



ST HELENA

REVISED EDITION OF THE LAWS 2017

CRIME AND CRIMINAL PROCEDURE

PUBLIC ORDER ORDINANCE, 1997¹

*Ordinance 10 of 1997
In force 22 December 1997*

Amended by Ordinance 8 of 1998

No subsidiary legislation to 1 November 2017

PUBLIC ORDER ORDINANCE, 1997

ARRANGEMENT OF SECTIONS

1. Short title
2. Interpretation

PART I
OFFENCES

3. Riot
4. Violent disorder
5. Affray
6. Fear or provocation of violence
7. Harassment, alarm or distress
8. Mental element: miscellaneous
9. Procedure: miscellaneous

PART II
PROCESSIONS AND ASSEMBLIES

10. Advance notice of public processions
11. Imposing conditions on public processions
12. Prohibiting public processions
13. Imposing conditions on public assemblies _____

AN ORDINANCE to make provision for the preservation of public order.

Short title

¹ 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.

1. This Ordinance may be cited as the Public Order Ordinance, 1997.

Interpretation

2. In this Ordinance—
“**dwelling**” means any structure or part of a structure occupied as a person’s home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose “**structure**” includes a tent, caravan, vehicle, vessel or other temporary or movable structure;
“**public assembly**” means an assembly of 20 or more persons in a public place which is wholly or partly open to the air;
“**public place**” means—
 - (a) any road within the meaning of the Road Traffic Ordinance, 1985; and
 - (b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;“**public procession**” means a procession in a public place;
“**violence**” means any violent conduct, so that—
 - (a) except in the context of affray, it includes violent conduct towards property as well as violent conduct towards persons; and
 - (b) it is not restricted to conduct causing or intended to cause injury or damage, but includes any other violent conduct (for example, throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short).

PART I OFFENCES

Riot

3. (1) If 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using or threatening unlawful violence for the common purpose ~~is guilty~~ commits the offence of riot.

Penalty: A fine, or imprisonment for 10 years, or both.

(2) It is immaterial whether or not the 12 or more persons use or threaten unlawful violence simultaneously.

(3) The common purpose may be inferred from conduct.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Riot may be committed in private as well as in public places.

(6) *Omitted*

Violent disorder

4. (1) If 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using or threatening unlawful violence commits the offence of violent disorder.

Penalty: (a) on summary conviction - a fine of £500 or imprisonment for 12 months, or both;

(b) on conviction on indictment – an unlimited fine, or imprisonment for 5 years, or both.

(2) It is immaterial whether or not the 3 or more persons use or threaten unlawful violence simultaneously.

(3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(4) Violent disorder may be committed in private as well as in public places.

(5) *Omitted*

Affray

5. (1) A person who uses or threatens unlawful violence towards another and whose conduct is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety commits an offence.

Penalty: (a) on summary conviction - a fine of £500 or imprisonment for 6 months, or both;

(b) on conviction on indictment – an unlimited fine, or imprisonment for 3 years, or both.

(2) If 2 or more persons use or threaten unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

(3) For the purposes of this section a threat cannot be made by the use of words alone.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Affray may be committed in private as well as in public places.

(6) A police officer may arrest without warrant anyone he or she reasonably suspects is committing affray.

(7) *Omitted*

Fear or provocation of violence

6. (1) It is an offence for a person ('A') to—

(a) use towards another person ('B') threatening, abusive or insulting words or behaviour; or

- (b) distribute or display to another person ('B') any writing, sign or other visible representation which is threatening, abusive or insulting,
- either –
- (c) with intent –
- (i) to cause B to believe that immediate unlawful violence will be used against B or another by any person; or
- (ii) to provoke the immediate use of unlawful violence by B or another; or
- (d) whereby B is likely to believe that such violence will be used or it is likely that such violence will be provoked.

Penalty: A fine of £500 or imprisonment for 6 months, or both.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) A police officer may arrest without warrant anyone he or she reasonably suspects is committing an offence under this section.

