



## **TRISTAN DA CUNHA**

### **REVISED EDITION OF THE LAWS, 2017**

#### **CONSTITUTIONAL AND ADMINISTRATIVE LAW**

#### **INTERPRETATION (TRISTAN DA CUNHA) ORDINANCE, 1987<sup>1</sup>**

*Ordinance T4 of 1987, applying Ordinance SH8 of 1968  
In force 8 February 1988*

*Amended by Ordinance T1 of 1988 and by SH Ordinance 14 of 2017.*

*No subsidiary legislation to 1 November 2017 except SH Change of Title orders which have been incorporated in the relevant SH Ordinances.*

*Also see the Proclamation of an Exclusive Economic Zone for Tristan da Cunha, published as Legal Notice T1 of 2017<sup>2</sup>*

*See also the SH Interpretation Ordinance, 1968 for terms used in SH laws applied to Tristan da Cunha and not defined in this Ordinance*

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#### **INTERPRETATION (TRISTAN DA CUNHA) ORDINANCE, 1987<sup>3</sup>**

##### **ARRANGEMENT OF SECTIONS**

##### **PART I PRELIMINARY**

1. Short title
2. Application

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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.

<sup>2</sup> The EEZ extends 200 nautical miles (M) from the nearest points on the baseline from which the breadth of the territorial waters adjacent to the Islands of Tristan da Cunha, Gough Island, Inaccessible Island and Nightingale Islands are measured. See the St Helena and Dependencies (Territorial Sea) Order 1989 (SI 1989/1994).

<sup>3</sup> The Ordinance applied the SH Interpretation Ordinance 1968 with modifications listed in a Schedule. The following is a text of that Ordinance incorporating those modifications, and others required by the Constitutional position of Tristan da Cunha.

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AN ORDINANCE relating to the construction and interpretation of Ordinances, to regulate certain other matters relating to Ordinances and to statutory powers and duties, and to make general provision for purposes connected with or similar to those purposes.

**PART I  
PRELIMINARY**

**Short title**

1. This Ordinance may be cited as the Interpretation Ordinance, 1968.

**Application**

2. (1) Subject to this section, this Ordinance applies for the construction and interpretation of and otherwise in relation to all Ordinances and subsidiary legislation including this Ordinance and Ordinances enacted before the commencement of this Ordinance.

(2) Where in any Ordinance or subsidiary legislation—

(a) it is expressly provided that this Ordinance or any provision of it does not apply;  
or

(b) there is something in the subject or context which is inconsistent with or repugnant to the application of this Ordinance or any provision of it,

this Ordinance or that provision, as the case may be, does not apply.

(3) This Ordinance does not apply for the construction or interpretation of any Act of Parliament of the United Kingdom or of any Order in Council, but the Interpretation Acts, 1889 and 1978 apply for the interpretation of adopted English Laws or any other Acts of Parliament mentioned in an Ordinance, to the extent appropriate.

**PART II  
MEANING OF CERTAIN WORDS AND EXPRESSIONS**

**Interpretation of words and phrases**

3. (1) Unless otherwise provided by an enactment or the context otherwise requires, the following words and expressions have the meanings respectively assigned to them in relation to all enactments that is to say—

“**Act**” means an Act of Parliament of the United Kingdom;

“**act**”, used with reference to an offence or a civil wrong, includes a series of acts, and words which refer to acts done extend to unlawful omissions;

“**Administrator**” means the Administrator of Tristan da Cunha and includes any Acting Administrator for the time being appointed by the Governor;

“**Administrator in Council**” means the Administrator acting after consultation with the Island Council and in such Council assembled, but not necessarily in accordance with the advice of the Council;

“**adopted English Law**” has the meaning given that term by section 2 of the English Law (Application) Ordinance, 2005(SH);

“**advocate**” means a solicitor or barrister entitled to practise in St Helena, or a Lay Advocate appointed pursuant to Part II of the Legal Aid, Assistance and Services Ordinance, 2017;

“**alien**” in relation to St Helena means a person who does not have islander status, and in relation to Tristan da Cunha means a person who is not a Tristanian;

“**animal**” includes birds, reptiles, fish and every kind of vertebrate animal and their young;

“**applied St Helena Ordinance**” means an Ordinance of St Helena applied to Tristan da Cunha by virtue of the Application of St Helena Law (Tristan da Cunha) Ordinance, 1988;

“**arrestable offence**” has the meaning given to that term by section 2(4) of the Police and Criminal Evidence Ordinance, 2003;

“**Ascension**” means the Island of Ascension and its territorial sea;

“**audit**” means an independent examination of financial statements resulting in a report which –

