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ST HELENA

REVISED EDITION OF THE LAWS, 2017

CONSTITUTIONAL AND ADMINISTRATIVE LAW

ENGLISH LAW (APPLICATION) ORDINANCE, 2005 ¹

*Ordinance 10 of 2005
In force 1 January 2006
Amended by Ord. 4 of 2007, L.N. 3/2017*

Subsidiary legislation to 1 November 2017:
APPLICATION ORDERS—

**RECOGNITION OF DIVORCES AND LEGAL SEPARATIONS ACT
(APPLICATION) ORDER, 1976**
Legal Notice 13 of 1976

PROTECTION OF WRECKS (APPLICATION) ORDER, 1976
Legal Notice 10 of 1976

**EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT
(APPLICATION) ORDER, 1977**
Legal Notice 12 of 1977

**MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT
(APPLICATION) ORDERS, 1978**
Legal Notice 4 of 1978

STATE IMMUNITY ACT (APPLICATION) ORDER, 1979
Legal Notice 3 of 1979

**CROWN PROCEEDINGS (ARMED FORCES) ACT (APPLICATION) ORDER,
1988**
Legal Notice 35 of 1988

SEXUAL OFFENCES ACT 2003 (APPLICATION) ORDER, 2004
Legal Notice 7 of 2004, amended by L.N. 3/2017 (in force 30 March 2017)

SEXUAL OFFENCES ACT (APPLICATION)(AMENDMENT) ORDER, 2017
Legal Notice 3 of 2017

DISAPPLICATION ORDERS—

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.

THE FREEDOM OF INFORMATION ACT (DIS-APPLICATION) ORDER, 2005
Legal Notice 3 of 2005 dated 11 January 2005

ENGLISH LAW (HUMAN RIGHTS ACT) ORDER, 2010
Legal Notice 1 of 2010 dated 7 January 2010

This Ordinance applies certain English laws to St Helena.²

For other English laws applied to St Helena of their own force or by Order in Council, see the List of UK Laws Applied to St Helena, Ascension and Tristan da Cunha, on this website.

ENGLISH LAW (APPLICATION) ORDINANCE, 2005

ARRANGEMENT OF SECTIONS

1. Short title and commencement
2. Adopted English Law
3. Application of Adopted English Law to St Helena
4. Exclusion of Adopted English Law in certain circumstances
5. Governor in Council may make Orders
6. Orders to be laid before Legislative Council
7. Attorney General to publish information
8. Annual Report to the Legislative Council
9. Repeal, transitional and saving provisions

AN ORDINANCE to make fresh provision relating to the application of English law in St Helena.

Short title and commencement

1. This Ordinance may be cited as the English Law (Application) Ordinance, 2005 and comes into force on 1 January 2006.

Adopted English law

2. In this Ordinance, “**Adopted English Law**” means:
- (a) the common law of England, including the rules of equity; and

² Section 8 requires the Attorney General to make an annual report to the Legislative Council, so the St Helena legislature is involved in decisions on the application of UK laws. However, for guidance in determining whether English laws are applicable to St Helena by virtue of this Ordinance, and if so what modifications, qualifications, adaptations and exemptions should apply, see the court judgments set out in the Annex to the General Introduction to the website.

- (b) the Acts of Parliament which are in force in England at the time of commencement of this Ordinance.

Application of Adopted English Law to St Helena

3. (1) Subject to subsection (2) and other provisions of this Ordinance, the Adopted English Law applies in St Helena.

(2) The Adopted English Law applies to St Helena only in so far as it is applicable and suitable to local circumstances, and subject to such modifications, adaptations, qualifications and exceptions as local circumstances render necessary.³

Exclusion of Adopted English Law in certain circumstances

4. The Adopted English Law applies to St Helena only insofar as it is not inconsistent with—

- (a) any enactment of the Parliament of the United Kingdom which extends to St Helena otherwise than by virtue of this Ordinance;⁴
- (b) any Order of Her Majesty in Council which extends to St Helena otherwise than by virtue of this Ordinance;⁵ or
- (c) any provision made by or under any law enacted by a legislature in St Helena.

Governor in Council may make Orders

5. The Governor in Council may, by Order published in the *Gazette*, do any or all of the following:

- (a) declare that any specified part of the Adopted English Law is not suitable to local circumstances; and that such part is accordingly excepted from the provisions of section 3 by subsection (2) of that section;
- (b) direct that any part of the Adopted English Law is to have effect subject to any modifications specified in the Order;
- (c) direct that any Act of Parliament which is not within section 2(b) is (subject to any modifications prescribed in the Order) to be in force in St Helena.