Ditto

(4) *Omitted*

Harassment, alarm or distress

7. (1) It is an offence for a person to—

- (a) use threatening, abusive or insulting words or behaviour, or disorderly behaviour; or
- (b) display any writing, sign or other visible representation which is threatening, abusive or insulting,

within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

Penalty: A fine of £200.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) It is a defence for the accused to prove—

- (a) that he or she had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress;
- (b) that he or she was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling; or
- (c) that his or her conduct was reasonable.

(4) A police officer may arrest without warrant a person who—

- (a) engages in offensive conduct which the police officer warns the person to stop; and
- (b) engages in further offensive conduct immediately or shortly after the warning.

(5) In subsection (4) “**offensive conduct**” means conduct the police officer reasonably suspects to constitute an offence under this section, and the conduct mentioned in subsection (4)(a) and the further conduct need not be of the same nature.

(6) *Omitted*

Mental element: miscellaneous

8. (1) A person commits the offence of riot only if the person intends to use violence or is aware that his or her conduct may be violent.

(2) A person commits the offence of violent disorder or affray only if the person intends to use or threaten violence or is aware that his or her conduct may be violent or threaten violence.

(3) A person commits an offence under section 6 only if the person intends his or her words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting.

(4) A person commits an offence under section 7 only if the person intends his or her words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting or (as the case may be) the person intends his or her behaviour to be or is aware that it may be disorderly.

(5) For the purposes of this section a person whose awareness is impaired by intoxication is to be taken to be aware of that of which he or she would be aware if not intoxicated, unless the person shows either that his or her intoxication was not self-induced or that it was caused solely by the taking or administration of a substance in the course of medical treatment.

(6) In subsection (5) “**intoxication**” means any intoxication, whether caused by drink, drugs or other means, or by a combination of means.

(7) Subsections (1) and (2) do not affect the determination for the purposes of riot or violent disorder of the number of persons who use or threaten violence.

Procedure: miscellaneous

9. (1) No prosecution for an offence of riot or incitement to riot may be instituted except by or with the consent of the Attorney General.

(2) For the purpose of the rules against charging more than one offence in the same count or information, each of sections 3 to 7 creates one offence.

(3) If on the trial of a person charged with violent disorder or affray the court finds the person not guilty of the offence charged, the court may find the person guilty of an offence under section 6.

(4) The Supreme Court has the same powers and duties in relation to a person who is by virtue of subsection (3) convicted before it of an offence under section 6 as the

Magistrates' Court would have on convicting the person of the offence.

PART II PROCESSIONS AND ASSEMBLIES

Advance notice of public processions

10. (1) Written notice must be given in accordance with this section of any proposal to hold a public procession intended to—

- (a) demonstrate support for or opposition to the views or actions of any person or body of persons;
- (b) publicise a cause or campaign; or
- (c) mark or commemorate an event,

unless it is not reasonably practicable to give any advance notice of the procession.

(2) Subsection (1) does not apply to a funeral procession, or processions by benefit societies, churches, church lads brigades or youth movements.

(3) The notice required by subsection (1) must specify the date when it is intended to hold the procession, the time when it is intended to start it, its proposed route, and the name and address of the person (or of one of the persons) proposing to organise it.

(4) The notice must be sent or delivered to the Director of Police at Police Headquarters in Jamestown not less than 7 clear days before the date when the procession is intended to be held.

(5) If a public procession is held, and –

- (a) the requirements of this section as to notice have not been satisfied; or
- (b) the date when it is held, the time when it starts, or its route, differs from the date, time or route specified in a notice given under subsection (1),

each of the persons organising the procession commits an offence.

Penalty: A fine of £500.

(6) It is a defence for a person accused of an offence under this section to prove that the person did not know of, and neither suspected nor had reason to suspect, the failure to satisfy the requirements or (as the case may be) the difference of date, time or route.

(7) To the extent that an alleged offence turns on a difference of date, time or route, it is a defence for the accused person to prove that the difference arose from circumstances beyond the person's control or from something done with the agreement of a police officer or by his or her direction.

(8) *Omitted*

Imposing conditions on public processions

11. (1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public procession is being held or is intended to be held and to its route or proposed route, reasonably believes that—

- (a) it may result in serious public disorder, serious damage to property or serious

- disruption to the life of the community; or
- (b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

the officer may give directions imposing on the persons organising or taking part in the procession any conditions that appear to him or her necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions.