(a) if it relates to an entity whose gross income exceeds £500,000, or whose gross income exceeds £250,000 and whose gross assets exceed £3.26 million, must comply with the International Standards on Auditing (UK and Ireland) issued by the Financial Reporting Council; and

(b) if it relates to an entity below that threshold, must comply with the International Standard on Review Engagements published by the International Auditing and Assurance Standards Board;

“**British possession**” means any British colony, Dependent Territory, Overseas Territory or protectorate, any territory under Her Majesty’s protection or any territory in respect of which trusteeship is exercised by Her Majesty’s Government in the United Kingdom;

“**Cap.**” refers to an Ordinance given a Chapter number in the 2001 Revised Edition of the Laws of Saint Helena;

“**Chair**”, “**Chairman**” and “**Chairperson**” in relation to a meeting each mean the person appointed to preside at the meeting;

“**Chief Auditor**” means the person appointed as such under section 110 of the Constitution;

“**Chief Justice**” means the person holding the office of Chief Justice for the time being by virtue of the Constitution;

“**Chief Magistrate**” means the person appointed as such under section 7 of the Magistrates’ Court Ordinance, 2011;

“**Clerk of the Peace**” means the public officer appointed as such under section 12 of the Magistrates’ Court Ordinance, 2011;

“**Code of Management**” means a Code of Management for the Public Service contemplated by sections 96, 164 and 227 respectively of the Constitution;

- “**coin**” means any coin legally current in St Helena, Ascension or Tristan da Cunha;
- “**commencement**”, used with reference to an Ordinance, means the date on which the Ordinance comes into force;
- “**Commissioner for Oaths**” means a person appointed as such under the Commissioners for Oaths Ordinance, 1968;
- “**common law**” means the common law of England;
- “**Commonwealth**” means the Commonwealth of Nations;
- “**Consolidated Fund**” in relation to St Helena means the Fund established by section 98 of the Constitution, and in relation to Tristan da Cunha means the public revenues of Tristan da Cunha;
- “**Constitution**” means the Constitution set out in the Schedule to the St Helena, Ascension and Tristan da Cunha Constitution Order 2009;
- “**contravene**” in relation to any requirement or condition prescribed in any written law or in any grant, permit, lease, licence or authority granted by or under any written law includes a failure to comply with that requirement or condition;
- “**Court of Appeal**” means the Court of Appeal for St Helena established by section 86 of the Constitution;
- “**Crown lands**” means all public lands in St Helena or in Tristan da Cunha which are for the time being subject to the control of Her Majesty and all lands which have been acquired by Her Majesty for the public service or otherwise;
- “**Crown Prosecutor**” has the meaning given to that term by section 51A of the Criminal Procedure Ordinance, 1975;
- “**Customs**” and “**customs officer**” have the meaning given to those terms by the Customs and Excise Ordinance, 1999;
- “**dues**” includes duties, rates and taxes;
- “**enactment**” means a law made by a legislature in and for Tristan da Cunha or an adopted English Law or an applied St Helena Ordinance;
- “**entered**”, in relation to a judgment or order, means included in the records of the court;
- “**export**” means take or cause to be taken out of Tristan da Cunha;
- “**financial regulations**” mean regulations made under section 5 of the Public Finance Ordinance, 2010;
- “**Gazette**” means the St Helena Government *Gazette* and includes any supplement to it and any Gazette Extraordinary;
- “**Government**” means Her Majesty’s government in right of St Helena or of Tristan da Cunha, as the case may be;
- “**Governor in Council**” means the Administrator in Council in relation to Tristan da Cunha;
- “**Government Printer**” means any person or body authorised from time to time to print the *Gazette* and other official publications of the Government;
- “**Governor**” means the person for the time being holding, or lawfully performing the functions of, the officer of Governor of St Helena;
- “**Harbour Master**” means, for St Helena, the person appointed as such under section 3 of the Ports Ordinance, 2016, and for Tristan da Cunha means the person appointed as such for purposes of the Harbour (Tristan da Cunha) Regulations, 1968;
- “**Her Majesty**” and “**the Queen**” include Her Majesty the Queen, Her Heirs and Successors;
- “**Her Majesty’s dominions**” includes the United Kingdom of Great Britain and Northern Ireland, all British possessions and all countries within the Commonwealth of which Her Majesty is the Sovereign;
- “**import**” means bring or cause to be brought into Tristan da Cunha;
- “**infectious disease**” has the meaning given to that term by section 32 of the Public Health Ordinance, 2016;

