of the sum due, any person who makes default in payment of any debt or instalment or any debt due by the person under any judgment or order of the Supreme Court or of the Court:



**(1A)** The jurisdiction conferred by subsection (1)(f) is limited to the extent that no person making default may be committed to prison unless it is established to the satisfaction of the Court that the person—

- (a) has, or since the date of the judgment or order has had, the means, after providing for the support of dependants, to pay the sum in respect of which the person has made default; and
- (b) refuses or neglects, or has refused or neglected, to pay the sum.

**(2)** For the purpose of subsection (1)(f), the Court may order—

- (a) that any debt due by any person under any judgment or order of the Supreme Court or of the Court may be paid by instalments; or
- (b) that any warrant of commitment of such person to prison under that paragraph is to be suspended on payment by the person of instalments as specified in the order.

**(3)** Notwithstanding subsection (1), the Court does not have jurisdiction in—

- (a) suits in which the title to any office is in issue;
- (b) suits in which the validity of any will or other testamentary writing or of any bequest or limitation under any will or settlement is in issue;
- (c) suits in which the legitimacy of any person is in issue;
- (d) suits in which the validity or dissolution of any marriage is in issue; or
- (e) any action for malicious prosecution, defamation, seduction or breach of promise of marriage.

**(4)** If in any suit the debt or demand consists of a balance not exceeding £5,000 after an admitted set off of any debt or demand claimed or recoverable by the defendant from the plaintiff, the Court has jurisdiction and power to hear and determine the suit, within the limits of its jurisdiction and power.

**(5)** If the Chief Justice considers that a civil case brought in the Supreme Court is suitable to be heard in the Magistrates' Court, then even if the value of the claim exceeds the maximum amounts prescribed in this section, the Chief Justice may remit the case to the Magistrates' Court for hearing and determination, and may include in the order remitting the case any directions to the Court the Chief Justice thinks fit.

**(6)** When the Court is constituted as provided in section 3(2)(a), the foregoing provisions of this section have effect with the following amendments:

- (a) for the amount of "£5,000", wherever it appears, there is substituted "£20,000"; and
- (b) subsection (3) has effect subject to any modifications made to it by rules of court.

## **Law and equity**

**18. (1)** In every civil cause or matter which is instituted in the Court, law and equity are to be administered concurrently.

**(2)** In the exercise of the jurisdiction conferred upon the Court, the Court has power in every cause or matter to grant and must grant, either absolutely or on any reasonable terms and conditions that seem just, all remedies and reliefs, interlocutory or final, that any of the parties to the cause or matter appear to be entitled to in respect of every legal and

equitable claim or defence properly brought forward by them respectively or which appear in the cause or matter.

**(2A)** The jurisdiction referred to in subsection (2) must be exercised so that, so far as is possible, all matters in controversy between the parties are fully and finally determined and multiplicity of proceedings concerning such matters is avoided.

**(3)** If in any cause or matter there is a conflict between the rules of equity and the rules of the common law with reference to the same subject, the rules of equity prevail.

### **Criminal jurisdiction**

**19. (1)** Subject to subsection (1A) and to any other law in force in St Helena, the Court has jurisdiction to try summarily any criminal offence except an offence punishable with imprisonment for a term exceeding 14 years.<sup>2</sup>

**(1A)** Subject to subsection (5), the Court may not impose a sentence of imprisonment for a term exceeding 18 months or a fine exceeding £5,000, or both such fine and imprisonment, unless a written law expressly provides that an offender is liable on summary conviction to a longer term or a higher fine, or both.

**(2)** If, on the conviction of an offender for an offence for which the maximum penalty prescribed by law exceeds the maximum penalty which the Court can impose, it appears to the Court, after obtaining information regarding the character and antecedents of the offender, that a sentence should be imposed which is in excess of that which it may lawfully impose –

- (a) the Court may commit the offender to the Supreme Court for sentence; and
- (b) the Supreme Court may pass sentence or make any other order upon or in respect of the offender as if the offender had been tried and convicted by that Court.

**(3)** If an offender is convicted of more than one offence, the offences have been lawfully joined in one charge, and it appears to the Court that consecutive sentences should be imposed, the Court does not need to commit the offender to the Supreme Court for sentence only because the total punishment for the several offences in respect of which consecutive sentences are imposed is in excess of the punishment which the Court is competent to impose on conviction for a single offence; but the Court must not impose consecutive sentences of imprisonment which in total exceed a period of 3 years.

**(4)** A sentence commences on the date sentence is passed, unless the Court directs otherwise.

**(5)** When the Court is constituted as provided in section 3(2)(a), the foregoing provisions of this section have effect with the following amendments:

- (a) for the amount of “£5,000”, there is substituted “£20,000”;
- (b) for the numbers and words “18 months” there are substituted the words “5 years”;  
and
- (c) for the words “3 years” there are substituted the words “5 years”;

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<sup>2</sup> See also section 241 of the Criminal Procedure Ordinance, 1975, as to the sentencing powers of the Magistrates’ Court.

but subject to subsection (6).

(6) The Court may not impose the higher sentences authorised by subsection (5) unless the Chief Magistrate approves the sentence.

### **General powers of Justices**

20. Every Justice may make any orders, issue any processes and exercise any judicial and administrative powers in relation to the administration of justice that are prescribed by—

- (a) this or any other Ordinance;
- (b) rules of court; or
- (c) subject to this or any other Ordinance and rules of court, any special order of the Chief Justice,

and must perform those functions in the way so prescribed.

