



The Laws of Pitcairn, Henderson, Ducie and Oeno Islands

VOLUME I

CONTAINING

THE PITCAIRN CONSTITUTION ORDER 2010,
THE CONSTITUTION OF PITCAIRN,
THE PITCAIRN (APPEALS TO PRIVY COUNCIL) ORDER 2000,
THE PITCAIRN (COURT OF APPEAL) ORDER 2012,
AND THE ORDINANCES AND SUBSIDIARY
LEGISLATION IN FORCE IN THE ISLANDS

REVISED EDITION 2001
INCORPORATING ANNUAL REVISED EDITIONS UNDER
ORDINANCE NO. 1 OF 2002
UPDATED AS AT 26 JUNE 2017

Original Revised Edition prepared under statutory authority by
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VOLUME I
REVISED EDITION OF THE LAWS 2001

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PREFACE

This Revised Edition of the Laws of Pitcairn, Henderson, Ducie and Oeno Islands has been prepared in accordance with the Revised Edition of the Laws Ordinance 2001. It contains the ordinances and subsidiary legislation in force on the 31st day of December 2000, together with subsequent amendments to the laws down to the date of publication, which are appropriate to be included.

A chronological list of the ordinances made since the Pitcairn Order in Council 1952 down to the present time has been included. All prior regulations applicable to Pitcairn, made under the authority of the Pacific Order in Council 1893, lapsed with the coming into force of the Order of 1952 and have not been listed. They included the Pitcairn Island Government Regulations approved by the High Commissioner for the Western Pacific in 1941. These were, however, given the force of law by Ordinance No.2 of 1952 and continued to form the base of the Island administration.

As in the case of previous editions of the Laws, the subsidiary legislation made under each ordinance is printed immediately after the ordinance under which it is made. Any enactments which may have been authorised by the Revised Edition of the Laws Ordinance 2001 to be omitted from this edition will nevertheless remain in force until such time as they may become spent or are repealed or replaced.

The present work does not include the Statutory Instruments which apply to the Islands, other than the Pitcairn Order 1970 as amended by the Pitcairn (Amendment) Order 2000, the Pitcairn Court of Appeal Order 2000 and the Pitcairn (Appeals to the Privy Council) Order 2000. It is intended to publish the Statutory Instruments applicable to the Islands in a separate volume.

PJT
June 2001

ADDENDUM

The Annual Revision of Laws Ordinance 2002 now provides for the revision of further laws made since the Revised Edition of the Laws 2001 by the preparation and publication in January of each year, or as soon as possible thereafter, of the ordinances and subsidiary legislation enacted during the previous year. Each annual revised edition will be published together with the previous revised editions and consolidated with them. The source of each amendment will be shown at the end of the amended text. The first such annual revision has now been issued and the new ordinances are to be found in a second volume of the laws.

PJT
March 2003

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

PART I
REVISED EDITION OF THE LAWS ORDINANCE
2001

PART 1
REVISED EDITION OF THE LAWS ORDINANCE
2001

**An ordinance to make provision for the preparation and
publication of a revised edition of the laws of the Islands**

[6th March 2001]

1. This ordinance may be cited as the Revised Edition of the Laws Ordinance 2001. Short title

2. In this ordinance, except where the context otherwise requires—

Commissioner means the person or persons appointed under the provisions of section 3; Interpretation

revised edition means the revised edition of the laws of the Islands in force on the thirty-first day of December 2000 and such ordinances enacted after that date as the Commissioner may think fit to include, to be prepared under the authority of this ordinance.

3.—(1) Paul Julian Treadwell OBE LLB QC is hereby appointed a Commissioner for the purpose of preparing a revised edition of the laws of the Islands. Appointment of Commissioner

(2) In case the Commissioner shall from any cause be unable fully to discharge his commission under this ordinance, the Governor may appoint some other fit and proper person or persons to be Commissioner or Commissioners in his stead.

4. In the preparation of the revised edition the Commissioner shall have the following powers— Powers of Commissioner

(a) to omit—

- (i) all ordinances or parts of ordinances which have been repealed expressly or by necessary implication or which have expired, or which have become spent or have had their effect;
- (ii) all repealing enactments contained in ordinances and all tables or lists of repealed enactments whether contained in schedules or otherwise;
- (iii) all preambles or parts of preambles to ordinances and all or any recitals in ordinances where such omission can, in the opinion of the Commissioner, conveniently be made;

- (iv) all words of enactment in any ordinance;
- (v) all enactments prescribing the date when an ordinance or part of an ordinance is to come into operation where such omission can, in the opinion of the Commissioner, conveniently be made;
- (vi) all amending ordinances or parts thereof where the amendments effected thereby have been embodied by the Commissioner in the ordinances to which they relate;
- (b) to arrange the grouping and sequence of ordinances;
- (c) to consolidate into one ordinance any two or more ordinances *in pari materia* making the alterations thereby rendered necessary and affixing such date thereto as may seem most convenient;
- (d) to alter the order of sections in any ordinances and in all cases where it may be necessary to do so to renumber the sections;
- (e) to alter the form or arrangement of any section by transferring words, by combining it in whole or in part with another section or other sections or by dividing it into two or more subsections;
- (f) to transfer any enactment contained in any ordinance from such ordinance to any other ordinance to which that enactment more properly belongs, making such alterations as are thereby rendered necessary or expedient;
- (g) to divide ordinances into parts or divisions;
- (h) to add a short title to any ordinance which may require it or to alter the short title of any ordinance;
- (i) to supply or alter marginal and other notes, and tables of contents and chronological tables, and to provide footnotes by way of amplification:
Provided that such tables and notes shall not form any part of the ordinance in which they appear;
- (j) to correct cross references;
- (k) to correct grammatical, typographical and similar errors in the existing copies of ordinances and for that purpose to make verbal additions, omissions or alterations not affecting the meaning of any ordinance;
- (l) to shorten or simplify the phraseology of any ordinance;
- (m) to correct the punctuation in any ordinance;
- (n) to make such adaptations of or amendments in any ordinances as may appear to be necessary or proper

as a consequence of constitutional changes within the Commonwealth;

- (o) to make such formal alterations as to names, localities, offices and otherwise as may be necessary to bring any ordinance into conformity with the circumstances of the Islands;
- (p) to make such formal alterations to any ordinance as are necessary or expedient for the purpose of securing uniformity of expression in the revised edition;
- (q) to do all things relating to form and method, whether similar to the foregoing or not, which appear to him necessary for the perfecting of the revised edition.

5.—(1) The powers conferred upon the Commissioner by section 4 shall not be taken to imply any power in him to make any alteration or amendment in the matter or substance of any law.

Mode of dealing with alteration in substance

(2) If the Commissioner considers that it is desirable that in the preparation of the revised edition there should, in relation to any ordinance, be omissions, amendments or additions other than those authorised by section 4, the same, although not *in pari materia*, may be combined in one or more ordinances.

(3) If such ordinance or ordinances are enacted prior to the coming into operation of the revised edition, then—

- (a) the Commissioner shall in the preparation of the revised edition give the like effect to such omissions, amendments or additions as if they had been authorised by section 4; and
- (b) if as a result of any such omission, amendment or addition any ordinance or part thereof has been repealed or has expired or become spent or had its effect, such ordinance or part shall be omitted from the revised edition.

6.—(1) In the preparation of the revised edition the Commissioner shall, in respect of subsidiary legislation made under ordinances, have the like powers to do all things as are conferred upon him by this ordinance in respect of ordinances.

Subsidiary legislation

(2) For the avoidance of doubt, it is hereby declared that subsidiary legislation in force at the date when the revised edition comes into force and made under any ordinance included in the revised edition shall continue in force until otherwise provided.

7.—(1) The Governor in his discretion may by order declare that the revised edition shall come into force on such date as he may think fit.

Bringing the revised edition into force

(2) From the date specified in the order under subsection (1), the revised edition shall be deemed to be and shall be without any question whatsoever in all courts of justice and for all purposes whatsoever the sole and only proper laws of the Islands in respect of all ordinances, and all subsidiary legislation made under any ordinance, contained in the revised edition.

Complementary matter in revised edition

8. The revised edition may also contain such indices, notes and references as the Commissioner considers useful to include.

Rectification of errors

9.—(1) The Commissioner may by order rectify any clerical or printing error appearing in the revised edition or rectify in a manner not inconsistent with the powers of revision conferred by this ordinance any other error so appearing.

(2) Every order made under this section shall be published in the Islands without unreasonable delay.

Construction of references

10. Wherever in any law or in any document of whatever kind any reference is made to any provision of any law affected by or under the operation of this ordinance, the reference shall, where necessary and practicable, be construed as a reference to the corresponding provision in the revised edition.

Copy to be signed and deposited

11. One bound set of volumes of the revised edition shall be dated and signed by the Commissioner and by the Governor and shall be sealed with the public seal. Such copy shall be transmitted to the Chief Justice who shall deposit the same among the records of the Supreme Court.

Distribution of copies of revised edition

12.—(1) Copies of the revised edition shall be distributed among such persons, officers, departments and institutions as the Governor in his discretion may direct.

(2) There shall be offered to the public such number of copies at such price as the Governor in his discretion may direct.

Place of this ordinance in the new edition

13. This ordinance shall be printed at the commencement of the revised edition.

CHRONOLOGICAL TABLE OF ORDINANCES

No. and year	Short title	How repealed or otherwise dealt with
1952		
1	Interpretation and General Clauses Ordinance	Now cap. 1
2	Pitcairn Island (Local Government Regulations) Ordinance	Repealed by No.1 of 1964
3	Births and Deaths Registration Ordinance	Now cap. 19
4	Marriage Ordinance	Now cap. 20
1953		
1	Marriage Validation (Pitcairn) Ordinance	Spent
2	Pitcairn Island Government Regulations (Amendment) Ordinance	Repealed by No.1 of 1964
1954		
1	Landing and Residence Ordinance	Now cap. 12
2	Adoption of Infants Ordinance	Now cap. 18
3	Post Office Ordinance	Now cap. 21
4	Pitcairn Island Government Regulations (Amendment) Ordinance	Repealed by No.1 of 1964
1957		
1	Pitcairn Island Government Regulations (Amendment) Ordinance	Repealed by No.1 of 1964
2	Marriage (Amendment) Ordinance	Incorporated in cap. 20
1959		
1	Trade Unions and Trade Disputes Ordinance	Now cap. 23
1960		
1	Pitcairn Island Government Regulations (Amendment) Ordinance	Repealed by No.1 of 1964
1961		
1	Judicature Ordinance	Repealed by No. 2 of 1970
1963		
1	Pitcairn Island (Local Government Regulations) (Amendment) Ordinance	Repealed by No.1 of 1964
1964		
1	Local Government Ordinance	Now cap. 11
2	Pitcairn Souvenir Agency Ordinance	Now cap. 27