- “**Island Council**” means the Island Council of Tristan da Cunha constituted under the Island Council Ordinance, 1985;
- “**Islander**” in relation to St Helena has the meaning given to that term by Schedule I to the Immigration Ordinance, 2011;
- “**judge**” means the Chief Justice and any other judge or acting judge of the Supreme Court;
- “**judgment**” includes a decree, order, ruling or finding of a court or tribunal and a refusal to make any order;
- “**justice of the peace**” or “**Justice of the Peace**” in relation to St Helena means a person appointed as such under section 8(1) of the Magistrates’ Court Ordinance, 2011, or a person who under section 8(2) of that Ordinance is *ex officio* a justice of the peace; and in relation to Tristan da Cunha means the Magistrate;
- “**land**” or “**lands**” includes messuages, tenements, hereditaments, houses and buildings of any tenure;
- “**life partner**” of a person (‘A’) means the partner (‘B’) of A to whom B is not married, but with whom B lives in a heterosexual or homosexual relationship which is akin to marriage and which is intended by A and B to be permanent, as evidenced by their having lived together for at least 12 months or in such other way as is appropriate in any exceptional circumstances;
- “**local enactment**” means any Ordinance enacted for the peace, order and good government of St Helena or Tristan da Cunha, as the case may be;
- “**magistrate**” in St Helena means a justice of the peace, unless it means the Chief Magistrate; and “**Magistrate**” in Tristan da Cunha means the Administrator;
- “**Main Island**” means the Island of Tristan da Cunha;
- “**master**”, in relation to a ship, means any person (other than a pilot or harbourmaster) who has charge, control or command of a ship;
- “**medical practitioner**” means a person who may lawfully practise medicine or surgery under the provisions of the Medical Practitioners Ordinance, 1910;
- “**mental disorder**” has the meaning given to that term by section 2 of the Mental Health and Mental Capacity Ordinance, 2016;
- “**month**” and “**year**” mean respectively a month and a year reckoned according to the British Calendar;
- “**oath**”, “**swear**” and “**affidavit**” include the affirmation and declaration of any person who by law is permitted to make an affirmation or declaration in substitution for an oath;
- “**or**”, “**other**” and “**otherwise**” are to be construed disjunctively and not as implying similarity, unless the word “**similar**” or other word having the like meaning is added;
- “**Order in Council**” means an Order made by Her Majesty in Council;
- “**Ordinance**” includes a local enactment, and any subsidiary legislation made under the authority of an Ordinance or other written law, and a reference to a particular Ordinance includes a reference to any subsidiary legislation made under it;
- “**Part**”, “**section**”, “**paragraph**” and “**Schedule**” mean respectively a Part, section and paragraph of, and Schedule to, the Ordinance in which the word occurs, and “**subsection**” and “**subparagraph**” mean a subsection and subparagraph of the section and paragraph in which the word occurs;
- “**person**” includes any company, and any association and body of persons, corporate or unincorporated;
- “**police**” or “**police service**” means the St Helena Police Service established by the Police Service Ordinance, 1975 and in Ascension means the police detachment for Ascension;
- “**police officer**” means a person who is a member of, or seconded to, the police service, and

- includes a special constable and a constable under probation;
- “**prescribed**” means prescribed by the Ordinance in which the word occurs or by any subsidiary legislation-made under it;
- “**property**” includes land, goods, chattels, money, valuable securities, documents and every other matter or thing, whether real or personal, upon or in respect of which any offence may be committed;
- “**public holiday**” means any day so declared in accordance with the provisions of any local enactment relating to public holidays;
- “**public office**” means an office of emolument in the public service, and “**public officer**” is to be construed accordingly; but a person is not deemed to hold a public office by reason only that he or she is in receipt of a pension or other like allowance in respect of service under the Crown;
- “**public prosecutor**” means a person appointed as such under section 52 of the Criminal Procedure Ordinance, 1975;
- “**public seal**” means the public seal of St Helena or of Tristan da Cunha, as the case may be;
- “**public service**” means the service of the Crown in a civil capacity in respect of the Government of St Helena or of Tristan da Cunha, as the case may be;
- “**Public Solicitor**” means the person appointed as such under section 21 of the Legal Aid, Assistance and Services Ordinance, 2017;
- “**registered**”, in relation to a document, means registered under the provisions of the written law applicable to the registration of such document;
- “**Registrar**” means the Registrar of the Supreme Court;
- “**regulations**” includes rules, orders and by-laws;
- “**Resident of Tristan da Cunha**” means a person born in Tristan da Cunha, a spouse of any such person and any person who has lived on the Main Island of Tristan da Cunha for a period of at least one year immediately preceding the date of the event at issue or, as the case may be, the act or omission of which complaint is made, but not including in that period any period during which residence was authorised by a permit issued under the Entry Control (Tristan da Cunha) Ordinance, 1967;
- “**rules**” includes regulations, orders and by-laws;
- “**rules of court**” means rules made by the Chief Justice under section 89 of the Constitution or section 8 of the Courts (Appeals and Rules) Ordinance, 2017, or any other relevant power;
- “**Secretary of State**” means Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs;
- “**Senior Medical Officer/Clinical Director**” in relation to Tristan da Cunha means the most senior medical office on the Main Island;
- “**Sheriff of St Helena**” in relation to Tristan da Cunha means the chief officer of police;
- “**sign**”, in relation to a person who is unable to write his or her name, includes the making of a mark by such person;
- “**Speaker**” means the person elected as such under section 55 of the Constitution;
- “**St Helena**” means the Island of St Helena and its territorial sea, unless the context requires that the expression be construed as a reference to St Helena, Ascension and Tristan da Cunha;
- “**statutory body**” means a body incorporated by or under an enactment;
- “**statutory declaration**” means a declaration made under the Statutory Declarations Act, 1835 (UK);
- “**subsidiary legislation**” means any proclamation, rule, regulation, order, notice, by-law, or other instrument made under the authority of an Ordinance or other lawful authority and having legislative effect;