### **Administration of oaths**

21. (1) Every Justice is authorised to administer all oaths, affirmations and declarations that may require to be taken before a Justice in exercise of the jurisdiction and powers conferred upon Justices (or upon the Court) by this Ordinance or any other law in force.

(2) Any such oath or affirmation may also be administered by any clerk or other officer of the Court under the direction and in the presence of a Justice.

### **Jurisdiction of Supreme Court concurrent with that of Magistrates' Court**

22. Jurisdiction conferred upon the Court or any Justice does not in any way restrict or affect the jurisdiction of the Supreme Court, but the Supreme Court has in all causes and matters, civil and criminal, an original jurisdiction concurrent with the jurisdiction of the Court.

### **Judgment may be entered in Supreme Court on a judgment of Magistrates' Court**

23. (1) If the Chief Justice is satisfied that—

(a) judgment (whether by way of claim or counterclaim or for costs or otherwise) for an amount exceeding £2,000 has been pronounced in the court against a person, whether resident in St Helena or not; and

(b) the person has no goods or chattels within St Helena which can be conveniently be seized to satisfy the judgment,

the Chief Justice may, upon terms as to costs as the Chief Justice directs, by order under the hand of the Chief Justice and the seal of the Supreme Court, remove the judgment into the Supreme Court.

(2) Upon the removal of a judgment into the Supreme Court under subsection (1) –

(a) no further proceedings may be had or taken on the judgement in the Magistrates' Court; and

(b) the judgment must be entered in the Supreme Court for the amount due and

payable under the judgment of the Magistrates' Court together with the costs as provided in subsection (1).

**(2A)** A judgment entered in the Supreme Court under subsection (2)(b) has the same force and effect and the same proceedings may be had on it as if it were a judgment originally obtained in the Supreme Court.

**(3)** This section applies to orders obtained in the Magistrates' Court as it applies to judgments there obtained.

## **PART VI PRACTICE AND PROCEDURE OF THE COURT**

### **Practice and procedure**

**24.** Subject to any other law in force, the jurisdiction vested in the Court must be exercised (so far as regards practice and procedure) –

- (a)* in the manner provided by this Ordinance or by any other Ordinance in force relating to criminal or civil procedure, or by rules of court; and
- (b)* in the absence of any such provision, in substantial conformity with the law and practice for the time being observed in England in county courts and courts of summary jurisdiction.

### **Process issued by Justice ceasing to act**

**25.** If a Justice has issued a summons or warrant, whether civil or criminal, under any authority however conferred, and subsequently ceases to act as a Justice, the person in whose hands such summons or warrant is at the time may execute or serve it in the same manner as if the Justice who issued the summons or warrant had not ceased to act.

### **Issue of process**

**26.** **(1)** Subject to subsection (2), all summonses, warrants, orders, convictions and recognisances, and all other processes, whether civil or criminal, of the Court must be issued or made under the hand of a Justice.

**(2)** If expressly authorised by any law in force in St Helena or by rules of court, writs of summons and other civil process may be issued under the hand of the Clerk of the Peace.

### **Duty of Police Service to obey Justices**

**27.** All members of the Police Service are hereby authorised and required to obey the warrants, orders and directions of a Justice in the exercise –

- (a)* of the Justice's criminal jurisdiction; and
- (b)* if such obedience is authorised and required by any law in force in St Helena in that behalf, of the Justice's civil jurisdiction.

## **PART VII MISCELLANEOUS**

### **Protection of Justices of the Peace and other officers**

**28. (1)** A Justice or other person acting judicially is not liable to be sued in any civil court for any act done or ordered to be done by the Justice in the discharge of his or her judicial duty, whether or not within the limits of his or her jurisdiction, provided that the Justice, at the time, in good faith, believed himself or herself to have jurisdiction to do or order the act complained of.

**(2)** An officer of a court or any other person bound to execute the lawful warrants or order of a Justice or other person acting judicially is not liable to be sued in any civil court for the execution of any warrant or order which the officer or person would be bound to execute if within the jurisdiction of the person issuing it.

### **Representation of Crown, public officers and Directorates of the Government**

**29.** In any suit or matter—

- (a)* in which the Crown, a Council Committee, any Directorate of the Government or any public officer in his or her official capacity is a party; or
- (b)* affecting the revenues of St Helena,

the Crown, that Committee, that Directorate or that officer, as the case may be, may be represented by a legal practitioner or other person duly authorised in writing in that behalf by the Attorney General.

### **Employment of legal practitioners**

**30.** The employment of legal practitioners must, except as otherwise specifically provided, be allowed in all causes and matters, whether civil or criminal, before the Court.

### **Fees and costs**

**31. (1)** The fees and costs prescribed in or under any Ordinance or in rules of court may be demanded and received by the Clerk of the Peace or other person appointed to receive such fees and costs for and in respect of the several matters mentioned in such Ordinance or rules.

**(2)** Subject to subsections (3) and (4), all fees and costs so prescribed must in the first instance be paid by the party applying for the summons, warrant, or other process or document in respect of which the fees and costs are payable.

**(3)** No fees are payable—

- (a)* by any public officer in any cause or matter instituted or defended by the officer in his or her official capacity; or
- (b)* in any case in which a Justice endorses on the complaint that it is a fit one for remission of fees on account of the poverty of the party or for any other sufficient cause.

**(4)** Fees and costs payable by a party in any cause or matter under this section are, in the discretion of the Court, recoverable from the other party, if the decision be given against that party.

**Repeal, transitional provisions and amendment of legislation**

**32.** *Omitted*

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