1966		
1	Justice Ordinance	Repealed by No.3 of 1999
2	Wills Ordinance	Now cap. 17
1967		
1	Local Government (Amendment) Ordinance	Incorporated in cap. 11
2	Lands and Administration of Estates Ordinance	Repealed by No.8 of 2000
1968		
1	Interpretation and General Clauses (Amendment) Ordinance	Incorporated in cap. 1
2	Marriage (Amendment) Ordinance	Incorporated in cap. 20
3	Landing and Residence (Amendment) Ordinance	Incorporated in cap. 12
4	Adoption of Infants (Amendment) Ordinance	Incorporated in cap. 18
5	Judicature (Amendment) Ordinance	Repealed by No.2 of 1970
1970		
1	Pensions (Aged and Infirm Persons) Ordinance	Now cap. 22 [named Social Welfare Benefits Ordinance]
2	Judicature Ordinance	Repealed by No.2 of 1999
3	Interpretation and General Clauses (Amendment) Ordinance	Incorporated in cap. 1
4	Adoption of Infants (Amendment) Ordinance	Incorporated in cap. 18
5	Births Deaths and Marriages Registration (Amendment) Ordinance	Incorporated in cap. 19
6	Justice (Amendment) Ordinance	Repealed by No.3 of 1999
1971		
1	Judicature (Amendment) Ordinance	Repealed by No.2 of 1999
2	Revised Edition of the Laws Ordinance	Spent
1972		
1	Justice (Amendment) Ordinance	Repealed by No.3 of 1999
1980		
1	Fisheries Zone Ordinance	Repealed by No.3 of 2016

1982

1	Local Government (Amendment) Ordinance	Incorporated in cap. 11
2	Landing and Residence (Amendment) Ordinance	Incorporated in cap. 12
3	Interpretation and General Clauses (Amendment) Ordinance	Incorporated in cap. 1 [also affected cap. 17]
4	Fisheries Zone (Amendment) Ordinance	Repealed by No.3 of 2016

1983

1	Local Government (Amendment) Ordinance	Incorporated in cap. 11
2	Prevention of Collisions at Sea Ordinance	Now cap. 30

1985

1	Revised Edition of the Laws Ordinance	Spent
2	Law Reform (Monetary References) Ordinance	Spent
3	Lands and Administration of Estates (Amendment) Ordinance	Repealed by No.8 of 2000

1986

1	Local Government (Amendment) Ordinance	Incorporated in cap.11
2	Fisheries Zone (Amendment) Ordinance	Repealed by No.3 of 2016

1987

1	Local Government (Amendment) Ordinance	Incorporated in cap. 11
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1988

1	Currency Ordinance	Now cap. 25
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1992

1	Local Government (Amendment) Ordinance	Incorporated in cap. 11
2	Landing and Residence (Amendment) Ordinance	Incorporated in cap. 12

1997

1	Social Welfare Benefits (Amendment) Ordinance	Incorporated in cap. 22
2	Arms Embargoes (Extension) Ordinance	Repealed by No.5 of 1997
3	Alcohol Ordinance	Repealed by No.5 of 2009
4	Local Government (Amendment) Ordinance	Incorporated in cap. 11

5	Arms Embargoes (Extension to Pitcairn) Ordinance	Omitted
6	Justice (Amendment) Ordinance	Repealed by No.3 of 1999
1999		
1	Apiaries Ordinance	Now cap.18
2	Judicature (Courts) Ordinance	Now cap. 2
3	Justice Ordinance	Now cap. 3
4	Judicature (Appeals in Criminal Cases) Ordinance	Now cap. 4
5	Prisons Ordinance	Now cap. 7
6	Commissions of Inquiry Ordinance	Now cap. 8
7	Registration of Business Names Ordinance	Now cap. 16
8	Justice (Amendment) Ordinance	Repealed by No. 3 of 1999
2000		
1	Justice (Amendment) Ordinance	Incorporated in cap. 3
2	Judicature (Courts) (Amendment) Ordinance	Incorporated in cap. 2
3	Justice (Amendment) (No.2) Ordinance	Incorporated in cap. 3
4	Post Office (Amendment) Ordinance	Incorporated in cap. 21
5	Judicature (Appeals in Criminal Cases) (Amendment) Ordinance	Incorporated in cap. 4
6	Landing and Residence (Amendment) Ordinance	Incorporated in cap. 12
7	Land Tenure Reform Ordinance	Now cap. 14
8	Lands Court Ordinance	Now cap. 15
9	Probate and Administration Ordinance	Now cap. 13
10	Justice (Amendment) (No.3) Ordinance	Incorporated in cap. 3
11	Evidence (Proof of Written Laws) Ordinance	Now cap. 6
12	Judicature (Courts) (Amendment) (No.2) Ordinance	Incorporated in cap. 2
13	Justice (Amendment) (No.4) Ordinance	Incorporated in cap. 3
14	Judicature (Appeals in Criminal Cases) (Amendment) (No. 2) Ordinance	Incorporated in cap. 4
15	Summary Offences Ordinance	Now cap. 5
16	Justice (Amendment) (No.5) Ordinance	Incorporated in cap. 3

2001

1	Legal Aid (Criminal Proceedings) Ordinance	Now cap. 9
2	Revised Edition of the Laws Ordinance	Spent
3	Legal Practitioners Ordinance	Now cap. 10
4	Justice (Amendment) Ordinance	Incorporated in cap. 3
5	Revised Edition of the Laws (Miscellaneous Amendments) Ordinance	Spent
6	Judicature (Courts) (Amendment) Ordinance	Incorporated in cap. 2
7	Evidence (Special Measures Directions) Ordinance	Now cap. 31

2002

1	Annual Revision of Laws Ordinance	Now cap. 32
2	Sentencing (Offences Against the Person) Ordinance	Repealed
3	Public Defender in Criminal Proceedings Ordinance	Now cap. 33
4	Dental and Medical Practitioners (Amendment) Ordinance	Incorporated in cap. 24
5	Sentencing (Community-based Sentences) Ordinance	Repealed
6	Parole Ordinance	Now cap. 34
7	Legal Aid (Criminal Proceedings) (Amendment) Ordinance	Incorporated in cap. 9
8	Victims of Offences Ordinance	Repealed
9	Sentencing Ordinance	Now cap. 35
10	Victims of Offences (No. 2) Ordinance	Now cap. 36
11	Prisons (Amendment) Ordinance	Incorporated in cap. 7
12	Justice (Amendment) Ordinance	Incorporated in cap. 3
13	Judicature (Appeals in Criminal Cases) (Amendment) Ordinance	Incorporated in cap. 4
14	Judicature (Courts) (Amendment) Ordinance	Incorporated in cap. 2
15	Bail Ordinance	Now cap. 37
16	Victims of Offences (No. 2) (Amendment) Ordinance	Incorporated in cap. 36
17	Judicature (Appeals In Criminal Cases) (No. 2) (Amendment) Ordinance	Incorporated in cap. 4

2003

1	Judicature Amendment Ordinance	Now cap. 38
2	Judicature (Appeals in Criminal Cases) (Amendment) Ordinance	Incorporated in cap. 4

3	Justice (Amendment) Ordinance	Incorporated in cap. 3
4	Pitcairn Court of Appeal (Registry) Ordinance	Repealed by No.2 of 2016
5	Firearms Offences (Prosecution and Punishment) Ordinance	Now cap. 40
6	Justice (Amendment) (No. 2) Ordinance	Incorporated in cap. 3
7	Legal Aid (Criminal Proceedings) (Amendment) Ordinance	Incorporated in cap. 9
8	Landing and Residence (Amendment) Ordinance	Incorporated in cap. 12
9	Children Ordinance	Now cap. 41
10	Judicature (Appeals in Criminal Cases) (Amendment) (No. 2) Ordinance	Incorporated in cap. 4
11	Judicature (Courts) (Amendment) Ordinance	Incorporated in cap. 2
2004		
1	Local Government (Amendment) Ordinance	Incorporated in cap. 11
2	Alcohol (Amendment) Ordinance	Incorporated in cap. 26
3	Endangered Species Protection Ordinance	Now cap. 42
4	Justice (Amendment) Ordinance	Incorporated in cap. 3
5	Judicature (Appeals in Criminal Cases) (Amendment) Ordinance	Incorporated in cap. 4
6	Local Government (Special Electoral Provisions) Ordinance	Repealed
7	Local Government (Amendment) (No. 2) Ordinance	Incorporated in cap. 11
8	Local Government (Special Provisions) Ordinance	Spent
2005		
1	Judicature (Courts) (Amendment) Ordinance	Incorporated in cap. 2
2	(no enactment made)	
3	Judicature Amendment (Further Provisions) Ordinance	Incorporated in cap. 38
4	Summary Offences (Amendment) Ordinance	Incorporated in cap. 5
5	Interpretation and General Clauses (Amendment) Ordinance	Incorporated in cap. 1
6	Judicature (Courts) (Amendment) (No. 2) Ordinance	Incorporated in cap. 2
7	Justice (Amendment) Ordinance	Incorporated in cap. 3

2006		
1	Children (Amendment) Ordinance	Incorporated in cap. 41
2	Immigration Control Ordinance	Repeals and replaces cap. 12
3	Courts (Procedure) Ordinance	Incorporate in cap. 2 and cap. 39
4	Lands Court (Amendment) Ordinance	Incorporated in cap. 15
5	Land Tenure Reform (Amendment) Ordinance	Incorporated in cap. 14
6	Pitcairn Court of Appeal (Registry) (Amendment) Ordinance	Repealed by No.2 of 2016
2007		
1	Local Government (Amendment) Ordinance	Incorporated in cap. 11
2	Parole (Amendment) Ordinance	Incorporated in cap. 34
2008		
1	Judicature (Courts) Amendment Ordinance	Incorporated in cap. 2
2	Local Government (Amendment) Ordinance	Incorporated in cap. 11
3	Local Government (Amendment) Ordinance (No. 2)	Incorporated in cap. 11
2009		
1	Interpretation and General Clauses (Amendment) Ordinance	Incorporated in cap. 1
2	Justice (Amendment) Ordinance	Incorporated in cap. 3
3	Social Welfare Benefits (Amendment) Ordinance	Incorporated in cap. 22
4	Summary Offences (Amendment) Ordinance	Incorporated in cap. 5
5	Sale and Use of Liquor Ordinance	Incorporated in cap. 26
6	Local Government (Amendment) Ordinance	Incorporated in cap. 11
7	Children (Amendment) Ordinance	Incorporated in cap. 41
2010		
1	Right of Abode Ordinance	Now cap. 43
2	Right of Abode (Amendment) Ordinance	Incorporated in cap. 43
3	Sexual Offences (Notification and Prevention) Ordinance	Now cap. 44
4	Pitcairn Constitution (Consequential Amendments) Ordinance	Incorporated in caps. 1, 2, 3, 4, 5, 6, 7, 11, 32, 34, 35, 37 and 39
5	Local Government (Amendment) Ordinance	Incorporated in cap. 11
6	Judicature (Courts) (Amendment) Ordinance	Incorporated in cap. 2 and cap. 3

2011

1	Judicature (Courts) (Magistrate's Retirement Age and Filing of Documents) Amendment Ordinance	Incorporated in cap. 2
2	Local Government Amendment Ordinance	Incorporated in cap. 11
3	Coroners Ordinance	Now cap. 45

2012

1	Ombudsmen Ordinance	Now cap. 46
2	Marriage (Amendment) Ordinance	Incorporated in caps. 3 and 20
3	Freedom of Information Ordinance	Now cap. 47

2013

1	Local Government Amendment Ordinance	Incorporated in cap. 11
2	Social Welfare Benefits Amendment Ordinance	Incorporated in cap. 22
3	Local Government Amendment Ordinance (No 2)	Incorporated in cap. 11

2014

1	Immigration Control (Amendment) Ordinance	Incorporated in cap. 12
2	Gender Equality Ordinance	Incorporated in caps. 3, 13, 16, 18, 19, 20, 36, 41
3	Definition of Child Ordinance	Incorporated in caps. 1 and 41
4	Office of Administrator Ordinance	Incorporated in caps. 11 and 40

2015

1	Same Sex Marriage and Civil Partnerships Ordinance	Incorporated in caps. 1 and 20
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2016

1	Sentencing (Home Detention Amendment) Ordinance	Incorporated in caps. 34, 35
2	Judicature (Courts) (Court Registry) Amendment Ordinance	Incorporated in cap. 2
3	Pitcairn Islands Marine Protected Area Ordinance	Now cap. 48

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Revised Edition 2001
including subsequent Annual Revisions

PART II
CONSTITUTIONAL AND JUDICIAL PROVISIONS

2010 No. 244
PITCAIRN ISLANDS

The Pitcairn Constitution Order 2010

Made ——— 10th February 2010
Laid before Parliament 17th February 2010
Coming into force in accordance with section 1(2)

At the Court at Buckingham Palace, the 10th day of
February 2010

Present,
The Queen’s Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by the British Settlements Acts 1887(a) and 1945(b), section 1 of the Judicial Committee Act 1844(c) and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:

1.—(1) This Order may be cited as the Pitcairn Constitution Order 2010. Citation and commencement

(2) This Order shall come into force on the appointed day.

