

S.P. 24/16



ST. HELENA

## GOVERNMENT OF SAINT HELENA

STATUTORY REPORT ON ENGLISH LAW: 2015

*laid on the table - 18 March 2016.*



## **St. Helena**

### **Statutory Report on English Law: 2015**

This report is prepared pursuant to section 8 of the English Law (Application) Ordinance, 2005 ('the Ordinance'), which requires the Attorney General to make an annual report about developments in English law.

Under the Ordinance, relevant English law can be used in St Helena to deal with matters for which there is no local law. In relation to Acts of Parliament, those enacted after 1 January, 2006, only apply to St Helena if we take action locally to adopt them.

The mechanism of the annual report was conceived as a way of ensuring that there is a structured examination of new English Acts to assess whether or not they might need to be adopted.

In this year's report, as previously, there are a number of Acts which are clearly not relevant to St Helena; but there are some that deserve, and will receive, closer scrutiny.

The main part of the report is presented in tabular form, starting on the next page.

J Angelo Berbotto  
Acting Attorney General  
16 March, 2016.

## Statutory Report on English Law: 2015

No	Short Title, purpose and effect	Remarks
1	<p><b>Stamp Duty Land Tax Act</b> This Act amends the method of calculating Stamp Duty Land Tax in respect of residential property transactions and linked transactions and sets out a new table of rates and bands applying to residential property transactions.</p>	
2	<p><b>Criminal Justice and Courts Act</b> This Act deals with how offenders are dealt with before and after conviction. It creates offences involving ill-treatment or wilful neglect by persons providing health care or social care and also of the corrupt or other improper exercise of police powers and privileges. It also covers offences committed by disqualified drivers. The Act also creates an offence of disclosing private sexual photographs or films with intent to cause distress and amends the offences of meeting a child following sexual grooming and possession of extreme pornographic images. The Act also deals with the proceedings and powers of courts and tribunals and judicial review. The Act contains five Parts: Part 1 deals with criminal justice including sentencing and the release and recall of offenders, the electronic monitoring of offenders released on licence, drug testing in prisons and giving cautions. Part 1 also contains provision about certain offences and sentences. Part 2 deals with detention of young offenders, giving cautions and conditional cautions to youths and referral orders. Part 3 deals with courts and tribunals including provision creating a new procedure for use in criminal proceedings in the magistrates' courts in certain circumstances, committal of young offenders to the Crown Court for sentence, the recovery of the costs of the criminal courts from offenders, fundamental dishonesty in personal injury claims and the offer of inducements to bring personal injury claims. It also deals with appeals and costs in civil proceedings, juries and members of the Court Martial and reporting restrictions applying to under-18s. Part 4 deals with the refusal by the High Court and the Upper Tribunal of relief in judicial review proceedings,</p>	<p>Law Officers will consider whether this Act has implications for the administration of justice on St Helena; and report, in the first instance, to the appropriate Council Committee.</p>

funding and costs in relation to such proceedings and the procedure for certain planning proceedings.

Part 5 contains a power to make consequential or supplementary or incidental provisions with respect to the other provisions of the Act.

### **3 Social Action, Responsibility and Heroism Act**

This Act deals with civil liability for negligence and certain breaches of statutory duty and matters to which a court must have regard in determining a claim in negligence or breach of such statutory duty. The Act applies generally to claims against individuals or organisations (including employers). Currently, a court considering a claim in negligence must determine whether the defendant acted reasonably, taking into account all the circumstances of the case and also all the relevant circumstances in determining whether a defendant was in breach of a duty of care imposed by statute. Case law has established the kinds of factors which might be relevant to such determinations and the Compensation Act 2006 also confirms that in considering what was necessary to meet a standard of care, the court can look at whether a particular requirement might prevent a desirable activity being carried out or discourage people from undertaking any function in relation to such activity.

This Act does not change this framework but requires a court which is determining what was required to meet the standard of care in a specific case, to have regard to specific matters mentioned in the Act. It does not preclude the court from having regard to any other relevant factors or from deciding what weight to give to each of the relevant matters in determining whether the standard of care has been met.

### **4 Insurance Act**

This Act deals with insurance contracts and updates the statutory framework with regard to disclosure and misrepresentation in business and other non-consumer insurance contracts, insurance warranties and insurers' remedies for fraudulent claims, in line with best practice in the UK insurance market. The Act also amends the Third Parties (Rights against Insurers) Act 2010, which has not come into force yet and these amendments now clears the way for this to come into force.

**5 National Insurance Contributions Act**

This Act deals with matters relating to national insurance contributions.