“**summary conviction**” means a conviction under and by virtue of any law for the time being in force conferring the power of summary jurisdiction on magistrates or justices of the peace;

“**Supreme Court**” means the Supreme Court of St Helena;

“**Tristan da Cunha**” means the Island of Tristan da Cunha and its territorial sea and includes the Islands of Gough, Nightingale and Inaccessible;

“**Tristanian**” means a person who—

(a) was born in Tristan da Cunha; or

(b) is domiciled in Tristan da Cunha and has been resident there for a consecutive period of at least 5 years;

“**vessel**” includes any ship, boat or other description of vessel used in maritime navigation;

“**warrant**” means a warrant under the hand of the person issuing it;

“**will**” includes a codicil;

“**writing**” includes printing, photography, lithography, typewriting and any other form of representing or reproducing words in visible form, including in electronic form;

“**written law**” means all Ordinances, all subsidiary legislation, all Acts of Parliament of the United Kingdom extending expressly or by necessary implication, or applied to, or otherwise having the force of law in St Helena or Tristan da Cunha, as the case may be, and all Orders in Council, Letters Patent and Royal Instructions so extending or applied or having such force.

(2) In the construction of references to the Governor or the Governor in Council, regard must be had to the provisions of sections 43 and 44 of the Constitution.

(3) A term defined in section 115 or 229 of the Constitution, as the case may be, has the same meaning in an Ordinance, unless the Ordinance otherwise expressly provides.

(4) A reference to a written law is a reference to it as amended or replaced from time to time and a reference to an Act of Parliament is to it as applied to St Helena or to Tristan da Cunha, as the case may be.

(5) The terms ‘attorney’ ‘advocate’, ‘barrister’, ‘counsel’ ‘legal practitioner’, ‘solicitor’ and ‘legally represented’ are to be construed by reference to the term ‘legal representative’ as defined in sections 115 or 229 of the Constitution, as the case may be.

#### **Grammatical variations, etc.**

4. (1) When any word is defined in any Ordinance, including this Ordinance, the definition extends to the grammatical variations of the word or expression so defined and to any cognate expression of it.

(2) Words importing the masculine gender include females.

(3) Words in the singular include the plural and words and expressions in the plural include the singular.

### **PART III ORDINANCES AND SUBSIDIARY LEGISLATION**

### **Ordinances to be public Ordinances**

5. Every Ordinance is deemed to be a public Ordinance and judicial notice must be taken of it accordingly unless the contrary is expressly provided and declared by the Ordinance.

### **Commencement of Ordinances**

6. (1) Subject to this section, the date of commencement of any local Ordinance is the date on which the Ordinance is published, that is to say the date on which a copy of the Ordinance is published by the Administrator in such manner as appears most expedient for the purpose, unless some other date of commencement is expressly provided in the Ordinance.

(2) Every Ordinance is deemed to come into operation immediately on the expiration of the day next preceding its date of commencement.

(3) A provision in an Ordinance regulating the coming into force of the Ordinance or any part of it has effect even if the part of the Ordinance containing that provision has not come into operation.

### **Repealed Ordinances not revived**

7. If any Ordinance which repeals in whole or in part a previously enacted Ordinance is itself repealed, that last mentioned repeal does not revive the Ordinance or provisions before repealed unless express provision is made for such revival.

### **When repealed provisions of Ordinances remain in force**

8. If by any Ordinance provision is made for the repeal in whole or in part of a previously enacted Ordinance and for the substitution of other provisions for those so repealed, the repeal has no effect until such time as the substituted provisions come into operation by virtue of the repealing Ordinance.

