

CRIMINAL JUSTICE (FIXED PENALTIES) ORDINANCE, 2019

ARRANGEMENT OF SECTIONS

1. Short title
2. Interpretation
3. Evidential test
4. Service of notification and payment of penalty
5. Action that may be taken on service of notification of a fixed penalty notice
6. Contents of fixed penalty notice
7. Effect of fixed penalty notice and payment
8. Withdrawal of fixed penalty notice
9. Regulations

DRAFT FOR PUBLIC CONSULTATION

Assented to in Her Majesty's name and on Her Majesty's behalf this day of , 2019.

Philip Rushbrook
Governor



**ST HELENA
NO. OF 2019**

Enacted.....
Date of Commencement.....
Published in the Gazette.....

A BILL

FOR

AN ORDINANCE

TO MAKE PROVISION FOR FIXED PENALTIES TO BE ISSUED IN RESPECT OF CERTAIN OFFENCES; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St. Helena.

Short title

1. This Ordinance may be cited as the Criminal Justice (Fixed Penalties) Ordinance, 2019.

Interpretation

2. In this Ordinance, unless the context otherwise indicates—

“**fixed penalty notice**” means a notice issued and served in the prescribed manner by an officer to a person considered by the officer to have committed a prescribed offence which gives the person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a prescribed penalty;

“**motor vehicle**” has the same meaning as that given to this term in the Road Traffic Ordinance, 1985;

“**officer**” means a police officer as defined in the Interpretation Ordinance 1968 or a person appointed by the Governor to issue or serve a fixed penalty notice in the manner prescribed; and

“**prescribed offence**” means an offence prescribed in Regulations under section 9(a).

Evidential Test

3. The evidential test for the prosecution of an offence must be met before a fixed penalty notice may be issued.

Service of notification and payment of penalty

4. (1) An officer who has reason to believe that a person has committed a prescribed offence for which a fixed penalty notice may be issued, must cause notification of the offence to be served on the person in accordance with subsection (2).

(2) The notification served under subsection (1) must be in the prescribed form and must require the person upon whom the notification is served to either accept or refuse to accept a fixed penalty notice in relation to the offence of which the person is accused.

(3) Notification under subsection (1) is considered to be served on the person named in the fixed penalty notice who is accused of having committed the offence contained therein if the notification is—

- (a) handed to the person by an officer;
- (b) delivered to the person by registered post;
- (c) left by an officer at the last known address of the person; or
- (d) placed securely on a motor vehicle involved in the commission of a prescribed offence for which provision is made under the Road Traffic Ordinance, 1985.

(4) A person served with notification of a fixed penalty notice may be eligible to pay a reduced amount as prescribed if payment of the penalty in the fixed penalty notice is made within a time prescribed.

Action that may be taken on service of notification of a fixed penalty notice

5. A person who is served with notification of a fixed penalty notice may within 14 days of the date on which the notification is served—

- (a) accept the fixed penalty notice in the manner prescribed and pay the penalty specified in the fixed penalty notice; or
- (b) deny the offence by returning the notification of the fixed penalty notice in the manner prescribed.

Contents of fixed penalty notice

6. A fixed penalty notice must be in the form prescribed and must—

- (a) specify the alleged offence (and give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence);
- (b) specify the amount of the penalty and the period for payment thereof;
- (c) contain an option for a person served with a fixed penalty notice to pay a reduced amount before a specified date in the fixed penalty notice that is earlier than the date specified pursuant to paragraph (b);
- (d) state the consequences of not paying the penalty before the end of the period mentioned in the notice;
- (e) specify the person to whom and the address at which payment may be made;

- (f) state that the person named in the fixed penalty notice has a right to deny the offence of which the person is accused, be tried for the offence and explain how that right may be exercised.

Effect of fixed penalty notice and payment

7. (1) Proceedings for an offence in respect of which a fixed penalty notice is issued may not be commenced before the end of the period specified in the fixed penalty notice for payment of the penalty stated in the fixed penalty notice.

(2) If the penalty specified in the fixed penalty notice is paid before the end of the period stated in the fixed penalty notice, no proceedings for the offence may be commenced.