**6 Counter-terrorism and Security Act**

This Act deals with matters relating to terrorism and contains provisions on the retention of communications data, and deals with information, security in relation to air, sea and rail transport and also contains provision relating to reviews by the Special Immigration Appeals Commission against refusals to issue certificates of naturalization. This Act covers the following main areas:

- It will strengthen powers to place temporary restrictions on travel where a person is suspected of involvement in terrorism.
- It will enhance existing Terrorism Prevention and Investigation Measures to monitor and control the actions of individuals in the UK who pose a threat.
- It will enhance law enforcement agencies' ability to investigate terrorism and serious crime by extending the retention of relevant communications data to include data that will help to identify who is responsible for sending a communication on the internet or accessing an internet communications service.
- It will strengthen security arrangements in relation to the border and to aviation, maritime and rail transport.
- It will reduce the risk of people being drawn into terrorism, by enhancing the programmes that combat the underlying ideology which supports terrorism through improved engagement from partner organisations and consistency of delivery.
- It will amend existing terrorism legislation to clarify the law in relation to both insurance payments made in response to terrorist demands and the power to examine goods under the Terrorism Act 2000.
- It strengthens the independent oversight arrangements for UK counter-terrorism legislation by extending the statutory remit of the Independent Reviewer of Terrorism Legislation and enabling a more flexible reporting schedule, and by providing for the creation of a Privacy and Civil Liberties Board which will support the

Independent Reviewer to discharge his statutory functions.

**7 Infrastructure Act**

This Act deals with strategic highways companies and the funding of transport services by land. It also covers the control of invasive non-native species, nationally significant infrastructure projects and town and country planning. The Act also deals with matters relating to the Homes and Communities Agency and Mayoral development corporations, the Greater London Authority and HM Land Registry. It enables building regulations to provide for off-site carbon abatement measures, gives members of communities the right to buy stakes in local renewable electricity generation facilities, maximises economic recovery of petroleum in the UK and provides for a levy to be charged on holders of certain energy licences. It enables HM Revenue and Customs to exercise certain functions and deals with onshore petroleum and geothermal energy, renewable heat incentives, reimbursement of persons who have paid for electricity connections and for the Public Works Loan Commissioners to be abolished.

**8 Pension Schemes Act**

This Act deals with pension schemes and contains a number of measures concerning guidance, appropriate independent advice and transfers in relation to both public service and private sector pension schemes as well as changes to pensions legislation as a consequence of the Taxation of Pensions Act 2014.

**9 Serious Crime Act**

This Act amends the Proceeds of Crime Act 2002, the Computer Misuse Act 1990, Part 4 of the Policing and Crime Act 2009, section 1 of the Children and Young Persons Act 1933, the Sexual Offences Act 2003, the Street Offences Act 1959, the Female Genital Mutilation Act 2003, the Prohibition of Female Genital Mutilation (Scotland) Act 2005, the Prison Act 1952 and the Terrorism Act 2006. The Act covers involvement in organised crime groups and serious crime prevention orders and makes provision for the seizure and forfeiture of drug-cutting agents. It also makes it an offence to possess an item that contains advice or guidance about committing sexual offences against children and creates

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an offence in relation to controlling or coercive behaviour in intimate or family relationships. The Act also makes provision for the prevention or restriction of the use of communication devices by persons detained in custodial institutions. It makes provision approving (for the purposes of section 8 of the European Union Act 2011) certain draft decisions under Article 352 of the Treaty on the Functioning of the European Union relating to serious crime. The Act also makes provision about codes of practice that relate to the exercise and performance, in connection with the prevention or detection of serious crime, of powers and duties in relation to communications.

The Act consists of six Parts.

- Part 1 deals with the recovery of property derived from the proceeds of crime.
- Part 2 amends the Computer Misuse Act 1990.
- Part 3 provides for a new offence of participating in the activities of an organised crime group and strengthens the arrangements for protecting the public from serious crime and gang-related activity provided for in Part 1 of the Serious Crime Act 2007 and Part 4 of the Policing and Crime Act 2009 respectively.
- Part 4 provides for the seizure and forfeiture of substances used as drug-cutting agents.
- Part 5 amends the criminal law in relation to the offence of child cruelty, provides for new offences in respect of sexual communication with a child and the possession of “paedophile manuals”, amends the Sexual Offences Act 2003 to remove references to child prostitution and child pornography, makes further provision for combating female genital mutilation and provides for new offence in respect of domestic abuse.
- Part 6 makes provision to strengthen prison security, provides for or extends extra-territorial jurisdiction in respect of the offences in sections 5 (preparation of terrorist acts) and 6 (training for terrorism) of the Terrorism Act 2006, confers parliamentary approval (as required by section 8 of the European Union Act 2011) for two draft Council Decisions under Article 352 of the Treaty on the Functioning of the European Union (“TFEU”), specifies the matters that must be addressed in a code of practice in respect of the



exercise of powers under Part 1 of the Regulation of Investigatory Powers Act 2000 and places a duty on the Secretary of State to assess the evidence of abortions taking place on the grounds of the sex of the foetus. Part 6 also contains minor and consequential amendments to other enactments and general provisions, including provisions about territorial application and commencement.