### **Effect of repeal**

9. (1) If an Ordinance repeals any other enactment the repeal does not—
- (a) revive anything not in force or existing at the time at which the repeal takes effect;
  - (b) affect the previous operation of the repealed enactment or anything duly done or suffered under it;
  - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment;
  - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed enactment prior to the repeal; or
  - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, and an investigation, legal proceeding or remedy may be instituted, continued or

enforced, and any such penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed.

(2) Upon the expiry of an Ordinance, this section applies as if the Ordinance had been repealed.

### **Amended Ordinances**

10. (1) If in any Ordinance a reference is made to any other Ordinance, the reference is deemed to be a reference to that other Ordinance as from time to time amended.

(2) If an Ordinance repeals and re-enacts, with or without modification, any provision of any previously enacted Ordinance, a reference in any other Ordinance to the provision so repealed is to be construed as a reference to the provision so re-enacted.

### **Construction of amended Ordinance**

11. If an Ordinance amends any other Ordinance—

- (a) the amended Ordinance may in the amending Ordinance be referred to as the principal Ordinance; and
- (b) the amending Ordinance is, so far as is consistent with the tenor of it, to be construed as one with the amended Ordinance.

### **Meaning of reference to the number of a line**

12. A reference in any Ordinance to a line of any section of an Ordinance is to be construed as a reference to the line as it occurs in the latest official printed copy of that Ordinance in existence at the time of the enactment of the Ordinance containing the reference.

### **Subsidiary legislation**

13. If an Ordinance confers power upon any authority to make subsidiary legislation—

- (a) subject to paragraph (aa), the subsidiary legislation may at any time be amended, varied, suspended or revoked by the same authority by which and in the same manner as that in which it was made;
- (aa) if the authority has been replaced, wholly or partially, by some other authority, the power conferred by paragraph (a) upon the original authority may be exercised by that other authority in relation to all matters within the extent of its jurisdiction as if it were the original authority;
- (b) any such subsidiary legislation may provide that in respect of any contravention of it the offender is liable on conviction to a fine not exceeding £5,000, or to a term of imprisonment not exceeding 6 months, or to both, as prescribed in the subsidiary legislation;
- (c) the subsidiary legislation must be published in the *Gazette* and is to be judicially noticed;
- (d) if in any subsidiary legislation a reference is made to “**the Ordinance**”, the reference is to be construed as a reference to the Ordinance by which power is conferred to make such subsidiary legislation.

### **Commencement of subsidiary legislation**

**14. (1)** Subject to this section, the date of commencement of any subsidiary legislation is the date on which it is published, that is to say, the date on which a copy of it is published by the Governor or the Administrator, as the case may be, in such manner as appears most expedient for the purpose, unless some other date of commencement is expressly provided in the subsidiary legislation.

**(2)** All subsidiary legislation is deemed to come into operation immediately on the expiration of the day preceding its date of commencement.

**(3)** Subsidiary legislation made and published on the date of commencement of the Ordinance under which it is made is deemed to come into force simultaneously with that Ordinance.

**(4)** References in this section to the commencement of the Ordinance under which subsidiary legislation is made are, if different provisions of that Ordinance come into force on different dates, to be construed as references to the commencement of the particular provision under which the subsidiary legislation is made.

**(5)** This section does not affect section 22.

### **Miscellaneous provisions relating to subsidiary legislation**

**15. (1)** Words and expressions used in subsidiary legislation have the same meaning as in the Ordinance under which the subsidiary legislation is made.

**(2)** Any provision of subsidiary legislation which is inconsistent with any provision of any Ordinance, including the Ordinance under which the subsidiary legislation is made, is void to the extent of the inconsistency.

**(3)** An act done under or by virtue of or in pursuance of subsidiary legislation is deemed to be done under or by virtue of or pursuant to the Ordinance conferring power to make the subsidiary legislation.

**(4)** Subsidiary legislation is deemed to be made under all powers enabling such legislation to be made, whether or not it purports to be made in exercise of a particular power or particular powers.

**(5)** Section 9 applies upon the revocation of subsidiary legislation as it applies on the repeal of an Ordinance.

**(6)** Upon the repeal or expiry of an Ordinance, all subsidiary legislation made under that Ordinance is deemed to have been revoked on the same date as that on which that Ordinance ceases to have effect.

## **PART IV PUBLIC OFFICERS**

## Registrar of Court

- 16.** The Governor –
- (a) must appoint suitable public officers to be (and to perform the duties and exercise the powers from time to time imposed or conferred by any written law upon) the Registrar of the Supreme Court and Registrar of the Court of Appeal, respectively; and
  - (b) may appoint deputy registrars of either of those courts.

## References to public officers

**17. (1)** Subject to subsection (1A), if in any written law there is a reference to a public officer by the title of the office, the reference is to be construed as a reference to the person holding or for the time being exercising the powers and performing the duties of that office.