Withdrawal of fixed penalty notice

8. (1) Notwithstanding any provision contained in this Ordinance if the Director of Police, any police officer of the rank of Inspector or above or person appointed by the Governor, considers that a fixed penalty notice should not have been issued or served, the fixed penalty notice may be withdrawn by the Director of Police, the police officer of the rank of Inspector or above or person appointed by the Governor, as the case may be.

(2) If a fixed penalty notice is withdrawn in accordance with subsection (1) any amount which has been paid by way of penalty in pursuance of the fixed penalty notice must be refunded.

(3) If a fixed penalty notice is withdrawn pursuant to this section the Director of Police or police officer of the rank of Inspector or above withdrawing the fixed penalty notice must cause notice of the withdrawal to be served on the person who was served with the fixed penalty notice.

(4) For the purpose of subsection (1) "person appointed by the Governor" means a person who is the chief officer in a department of Government who is permitted by the Governor, by Order, to issue fixed penalty notices for prescribed offences.

Regulations

9. The Governor in Council may make regulations necessary or convenient for the purposes of this Ordinance and, without prejudice to the generality of this provision, may specifically prescribe—

- (a) the offences in respect of which fixed penalty notices may be issued;
- (b) the form of the notification for a fixed penalty notice;
- (c) the form of a fixed penalty notice issued under this Ordinance;
- (d) the amount of the penalty for purposes of this Ordinance;
- (e) who must be appointed and the manner in which a person must be appointed to be an officer for the purpose of this Ordinance; and
- (f) generally for carrying into effect the provisions of this Ordinance.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

This Ordinance makes provision for fixed penalty notices to be issued in respect of certain offences whereby liability to conviction for any such offence is discharged by payment of a penalty. If the penalty in the fixed penalty notice is paid, no criminal proceedings will be brought against the person named in the fixed penalty notice for the offence specified in the fixed penalty notice.

Clause 1 of the Bill would contain the citation for the Ordinance.

Clause 2 of the Bill would define certain words and terms used in the Ordinance.

Clause 3 of the Bill would stipulate the evidential standard that must be met before a fixed penalty can be issued.

Clause 4 of the Bill would make provision for the manner in which notification for a fixed penalty notice should be served and for the format for such notification. The Clause would also provide that the penalty due to be paid pursuant to a fixed penalty notice could be a reduced amount which will be prescribed if the penalty is paid within a prescribed period of time.

Clause 5 of the Bill would provide the time in which a person is required to accept a fixed penalty notice and pay the penalty specified in the fixed penalty notice or deny the offence specified in the fixed penalty notice.

Clause 6 of the Bill would provide that the fixed penalty notice must contain—

- (a) the particulars of the offence for which the person being issued and served with the fixed penalty notice is accused so that the person may defend proceedings which may be brought or admit guilt;
- (b) the amount for which payment is required;
- (c) the reduced penalty that a person would be entitled to pay if the person opted to pay the penalty rather than contest the fixed penalty notice or defend the charge which could later be brought as a result of the fixed penalty notice;
- (d) the consequences of not paying the penalty, i.e. that proceedings may be commenced in respect of the offence for which the person is accused as specified in the fixed penalty notice;
- (e) where payment for the penalty is to be made;
- (f) where advice may be obtained in respect of the explanation of the offence;
- (g) explain that the person served with notification of the fixed penalty notice may exercise their right to deny the offence specified in the fixed penalty notice and the course of action that would thereafter ensue.

Clause 7 of the Bill would set out the circumstances in which proceedings for which a fixed penalty notice has been issued may be commenced. The Clause would provide that in the specified circumstances, the officer with responsibility for the issue of the fixed penalty notice may withdraw the fixed penalty notice or commence proceedings in respect of the offence for which the fixed penalty notice was issued. The Clause would also provide that if the penalty specified in the fixed penalty notice is paid then no proceedings may be commenced in respect of the offence for which the fixed penalty notice was issued.

Clause 8 of the Bill would permit the Director of Police or a senior police officer to withdraw a fixed penalty notice, even after the penalty specified in the fixed penalty notice was paid.

Clause 9 of the Bill would permit the Governor in Council to make the necessary Regulations for the operation of the Ordinance.