**10 Supply and Appropriation (Anticipation and Adjustments) Act**

The Act authorises the use of resources for the years ending with 31 March 2014 – 2016 and authorises the issue and appropriation of sums out of the Consolidated Fund

**11 Finance Act**

This Act introduces the annual tax changes and amends the law relating to the National Debt and the Public Revenue.

**12 International Development (Official Development Assistance Target) Act**

This Act makes ensures the United Kingdom meets the target for official development assistance to constitute 0.7 per cent of gross national income and makes provision for independent verification that such assistance is spent efficiently and effectively

**13 Mutuels' Deferred Shares Act**

This Act enables the law relating to societies registered and incorporated under the Friendly Societies Act 1992 and certain mutual insurers to be amended to permit or facilitate the issue of deferred shares and to restrict the voting rights of members who hold such shares.

**14 House of Lords (Expulsion and Suspension) Act**

This Act makes provision to empower the House of Lords to expel or suspend members.

**15 Consumer Rights Act**

This Act amends the law relating to the rights of consumers and protection of their interests and deals with investigatory powers for enforcing the regulation of traders. The Act also makes provision for private actions

Law Officers will consider whether this Act has implications for consumer protection on St Helena; and report, in the

in competition law and the Competition Appeal Tribunal.

first instance, to the appropriate Council Committee.

**16 Specialist Printing Equipment and Materials (Offences) Act**

This Act make provision for an offence in respect of supplies of specialist printing equipment and related materials. The Metropolitan Police Service's Project Genesis works together with the specialist printing equipment industry to prevent the supply of such equipment to criminals for its use in the manufacture of false documents. Project Genesis has identified that the police find it difficult to prosecute those who knowingly supply this equipment to criminals, because of the absence of a targeted offence. This Act creates a specific criminal offence of knowingly supplying specialist printing equipment to criminals.

**17 Self-build and Custom Housebuilding Act**

This Act places a duty on certain public authorities to keep a register of individuals and associations of individuals who wish to acquire serviced plots of land to bring forward self-build and custom housebuilding projects and to place a duty on certain public authorities to have regard to those registers in carrying out planning and other functions.

**18 Lords (Spiritual) Women Act**

This Act makes time-limited provision for vacancies among the Lords Spiritual to be filled by bishops who are women.

**19 Armed Forces (Service Complaints and Financial Assistance) Act**

This Act deals with service complaints and covers financial assistance for the armed forces community.

**20 Deregulation Act**

This Act provides for the removal or reduction of burdens on businesses, civil society, individuals, public sector bodies and the taxpayer. These include measures relating to general and specific areas of business, companies and insolvency, the use of land, housing and development, transport, communications, the environment, the regulation of child trust funds, education and training, alcohol, sport and entertainment,

the administration of justice, public authorities and legislative reform. The Act also provides for a duty on those exercising specified regulatory functions to have regard to the desirability of promoting economic growth. In addition, the Act repeals legislation that is no longer of practical use.

- 21 Corporation Tax (Northern Ireland) Act**  
This Act makes provision for and in connection with the creation of a Northern Ireland rate of corporation tax.
- 22 Local Government (Review of Decisions) Act**  
This Act deals with the procedure for conducting investigations under Part 3 the Local Government Act 1974 and makes provision for cases where an authority to which that Part applies takes a decision that affects the holding of an event for a reason relating to health or safety. The Act is intended to ensure councils think carefully about any refusals issued on the grounds of Health & Safety, by requiring them to put their decision in writing, and carry out a review where requested following their decision (and then put the outcome of that review in writing), and to allow the Local Government Ombudsman to ‘fast-track’ complaints related to such decisions.
- 23 Control of Horses Act**  
This Act makes provision for the taking of action in relation to horses which are on land in England without lawful authority.
- 24 House of Commons Commission Act**  
This Act amends the House of Commons (Administration) Act 1978 regarding the membership of the House of Commons Commission, to confer a new strategic function on the Commission, and to deal with the exercise of functions on behalf of the Commission or its members.
- 25 Recall of MPs Act**  
This Act deals with the recall of members of the House of Commons.
- 26 Small Business, Enterprise and Employment Act**  
This Act implements a range of Government commitments intended to ensure that the UK continues

to be recognised globally as a trusted and fair place to do business and open up new opportunities for small businesses to innovate and compete. It will strengthen the current system and introduce new rules requiring companies to obtain, and hold, information on who owns and controls them. It also give the Treasury a power to require public sector workers to repay exit payments if they are re-employed in the public sector; tackle misconduct by directors and unfair employment practices; provide reforms to increase the efficiency of the Employment Tribunals system and further reduce its burden on small businesses; and ensure a strong regulatory regime for those that administer insolvencies.