**(1A)** If the Governor has appointed a public officer to be responsible for the administration of a subject or matter referred to in a written law, any reference to a public officer is to be construed as a reference to that public officer, as the case may be.

**(2)** If powers and duties are conferred and imposed by any written law upon the holder of an office—

- (a) which has been abolished; or
  - (b) which has been amalgamated with some other office; or
  - (c) the duties of which have devolved upon some other person,
- the powers and duties may be exercised and performed by a person in the public service authorised by the Governor in writing for the purpose.

## Change in title of public office

**18.** When the Governor (in respect of St Helena) or Administrator (in respect of Tristan da Cunha) decides to change the title of any public office, other than one constituted by a written law –

- (a) the Governor or Administrator, as the case may be, may by notice published in the *Gazette* declare that the change of title is to take effect from a date specified in the notice; and
- (b) with effect from that date any reference in any written law to the former title of the office is to be construed as a reference to that office by the new title.

## Acting appointments

**19. (1)** If by or under any Ordinance any powers or duties are conferred or imposed upon a public officer, and owing to absence or inability from illness or any other cause the public officer is unable to exercise such powers or perform such duties –

- (a) the Governor (in respect of St Helena) or the Administrator (in respect of Tristan da Cunha) may direct that the powers and duties are to be exercised and performed by the person named or the public officer holding the public office designated by the Governor or Administrator, as the case may be; and
- (b) that person or public officer, for the period of the absence or inability, has and

may exercise those powers and must perform those duties, subject to any conditions, exceptions and qualifications the Governor or Administrator respectively directs.

(2) If the substantive holder of any office in the public service is on leave of absence pending relinquishment of the office, another person may be appointed to be the substantive holder of that office.

### **Appointment of public officer to board, etc**

20. If under any written law power is conferred upon the Governor (in respect of St Helena) or the Administrator (in respect of Tristan da Cunha) or any authority to appoint any person to be a member of any board, commission, committee or other similar body –

(a) the Governor, Administrator or authority, as the case may be, may appoint as such member any public officer by the designation of the office; and

(b) on such an appointment and until it is revoked or otherwise terminated, the person for the time being holding or exercising the powers and performing the duties of that office is a member of such board, commission, committee or body.

### **Appointment by name or office**

21. (1) If under any written law the Governor (in respect of St Helena) or the Administrator (in respect of Tristan da Cunha) or any authority is empowered to appoint or nominate a person to have and exercise any powers or perform any duties, the Governor, Administrator or authority, as the case may be, may—

(a) appoint a person by name; or

(b) direct the person for the time being holding the office designated by the Governor or that authority to have and exercise those powers and perform those duties, and thereupon, or from the date specified by the Governor, Administrator or authority, as the case may be, the person appointed by name or holding the office so designated has and may exercise those powers and must perform those duties accordingly.

(2) Unless otherwise provided, the making of an appointment under an Ordinance does not need to be by order, but notice of any such appointment must be published in the *Gazette*.

### **Gazette as evidence**

21A. If notice of the exercise of a statutory power, whether of appointment or otherwise, is published in the *Gazette*, the notice is sufficient evidence of the lawful exercise of the power unless it is shown not to have been lawfully exercised.

## **PART V POWERS AND DUTIES**

### **Exercise of power between publication and commencement of Ordinance**

22. (1) Subject to subsection (1A), if an Ordinance which is not to come into operation immediately on publication confers a power to—

(a) make any appointment or establish any office;

(b) make any subsidiary legislation;  
 (c) issue any order with respect to the application of the Ordinance; or  
 (d) do any other thing for the purposes of the Ordinance,  
 the power may be exercised at any time after the publication of the Ordinance.

(2) An appointment, subsidiary legislation, order or other thing made or done in the exercise of a power mentioned in subsection (1A) does not, unless it is necessary for bringing the Ordinance into operation, have effect until the commencement of the Ordinance.

### **Powers, etc, conferred by Act on holders of non-existent offices**

23. If powers and duties are conferred or imposed by any Act upon the holder of an office which does not exist in St Helena or Tristan da Cunha, as the case may be, the powers and duties may be exercised and performed by a person authorised for the purpose by the Governor or the Administrator, respectively.

### **Exercise of powers and duties**

24. Powers and duties conferred or imposed by any Ordinance may be exercised and must be performed from time to time as occasion requires.

### **Implied powers**

25. If an Ordinance confers a power on any person to do or enforce the doing of any act or thing, all additional powers are deemed to be given that are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

### **Power to appoint includes power to remove**

26. If an Ordinance confers on the Governor (in respect of St Helena) or Administrator (in respect of Tristan da Cunha) or any authority a power to make any appointment, the Governor, Administrator or authority empowered to make the appointment may, subject to any limitations or qualifications which affect the power of appointment, revoke the appointment and remove, suspend, reappoint or reinstate any person appointed in the exercise of the power.