2. In this Order— Interpretation

“the appointed day” means such day as may be prescribed by the Governor by proclamation published in such manner as the Governor thinks fit;

“the Constitution” means the Constitution set out in Schedule 2;

“the Governor” means the Governor of Pitcairn and includes any person for the time being lawfully performing the functions of the office of Governor of Pitcairn;

“Pitcairn” means Pitcairn, Henderson, Ducie and Oeno Islands.

3. The instruments listed in Schedule 1 are revoked with effect from the appointed day. Revocations

4. The Constitution shall have effect in Pitcairn from the appointed day. Establishment of Constitution

5.—(1) The existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Existing laws

(a) 1887 c.54. (b) 1945 c.7. (c) 1844 c.69.

Constitution and, so far as possible, shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution

(2) In subsection (1), “existing laws” means laws and instruments (other than Acts of Parliament of the United Kingdom and instruments made under them) having effect as part of the law of Pitcairn immediately before the appointed day.

Existing offices and officers

6.—(1) Except for the office of Legal Adviser, any office established by or under the Pitcairn Order 1970(d) and existing immediately before the appointed day shall on and after that day, so far as consistent with the Constitution, continue as if it had been established by or under the Constitution.

(2) Any person who immediately before the appointed day holds or is acting in an office referred to in subsection (1) shall, on and after that day, continue to hold or act in that office or the corresponding office established by the Constitution as if he or she had been appointed to hold or act in it in accordance with or under the Constitution; but any person who under the law in force immediately before the appointed day would have been required to vacate his or her office at the expiration of any period shall vacate that office at the expiration of that period.

(3) Any person to whom subsection (2) applies who, before the appointed day, has made any oath or affirmation required to be made before assuming the functions of his or her office shall be deemed to have made any like oath or affirmation so required by the Constitution or any other law.

(4) The person who holds the office of Legal Adviser immediately before the appointed day shall, on and after that day, hold the office of Attorney General in accordance with the Constitution.

Island Council

7. Any person who immediately before the appointed day is a member of the Island Council for Pitcairn in accordance with a law in force in Pitcairn shall on that day become a member of the Island Council established by the Constitution, shall be deemed to have taken any oath or affirmation required by law, and shall hold his or her seat in accordance with any such law.

Pending legal proceedings

8.—(1) Any proceedings pending immediately before the appointed day in any court having jurisdiction in or in

(d) S.I. 1970/1434, amended by S.I. 2000/1340 and 2002/2638.

relation to Pitcairn may be continued on and after that day in the same court or in the equivalent court established by the Constitution.

(2) Any judgment or order of any court having jurisdiction in or in relation to Pitcairn given or made before the appointed day, in so far as it has not been fully executed or enforced, may be executed or enforced on and after that day as a judgment or order of the same court or as if it were a judgment or order of the equivalent court established by the Constitution.

9. Article 2 of the Pitcairn (Appeals to Privy Council) Order 2000(e) is amended by substituting for the definition of “Court” the following—

Appeals to Her Majesty in Council

“Court” means the Pitcairn Court of Appeal established by the Constitution set out in Schedule 2 to the Pitcairn Constitution Order 2010.

10. There is reserved to Her Majesty full power to make laws from time to time for the peace, order and good government of Pitcairn including, without prejudice to the generality of the foregoing, laws amending or revoking this Order or Schedule 2.

Power reserved to Her Majesty

Judith Simpson
Clerk of the Privy Council

SCHEDULE 1 REVOCATIONS

The Pitcairn Order 1970 (S.I. 1970/1434)

The Pitcairn (Amendment) Order 2000 (S.I. 2000/1340)

The Pitcairn (Amendment) Order 2002 (S.I. 2002/2638)

The Pitcairn Court of Appeal Order 2000 (S.I. 2000/1341)

The Pitcairn Court of Appeal (Amendment) Order 2004 (S.I. 2004/2669)

The Instructions issued under the Royal Sign Manual and Signet to the Governor of Pitcairn on 30th September 1970

SCHEDULE 2

The Constitution of Pitcairn set out in Schedule 2 is set out in full on pages xxxi–lxv.

(e) S.I. 2000/1816, amended by SI 2009/224.

Proclamation appointing the day for the coming into force of the Pitcairn Constitution Order 2010

WHEREAS the Pitcairn Constitution Order 2010 (“the Order”) was made on 10 February 2010 at the Court at Buckingham Palace;

AND WHEREAS section 1(2) of the Order provides that the Order “shall come into force on the appointed day”;

AND WHEREAS section 2 of the Order provides that “the appointed day” is such day as the Governor may prescribe by proclamation published in such manner as the Governor thinks fit;

NOW THEREFORE I, George Fergusson, Governor of Pitcairn, DO HEREBY PROCLAIM that the appointed day for the coming into force of the Order shall be the fourth day of March 2010;

AND I DIRECT that a copy of this proclamation shall be published by being displayed on the public notice board at Adamstown.

PROCLAIMED at Adamstown on Pitcairn Island this fourth day of March 2010

**George Fergusson
Governor of Pitcairn**

THE CONSTITUTION OF PITCAIRN

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PART 1 PARTNERSHIP VALUES

The partnership values

1.—(1) The partnership between the United Kingdom and Pitcairn shall be based on the following values—

- (a) good faith;
- (b) the rule of law;
- (c) good government;
- (d) sound financial management;
- (e) the impartial administration of justice;
- (f) the impartiality of the Pitcairn Public Service;
- (g) the maintenance of public order;
- (h) compliance with applicable international obligations of the United Kingdom and of Pitcairn; and
- (i) the maintenance of international peace and security and the right of individual or collective self-defence.

(2) In exercising their responsibilities and powers, all organs of government of Pitcairn have a duty to give effect to the partnership values.

(3) Nothing in this section creates any legally enforceable rights or obligations.

PART 2 FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Right to life

2.—(1) Everyone's right to life shall be protected by law.

(2) Deprivation of life shall not be regarded as inflicted in contravention of this section when it results from the use of force which is no more than absolutely necessary—

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Physical and mental integrity

3.—(1) Everyone has the right to respect for his or her physical and mental integrity.

(2) In the fields of medicine and biology, the free and informed consent of the person concerned must be respected, according to the procedures prescribed by law.

Human dignity

4. Everyone has inherent dignity and the right to have his or her dignity respected and protected.

Prohibition of torture

5. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

6.—(1) No one shall be held in slavery or servitude.

Prohibition of slavery
and forced labour

(2) No one shall be required to perform forced or compulsory labour.

(3) For the purpose of this section the term “forced or compulsory labour” shall not include—

- (a) any work required to be done in the ordinary course of detention imposed according to section 7 or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.

7.—(1) Everyone has the right to liberty and security of person. No one shall be deprived of his or her liberty save in the following cases and in accordance with a procedure prescribed by law—

Right to liberty and
security

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him or her before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his or her committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his or her lawful detention for the purpose of bringing him or her before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his or her effecting an unauthorised entry into Pitcairn or of a person against whom action is being taken with a view to deportation or extradition.

(2) Everyone who is arrested shall be informed promptly, in a language which he or she understands, of the reasons for his or her arrest and of any charge against him or her.

(3) Everyone arrested or detained in accordance with subsection (1)(c) shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

(4) Everyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his or her detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.

(5) Everyone who has been the victim of arrest or detention in contravention of this section shall have an enforceable right to compensation.

Right to a fair trial

8.—(1) In the determination of his or her civil rights and obligations or of any criminal charge against him or her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

(3) Everyone charged with a criminal offence has the following minimum rights—

- (a) to be informed promptly, in a language which he or she understands and in detail, of the nature and cause of the accusation against him or her;
- (b) to have adequate time and facilities for the preparation of his or her defence;
- (c) to defend himself or herself in person or through legal assistance of his or her own choosing or, if he or she has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same

- conditions as witnesses against him or her;
- (e) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court.

9.—(1) All persons deprived of their liberty (in this section referred to as “prisoners”) shall have the right to be treated with humanity and with respect for the inherent dignity of the human person.

Right of prisoners to humane treatment

(2) Every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his or her status as such.

(3) Every juvenile prisoner shall be treated in a manner appropriate to his or her age and legal status and, if he or she is an unconvicted prisoner and unless he or she is earlier released, shall have any criminal proceedings against him or her pursued with the greatest possible expedition.

(4) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, or the facilities available for the detention of prisoners do not permit, or segregation would be detrimental to the well-being of a prisoner, unconvicted prisoners shall be segregated from convicted prisoners, and juvenile prisoners shall be segregated from adult prisoners.

10.—(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

No punishment without law

(2) This section shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

11.—(1) Everyone has the right to respect for his or her private and family life, his or her home and his or her correspondence.

Right to respect for private and family life

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of Pitcairn, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

12.—(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change

Freedom of thought, conscience and religion

his or her religion or belief and freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief, in worship, teaching, practice and observance.

(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Freedom of expression

13.—(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

(3) This section shall not prevent the Government of Pitcairn from requiring the licensing of broadcasting, television or cinema enterprises.

(4) Freedom of information in Pitcairn shall be provided by Ordinance, which shall reflect the freedom of information legislation of the United Kingdom adapted to the circumstances of Pitcairn.

Freedom of assembly and association

14.—(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his or her interests.

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

(3) This section shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of Pitcairn.

Right to marry

15. Men and women of marriageable age have the right to marry and found a family, according to the national laws

governing the exercise of this right.

16. Every child has the right to such measures of protection as are required by his or her status as a minor, on the part of his or her family, society and the Government of Pitcairn, and which are appropriate and proportionate to the circumstances of Pitcairn.

Children's rights

17.—(1) Every child of the appropriate age, as provided by law, shall be entitled to receive primary education which shall, subject to subsection (2), be free.

Right to education

(2) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless a law otherwise provides, in a private school (that is to say, a school other than one established by the Government of Pitcairn or a public authority) and, in such a school, to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(3) Nothing contained in or done under the authority of any law shall be held to breach subsection (2) to the extent that the law in question is necessary in a democratic society for the purpose of making provision requiring private schools, as a condition of their being allowed to operate and on terms no more onerous than are applicable to schools established by the Government of Pitcairn or a public authority, to satisfy—

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under that or any other law; and
- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed.

18.—(1) Everyone lawfully within Pitcairn shall, within Pitcairn, have the right to liberty of movement and freedom to choose his or her residence.

Freedom of movement

(2) Everyone shall be free to leave Pitcairn.

(3) The rights mentioned in subsections (1) and (2) shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in this Constitution.

(4) No one who has the right of abode shall be arbitrarily deprived of the right to enter Pitcairn.

(5) Subsections (1) to (4) are subject to the provisions of Pitcairn immigration legislation governing the entry into, stay

in and departure from Pitcairn as regards persons who do not have the right of abode.