**27 Local Government (Religious etc. Observances) Act**

This Act gives local authorities and a range of other authorities in England such as fire and rescue authorities, integrated transport authorities and combined authorities, the power to include prayers etc. as an item of business should they wish to do so, and to support, facilitate, or be represented at religious or similar events. In particular this will ensure that small parish councils which do not have the power of general competence can take time for prayers at their meetings, and that authorities in England can support activities, such as the annual commemoration on Remembrance Sunday, which have a religious dimension.

**28 Health and Social Care (Safety and Quality) Act**

This Act contains measures that together are intended to improve the safety and quality of health services and social care. Specifically it:

- seeks to ensure a reduction in the harm suffered by patients and other service users from receiving certain health and social care-related services in England;
- makes provision for requiring the use of a consistent service user identifier in individuals' health and social care records in England;
- is intended to secure the appropriate sharing of information in support of people's direct care in England to help ensure more integrated care;
- seeks to give the Professional Standards Authority for Health and Social Care ('PSA') and certain regulators of health and social care professionals in the United Kingdom an

overarching objective of public protection. It also requires those regulators' committees and panels to have regard to the new objective when determining whether a practitioner is fit to practise and when determining what sanctions might be appropriate. The overarching objective involves the pursuit of objectives in relation to maintaining public safety, public confidence and proper standards and conduct.

**29 Health Service Commissioner for England (Complaint Handling) Act**

This Act seeks to increase the effectiveness of the Commissioner (known as the Health Service Ombudsman) by requiring the Health Service Ombudsman to take action with a view to concluding investigations of complaints within 12 months and, in any case where this timescale is not met, to inform the complainant of the reason why not.

**30 Modern Slavery Act**

This Act deals with slavery, servitude and forced or compulsory labour and human trafficking, and includes provision for the protection of victims. The Act also makes provision for an Independent Anti-slavery Commissioner

The Act contains seven parts:

- Part 1 consolidates and clarifies the existing offences of slavery and human trafficking whilst increasing the maximum penalty for such offences.
- Part 2 provides for two new civil preventative orders, the Slavery and Trafficking Prevention Order and the Slavery and Trafficking Risk Order.
- Part 3 provides for new maritime enforcement powers in relation to ships.
- Part 4 establishes the office of Independent Anti-slavery Commissioner and sets out the functions of the Commissioner.
- Part 5 introduces a number of measures focused on supporting and protecting victims, including a statutory defence for slavery or trafficking victims and special measures for witnesses in criminal proceedings.
- Part 6 requires certain businesses to disclose what

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activity they are undertaking to eliminate slavery and trafficking from their supply chains and their own business.

- Part 7 requires the Secretary of State to publish a paper on the role of the Gangmasters Licensing Authority and otherwise relates to general matters such as consequential provision and commencement.

**31 Supply and Appropriation (Main Estimates) Act**

This Act authorises the use of resources for the year ending with 31 March 2016; and authorises both the issue of sums out of the Consolidated Fund and the application of income for that year and to appropriate the supply authorised for that year.

**32 European Union (Finance) Act**

This Act approves, for the purposes of section 7(1) of the European Union Act 2011, the decision of the Council of 26 May 2014 on the system of own resources of the European Union; and amends the definition of “the Treaties” and “the EU Treaties” in section 1(2) of the European Communities Act 1972 so as to include that decision.

**33 Finance (No. 2) Act**

This Act introduces further tax changes and amends the law relating to the National Debt and the Public Revenue

**34 Northern Ireland (Welfare Reform) Act**

This Act deals with social security and child support maintenance in Northern Ireland and makes further provision for arrangements under section 1 of the Employment and Training Act (Northern Ireland) 1950

**35 National Insurance Contributions (Rate Ceilings) Act**

This Act sets a ceiling on the main and additional primary percentages, the secondary percentage and the upper earnings limit in relation to Class 1 national insurance contributions.

**36 European Union Referendum Act**

This Act make provision for the holding of a referendum in the UK and Gibraltar on whether the UK should remain a member of the European Union.

**37 European Union (Approvals) Act**

This Act makes provision for approval of certain draft decisions under Article 352 of the Treaty on the Functioning of the European Union for purposes of section 8 of the European Union Act 2011.