### **Power to appoint member of board, etc, temporarily**

27. If an Ordinance confers on the Governor (in respect of St Helena) or Administrator (in respect of Tristan da Cunha) or any authority a power to appoint any person to be a member of any board, commission, committee or other similar body and any member so appointed is unable to act as such owing to absence or inability from illness or any other cause, the Governor, Administrator or authority, as the case may be, may appoint some other person temporarily to act for the member during the period of absence or inability.

### **Power to appoint chairman, etc**

28. If an Ordinance confers on the Governor (in respect of St Helena) or Administrator (in respect of Tristan da Cunha) or any authority a power to appoint any board,

commission, committee or other similar body, the Governor, Administrator or that authority, as the case may be, may appoint a chair, deputy chair and secretary of such board, commission, committee or similar body.

### **Power of majority**

**29.** If an Ordinance requires or enables an act or thing to be done by more than 2 persons, the act or thing may be done by a majority of them.

### **Power to fill vacancies**

**30.** If an Ordinance confers powers or imposes duties upon any person who is to be elected or appointed and the election or appointment has not been made or the person elected or appointed declines to act, the Governor (in respect of St Helena) or Administrator (in respect of Tristan da Cunha) may appoint any person to exercise the powers and perform the duties until a person is elected or appointed and is willing to act.

### **Delegation of powers by Governor**

- 31.** (1) If an Ordinance confers powers or imposes duties upon the Governor –
- (a) the Governor may, unless by law expressly prohibited from so doing, by notice published in the *Gazette*, depute any person by name, or the person for the time being holding the office designated by the Governor, to exercise those powers and perform those duties on behalf of the Governor, subject to any conditions, exceptions and qualifications the Governor specifies; and
  - (b) upon publication of such a notice, or from any later date specified in it, the person so deputed has and may exercise those powers and must perform those duties, subject to any conditions, exceptions and qualifications the Governor specifies.

(2) Subject to any Royal Instructions that apply to St Helena and that relate to the appointment of a deputy to the Governor, this section does not authorise the Governor to delegate to any person the power to make rules or to make or issue any warrant or proclamation.

(3) The delegation, under a power conferred by a written law, of a power or duty to another person does not prevent the person who made the delegation from exercising the power or performing the duty upon the withdrawal or expiration of the delegation.

### **Signification of orders, etc, of Governor, etc.**

- 32.** (1) If an Ordinance empowers the Governor to—
- (a) make any subsidiary legislation or appointment;
  - (b) give any directions or issue any order;
  - (c) authorise any thing or matter to be done or omitted;
  - (d) grant any exemption or remit any fee or penalty; or
  - (e) exercise any other power,

the exercise of the power by the Governor may, subject to subsection (1A), be signified under the hand of the Government Secretary, or of the Administrator (in the case of Tristan da Cunha).

(2) Subsection (1) does not apply to the power of the Governor to make or issue any warrant or proclamation, which instruments must be made or issued under the hand of the Governor only.

### **Rectification of errors**

**32A.** (1) The Attorney General may, by Order published in the *Gazette*, rectify any printing or clerical error appearing in any Ordinance or subsidiary legislation.

(2) Every Order made under subsection (1) must be laid before the Legislative Council at its next meeting and if a resolution is passed by the Legislative Council that the Order be annulled, it is thenceforth void.

### **Powers of a board, etc, not affected by vacancy etc**

**33.** If an Ordinance establishes any board, commission, committee or other similar body, whether corporate or unincorporated, then, unless the contrary intention appears, the powers of such board, commission, committee or other similar body are not affected by—

- (a) any vacancy in its membership;
- (b) the presence at or participation in a meeting of the body of any person not entitled to be present at it or to participate in it; or
- (c) any minor irregularity in the convening of any meeting of the body.

## **PART VI MISCELLANEOUS**

### **Distance**

**34.** Any distance to be measured for the purposes of any Ordinance must be measured in a straight line on a horizontal plane.

### **Time**

**35.** When any expression of time occurs in any Ordinance, the time referred to signifies the standard time of Tristan da Cunha which, unless the Governor prescribes otherwise by proclamation, is Greenwich Mean Time.

### **Computation of time**

- 36.** (1) In computing time for the purposes of any Ordinance—
- (a) a period of days from the happening of an event or the doing of any act or thing is deemed to be exclusive of the day in which the event happens or the act or thing is done;
  - (b) if the last day of the period is Sunday or a public holiday (in this section referred to as “**excluded days**”) the period includes the next following day, not being an excluded day;
  - (c) when any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding is to be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;

- (d) when an act or proceeding is directed or allowed to be done or taken within any time not exceeding 6 days, excluded days are not to be reckoned in the computation of the time.

