



TRISTAN DA CUNHA

REVISED EDITION OF THE LAWS, 2017

COURTS AND JUSTICE

MAGISTRATE'S COURT (TRISTAN DA CUNHA) ORDINANCE, 2019¹

Ordinance T1 of 2019

In force 21 February 2019

No subsidiary legislation has been issued under this Ordinance.

MAGISTRATES' COURT (TRISTAN DA CUNHA) ORDINANCE, 2019

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AN ORDINANCE to provide for the constitution in Tristan da Cunha of a Magistrates' Court, and for connected and incidental matters.

**PART I
PRELIMINARY**

Short title

1. This Ordinance may be cited as the Magistrates' Court (Tristan da Cunha) Ordinance, 2019.

Interpretation

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

“**action**” means a civil proceeding commenced in a manner prescribed by rules of court, and includes a suit;

“**Administrator**” means the Administrator of Tristan da Cunha acting in a judicial capacity;

“**cause**” means—

(a) any action, suit or other original civil proceeding between a plaintiff and a defendant; and

(b) any criminal proceeding;

“**Chief Justice**” means the Chief Justice of the Supreme Court and includes any person lawfully acting as or performing the functions of the Chief Justice;

“**civil**”, in relation to matters of jurisdiction, comprehends all such matters as are regulated by or under the provisions of any written law relating to civil procedure;

“**court**” means the Magistrates’ Court established by section 3;

“**criminal**” includes quasi-criminal, and in relation to matters of jurisdiction, comprehends all such matters as are regulated by or under the provisions of any written law relating to criminal procedure;

“**judgment**” and “**decree**” are deemed synonymous terms;

“**Magistrate**” means—

(a) the Chief Magistrate of St Helena as referred to in section 7;

(b) the Administrator; and

(c) the Chief Justice hearing any matter by virtue of section 7(3);

“**matter**” includes every proceeding in a court not in a cause;

“**police officer**” means a police officer referred to in the Police (Tristan da Cunha) Ordinance, 1923;

“**rules of court**” means rules of court made under the provisions of any Ordinance relating to civil or criminal procedure;

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

PART II CONSTITUTION OF THE COURT

Establishment of the Magistrates’ Court

3. (1) There shall be and is hereby established in Tristan da Cunha a court of summary jurisdiction subordinate to the Supreme Court which is to be—

(a) styled the Magistrates’ Court; and

(b) constituted in the manner provided by this section,

and the court is to exercise the jurisdiction conferred upon it by this or any other Ordinance or under any other law in force in Tristan da Cunha.

(2) The court is duly constituted when it is held before—

(a) the Administrator;

(b) the Chief Magistrate of St Helena referred to in section 7(1); or

(c) the Chief Justice as provided for in section 7(3).

(3) The Administrator may direct that a matter be heard before the Chief Magistrate if—

(a) having heard representations from the offender (or his or her representative) and the Crown and taking into consideration the case, the Administrator is of the view that if the accused is convicted, the sentence would likely exceed the maximum sentence that the Administrator is permitted to impose under section 17(1)(a); or

(b) a complex matter of law is likely to arise; or

- (c) the Administrator determines that the offender may be suffering from a mental disorder or lacks mental capacity; or
 - (d) the Administrator considers that it is in the interest of justice to do so, having regard to the factors referred to in section 23(3).
- (4) If, after conviction, the Administrator is of the view that—
- (a) the antecedents and character of the offender are such that the likely sentence would exceed the Administrator’s maximum sentencing powers; or
 - (b) the only appropriate disposal is an immediate custodial sentence or an order for detention at a hospital for mental evaluation or treatment,

the Administrator must direct that the sentencing hearing take place before the Chief Magistrate and that the offender be remanded, either on bail or in custody, to appear before the Chief Magistrate in person or, if the Chief Magistrate considers it in the interests of justice to do so, to conduct the sentencing hearing by teleconference or other means of electronic, oral or written communication.

(5) Subsections (3) and (4) does not affect any provisions relating to the committal of accused persons for trial before the Supreme Court.

Limits of jurisdiction

4. The court has and may exercise jurisdiction throughout Tristan da Cunha, subject to any other laws extending the jurisdictional powers of the court, territorial, personal or otherwise.