Orders to be laid before Legislative Council

6. An Order made by the Governor in Council under section 5 must be laid before the Legislative Council at its next meeting after the publication of the Order in the *Gazette*; and does not come into force until ratified by a resolution of the Legislative Council.

Attorney General to publish information

7. (1) The Attorney General must, within one month of every resolution of the Legislative Council under section 6, cause an up-to-date schedule to be published listing all Orders then in force under section 5.

³ See the court judgments set out in the Appendix

⁴ See Part A of 'UK Laws Applied to St Helena' on this website

⁵ See Part B of 'UK Laws Applied to St Helena' on this website

(2) Every such schedule must be published in the *Gazette*; and, when so published, becomes the sole authentic record (in all courts and for all purposes) of such Orders in force on the date of publication of it.

Annual Report to the Legislative Council

8. The Attorney General must, not later than the 31st day of March in each year (commencing in 2007) present to the Legislative Council a report upon the Acts of Parliament enacted in England during the preceding calendar year and include in that report, in relation to each such Act:

- (a) a short description of the purpose and effect of the Act; and
- (b) a report of the action, if any, taken or intended to be taken under section 5 of this Ordinance in relation to that Act.

Repeal, transitional and saving provisions

9. (1) The English Law (Application) Ordinance (Cap 5) (“the old law”) is repealed.

(2) Notwithstanding subsection (1), all Orders made by the Governor in Council under section 4 of the old law continue to have effect as if made under section 5 of this Ordinance.

ENGLISH LAW (APPLICATION) ORDINANCE, 2005

RECOGNITION OF DIVORCES AND LEGAL SEPARATIONS ACT (APPLICATION) ORDER, 1976 (Sections 5 and 9)

Citation

1. This Order may be cited as the Recognition of Divorces and Legal Separations (Application) Order, 1976.

Recognition of Divorces and Legal Separations Act, 1971

2. The Recognition of Divorces and Legal Separations Act, 1971 (an enactment of the Parliament of the United Kingdom) is declared to be in force in St Helena, but in its application to St Helena the Act is modified to the extent stated in the Schedule to this Order.

SCHEDULE (Article 2)

- 1. Delete section 1.
 - 2. Throughout the Act, for “Great Britain”, “the British Isles” and “the United Kingdom”, substitute “St Helena”.
 - 3. Delete section 9.
 - 4. Amend section 10 by the deletion of subsections (2), (3) and (5).
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PROTECTION OF WRECKS (APPLICATION) ORDER⁶
(Sections 3 and 4)

Citation

1. This Order may be cited as the Protection of Wrecks (Application) Order, 1976.

Protection of Wrecks Act, 1973

2. The Protection of Wrecks Act, 1973 (an enactment of the Parliament of the United Kingdom) is declared to be in force in St Helena as from the coming into force of this Order, but in its application to St Helena the Act is modified to the extent stated in the Schedule to this Order.

SCHEDULE

1. Throughout the Act, for “Secretary of State”, substitute “Governor”.
2. Throughout the Act, for “United Kingdom”, substitute “St Helena”.
3. Section 3 of the Act is modified by the deletion of the first five lines of subsection (2) thereof, and substituting—
“(2) The Governor may revoke any such Order if—”.

ENGLISH LAW (APPLICATION) ORDINANCE, 2005

**EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT (APPLICATION)
ORDER, 1977**
(Sections 5 and 9)

Citation

1. This Order may be cited as the Evidence (Proceedings in Other Jurisdictions) (Application) Order, 1977.

Evidence (Proceedings in other Jurisdictions) Act

2. The Evidence (Proceedings in other Jurisdictions) Act 1975 (an enactment of the Parliament of the United Kingdom) is declared to be in force in St Helena, but in its application to St Helena the Act is hereby specifically modified to the extent stated in the Schedule to this Order, and is otherwise applicable to St Helena subject to such modifications, adaptations, qualifications and exceptions as are rendered necessary by local circumstances.

SCHEDULE
(Article 2)

⁶ This Order needs to be read in the light of the Protection of Wrecks and Marine Archaeological Heritage Ordinance, 2014 and section 4(c) of this Ordinance.

1. All references to the High Court, the Court of Session or the High Court of Justice in Northern Ireland are to be construed as references to the Supreme Court of St Helena.
2. References to the United Kingdom are to be construed as references to St Helena.
3. References to the powers of Her Majesty in Council and the Secretary of State are to be construed as references to the powers of the Governor.
4. Subsection (3) of section 10 does not apply.