(2) If no time is prescribed or allowed within which anything is to be done, the thing must be done without unreasonable delay and as often as due occasion arises.

### **Offences under 2 or more laws**

**37.** If an act or omission constitutes an offence under 2 or more Ordinances, or under an Ordinance and any other law, the offender is liable to be prosecuted and punished under either or any of those Ordinances or laws, but must not be punished twice for the same offence.

### **Disposal of forfeits, etc.**

**38.** (1) If any animal or thing is adjudged by any court or other authority to be forfeited, it is to be forfeited to the Crown and if the animal or thing is ordered by a competent authority to be sold, the net proceeds are to be paid into and form part of the Consolidated Fund.

(2) All dues, fees, fines and pecuniary penalties are to be paid into and form part of the Consolidated Fund.

(3) This section does not affect any provision of any Ordinance whereby any portion of any fine, penalty or forfeit or of the proceeds of any forfeit is expressed to be recoverable by any person or may be granted by any authority to any person.

### **Penalties**

**39.** (1) If an Ordinance contains a provision prescribing a fine or other penalty for any offence against that Ordinance, the provision is deemed to mean that the offence is punishable upon conviction by a fine or other penalty not exceeding the fine or penalty prescribed.

(1A) If a penalty is set out at the foot of a section or subsection of an Ordinance it means that a contravention of the section or subsection, whether by act or omission, is an offence punishable by a fine or term of imprisonment not exceeding the amount or period stated.

(2) If –

(a) a person contravenes a provision of an Ordinance the contravention of which constitutes an offence; and

(b) no penalty is provided in the Ordinance,  
the person is liable on conviction to a fine of £2,000.

(3) A person who wilfully obstructs any person in performing any duties under any Ordinance is, if no penalty is provided for such obstruction, liable on conviction to a fine of £2,000.

## Forms

**40.** (1) If an Ordinance prescribes any form, an instrument or document which purports to be in that form is not void only because of a deviation from the form which does not affect its substance or which is not calculated to mislead any person or authority.

(2) If an Ordinance does not prescribe forms, such forms as the Governor directs may be used for any purposes of the Ordinance for which forms are required.

## Fees

**41.** (1) If an Ordinance confers power on the Governor or any authority to prescribe fees and charges, the instrument prescribing the fees and charges may provide for all or any of the following matters—

- (a) the imposition either generally or under specified conditions or in specified circumstances of—
  - (i) specific fees and charges;
  - (ii) maximum and minimum fees and charges; or
  - (iii) no fee or charge;
- (b) the reduction, waiver or refund in whole or in part of any such fees and charges, either upon the happening of a specified event or in the discretion of a specified person.

(2) If provision is made for the reduction, waiver or refund in whole or in part of any fee or charge, the reduction, waiver or refund may be expressed to apply or be applicable either generally or specifically—

- (a) in respect of certain matters or transactions or classes of matters or transactions;
- (b) in respect of certain documents or classes of documents;
- (c) when any event happens or ceases to happen;
- (d) in respect of certain persons or classes of persons;
- (e) in respect of any combination of all or any such matters, transactions, documents, events or persons,

and may be expressed to apply subject to conditions specified in the instrument or at the discretion of a specified person.

(3) Fees and charges imposed under any Ordinance when collected are to be paid into and form part of the Consolidated Fund.

## References to the Crown

**42.** Any reference in any Ordinance to the Sovereign or to the Crown is to be construed as a reference to the Sovereign for the time being.

## Saving of rights of Crown

**43.** (1) No Ordinance in any manner whatever affects the rights of the Crown, unless it is therein expressly provided or unless it so appears by necessary implication.

- (2) This Ordinance is binding on the Crown.

### **Application to Tristan da Cunha**

**44. (1)** Where in any applied St Helena Ordinance there is a reference to the Governor in Council, the reference is to be construed as a reference to the Governor.

**(1A)** If an applied St Helena Ordinance confers a power to make subsidiary legislation on the Governor in Council, subsidiary legislation so made applies to Tristan da Cunha (in so far as it is appropriate to local circumstances and not inconsistent with any local enactment, and subject to such modifications as local circumstances may render necessary) notwithstanding subsection (1) and whether such subsidiary legislation is made before or after the date of the application of the Ordinance to Tristan da Cunha.

**(2)** If an Ordinance of St Helena has been applied to Tristan da Cunha, and the Ordinance is subsequently amended by the legislature in St Helena, the amendment applies to Tristan da Cunha, in so far as it is appropriate to local circumstances and not inconsistent with any local enactment.

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