Seal

5. The court is to have and use a seal of a nature and pattern the Governor approves.

Contempt of court

6. (1) The powers of the Supreme Court to deal with any contempt of its authority extend to upholding the authority of the Magistrates’ Court and if any contempt be committed in the face of the court, the court may commit the person guilty of it forthwith to prison pending an order of the Supreme Court on the matter:

- (2) Subsection (1) is subject to the following:
 - (a) upon committing a person to prison in accordance with that subsection, the Magistrates’ Court must cause a copy of the warrant of commitment (together with a written statement by the Magistrate concerning the circumstances thereof) to be forwarded to the Registrar of the Supreme Court as soon as practicable;
 - (b) the Magistrates’ Court may revoke an order made under this section if (at any time within 7 days of the making of it) it appears that the contempt has been purged; and thereupon or on the expiry of that period of 7 days the person committed must be forthwith released, but without affecting paragraph (a) of this subsection.

PART III MAGISTRATE AND OFFICERS OF THE COURT

Appointment of Magistrate

7. (1) The Chief Magistrate of St Helena also serves as the Magistrate for Tristan da Cunha.

(2) For purposes of performing any function under this Ordinance, the Chief Magistrate referred to in subsection (1) has the same powers with respect to Tristan da Cunha as is conferred on him or her for purposes of performance of those functions in St Helena.

(3) The Chief Justice may any hear any matter before the Magistrates' Court when the Chief Magistrate of St Helena is for any reason unable to sit as Magistrate for Tristan da Cunha and the Chief Justice will have the powers of the Chief Magistrate as provided in subsection (2).

Powers of Magistrate

8. Subject to this or any other Ordinance, the Magistrate has such powers and rights, and must perform such duties as are conferred or imposed on the Magistrate by this or any other Ordinance or any other law in force in Tristan da Cunha or by rules of court.

Appointment of Clerk of the Court

9. The Administrator may appoint a Clerk of the Court and any other officers that are necessary for the proper exercise of the jurisdiction of the court.

Duties of Clerk of the Court

10. The duties of the Clerk of the Court are—
- (a) to attend at such sessions of the court as the Magistrate directs;
 - (b) to prepare or cause to be prepared for signature all summonses, warrants, orders, convictions, recognisances, writs of execution and other documents;
 - (c) to issue civil processes in accordance with the rules of court in force;
 - (d) to make or cause to be made copies of proceedings when required so to do, and to record the judgments, convictions and orders of the court;
 - (e) to receive or cause to be received all fees, fines, penalties and other moneys paid or deposited in respect of proceedings in the court, and to keep or cause to be kept accounts of the same; and
 - (f) generally to perform or cause to be performed such other duties as may be imposed upon the Clerk of the Court by rules of court or assigned to that office by the court.

Duties of Chief Officer of Police

11. (1) The chief officer of police in Tristan da Cunha is charged with the execution of all orders and processes of the court, and for that purpose has the same powers, authority and immunities as are from time to time by law conferred upon the Sheriff of St Helena in respect of the orders and processes of the Supreme Court.

(2) Every duty of the chief officer of police in the execution of any process of the court may be performed by a subordinate police officer and for all purposes of such execution such subordinate police officer is an officer of the court.

PART IV JURISDICTION OF THE MAGISTRATES' COURT

Powers of the court

12. (1) The court has and may exercise such jurisdiction in civil and criminal matters as is in this Ordinance provided, or as is provided by or under any other law in force in Tristan da Cunha.

(2) Without limiting subsection (1), the court has and may exercise the jurisdiction conferred by any law in force in Tristan da Cunha upon a juvenile court.

(3) When exercising the jurisdiction conferred by subsection (2), the court is to be styled the “Tristan da Cunha Juvenile Court” and must be held *in camera*.

(4) All proceedings in the court in which a person under the age of 17 years (in this section called “**a juvenile**”) is charged with or otherwise accused of any criminal offence must be heard by the Tristan da Cunha Juvenile Court:

Provided that the rule does not apply to proceedings in which such a person is so charged or accused jointly with a person who is not under the age of 17 years.

(5) A person who causes to be printed, broadcast, or otherwise published, any particulars whereby the identity of any juvenile involved in proceedings held before the Tristan da Cunha Juvenile Court (or which would have been so held except for the proviso to subsection (4)) may be ascertained or made known commits contempt of court and is liable to be proceeded against and dealt with accordingly.