ENGLISH LAW (APPLICATION) ORDINANCE, 2005

**MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT (APPLICATION)
ORDER, 1978**
(Sections 5 and 9)

Citation

1. This Order may be cited as the Maintenance Orders (Reciprocal Enforcement) (Application) Order, 1978.

Application of English Act to St Helena

2. The Maintenance Orders (Reciprocal Enforcement) Act 1972 (an enactment of the Parliament of the United Kingdom) hereinafter referred to as “the Act” is declared to be in force in St Helena as from the coming into force of this Order, but in its application to St Helena the Act is hereby modified to the extent stated in the Schedule to this Order.

SCHEDULE

(Article 2)

1. Throughout the Act references to the persons, officers or bodies named in the first column following are to be construed as references to the persons, officers or bodies named in the corresponding position in the second column following:

First column	Second column
Her Majesty	The Governor in Council
The United Kingdom	St Helena
England and Wales	St Helena
Order in Council	Order
Secretary of State	Chief Secretary
High Court	Supreme Court
Parliament	Government of St Helena

2. In its application to St Helena, the following sections and subsections of the Act are to be omitted—

Sections 3(7), 4, 5(10), 7(7), 8(2), 8(9), 8(10), 9(11), 10(8), 14(2), 14(4), 14(6), 16(6), 17(6), 17(8), 18(2), 19, 20, 23(5), 27(11), 29, 30(1), 30(2), 30(4), 30(6), 31, 32(9), 33(7), 34(5), 35(5), 38(3), 38(5), 38(6), 41(3), 41(4), 43, 45(2), 46, 47(1), 47(2), 47(3), 48, 49(2).

3. In section 18(1), in the definition of “prescribed” in section 21, and in section 27(10) references to rules made under section 15 of the Justices of the Peace Act 1949 are to be

construed as references to rules made under section 74 of the Civil Procedure Ordinance, 1968 or other rules made for the governance of Magistrates' Courts.

4. References to Scotland and Northern Ireland are to be disregarded throughout the Act.
5. Where necessary, references in the Act to magistrates' powers under quoted English law shall be construed as references to equivalent powers of magistrates under St Helena law, where such exist.
6. In addition to the modifications and exclusions specifically provided for the construction of the Act in its application to St Helena, the Act is to be applied with such other minor modifications, adaptations, qualifications and exceptions as local circumstances render necessary wherever the context so requires.

ENGLISH LAW (APPLICATION) ORDINANCE, 2005

STATE IMMUNITY ACT (APPLICATION) ORDER, 1979

(Sections 5 and 9)

Citation

1. This Order may be cited as the State Immunity (Application) Order, 1979.

Application of State Immunity Act 1978

2. The State Immunity Act 1978 (an enactment of the Parliament of the United Kingdom) is declared to be in force in St Helena as from the coming into operation of this Order, but in its application to St Helena the Act is hereby specifically modified to the extent stated in the Schedule to this Order, and is otherwise applicable to St Helena subject to such modifications, adaptations, qualifications and exceptions as are rendered necessary by local circumstances.

SCHEDULE

(Article 2)

1. References to the United Kingdom are to be construed as references to St Helena, except in section 4(2)(b), section 4(5) and in the third lines of sections 17(3) and 19(4) where references to the United Kingdom are to remain as references to the United Kingdom.
2. References to the powers of Her Majesty in Council are to be construed as references to the powers of the Governor in Council.
3. References to Her Majesty are to be construed as references to the Governor.
4. In section 4(2)(b) the words 'in St Helena' are to be substituted for the word 'there'.
5. Subsection (2) of section 15 does not apply.
6. Any reference to the Consular Relations Act 1968 is to be construed as a reference to the Consular Relations Ordinance 1972.
7. Sections 13(6), 16(3) and 17(5) do not apply.
8. Section 20(3) does not apply.
9. Subsection (4) of section 22 is to be replaced by the following subsection—

- “(4) In this Act “dependent territory” means Ascension and Tristan da Cunha.”.
10. Subsections (2), (5) and (6) of section 23 do not apply.

ENGLISH LAW (APPLICATION) ORDINANCE, 2005

CROWN PROCEEDINGS (ARMED FORCES) ACT (APPLICATION) ORDER, 1988
(Sections 5 and 9)

Citation

1. This Order may be cited as the Crown Proceedings (Armed Forces) (Application) Order, 1988.

Crown Proceedings (Armed Forces) Act, 1987

2. (1) The Crown Proceedings (Armed Forces) Act, 1987 (“the Act”) is to be in force in St Helena.

(2) In its application to St Helena, the Act has effect with the following amendments—

- (a) the words “the Governor” are substituted for the words “the Secretary of State” wherever they appear;
- (b) the following subsection applies in lieu of subsection (5) of section 2—
“(5) Every Order made under this section must be published in the *Gazette*.”;
- and
- (c) section 4 does not apply.