(6) A person who does not have the right of abode may be expelled from Pitcairn only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit reasons against his or her expulsion and to have his or her case reviewed by, and be represented for the purpose before, the competent authority or a person or persons designated by the competent authority.

(7) In this section, “the right of abode” means the right of abode in Pitcairn under any law.

Protection of the environment

19. Everyone has the right to an environment that is generally not harmful to his or her health or well-being and to have the environment protected, for the benefit of present and future generations, through such laws as may be made under this Constitution including laws to—

- (a) prevent pollution and ecological degradation;
- (b) promote conservation; and
- (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Just administrative action

20.—(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

Protection of property

21.—(1) Every natural or legal person is entitled to the peaceful enjoyment of his or her possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

(2) Subsection (1) shall not, however, in any way impair the right of the Government of Pitcairn to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Protection from arbitrary deprivation of right of abode and of British citizenship

22.—(1) No person with the right of abode in Pitcairn under any law shall be arbitrarily deprived of that right, whether by legislation or otherwise.

(2) As everyone has the right to a nationality, no person shall be arbitrarily deprived of his or her British citizenship, whether by legislation or otherwise.

23.—(1) Subject to subsection (4), no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsections (4) and (6), no person shall be treated in a discriminatory manner by any organ or officer of the executive or judicial branches of government or any person acting in the performance of the functions of the Pitcairn Public Service or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons on any ground such as sex, sexual orientation, race, colour, language, religion, age, disability, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(4) Nothing contained in or done under the authority of any law shall be held to breach this section to the extent that it has an objective and reasonable justification and there is a reasonable proportion between the provision of law in question or, as the case may be, the thing done under it and the aim which that provision or the thing done under it seeks to realise.

(5) No person shall be treated in a discriminatory manner in respect of access to any of the following places to which the general public have access, namely, shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of resort; but the proprietor of such a place has a duty to provide amenities and equipment facilitating the access of disabled persons only to the extent provided by a law.

(6) For the purposes of subsection (2), the exercise, in relation to a person, of any discretion to institute, conduct or discontinue criminal or civil proceedings in any court shall not in itself be held to breach this section.

24.—(1) Nothing contained in or done under the authority of any law shall be held to breach any of the provisions of this Part other than sections 2, 3, 4, 5, 6(1), 8(2) and 10 to the extent that the law in question authorises the taking during a period of public emergency of measures that are strictly required by the exigencies of the situation that exists in Pitcairn during that period, provided that such measures are not inconsistent with the obligations of the United Kingdom in respect of Pitcairn under international law.

(2) Where any person who is lawfully detained in pursuance only of a law referred to in subsection (1) so requests at any time during the period of that detention (but if he or she has already made such a request during that period, not earlier than six months after he or she last made such a request during that

period), his or her case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice.

(3) On any review by a tribunal under subsection (2) of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his or her detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with such recommendations.

25.—(1) If any person alleges that any of the provisions of this Part has been, is being or is likely to be breached in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a breach in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and
- (b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (7),

and may make such declarations and orders, issue such writs and give such directions as it considers appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Part.

(3) The Supreme Court may decline to exercise its powers under subsection (2) if it is satisfied that adequate means of redress for the breach alleged are or have been available to the person concerned under any other law.

(4) Without prejudice to the generality of subsection (2), where, in exercise of its powers under that subsection, the Supreme Court determines that one of the provisions of this Part has been breached in relation to any person, it—

- (a) may order the award to that person of such damages as the Supreme Court considers just and appropriate; or
- (b) may direct the court which made the reference to it under subsection (7) (“the referring court”) to order the award to that person of such damages as that court considers just and appropriate, within such limits (if any) as the Supreme Court declares.

(5) An award of damages may not be made in pursuance of subsection (4) in respect of the making of any law but such an

award may be made in respect of anything done by any organ or officer of the executive or judicial branches of government or any person acting in the performance of the functions of the Pitcairn Public Service or any public authority.

(6) Subsection (4) is without prejudice to section 7(5).

(7) If in any proceedings in a subordinate court any question arises as to the breach of any of the provisions of this Part, the person presiding in that court may refer the question to the Supreme Court unless, in his or her opinion, the raising of the question is merely frivolous or vexatious.

(8) If the effect of a provision of this Part is in issue in proceedings before the Supreme Court, the Court of Appeal or Her Majesty in Council, to which the Crown is not a party—

- (a) the Attorney General may intervene; and
- (b) the presiding judge must not hear and determine the proceedings until satisfied that the Attorney General has received notice of the proceedings and has had sufficient time to decide whether or not to intervene.

(9) Where any question is referred to the Supreme Court in pursuance of subsection (7), the Supreme Court shall give its decision on the question and the referring court shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(10) An appeal shall lie as of right to the Court of Appeal from any final determination of any application or question by the Supreme Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case; but no appeal shall lie from a determination by the Supreme Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(11) The Governor may by Ordinance confer on the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred on it by this section.

(12) The Chief Justice or the President of the Court of Appeal, as the case requires, may make Rules of Court with respect to the practice and procedure—

- (a) of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this

section;

- (b) of the Supreme Court or the Court of Appeal in relation to appeals under this section from determinations of the Supreme Court or the Court of Appeal; and
- (c) of subordinate courts in relation to references to the Supreme Court under subsection (7),

including provisions with respect to the time within which any application, reference or appeal shall or may be made or brought.

(13) In determining any question which has arisen in connection with the interpretation or application of any of the foregoing provisions of this Part, every court shall take into account any—

- (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights;
- (b) decision of the European Commission of Human Rights (“the Commission”) given in a report adopted under Article 31 of the Convention;
- (c) decision of the Commission in connection with Article 26 or 27(2) of the Convention;
- (d) decision of the Committee of Ministers of the Council of Europe (“the Committee of Ministers”) taken under Article 46 of the Convention;
- (e) judgment, decision or declaration of a superior court in the United Kingdom on the interpretation or application of the Convention,

whenever made or given, so far as, in the opinion of the court, it is relevant to the proceedings in which that question has arisen.

(14) In subsection (13), references to the Convention are references to it as it has effect for the time being, except that—

- (a) the references in subsection (13)(b) and (c) to Articles 31, 26 and 27(2) are references to those Articles as they respectively had effect immediately before the coming into force of the Eleventh Protocol;
- (b) the reference in subsection (13)(d) to Article 46 includes a reference to Articles 32 and 54 as they had effect immediately before the coming into force of the Eleventh Protocol; and
- (c) the references in subsection (13) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs

3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).

(15) In subsections (13) and (14)—

“the Convention” means the European Convention on Human Rights;

“the Eleventh Protocol” means the protocol to the Convention (restructuring the control machinery established by it) agreed at Strasbourg on 11 May 1994; and

“a superior court in the United Kingdom” means any of the following—

- (a) the High Court or the Court of Appeal in England;
- (b) the High Court of Justiciary or the Court of Session in Scotland;
- (c) the High Court or the Court of Appeal in Northern Ireland;
- (d) the House of Lords or the Supreme Court; and
- (e) the Judicial Committee of the Privy Council.

26. So far as it is possible to do so, legislation of Pitcairn must be read and given effect in a way which is compatible with the rights and freedoms set forth in this Part.

Interpretation of legislation

PART 3 THE GOVERNOR

27.—(1) There shall be a Governor of Pitcairn, who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty’s pleasure.

The Governor

(2) The Governor shall have such functions as are conferred or imposed on him or her by this Constitution or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him or her through a Secretary of State.

(3) Subject to the provisions of this Constitution and of any other law by which any functions are conferred or imposed on the Governor, the Governor shall do and execute all things that belong to his or her office according to such instructions, if any, as Her Majesty may from time to time see fit to give him or her through a Secretary of State; but no court shall enquire whether or not the Governor has complied with any such instructions.

(4) A person appointed to the office of Governor shall, before assuming the functions of that office, make oaths or affirmations of allegiance and for the due execution of that office in the forms set out in the Schedule.

Acting Governor

28.—(1) During any period when the office of Governor is vacant or the Governor is for any reason unable to perform the functions of that office those functions shall, during Her Majesty’s pleasure, be assumed and performed by such person as Her Majesty may designate for that purpose by instructions given through a Secretary of State (“the person designated”).

(2) Before assuming the functions of the office of Governor, the person designated shall make the oaths or affirmations directed by section 27(4) to be made by the Governor.

(3) The person designated shall not continue to act in the office of Governor after the Governor has notified him or her that the Governor is about to assume or resume the functions of that office.

(4) In this section “the Governor” means the person holding the office of Governor.

Powers of pardon, etc

29. The Governor may, in Her Majesty’s name and on Her Majesty’s behalf—

- (a) grant to any person convicted of any offence under the law of Pitcairn a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for such an offence; or
- (d) remit the whole or part of any punishment imposed on any person for such an offence or of any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

Power to dispose of Crown land

30. Subject to this Constitution and any other law, the Governor or any person duly authorised by him or her in writing under his or her hand may, in Her Majesty’s name and on Her Majesty’s behalf, make and execute grants and other dispositions of any land or other immovable property in Pitcairn that is vested in Her Majesty in right of the Government of Pitcairn.

Official stamp

31.—(1) There shall be an Official Stamp for Pitcairn.

(2) The Governor shall keep and use the Official Stamp for stamping all such documents as may by law require to be stamped with it.

Constitution of offices

32. Subject to this Constitution and any other law, the Governor, in Her Majesty’s name and on Her Majesty’s behalf, may constitute offices for Pitcairn.

PART 4 THE EXECUTIVE

33.—(1) The executive authority of Pitcairn is vested in Her Majesty. Executive authority

(2) Subject to this Constitution, the executive authority of Pitcairn shall be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to the Governor.

(3) Nothing in this section shall preclude persons or authorities other than the Governor from exercising such functions as are or may be conferred on them by any law.

34.—(1) There shall be an Island Council for Pitcairn, which shall be composed, and shall have such functions in relation to the government of Pitcairn, as may be prescribed by any law. Island Council

(2) The members of the Island Council shall be elected to office in free and fair elections held at regular intervals in such manner as may be prescribed by any law.

35.—(1) There shall be an Attorney General of Pitcairn who shall be the principal legal adviser to the Government of Pitcairn. Attorney General

(2) The Attorney General shall be an officer of the Pitcairn Public Service appointed by the Governor, acting with the approval of a Secretary of State.

(3) The Attorney General shall be appointed—

- (a) for a term ending when the appointee reaches any retiring age fixed by law; or
- (b) whether or not the appointee has attained that age or will attain it during his or her term of office, for a term specified in the instrument of appointment.

(4) The Attorney General may, in any case in which he or she considers it desirable to do so—

- (a) institute and undertake criminal proceedings against any person before any court in respect of an offence against any law;
- (b) take over and continue any such criminal proceedings that have been instituted by any other person or authority; and
- (c) discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

(5) The powers of the Attorney General under subsection (4) may be exercised by him or her in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.

(6) The powers conferred on the Attorney General by subsection (4)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority; but where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(7) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings to any other court, shall be deemed to be part of those proceedings.

(8) In the exercise of the powers conferred on him or her by this section, the Attorney General, and any person acting under his or her authority, shall act independently and shall not be subject to the direction or control of the Governor, the Island Council or any other person or authority.

(9) The remuneration of the Attorney General shall be determined by the Governor and shall be charged on the public funds of Pitcairn.

(10) The remuneration and allowances and other terms and conditions of the Attorney General shall not be altered to the disadvantage of the Attorney General during his or her continuance in office.