- (2) In subsection (1) “**the senior police officer**” means—
- (a) in relation to a procession being held, or to a procession intended to be held in a case where persons are assembling with a view to taking part in it - the most senior in rank of the police officers present at the scene; ~~and~~
- (b) in relation to a procession intended to be held in a case where paragraph (a) does not apply - the Director of Police.

(3) A direction given by the Director of Police by virtue of subsection (2)(b) must be given in writing.

(4) A person who organises a public procession and knowingly fails to comply with a condition imposed under this section commits an offence.
Penalty: A fine of £500 or imprisonment for 3 months, or both.

(5) A person who takes part in a public procession and knowingly fails to comply with a condition imposed under this section commits an offence.
Penalty: A fine of £200.

(5A) It is a defence to a charge under subsection (4) or (5) for the person accused to prove that the failure arose from circumstances beyond the person’s control.

(6) A person who incites another to commit an offence under subsection (5) commits an offence.
Penalty: A fine of £500 or imprisonment for 3 months, or both.

(7) A police officer in uniform may arrest without warrant anyone he or she reasonably suspects is committing an offence under subsection (4), (5) or (6).

(8) to (10) *Omitted*

Prohibiting public processions

12. (1) If at any time the Director of Police reasonably believes that, because of particular circumstances existing in any part of St Helena, the powers under section 11 will not be sufficient to prevent the holding of public processions in that part from resulting in serious public disorder, the Director must apply to the Governor for an order prohibiting, for a period not exceeding 3 months specified in the application, the holding of all public processions, or of any class of public procession so specified, in the part of St Helena concerned.

(2) On receiving an application under subsection (1), the Governor may make an order either in the terms of the application or with any modifications the Governor thinks fit.

If a procession is prohibited the reason for the prohibition must be given to the organiser.

(3) An order made under this section may be revoked or varied by a subsequent order made in the same way, that is, in accordance with subsections (1) and (2), as the case may be.

(4) Any order under this section must, if not made in writing, be recorded in writing as soon as practicable after being made.

(5) A person who organises a public procession the holding of which the person knows is prohibited by virtue of an order under this section commits an offence.

Penalty: A fine of £500 or imprisonment for 3 months.

(6) A person who takes part in a public procession the holding of which the person knows is prohibited by virtue of an order under this section commits an offence.

Penalty: A fine of £200

(7) A person who incites another to commit an offence under subsection (6) commits an offence.

Penalty: A fine of £500 or imprisonment for 3 months.

(8) A police officer in uniform may arrest without a warrant anyone he or she reasonably suspects is committing an offence under subsection (5), (6) or (7).

(9) to (11) *Omitted*

Imposing conditions on public assemblies

13. (1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, reasonably believes that—

- (a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community; or
- (b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

the officer may give directions imposing on the persons organising or taking part in the assembly any conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, that appear to the officer to be necessary to prevent such disorder, damage, disruption or intimidation.

(2) In subsection (1) “**the senior police officer**” means—

- (a) in relation to an assembly being held - the most senior in rank of the police officers present at the scene; and
- (b) in relation to an assembly intended to be held - the Director of Police.

(3) A direction given by the Director of Police by virtue of subsection (2)(b) must be given in writing.

(4) A person who organises a public assembly and knowingly fails to comply with a

condition imposed under this section commits an offence.

Penalty: A fine of £500 or imprisonment for 3 months.

(5) A person who takes part in a public assembly and knowingly fails to comply with a condition imposed under this section commits an offence.

Penalty: A fine of £200.

(5A) It is a defence to a charge under subsection (4) or (5) for the person accused to prove that the failure arose from circumstances beyond the person's control.

(6) A person who incites another to commit an offence under subsection (5) commits an offence.

Penalty: A fine of £500 or imprisonment for 3 months, or both.

(7) A police officer in uniform may arrest without warrant anyone the officer reasonably suspects is committing an offence under subsection (4), (5) or (6).

(8) to (10) *Omitted*
