



ST HELENA

REVISED EDITION OF THE LAWS, 2017

CRIME AND CRIMINAL PROCEDURE

CRIMINAL DAMAGE ORDINANCE, 1979¹

Ordinance 8 of 1979

In force 16 November 1979

Amended by Ordinances 8 of 2007 and 14 of 2017

No subsidiary legislation to 1 November 2017

CRIMINAL DAMAGE ORDINANCE, 1979

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AN ORDINANCE to make provision in the law of St Helena as to offences of damage to property, and for connected purposes.

Short title

1. This Ordinance may be cited as the Criminal Damage Ordinance, 1979.

Interpretation

2. (1) In this Ordinance—

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.

“**mushroom**” includes any fungus;

“**plant**” includes any shrub or tree;

“**property**” means property of a tangible nature, whether real or personal, including money and—

- (a) including wild creatures which have been tamed or are ordinarily kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but
- (b) not including mushrooms growing wild on any land or flowers or fruit of a plant growing wild on any land.

(2) Property is to be treated for the purposes of this Ordinance as belonging to any person who has—

- (a) the custody or control of it;
- (b) any proprietary right or interest in it (not being an equitable interest arising only from an agreement to transfer or grant an interest); or
- (c) a charge on it.

(3) If property is subject to a trust, the persons to whom it belongs must be so treated as including any person having a right to enforce the trust.

(4) Property of a corporation sole must be so treated as belonging to the corporation even if there is a vacancy in the corporation.

Destroying or damaging property

3. (1) It is an offence for a person, without lawful excuse, to destroy or damage any property belonging to another person, intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged.
Penalty: Imprisonment for 7 years.

(2) It is an offence for a person, without lawful excuse, to destroy or damage any property, whether belonging to himself or herself or another person—

- (a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and
- (b) intending by the destruction or damage to endanger the life of another person or being reckless as to whether the life of another person would be thereby endangered.

Penalty: Imprisonment for life.

Arson

3A. A person who commits an offence under section 3(1) or (2) by destroying or damaging property by fire commits the offence of arson.

Penalty: (a) if the related offence is under section 3(1) - imprisonment for 7 years;

(b) if the related offence is under section 3(2) – imprisonment for life.

Threats to destroy or damage property

4. It is an offence for a person (‘A’), without lawful excuse, to make to another

person ('B') a threat, intending that B would fear it would be carried out, to destroy or damage—

- (a) any property belonging to B or a third person; or
- (b) A's own property in a way which A knows is likely to endanger the life of B or a third person.

Penalty: Imprisonment for 7 years.

Possessing anything with intent to destroy or damage property

5. It is an offence for a person ('A') to have anything in his or her custody or under his or her control, intending without lawful excuse to use it or cause or permit another person ('B') to use it, to destroy or damage—

- (a) any property belonging to some other person; or
- (b) A's own or B's property,

in a way which A knows is likely to endanger the life of some other person.

Penalty: Imprisonment for 7 years.

Punishment of offences

6. Notwithstanding section 19 of the Magistrates' Court Ordinance, 2011, an offence under this Ordinance punishable by imprisonment for more than 7 years is triable only on indictment.

Lawful excuse

7. (1) This section applies to any offence under section 3(1) and any offence under section 3A, 4 or 5 other than one involving a threat by the person charged to destroy or damage property in a way which the person knows is likely to endanger the life of another or involving an intent by the person charged to use or cause or permit the use of something in his or her custody or under his or her control so to destroy or damage property.

(2) A person ('A') charged with an offence to which this section applies is, whether or not A would be treated for the purposes of this Ordinance as having a lawful excuse apart from this subsection, to be treated for those purposes as having a lawful excuse—

- (a) if at the time of the act or acts alleged to constitute the offence A believed that the person or persons whom A believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented to it if that person or persons had known of the destruction or damage and its circumstances; or
- (b) if A destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section 5, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property belonging to A or another person or a right or interest in property which was or which A believed to be vested in A or another person, and at the time of the act or acts alleged to constitute the offence A believed that—
 - (i) the property, right or interest was in immediate need of protection; and
 - (ii) the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

(3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of subsection (2) a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

(5) This section is not to be construed as casting doubt on any defence recognised by law as a defence to a criminal charge.

Search for things intended for use in committing offences of criminal damage

8. (1) If it is made to appear by information on oath before a justice of the peace that there is reasonable cause to believe that any person has in custody or under control or on premises belonging to the person anything which there is reasonable cause to believe has been used or is intended for use without lawful excuse to destroy or damage —

(a) property belonging to another; or

(b) any property in a way likely to endanger the life of another,

the justice may grant a warrant authorising any police officer to search for and seize that thing.

(2) A police officer authorised under this section to search premises for anything, may enter (if need be by force) and search the premises accordingly and may seize anything which the officer believes to have been used or to be intended to be used as described in subsection (1)

(3) The Police Service Ordinance, 1975 (Part V—Disposal of stolen or unclaimed property in custody of police) applies to property which has come into the possession of the police under this section as it applies to property which is in the custody of the police in the circumstances mentioned in that Ordinance.

Award of compensation on conviction of an offence under s. 3

9. (1) On conviction of any person of an offence under section 3 or 3A of destroying or damaging property belonging to another the court may, on application or otherwise, and on being satisfied as to the approximate cost of making good the loss of or damage to the property order the person to pay to the person or any of the persons to whom the property belongs or belonged immediately before its destruction or damage any sum by way of compensation in respect of the whole or part of the loss of or damage to the property (not exceeding £2,000 in the case of the Magistrates' Court) the court thinks fit.

(2) An order under this section for the payment of compensation by a person made on conviction is to be treated for the purposes of section 128(4) and of the Criminal Procedure Ordinance, 1975 as an order for the restitution of property; and if by reason of the quashing by the Supreme Court of a person's conviction any such order under this section does not take effect, and on an appeal to the Court of Appeal the conviction is restored by that Court, the Court of Appeal may make any order under this section which could be made on conviction by the court which convicted the person.

(3) An order under this section for the payment of compensation must be suspended—

- (a) in any case - until the expiration of the period prescribed by law for the giving of notice of appeal against a decision of the court;
- (b) if notice of appeal is given within the period so prescribed - until the determination of the appeal.

Evidence in connection with offences under this Ordinance

10. (1) Subject to subsection (2), a person must not be excused, by reason that to do so may incriminate that person or the spouse of that person of an offence under this Ordinance—

- (a) from answering any question put to that person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or
- (b) from complying with any order made in any such proceedings.

(2) A statement or admission made by a person in answering a question put or complying with an order made as mentioned in subsection (1) is not, in proceedings for an offence under this Ordinance, admissible in evidence against that person or (unless they married after the making of the statement or admission) against the spouse of that person.

Abolition of common law offence of arson

11. The common law offence of arson is abolished.