Law to be applied

13. (1) Subject to this Ordinance or of any other law in force in Tristan da Cunha, the jurisdiction of the court is to be exercised in conformity with the laws with which the Supreme Court is required to conform in the exercise of its own jurisdiction:

Provided that the Magistrates’ Court must not exercise any jurisdiction which is by the provisions of any law in force in Tristan da Cunha conferred exclusively on the Supreme Court or on a court of record.

(2) For the purposes of this Ordinance, any reference in the laws applied by this section to—

- (a)* a county court;
- (b)* a police court; or
- (c)* a court of summary jurisdiction,

is to be construed as a reference to the Magistrates’ Court.

Civil jurisdiction

14. (1) Subject to subsection (5), in civil causes and matters, the Magistrates’ Court, in addition to any other jurisdiction conferred on it by any other Ordinance or law in force in Tristan da Cunha, has jurisdiction—

- (a)* in all personal suits, whether arising from tort or contract or both, where the value of the property, the debt or the damage claimed, whether as the balance of an account or otherwise, does not exceed £5,000;
- (b)* in all suits between landlord and tenant for possession of any premises claimed under an agreement or refused to be delivered up, where the annual value or the rent of the premises does not exceed £5,000;

(c) to grant in any suit instituted in the court injunctions or orders to stay waste or alienation or for the detention and preservation of any property the subject of such suit, or to restrain any wrongful act or breach of contract;

(d) in all claims for relief by way of interpleader in respect of land or other property attached in execution of a decree of the court:

Provided that the jurisdiction conferred by this paragraph must not be exercised, unless the parties consent, in respect of land or other property exceeding £5,000 in value;

(e) to enforce by attachment any order made by the court;

(f) to commit to prison for a term not exceeding 3 months, or until payment of the sum due, any person who makes default in payment of any debt or instalment or any debt due by the person pursuant to any judgment or order of the Supreme Court or of the court:

Provided that no such person may be committed to prison unless it is established to the satisfaction of the court that the person making default—

(i) has, or since the date of the judgment or order has had, the means, after providing for the support of his or her dependants, to pay the sum in respect of which he or she has made default; and

(ii) refuses or neglects, or has refused or neglected, to pay the same.

(2) For the purpose of paragraph (f) of subsection (1), the court may order—

(a) that any debt due by any person pursuant to any judgment or order of the Supreme Court, or of the court, may be paid by instalments; or

(b) that any warrant of commitment of such person to prison under that paragraph are to be suspended on payment by the person of instalments as specified in the order, and may from time to time vary or rescind any such order.

(3) Notwithstanding subsection (1), the court does not have jurisdiction in—

(a) suits in which the title to any office is in issue;

(b) suits in which the validity of any will or other testamentary writing or of any bequest or limitation under any will or settlement is in issue;

(c) suits in which the legitimacy of any person is in issue;

(d) suits in which the validity or dissolution of any marriage is in issue; or

(e) any action for malicious prosecution, defamation, seduction or breach of promise of marriage.

(4) If in any suit the debt or demand consists of a balance not exceeding £5,000 after an admitted set off of any debt or demand claimed or recoverable by the defendant from the plaintiff, the court has jurisdiction and power to hear and determine such suit within the limits of its jurisdiction and power.

(5) If the Chief Justice considers that a civil case brought in the Supreme Court is suitable to be heard in the Magistrates' Court, then notwithstanding that the value of the claim exceeds the maximum amounts prescribed in this section, the Chief Justice may remit the case to the Magistrates' Court for hearing and determination.

Law and equity

15. (1) In every civil cause or matter which is instituted in the court, law and equity are to be administered concurrently.

(2) In the exercise of the jurisdiction conferred upon the court, the court has power in every cause or matter to grant and must grant, either absolutely or on such reasonable terms and conditions as seem just, all such remedies and reliefs, interlocutory or final, as any of the parties to the cause or matter appear to be entitled to in respect of every legal and equitable claim or defence properly brought forward by them respectively or which appear in the cause or matter; so that, so far as is possible, all matters in controversy between the parties can be fully and finally determined and multiplicity of proceedings concerning such matters can be avoided.

(3) If in any cause or matter there is a conflict between the rules of equity and the rules of the common law with reference to the same subject, the rules of equity prevail.

Extension of civil jurisdiction

16. The Governor, upon the recommendation of the Chief Justice, may by order published in the *Gazette* increase the jurisdiction exercised by the court in such civil causes and matters as are specified in the order, and thereupon section 14 is deemed to be varied in accordance with such order.