(11) The Attorney General may be removed from office only for inability to discharge the functions of the office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (12).

(12) The Attorney General shall be removed from office by the Governor if the question of his or her removal from office has been referred to a tribunal appointed under subsection (13) and the tribunal has advised the Governor that he or she should be removed from office for inability as aforesaid or for misbehaviour.

(13) If the Governor considers that the question of removing the Attorney General from office for inability as aforesaid or for misbehaviour ought to be investigated, then—

- (a) the Governor shall appoint a tribunal, which shall consist of a convenor and two other members, selected by the Governor from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in one or more Commonwealth countries or in Ireland or a court having jurisdiction in appeals

- from any such court; and
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether the Attorney General should be removed from office for inability as aforesaid or for misbehaviour.

(14) The Commissions of Inquiry Ordinance shall apply *mutatis mutandis* in relation to a tribunal appointed under subsection (13) and the expenses of any such inquiry shall be charged on the public funds of Pitcairn.

(15) If the question of removing the Attorney General from office has been referred to a tribunal under subsection (13), the Governor may suspend the Attorney General from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor and shall in any case cease to have effect if the tribunal advises the Governor that the Attorney General should not be removed from office.

(16) References in subsections (11), (12), (13) and (15) to the Attorney General do not include references to a person appointed to act in the office of Attorney General during any period when it is vacant or the holder of that office is unable to perform the functions of that office; and the appointment of such a person may be revoked by the Governor at any time before the expiration of that period.

PART 5 THE LEGISLATURE

36.—(1) Subject to this Constitution, the Governor, acting after consultation with the Island Council, may make laws for the peace, order and good government of Pitcairn.

Power to make laws

(2) The Governor shall not be obliged to act in accordance with the advice of the Island Council in exercising the power conferred by subsection (1), but in any case where the Governor acts contrary to the advice of the Council any member of the Council shall have the right to submit his or her views on the matter to a Secretary of State.

(3) The Governor may exercise the power conferred by subsection (1) without consulting the Island Council whenever he or she is instructed to do so by Her Majesty through a Secretary of State.

37.—(1) In the making of laws for Pitcairn the Governor shall observe, so far as is practicable, the following rules.

Rules for the making of laws

(2) All laws shall be styled “Ordinances” and the words of enactment shall be “Enacted by the Governor of the Islands of Pitcairn, Henderson, Ducie and Oeno”.

(3) Matters having no proper relation to each other shall not be provided for by the same law.

(4) No law shall contain anything foreign to what the title of the law imports.

(5) No provision having indefinite duration shall be included in any law expressed to have limited duration.

(6) All laws shall be distinguished by titles, and shall be divided into successive sections consecutively numbered, and to every section there shall be annexed a short indication of its contents.

(7) All laws shall be numbered consecutively in a separate series for each year commencing with the number one, and the position of each law in the series shall be determined with reference to the day on which the Governor made the law.

Certain laws not to be made without instructions

38. The Governor shall not, without having previously obtained instructions through a Secretary of State, make any law within any of the following classes, unless such law contains a clause suspending its operation until the signification of Her Majesty's pleasure on it—

- (a) any law whereby any grant of land or money, or other donation or gratuity, may be made to the Governor;
- (b) any law affecting the currency of Pitcairn or relating to the issue of banknotes;
- (c) any law the provisions of which shall appear to the Governor to be inconsistent with obligations imposed on the United Kingdom by treaty;
- (d) any law of an extraordinary nature and importance whereby Her Majesty's prerogative, or the rights or property of Her subjects not residing in Pitcairn, or the trade, transport or communications of any territory under Her Majesty's sovereignty may be prejudiced;
- (e) any law containing provisions which have been disallowed by Her Majesty;

but the Governor may, without such instructions and although the law contains no such suspending clause, enact any such law (except a law of the class referred to in paragraph (c)) if the Governor is satisfied that an urgent necessity exists requiring that law to be brought into immediate operation; and in any such case the Governor shall forthwith transmit a copy of the law to a Secretary of State together with his or her reasons for so enacting it.

Publication and commencement of laws

39.—(1) All laws made by the Governor shall be published in such manner and at such place or places in Pitcairn as the

Governor may from time to time direct.

(2) Every such law shall come into force on the date on which it is published in accordance with subsection (1) unless it is provided, either in such law or in some other enactment, that it shall come into force on some other date, in which case it shall come into force on that date.

40. When any law has been made, the Governor shall at the earliest convenient opportunity transmit to a Secretary of State a transcript in duplicate of the law, duly authenticated under the Official Stamp and by his or her own signature, together with an explanation of the reasons and occasion for the making of the law.

Laws to be sent to a Secretary of State

41.—(1) Any law made by the Governor may be disallowed by Her Majesty through a Secretary of State.

Disallowance of laws

(2) Whenever a law has been disallowed by Her Majesty the Governor shall, as soon as practicable, cause notice of such disallowance to be published in such manner and in such place or places in Pitcairn as the Governor may from time to time direct, and the law shall be annulled with effect from the date of the publication of that notice.

(3) Section 16(1) of the Interpretation Act 1978(a) shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

PART 6 THE ADMINISTRATION OF JUSTICE

42.—(1) Subject to subsection (2), the common law, the rules of equity and the statutes of general application as in force in and for England for the time being shall be in force in Pitcairn.

Application of English law

(2) All the laws of England extended to Pitcairn by subsection (1) shall be in force in Pitcairn so far only as the local circumstances and the limits of local jurisdiction permit and subject to any existing or future Ordinance, and for the purpose of facilitating the application of the said laws it shall be lawful to construe them with such formal alterations not affecting the substance as to names, localities, courts, offices, persons, moneys, penalties and otherwise as may be necessary to render those laws applicable to the circumstances.

43.—(1) The courts of Pitcairn shall be the Pitcairn

The courts of Pitcairn

(a) 1978 c.30.

Supreme Court, the Pitcairn Court of Appeal, and such courts subordinate to the Supreme Court as may be established by law.

(2) The Pitcairn (Appeals to Privy Council) Order 2000(a) (as amended by this Order) shall continue to apply in relation to appeals to Her Majesty in Council from judgments of the Court of Appeal.

(3) Without prejudice to the generality of the power conferred by section 36(1), the Governor may by any law constitute courts for Pitcairn with such jurisdiction, and make such provisions and regulations for the proceedings in such courts and for the administration of justice, as the Governor may think fit.

(4) Subject to any law, a court established under subsection (3) shall sit in such place in Pitcairn as the Governor, acting in accordance with the advice of the Chief Justice, may appoint; but it may also sit in the United Kingdom, or in such other place as the Governor, acting in accordance with the advice of the Chief Justice, may appoint.

(5) Where a court sits, by virtue of subsection (4), in some place other than Pitcairn, it may there exercise its jurisdiction and powers in like manner as if it were sitting within Pitcairn, but anything done there by virtue of this subsection shall have, and shall have only, the same validity and effect as if done in Pitcairn.

(6) The references in subsections (4) and (5) to a court sitting and exercising its jurisdiction and powers in any place include references to a judge or judicial officer or officer of the court exercising in that place any jurisdiction or powers or other functions vested in him or her as such by any law.

Independence of the judiciary

44. The judges and judicial officers appointed to preside or sit in any court of Pitcairn shall exercise their judicial functions independently from the legislative and executive branches of government.

SUPREME COURT

Constitution of Supreme Court

45.—(1) There shall be a Supreme Court for Pitcairn which shall be a superior court of record and shall be styled the Pitcairn Supreme Court.

(2) Subject to this Constitution, the Supreme Court shall have and may exercise all such jurisdiction in and in relation to Pitcairn as is necessary to administer the law of Pitcairn.

(3) Without prejudice to the generality of subsection (2), the Supreme Court shall possess and may exercise in and in

(a) S.I. 2000/1816, amended by SI 2009/224.

relation to Pitcairn, subject to this Constitution and to any other law, all the jurisdiction which is vested in, or is capable of being exercised by, Her Majesty's High Court of Justice in and in relation to England.

(4) The Supreme Court shall have and use a seal bearing the style of the Court and a device approved by the Chief Justice.

46.—(1) The Supreme Court may sit in Pitcairn or, in such circumstances as may be prescribed by Ordinance, outside Pitcairn.

Sittings of Supreme Court

(2) The Chief Justice when outside Pitcairn may exercise such powers of revision, variation, confirmation or setting aside of any sentence or order made by a subordinate court as are conferred on him or her by any law.

47.—(1) The judges of the Supreme Court shall be a Chief Justice and such number of other judges (if any) as may be prescribed by law.

Judges of Supreme Court

(2) If the office of Chief Justice is vacant, or the Chief Justice has not assumed, or is for any reason unable to perform the functions of, that office, those functions may be performed by—

- (a) the next most senior judge of the Supreme Court in terms of the date of his or her appointment; or
 - (b) if there is no such judge, or if for any reason no such judge is able to perform the functions of the office of Chief Justice, then, unless this Constitution otherwise provides, those functions may be performed by an acting judge of the Supreme Court authorised to perform those functions by the Governor.
- (3) If—
- (a) in the circumstances described in subsection (2), there is no judge who can perform the functions of the office of Chief Justice; or
 - (b) the state of the business of the Supreme Court makes it desirable that an additional person should be appointed by whom the Supreme Court may be held,

the Governor may decide that an acting judge should be appointed to hold the Supreme Court.

(4) A person shall not be qualified for appointment as the Chief Justice or any other judge or acting judge of the Supreme Court unless—

- (a) he or she is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in Ireland,

or a court having jurisdiction in appeals from any such court; or

- (b) he or she is entitled to practise as an advocate in such a court and has been entitled for not less than seven years to practise as an advocate or solicitor in such a court.

(5) For the purposes of subsection (4), a person shall be regarded as an advocate or a solicitor if he or she has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—

- (a) he or she holds or acts in any office the holder of which is, by reason of his or her office, precluded from practising in a court; or
- (b) he or she does not hold a practising certificate or has not satisfied any other like condition of being permitted to practise.

Exercise of jurisdiction of Supreme Court

48.—(1) The Chief Justice or any other judge or acting judge of the Supreme Court may hold the Supreme Court.

(2) A judge holding the Supreme Court has, in exercise of the jurisdiction of that Court, all the powers and authority of the Court, and, if not the Chief Justice, has the jurisdiction, powers, authority, privileges and immunities conferred on the Chief Justice.

(3) If, at any time, there are two or more judges who may hold the Supreme Court, each of them may hold sittings of the Court simultaneously.

(4) In this section “Chief Justice” means the person holding the office of Chief Justice.

COURT OF APPEAL

Constitution of Court of Appeal

49.—(1) There shall be a Court of Appeal for Pitcairn which shall be a superior court of record and shall be styled the Pitcairn Court of Appeal.

(2) The judges of the Court of Appeal shall be—

- (a) a President and two or more Justices of Appeal; and
- (b) the Chief Justice, who shall be a member of the Court *ex officio*.

(3) A person shall not be qualified for appointment as the President of the Court of Appeal or a Justice of Appeal unless—

- (a) he or she is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in Ireland, or a court having jurisdiction in appeals from any

such court; or

- (b) he or she is entitled to practise as an advocate in such a court and has been entitled for not less than seven years to practise as an advocate or solicitor in such a court.

(4) For the purposes of subsection (3), a person shall be regarded as an advocate or a solicitor if he or she has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—

- (a) he or she holds or acts in any office the holder of which is, by reason of his or her office, precluded from practising in a court; or
- (b) he or she does not hold a practising certificate or has not satisfied any other like condition of being permitted to practise.