ENGLISH LAW (APPLICATION) ORDINANCE, 2005

SEXUAL OFFENCES ACT (APPLICATION) ORDER, 2004
(Sections 5 and 9)

Citation

1. This Order may be cited as the Sexual Offences Act (Application) Order, 2004.

Sexual Offences Act 2003

2. The Sexual Offences Act 2003 (an enactment of the Parliament of the United Kingdom) is declared to be in force in St Helena, but in its application to St Helena the Act is hereby specifically modified to the extent stated in the Schedule to this Order, and is otherwise applicable to St Helena subject to such modifications, adaptations, qualifications and exceptions as are rendered necessary by local circumstances.

SCHEDULE
(Article 2)

<u>Section</u>	<u>Modification</u>
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Part 1

- 9(2) The penalty at the end of the subsection is deleted and replaced by the following:
 “is liable –
 (a) on summary conviction to imprisonment for a term not exceeding 18 months or to a fine not exceeding £500, or both;
 (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.”.
- 21(1)(b) Replace “Secretary of State” with “Governor in Council”
- 21(3) Replace the subsection with the following:
 “(3) This subsection applies if A looks after persons under 18 who are resident in a home or other place established or designated in accordance with the Welfare of Children Ordinance, 2008, and B is resident, and is so provided with accommodation, in that place.”
- 21(6) and (7) Do not apply
- 21(8) Replace the subsection with the following:
 “(8) This subsection applies if A regularly has unsupervised contact with B (whether face to face or by any other means) in accordance with the Welfare of Children Ordinance, 2008.”
- 21(9), (10)
 and (12) Do not apply
- 22(5) Does not apply

Part 2

- Replace “Secretary of State” with “Governor in Council”
- Replace “the United Kingdom” with “St Helena”
- Replace “Crown Court” with “St Helena Supreme Court”
- 81(7) and (8) Do not apply
- 91A to 91F The sections as inserted in the Sexual Offences Act 2003 in 2012 apply.
- 102, 103, 105
 111, 112,
 114 to 122
 and 131 Do not apply
- 133 Substitute the following definitions:
 “admitted to a hospital” means admitted to a hospital under the Mental Health and Mental Capacity Ordinance, 2015;
 “cautioned” means cautioned by a police officer after the person concerned has admitted the offence;

“community order” means a probation or order or a community service order made under the Criminal Procedure Ordinance, 1975;
 “detained in a hospital” means detained in a hospital under the Mental Health and Mental Capacity Ordinance, 2015 or section 117 of the Criminal Procedure Ordinance, 1975;
 “order for conditional discharge” means an order made under section 238 of the Criminal Procedure Ordinance, 1975;
 “the period of conditional discharge” means the period set out in section 238(1)(b) of the Criminal Procedure Ordinance, 1975;
 “probation order” means an order made under section 235 of the Criminal Procedure Ordinance, 1975;
 “probation period” means the period specified under section 235(2) of the Criminal Procedure Ordinance, 1975.

The following definitions do not apply:

“community supervision order”
 “guardianship order”
 “local probation board”
 “restriction order”
 “term of service detention”.

- 134 Does not apply
- 135(2) Replace the subsection with the following:
 “(2) The enactment is section 121 of the Criminal Procedure Ordinance, 1975.”
- 136 and 137 Do not apply
- 138(1) Replace “Secretary of State” with “Governor in Council” and “statutory instrument” with “Legal Notice”
- 138(2) Replace “statutory instrument” with “Legal Notice” and “each House of Parliament” with “the Legislative Council”
- 138(3) Does not apply
- 142 Does not apply.

ENGLISH LAW (APPLICATION) ORDINANCE, 2005

FREEDOM OF INFORMATION ACT (DISAPPLICATION) ORDER, 2005
 (Section 5)

Citation

- 1.** This Order may be cited as the Freedom of Information Act (Disapplication) Order, 2005.

Freedom of Information Act 2000

2. The Freedom of Information Act 2000 (an enactment of the Parliament of the United Kingdom) is hereby declared to be unsuitable to local circumstances and is accordingly excepted from section 3 of the English Law (Application) Ordinance, 2005 by subsection (2) of that section.

ENGLISH LAW (APPLICATION) ORDINANCE, 2005

HUMAN RIGHTS ACT (DISAPPLICATION) ORDER, 2010
(Section 5)

Citation

1. This Order may be cited as the Human Rights Act (Disapplication) Order, 2010.

Human Rights Act, 1998

2. The Human Rights Act 1998 (an enactment of the Parliament of the United Kingdom) is hereby declared to be unsuitable to local circumstances and is accordingly excepted from section 3 of the English Law (Application) Ordinance, 2005 by -subsection (2) of that section.