Criminal jurisdiction

17. (1) Subject to any other law in force in Tristan da Cunha, the court has jurisdiction to try summarily any criminal offence except for any offence punishable with imprisonment for a term exceeding 14 years:

Provided that—

- (a) where the court is constituted as referred to in section 3(2)(a), the court may not impose a sentence of imprisonment for a term exceeding 18 months or a fine exceeding £5,000, or both such fine and imprisonment; or
- (b) where the court is constituted as referred to in section 3(2)(b), the court may not impose a sentence of imprisonment for a term exceeding 5 years or a fine exceeding £20,000, or both such fine and imprisonment,

unless a written law expressly provides that an offender is liable on summary conviction to a longer term or a higher fine or both.

(2) If, on the conviction of an offender for an offence for which the maximum penalty prescribed by law exceeds the maximum penalty which the court can impose, it appears to the court, after obtaining information regarding the character and antecedents of the offender, that a sentence should be imposed which is in excess of that which it may lawfully impose, the court may commit the offender to the Supreme Court for sentence, and thereupon the Supreme Court may pass such sentence or make such order upon or in respect of such offender as if the person had been tried and convicted by that court.

(3) If an offender is convicted of more offences than one, such offences having been lawfully joined in one charge, and it appears to the court that consecutive sentences should be imposed, it is not necessary for the court to commit the offender to the Supreme Court for sentence by reason only that the aggregate punishment for the several offences in respect of which such sentences are imposed is in excess of the punishment which it is competent to impose on conviction for a single offence.

(4) All offenders commence serving their sentences on the date sentence is passed, except where the court directs otherwise.

General powers of Magistrate

18. The Magistrate has power to make such orders, to issue such processes and to exercise such judicial and administrative powers in relation to the administration of justice as are, and in the manner, from time to time prescribed by this or any other Ordinance, or by rules of court, or subject thereto, by any special order of the Chief Justice.

Administration of oaths

19. (1) The Magistrate is authorised to administer all oaths, affirmations and declarations which may require to be taken before him or her in exercise of the jurisdiction and powers conferred upon the Magistrate by this Ordinance or any other law in force in Tristan da Cunha.

(2) Any such oath or affirmation may also be administered by a clerk or other officer of the court under the direction and in the presence of the Magistrate.

Jurisdiction of Supreme Court concurrent with that of Magistrates' Court

20. No jurisdiction conferred upon the court in any way restricts or affects the jurisdiction of the Supreme Court, but the Supreme Court has in all causes and matters, civil and criminal, an original jurisdiction concurrent with the jurisdiction of the Magistrates' Court.

Reconciliation

21. (1) In criminal cases, the court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any offence of a personal or private nature, being an offence which the court would have jurisdiction to try and not aggravated in degree, on terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed or terminated.

(2) In civil causes and matters, the court and its officers must, as far as there is proper opportunity, promote reconciliation among persons subject to its jurisdiction and encourage and facilitate the settlement in an amicable way and without recourse to litigation of matters in difference between them.

(3) Where a civil suit or proceeding is pending, the court and its officers may promote reconciliation among the parties to the suit and encourage and facilitate the amicable settlement of it.

Judgment may be entered in Supreme Court on a judgement of Magistrates' Court

22. (1) If the Chief Justice is satisfied that a person, whether resident in Tristan da Cunha or not, against whom judgment for an amount exceeding £2,000 has been pronounced (whether by way of claim or counterclaim or for costs or otherwise) in the court, has no goods or chattels within Tristan da Cunha which can conveniently be seized to satisfy the judgment, the Chief Justice may, if he or she thinks fit, and upon such terms as to costs as he or she directs, by order under his or her hand and the seal of the Supreme Court, remove the judgment into the Supreme Court.

(2) Upon the removal of a judgment into the Supreme Court pursuant to this section—

- (a) no further proceedings are to be had or taken on it in the Magistrates' Court, and the judgment must be entered in the Supreme Court for the amount due and payable under the judgment of the Magistrates' Court together with the costs as aforesaid; and
 - (b) a judgment so entered has the same force and effect and the same proceedings may be had on it as if it were a judgment originally obtained in the Supreme Court.
- (3) This section applies to orders obtained in the court as it applies to judgments there obtained.