(5) At any time when the office of President of the Court of Appeal is vacant or the person holding that office is for any reason unable to perform the functions of that office, those functions shall be performed by such one of the Justices of Appeal or such other person qualified for appointment as a Justice of Appeal as may from time to time be designated for that purpose by the Governor or, in the absence of such designation, by the Justice of Appeal who is the senior Justice of Appeal in terms of date of appointment.

(6) The Court of Appeal shall have and use a seal bearing the style of the Court and a device approved by the President of the Court.

50.—(1) The Court of Appeal shall have jurisdiction to hear and determine such appeals from the courts of Pitcairn as may be prescribed by this Constitution or any other law.

Jurisdiction of Court
of Appeal

(2) In connection with any appeal from a court of Pitcairn, the Court of Appeal shall, subject to this Constitution and any other law, have all the powers and jurisdiction that are possessed by that court under any law; and decisions of the Court of Appeal in respect of any appeal from a court of Pitcairn shall, subject as aforesaid, be enforced in Pitcairn in the same way as decisions of that court.

(3) The Court of Appeal may, in accordance with any directions issued from time to time by the President of the Court, sit in Pitcairn or elsewhere for the purpose of exercising any jurisdiction and powers conferred on it by or under this Constitution or by any rule made under section 51; but anything done elsewhere than in Pitcairn by virtue of this subsection shall have, and have only, the same validity and effect as if done in Pitcairn.

51.—(1) Subject to this Constitution, the President of the Court of Appeal may make rules for regulating the practice and procedure of the Court of Appeal with respect to appeals from the courts of Pitcairn and, in connection with such appeals, for regulating the practice and procedure in any court of Pitcairn from which such appeals are brought.

(2) Without prejudice to the generality of subsection (1), rules of court may be made for the following purposes—

- (a) for regulating the sittings of the Court of Appeal, whether in divisions or otherwise, and the selection of judges for any purpose;
- (b) for regulating the right of practising before the Court of Appeal and the representation of persons concerned in any proceedings in the Court;
- (c) for prescribing cases in which, and conditions on which, an appellant in a criminal appeal to the Court of Appeal shall be entitled to be present at the hearing of the appeal;
- (d) for providing for the summary determination of any appeal which appears to the Court of Appeal to be frivolous or vexatious or to be brought for the purposes of delay;
- (e) for prescribing the forms and fees in respect of proceedings in the Court of Appeal and regulating the costs of and incidental to any such proceedings;
- (f) for prescribing and regulating the powers and duties of registrars and officers of the Court of Appeal;
- (g) for prescribing the time within which any requirement of the rules is to be complied with;
- (h) for providing for a reference to the Court of Appeal from a decision of a single judge.

(3) Rules made under this section may fix the number of judges of the Court of Appeal who may sit for any purpose; but—

- (a) an uneven number shall sit, which, for the purposes of any final determination by the Court other than the summary dismissal of an appeal, shall not be fewer than three; and
- (b) any determination by the Court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit for the purpose of determining that matter.

GENERAL

52.—(1) The Governor, on instructions from Her Majesty

given through a Secretary of State, shall appoint—

- (a) the Chief Justice and any other judges of the Supreme Court; and
 - (b) the President of the Court of Appeal and the Justices of Appeal.
- (2) The Governor, acting in accordance with the advice of the Chief Justice, shall appoint any acting judge of the Supreme Court.

(3) The Governor shall appoint any judicial officers.

(4) Every person appointed under this section shall, subject to this Constitution, hold office on such terms and conditions as the Governor may prescribe.

(5) Before entering upon the functions of the office, every holder of a judicial office referred to in this section shall make an oath or affirmation of allegiance and the judicial oath or affirmation in the forms set out in the Schedule.

53.—(1) There shall be paid to every judge or judicial officer such remuneration as may be agreed between the Governor and the judge or judicial officer immediately before his or her appointment, and such remuneration shall be charged on the public funds of Pitcairn.

Remuneration

(2) The remuneration and allowances and other terms and conditions of a judge or a judicial officer shall not be altered to the disadvantage of the judge or judicial officer during his or her continuance in office.

54.—(1) Subject to the following provisions of this section, the Chief Justice, any other judge of the Supreme Court, the President of the Court of Appeal and any Justice of Appeal shall hold office until he or she attains the age of 75 years; but the Governor may permit any such person who has attained the age of 75 years to remain in office for such fixed period, not exceeding two years, as may have been agreed between that person and the Governor.

Tenure of office of judges

(2) An acting judge of the Supreme Court shall be appointed either—

- (a) for a term specified in the instrument of appointment; or
- (b) if the appointee is acting in the place of a Chief Justice or other judge whose office is vacant, or who has not assumed, or is for any reason unable to perform the functions of, that office, for a term expiring on the assumption or resumption by the Chief Justice or other judge of the functions of the office.

(3) A judge may, when his or her appointment expires, continue so to act for the purposes of giving judgment or

otherwise in relation to any proceeding commenced before him or her while his or her appointment was subsisting.

(4) A judge may at any time resign from office by writing under his or her hand addressed to the Governor.

(5) Nothing done by a judge shall be invalid by reason only that the judge has attained the age at which he or she is required by or under this section to retire from office.

(6) The office of a judge shall not be abolished during the continuance in office of the judge without his or her consent.

(7) A judge may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be removed except in accordance with subsection (8).

(8) A judge shall be removed from office by the Governor by instrument stamped with the Official Stamp if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (9), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833(a) or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge should be removed from office for inability as aforesaid or for misbehaviour.

(9) If the Governor considers that the question of removing a judge from office for inability as aforesaid or for misbehaviour ought to be investigated, then—

- (a) the Governor shall appoint a tribunal, which shall consist of a convenor and two other members, selected by the Governor from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in one or more Commonwealth countries or in Ireland or a court having jurisdiction in appeals from any such court;
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly.

(10) The Commissions of Inquiry Ordinance shall apply

(a) 1833 c. 41.

mutatis mutandis in relation to a tribunal appointed under subsection (9) and the expenses of any such inquiry shall be charged on the public funds of Pitcairn.

(11) If the question of removing a judge from office has been referred to a tribunal under subsection (9), the Governor may suspend the judge from performing the functions of that office, and any such suspension may at any time be revoked by the Governor and shall in any case cease to have effect—

- (a) if the tribunal advises the Governor that he or she should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge should not be removed from office.

55.—(1) A judicial officer shall be appointed for life, or until the appointee reaches such an age as may be prescribed by Ordinance.

Tenure of office of
judicial officers

(2) A judicial officer may, when his or her appointment expires, continue so to act for the purposes of giving judgment or otherwise in relation to any proceeding commenced before him or her while his or her appointment was subsisting.

(3) A judicial officer may at any time resign from office by writing under his or her hand addressed to the Governor.

(4) A judicial officer may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be removed except in accordance with subsection (5).

(5) The Governor may remove a judicial officer from office if the Governor, after such enquiries as he or she considers appropriate, determines that the judicial officer concerned should be removed from office for inability as aforesaid or for misbehaviour.

(6) A person who has been removed from office as a judicial officer by the Governor may apply to the Supreme Court for redress on the ground that any finding of fact or law on which the Governor based his or her decision was unjustified or wrong; and, for the purpose of affording such redress, the Supreme Court may make such declarations and orders, issue such writs and give such directions as it considers appropriate.

PART 7 PUBLIC SERVICE

Appointments etc of
officers of Pitcairn
Public Service

56.—(1) The Governor may make appointments to any office in the Pitcairn Public Service, and any person so appointed, unless otherwise provided by law, shall hold his or her office during Her Majesty's pleasure.

(2) The Governor may, subject to any law and to such instructions as may from time to time be given to him or her by Her Majesty through a Secretary of State, upon sufficient cause to the Governor appearing—

- (a) remove from office or suspend from performing the functions of his or her office any officer of the Pitcairn Public Service; or
- (b) take such other disciplinary action as may seem to the Governor desirable in relation to any such officer.

(3) The Governor may by directions in writing delegate the powers conferred on him or her by subsections (1) and (2) to any officer or officers of the Pitcairn Public Service to such extent, and subject to such conditions, as may be specified in the directions.

(4) The Governor may, whenever he or she thinks fit, require any officer of the Pitcairn Public Service to make an oath or affirmation of allegiance in the form set out in the Schedule, together with such other oaths or affirmations as may from time to time be prescribed by any law in the form prescribed by any such law; and the Governor shall administer such oaths or affirmations or cause them to be administered by some officer of the Pitcairn Public Service.

(5) This section is without prejudice to section 35.

Terms and conditions
of employment

57.—(1) The Governor shall approve (and may from time to time amend) a Code of Management by or under which the terms and conditions of employment of officers of the Pitcairn Public Service, or any branch of it, shall be determined.

(2) Subject to any such Code of Management, the terms and conditions of the employment of an individual officer of the Pitcairn Public Service shall be as agreed in that officer's contract of employment or implied by any rule of law.

PART 8 AUDIT

Audit

58.—(1) The Governor shall make appropriate arrangements for the audit of the public accounts of Pitcairn and of all courts of Pitcairn and all authorities and offices of the Government of Pitcairn; and any person or authority conducting such an

audit shall have access to all books, records, reports and other documents relating to those accounts.

(2) Any person or authority conducting an audit pursuant to subsection (1) shall act independently and shall not be subject to the direction or control of the Governor, the Island Council or any other person or authority.

PART 9 OMBUDSMAN

59.—(1) The Governor may from time to time appoint an Ombudsman to investigate, in accordance with any Ordinance enacted under section 36, any complaint of maladministration in the government of Pitcairn or such other matters as may be prescribed by Ordinance.

Ombudsman

(2) No person shall be qualified to be appointed as an Ombudsman if he or she is a member of the Island Council or an officer of the Pitcairn Public Service.

(3) An Ombudsman shall vacate office—

- (a) at the expiration of the period specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes a member of the Island Council or an officer of the Pitcairn Public Service; or
- (d) if the Governor directs that he or she shall be removed from office for inability to discharge the functions of the office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour.

60.—(1) An Ombudsman shall have such functions, powers and jurisdiction as may be prescribed by Ordinance.

Functions of
Ombudsman

(2) In the investigation of any complaint or other matter, an Ombudsman shall act independently and shall not be subject to the direction or control of the Governor, the Island Council or any other person or authority.

PART 10 MISCELLANEOUS

61. In this Constitution, unless it is otherwise provided or required by the context—

Interpretation

“breach”, in relation to any provision of this Constitution, includes a failure to comply with that provision, and cognate expressions shall be construed accordingly;
“court” means any subordinate court, the Supreme Court

- or the Court of Appeal, and includes Her Majesty in Council;
- “Court of Appeal” means the Pitcairn Court of Appeal established by section 49;
- “functions” includes powers and duties;
- “Island Council” means the Island Council of Pitcairn established by section 34;
- “judge” means the Chief Justice or another judge of the Supreme Court, the President of the Court of Appeal, a Justice of Appeal, or an acting judge of the Supreme Court;
- “judicial officer” means a magistrate, an island magistrate, a judge of a subordinate court or any other person who is authorised to exercise the powers of such a judge, a registrar of the Supreme Court or a registrar of the Court of Appeal;
- “law” means law in force in Pitcairn, and “lawful” and “lawfully” shall be construed accordingly;
- “minor” means a person who has not attained the age of eighteen years or such other age as may be prescribed for the purposes of this Constitution by any other law;
- “officer of the Pitcairn Public Service” means the holder of any office in the Pitcairn Public Service and any other employee of the Public Service (except a casual worker), and includes a person appointed to act as an officer of the Pitcairn Public Service;
- “Ordinance” means a law made by the Governor in respect of Pitcairn;
- “period of public emergency” means any period during which—
- (a) there is, in or affecting Pitcairn, a war or other public emergency threatening the life of the nation; and
 - (b) a proclamation of a state of emergency is in force under a law;
- “Pitcairn” means Pitcairn, Henderson, Ducie and Oeno Islands;
- “Pitcairn Public Service” means the service of the Crown in a civil capacity in respect of the government of Pitcairn, and includes service as a member of any police force, prison service or fire service of Pitcairn; but does not include service as a judge or judicial officer or service as a member of the Island Council, any committee of the Council or, unless otherwise provided by a law, of any other public authority;

“subordinate court” means a court of Pitcairn subordinate to the Supreme Court that has been established by law;

“Supreme Court” means the Pitcairn Supreme Court established by section 45.

62. In this Constitution, unless it is otherwise provided or required by the context, a reference to the holder of an office by the term designating his or her office shall be construed as including a reference to any person acting in that office or, to the extent of his or her authority, otherwise performing the functions of that office.

References to the holder of an office to include a person acting in the office

63.—(1) Any power conferred by this Constitution to make any subsidiary instrument or to give any instructions or directions shall be construed as including a power exercisable in like manner to amend or revoke any such instrument, instructions or directions.

Power to amend and revoke instruments, etc

(2) In subsection (1), “subsidiary instrument” means any proclamation, regulation, order, rule or other like instrument having the force of law.

64.—(1) Where any person has vacated any office established by this Constitution, he or she may, if qualified, again be appointed or elected or otherwise selected to hold that office in accordance with this Constitution.

Appointments

(2) Where a power is conferred by this Constitution on any person to make any appointment to any office, a person may be appointed to that office even though some other person may be holding that office, when that other person is on leave of absence pending relinquishment of that office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred on the holder of that office, the person last appointed to that office shall be deemed to be the sole holder of the office.

(3) In this Constitution, unless it is otherwise provided or required by the context, any reference to power to make appointments to an office shall be construed as including reference to power to make appointments on promotion and transfer to that office and power to appoint a person to act in that office during any period when it is vacant or the holder of it is unable (whether by reason of absence or infirmity of body or mind or any other cause) to perform the functions of that office.

(4) Where by this Constitution any person is directed, or power is conferred on any person or authority to appoint a

person, to act in an office if the holder of it is unable to perform the functions of that office, the validity of any performance of those functions by the person so directed or of any appointment made in exercise of that power shall not be called into question in any court on the grounds that the holder of the office is not unable to perform the functions of the office.

Removal from office

65. References in this Constitution to the power to remove an officer of the Pitcairn Public Service from his or her office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the Public Service and to any power or right to terminate a contract on which a person is employed in the Public Service and to determine whether any such contract shall or shall not be renewed.

Resignations

66.—(1) Any person who is appointed to any office established by or under this Constitution may resign from that office by writing under his or her hand addressed to the person or authority by whom he or she was appointed.

(2) The resignation of any person from any office established by or under this Constitution takes effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any other person authorised by that person or authority to receive it.

**SCHEDULE TO THE CONSTITUTION
FORMS OF OATHS AND AFFIRMATIONS**

1. Oath of allegiance

I.....do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. Oath for due execution of office of Governor

I.....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of Governor in accordance with the Constitution and other laws of Pitcairn. So help me God.

3. Judicial Oath

I.....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of.....and I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God.

4. Affirmations

In the forms above respectively set forth, for the word “swear” there shall be substituted the words “solemnly and sincerely affirm and declare”, and the words “So help me God” shall be omitted.

**Notice under Section 43(4) of the Constitution of
Pitcairn appointing places at which the Magistrate's
Court may sit**

Under the power conferred by s43(4) of the Constitution of Pitcairn, and in accordance with the advice of the Chief Justice, I hereby appoint the following places as places at which the Magistrate's Court may sit:

Adamstown in Pitcairn
Any place within New Zealand

**Victoria Treadell
Governor of Pitcairn, Henderson, Ducie and Oeno
Islands**

Date: 29 July 2010

**The Court of Appeal (Criminal) Rules 2014 made
under section 51 of the Constitution on 7 February
2014 appear from page 680 in Volume II of this Revised
Edition.**

OFFICE OF ADMINISTRATOR ORDER

PURSUANT to Section 32 of the Constitution of Pitcairn, I hereby constitute the office of Administrator as a public office for Pitcairn.

The Administrator shall be my representative on Pitcairn and, subject to any directions by me, shall exercise executive authority on Pitcairn pursuant to section 33(2) of the Constitution. In particular, the Administrator shall-

- be the head of the Pitcairn Public Service on Pitcairn;
- continue to exercise such powers and responsibilities as have been delegated by me to the office of Governor's Representative or are conferred by any law on the Governor's Representative; and
- exercise any other powers conferred by law.

Dated this 28th day of November 2014 at Adamstown

Jonathan Sinclair

Governor

2000 No.1816

JUDICIAL COMMITTEE

The Pitcairn (Appeals to Privy Council) Order 2000

Made -----

12th July 2000

Coming into Operation

14th August 2000

At the Court at Buckingham Palace, the 12th day of July 2000

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 1 of the Judicial Committee Act 1844(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows:—

Citation and commencement

1. This Order may be cited as the Pitcairn (Appeals to Privy Council) Order 2000 and shall come into operation on 14th August 2000.

Interpretation

2. In this Order unless the contrary intention appears:
“appeal” means appeal from a judgment of the Court to Her Majesty in Council;
[“Court” means the Pitcairn Court of Appeal established by the Constitution set out in Schedule 2 to the Pitcairn Constitution Order 2010;]

(Amended by the Pitcairn Constitution Order 2010)

- “the Islands” means the Pitcairn, Henderson, Ducie and Oeno Islands;
“judgment” means a judgment of the Court given in exercise of any jurisdiction conferred upon it by any law for the time being in force in the Islands and includes a decree, order, ruling, sentence or decision of the Court;
“the Judicial Committee” means the Judicial Committee of the Privy Council;
“the record” means the aggregate of papers relating to an appeal (including pleadings, proceedings, evidence and judgments) proper to be laid before Her Majesty in Council on the hearing of an appeal;
“the Registrar” means the Registrar of the Court or other proper officer having custody of the records of the Court.

(a) 1844 c. 69.

Appeals to Her Majesty in Council

3. Subject to the provisions of this Order, an appeal shall lie—
 - (a) as of right, from any final judgment where the matter in dispute on the appeal amounts to or is of the value of £5,000 or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards; and
 - (b) at the discretion of the Court, from any other judgment, whether final or interlocutory, if, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great or general importance or otherwise, ought to be submitted to Her Majesty in Council for decision.

Applications for leave to appeal

4. Application to appeal shall be made by motion or petition within 21 days of the date of the judgment to be appealed from, and the applicant shall give all other parties concerned notice of his intended application.

Conditional leave to appeal

5. Leave to appeal under article 3 of this Order shall, in the first instance, be granted by the Court only—
 - (a) upon condition of the appellant, within a period to be fixed by the Court but not exceeding 90 days from the date of the hearing of the application for leave to appeal, entering into good and sufficient security to the satisfaction of the Court in a sum not exceeding £1,000 for the due prosecution of the appeal and for the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay costs of the appeal (as the case may be); and
 - (b) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purposes of procuring the preparation of the record and the dispatch thereof to the Registrar of the Privy Council as the Court, having regard to all the circumstances of the case, may impose.

Power of a single judge

6. All or any of the powers and functions of the Court under this Order, except the exercise of the discretion conferred by article 3(b) of this Order, may be exercised by any judge of the Court:

Provided that any order, directions or decision made or given in pursuance of this article may be varied, discharged or reversed

by the Court when consisting of three judges, which may include the judge who made or gave the order, directions or decision.

Stay of execution

7. Where the judgment appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as the Court considers just; and, if the Court directs the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as Her Majesty in Council thinks fit to make thereon.

Manner of providing security

8. For the purposes of articles 5 and 7 of this Order, a person may provide security in any manner that the Court may approve in his case, and for the avoidance of doubt it is declared that such security may, with the approval of the Court, consist in whole or in part of a deposit of money.

Preparation of record

9.— (1) The preparation of the record shall be subject to the supervision of the Court and the parties may submit any disputed question arising in connection therewith to the decision of the Court; and the Court shall give such directions thereon as the justice of the case may require.

(2) The Registrar, as well as the parties and their legal agents, shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be transmitted with the record.

(3) Where, in the course of the preparation of a record, one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the record as finally printed shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate, in the index of papers or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

(4) The reasons given by the judges of the Court for or against any judgment pronounced in the course of the proceedings out of which the appeal arises shall be communicated by them in writing to the Registrar and shall be included in the record.

Printing of the record

10.—(1) The record may be printed in the Islands or elsewhere outside the United Kingdom or in the United Kingdom if the parties agree to its being printed but, in the absence of such agreement, shall be duplicated by process approved by the Registrar of the Privy Council. If the record is to be printed, it shall be printed in accordance with the Rules set forth in the Schedule to this Order.

(2) Where the record is printed outside the United Kingdom, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council 30 copies, one of which he shall certify to be correct by signing his name on, or initialling, every 8th page thereof and by affixing thereto the seal of the Court.

(3) Where the record is to be printed or duplicated in the United Kingdom the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council one certified copy, together with an index of all the papers and exhibits in the case. No other certified copies of the record shall be transmitted to the agents in the United Kingdom by or on behalf of the parties to the appeal.

(4) Where part of the record is printed outside the United Kingdom and part is to be printed or duplicated in the United Kingdom, paragraphs (2) and (3) of this Article shall, as far as possible, apply to such parts as are printed outside the United Kingdom and such as are to be printed or duplicated in the United Kingdom respectively.

Consolidation of appeals

11. Where there are two or more applications for leave to appeal arising out of the same matter and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the appeals should be consolidated, the Court may direct the appeals to be consolidated and grant leave to appeal by a single order.

Failure to prosecute appeal

12. Where an appellant, having obtained an order granting conditional leave to appeal and having complied with the conditions imposed on him by such order, fails thereafter to apply with due diligence to the Court for an order granting final leave to appeal, the Court may, on an application in that behalf made by the respondent, rescind the order granting conditional leave to appeal, notwithstanding the appellant's compliance with the conditions imposed by such an order, and may give such directions as to the costs of the appeal and security entered into by the appellant as the Court thinks fit, or make such further or other order as, in the opinion of the Court, the justice of the case requires.

Notice to other parties

13.—(1) On an application for final leave to appeal, the Court may enquire whether notice of the application has been given by the appellant to parties concerned and, if not satisfied as to the notices given, may defer the granting of the final leave to appeal or may give such other directions in the matter as, in the opinion of the Court, the justice of the case requires.

(2) The Registrar shall, with all convenient speed, transmit to the Registrar of the Privy Council a certificate to the effect that the respondent has received notice or is otherwise aware of the order of the Court granting final leave to appeal and of the transmission of the record to the Registrar of the Privy Council.

Prosecution of appeal

14. An appellant who has obtained final leave to appeal shall prosecute the appeal in accordance with the Rules for the time being regulating the general practice and procedure in appeals to Her Majesty in Council.

Withdrawal of appeal

15.—(1) An appellant who has obtained an order granting conditional leave to appeal may, at any time prior to the making of an order granting final leave to appeal, withdraw the appeal on such terms as to costs and otherwise as the Court may direct.

(2) Where an appellant, having obtained final leave to appeal, desires to withdraw the appeal, the Court may, upon an application in that behalf made by the appellant, grant a certificate to the effect that the appeal has been withdrawn; and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may direct.