PART V SITTINGS OF THE COURT

Place and time for sittings of Magistrates' Court

23. (1) The court must ordinarily be held at such place as the Chief Justice directs, but should necessity arise it may be held at any other place within the limits of its jurisdiction.

(2) Subject to any directions of the Chief Justice, the court must be held at a time that the Magistrate considers most expedient for the despatch of the business of the court.

(3) Where the court is constituted as provided in section 3(2)(b) or (c), the sitting of the court will be held outside Tristan da Cunha, provided the Magistrate is satisfied that—

- (a) a matter arising in a proceeding before the court needs to be dealt with promptly;
- (b) every party to the proceeding is able to participate, in person or through a legal representative, by teleconference or other means of electronic, oral or written communication;
- (c) no injustice will result; and
- (d) the course proposed is in the public interest.

Nature of business at any sitting

24. At any sitting of the court both civil and criminal causes and matters may be heard and determined.

PART VI PRACTICE AND PROCEDURE OF THE COURT

Practice and procedure

25. Subject to any other law in force in Tristan da Cunha, the jurisdiction vested in the court is to be exercised (so far as regards practice and procedure)—

- (a) in the manner provided by this Ordinance or by any other Ordinance in force relating to criminal or civil procedure, or by rules of court; and
- (b) in the absence of any such provision, in substantial conformity with the law and practice observed in England in county courts, police courts and courts of summary jurisdiction.

Process issued by Magistrate ceasing to act

26. If the Magistrate has issued any summons or warrant, whether civil or criminal, under any authority howsoever conferred, and subsequently ceases to act as Magistrate, the person in whose hands such summons or warrant is may execute or serve it in the same manner as if the Magistrate who issued the summons or warrant had not ceased to act.

Issue of process

27. All summonses, warrants, orders, convictions and recognisances, and all other processes, whether civil or criminal, of the court must be issued or made under the hand of the Magistrate: except that, where expressly authorised by the provisions of any law in force in Tristan da Cunha or by rules of court, writs of summons and other civil process may be issued under the hand of the Clerk of the Court.

Duty of police officers to obey Magistrate

28. All police officers are authorised and required to obey the warrants, orders and directions of the Magistrate in the exercise of his or her criminal jurisdiction, and, in so far as such obedience may be authorised and required by any law in force in Tristan da Cunha in that behalf, of his or her civil jurisdiction.

PART VII MISCELLANEOUS

Protection of Magistrate and other officers

29. (1) The Magistrate or other person acting judicially is not liable to be sued in any civil court for any act done or ordered to be done by him or her in the discharge of a judicial duty, whether or not within the limits of his or her jurisdiction, provided that the Magistrate or other person, at the time and in good faith, believed himself or herself to have jurisdiction to do or order the act complained of.

(2) No officer of any court or other person bound to execute the lawful warrants or order of the Magistrate or other person acting judicially is liable to be sued in any civil court for the execution of any warrant or order which he or she would be bound to execute if within the jurisdiction of the person issuing it.

Representation in court

30. In any suit or matter—
(a) in which the Crown, any department of the Government or any public officer in his or her official capacity is a party; or
(b) affecting the revenues of Tristan da Cunha,
the Crown, that department or that officer, as the case may be, may be represented by a legal practitioner or other person duly authorised in writing in that behalf by the Administrator acting in his or her executive capacity.

Employment of legal practitioners

31. The employment of legal practitioners is, except as otherwise specifically provided, to be allowed in all causes and matters, whether civil or criminal, before the court.

Fees and costs

32. (1) The fees and costs set forth in any Ordinance or in rules of court, may be demanded and received by the Clerk of the Court or other person appointed to receive such fees and costs for and in respect of the several matters therein mentioned.

(2) Except as provided in subsection (3), all such fees and costs must in the first instance be paid by the party applying for the summons, warrant, or other process or document in respect of which they are payable.

(3) No fees are payable—

- (a)* by any public officer in any cause or matter instituted or defended by the officer in his or her official capacity; or
- (b)* in any case in which the Magistrate endorses on the complaint that it is a fit one for remission of fees on account of the poverty of the party or for any other sufficient cause; and
- (c)* any such fees and costs are, in the discretion of the court, recoverable from the other party, if the decision be given against that party.

Repeal of legislation

33. Section 6 of the Law Reform (Miscellaneous Provisions)(Tristan da Cunha) Ordinance, 1988, is repealed.