Dismissal for non-prosecution

16. Where an appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the dispatch of the record to the Registrar of the Privy Council, any respondent may, after giving the appellant due notice of the intended application, apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant; and, if the Court grants such a certificate, the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express Order of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may direct.

Substituting parties

17.—(1) Where, at any time between the order granting final leave to appeal and the dispatch of the record to the Registrar of the Privy Council, the record becomes defective by reason of the death or change of status of a party to the appeal, the Court may, notwithstanding the order granting final leave to appeal and on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of or in addition to the party who has died or undergone a change of status; and the name of such person shall thereupon be deemed to be so substituted or entered on the record without express Order of Her Majesty in Council.

(2) Where the record, after its dispatch to the Registrar of the Privy Council, becomes defective by reason of the death or change of status of a party of the appeal, the Court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of or in addition to the party who has died or undergone a change of status.

Printing of case

18. The case of each party to the appeal may be printed in the Islands or elsewhere outside the United Kingdom or may be printed or duplicated in the United Kingdom and shall, in either event, be printed or duplicated in accordance with the Rules set forth in the Schedule to this Order, and shall be signed by at least one of the counsel who attends at the hearing of the appeal or by the party himself if he conducts the appeal in person.

Form of case

19. The case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the case and the reasons of appeal. Reference by page and line to the relevant portions of the record as printed or duplicated shall, as far as practicable, be printed or duplicated in the margin and care shall be taken to avoid, as far as possible, the reproduction in the case of long extracts from the record. The taxing officer, in taxing the costs of appeal, shall, either of his own motion or at the instance of any party, inquire into any unnecessary prolixity in the case and shall disallow the costs occasioned thereby.

Costs incurred otherwise than before Judicial Committee

20. Where the Judicial Committee directs a party to bear the costs of an appeal incurred otherwise than before the Judicial Committee, such costs shall be taxed by the proper officer of the Court in accordance with the rules for the time being regulating taxation in the Court.

Enforcing judgment

21. Any Order which Her Majesty in Council may think fit to make on an appeal from a judgment of the Court may be enforced in like manner as any judgment of the Court should or might have been executed.

Special leave to appeal

22. Nothing in this Order contained shall be deemed to interfere with the right of Her Majesty, upon the humble petition of any person aggrieved by any judgment of the Court, to admit his appeal therefrom upon such conditions as Her Majesty in Council may impose.

SCHEDULE

Articles 10(1) and 18

RULES AS TO REPRODUCTION OF DOCUMENTS

1.—(1) All records, cases and other proceedings in appeals or other matters pending before her Majesty in Council or the Judicial Committee which are required by the above Rules to be reproduced shall be reproduced on A4 ISO paper.

(2) Each page shall be numbered.

(3) The number of lines on each page of type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

2. The record shall, where practicable, be arranged in two parts in the same volume, viz:

Part I. The pleadings and proceedings, the transcript of the evidence of the witnesses, the judgments, orders etc., of the courts below down to the order admitting the appeal.

Part II. The exhibits and documents.

3.—(1) The index to both parts of the record shall be placed at the beginning of Part I.

(2) Where a record is in more than one volume, each volume shall contain an index of its contents.

(3) The index to Part I shall be in chronological order; the index to Part II shall follow the order of the exhibit marks.

(4) A list of any documents transmitted to the Privy Council but not reproduced shall be inserted in the record after the index to Part II.

4.—(1) The documents in Part I of the record shall be arranged in chronological order.

(2) (a) Part II shall be arranged in the most convenient way for the use of the Judicial Committee, as the circumstances of the case require.

(b) The documents shall be as far as suitable in chronological order, mixing plaintiff's and defendant's documents together when necessary.

(c) Each document shall show its exhibit mark and whether it is a plaintiff's or defendant's document (unless this is clear from the exhibit mark).

(d) Documents relating to the same matter, such as-

(i) a series of correspondence, or

(ii) proceedings in a suit other than the one under appeal, shall be kept together.

(e) The page number of each document shall be inserted in the index.

5.—(1) The documents in Part I shall be numbered consecutively.

(2) The documents in Part II shall not be numbered, apart from the exhibit mark.

6. Each document shall have a heading which shall consist of the number or exhibit mark and the description of the document in the index, without the date.

7. Each document shall have a marginal note which shall be repeated on each page over which the document extends, viz:-

PART I

- (a) Where the case has been before more than one court, the short name of the court shall first appear. Where the case has been before only one court, the name of the court need not appear.
- (b) The marginal note of the document shall then appear consisting of the number and the description of the document in the index, with the date, except in the case of oral evidence.
- (c) In the case of oral evidence, “plaintiff’s evidence” or “defendant’s evidence” shall appear beneath the name of the court, and then the marginal note consisting of the number in the index and the witness’s name, with “examination”, “cross-examination” or “re-examination”, as the case may be.

PART II

The word “Exhibits” shall first appear.

The marginal note of the exhibit shall then appear consisting of the exhibit mark and the description of the document in the index, with the date.

8.—(1) The parties shall agree to the omission of formal and irrelevant documents, but the description of the document may appear (both in the index and in the record), if desired, with the words “not reproduced” against it.

(2) A long series of documents, such as accounts, rent rolls, inventories, etc., shall not be reproduced in full unless Counsel so advise, but the parties shall agree to short extracts being reproduced as specimens.

2012 No.1761

OVERSEAS TERRITORIES

The Pitcairn (Court of Appeal) Order 2012

<i>Made</i> – – – – –	10th July 2012
<i>Laid before Parliament</i>	17th July 2012
<i>Coming into force</i> – –	10th August 2012

At the Court at Windsor Castle, the 10th day of July 2012

Present,

The Queen’s Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by the British Settlements Acts 1887(a) and 1945(b) and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:

Citation and commencement

1. This Order may be cited as the Pitcairn (Court of Appeal) Order 2012 and shall come into force on 10th August 2012.

Interpretation

2. In this Order –
- “the Constitution” means the Constitution set out in Schedule 2 to the Pitcairn Constitution Order 2010(c);
 - “the Court of Appeal” means the Court of Appeal for Pitcairn established by section 49(1) of the Constitution;
 - “the Governor” means the Governor of Pitcairn;
 - “Pitcairn” means Pitcairn, Henderson, Ducie and Oeno Islands.

Appointments and acts of judges of Court of Appeal

3. The appointment of Justice Sir David Baragwanath, Justice Andrew McGechan and Justice Sir Bruce Robertson as judges of the Court of Appeal in purported exercise of the powers conferred on the Governor by section 52(1) of the Constitution shall for all purposes whatsoever be deemed to have been made validly, and all acts and things done by the said judges before the commencement of this Order in purported exercise of the functions of the office of judge of the Court of Appeal shall accordingly be deemed to have been validly and effectively done.

Richard Tilbrook
Clerk of the Privy Council

(a) 1887 c. 54.
(b) 1945 c. 7.
(c) S.I. 2010/244.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

PART III
ORDINANCES AND SUBSIDIARY
LEGISLATION MADE THEREUNDER

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2017

CHAPTER I

**INTERPRETATION AND GENERAL CLAUSES
ORDINANCE**

Arrangement of sections

Section

1. Short title.
2. Interpretation of terms.
3. Ordinances to be public ordinances.
4. Ordinances to be divided into sections without any introductory words.
5. Mode of citing.
6. Time when ordinance or subsidiary legislation comes into operation.
7. Judicial notice of proclamations, rules and orders.
8. Repealed ordinances not revived.
9. Repeal and substitution.
10. Provisions with respect to amended ordinance and effect of repealing.
11. Construction of amending ordinance or rules with amended ordinance or rules.
12. General provisions with respect to power given to any authority to make subsidiary legislation.
13. Construction of subsidiary legislation.
14. Effect of repeal of ordinance on subsidiary legislation made under it.
15. Acts done under subsidiary legislation to be deemed done under ordinance by which subsidiary legislation authorized.
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17. Appointment of officers by name or office.
18. Power to appoint to include power to suspend or dismiss.
19. Power of Governor to provide for execution of duties of public officer during temporary absence or inability.
20. Official designation to include officer executing duties.
21. Power of Governor to delegate authority.
22. Powers to be exercised and duties to be performed from time to time.
23. Power to make regulations, etc., under ordinance not immediately in force.
24. Computation of time.
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26. Provision where no time prescribed.
27. Measurement of distances.
28. Acts of the Parliament of the United Kingdom and other applied laws to be read with necessary modifications.
29. Provisions as to offences under two or more laws.
30. Power of majority of more than two persons.
31. References to Crown.
32. Disposal of forfeits.
33. Attempt to commit an offence to be deemed an offence.
34. Penalties prescribed to be maximum penalties.
35. Statement of penalty at foot of section to indicate maximum penalty provided for contravention of section.
36. Saving of rights of Crown in ordinances.

Ordinances Nos:
 1 of 1952
 1 of 1968
 3 of 1970
 3 of 1982
 5 of 2005
 1 of 2009
 4 of 2010
 3 of 2014
 1 of 2015
 2 of 2016
 3 of 2016.
 Short Title.

Interpretation of
 terms.

—————

An ordinance relating to interpretation and general clauses.

[16th October, 1952]

1. This ordinance may be cited as the Interpretation and General Clauses Ordinance.

2.—(1) In this ordinance and every other ordinance, and in all public documents enacted, made or issued before or after the coming into operation of this ordinance, the following words and expressions shall have the meanings hereby assigned to them respectively, unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided—

“act” used with reference to an offence or civil wrong, includes a series of acts, and words which refer to acts done extend to illegal omissions;

“Act of the Parliament of the United Kingdom” means an Act passed by the Parliament of the United Kingdom, which may be cited by its short title (if any) or by reference to the regnal year in which it was passed and its chapter;

“amend” includes repeal, revoke, rescind, cancel, replace, add to or vary, and the doing of any two or more of such things simultaneously or in the same written law or instrument;

“applied Act” means any Act of the Parliament of the United Kingdom for the time being in force in the Islands;

[“Attorney General” means the person from time to time appointed by the Governor as Attorney General under section 35 of the Constitution of Pitcairn,

and includes any person lawfully carrying out the functions of the Attorney General;]

(Inserted by Ordinance No. 4 of 2010)

“child” means a person under the age of [18] years;

(Amended by Ordinance No. 1 of 2009)

(Amended by Ordinance No. 3 of 2014)

“Christian name” means any name prefixed, or suffixed to a surname, whether received in Christian baptism or otherwise;

“commencement” used with reference to an ordinance means the date on which the ordinance comes into operation;

“common law” means the Common Law of England;

“Commonwealth” means the Commonwealth of Nations;

“contravene” in relation to any requirement or condition prescribed in any written law or in any grant, permit lease, licence or authority granted by or under any written law, includes a failure to comply with that condition;

“country or territory of the Commonwealth” means any member of the Commonwealth or any country or territory for whose international relations any member of the Commonwealth is responsible;

“court” means any court of the Islands of competent jurisdiction;

“daily penalty” means a penalty for each day on which the offence is continued after conviction therefor;

“document” includes any publication and any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used or may be used for the purpose of recording that matter;

“dollar”, “cent” and symbols therefor shall unless otherwise specified be construed as references to New Zealand currency or Pitcairn coin;

“export” means to take out or cause to be taken out of the Islands by air, land or water;

“Government” means the Government of the Islands;

“Governor” means the Governor of the Islands of Pitcairn, Henderson, Ducie and Oeno or any officer for the time being administering the government of the said Islands;

“Her Majesty” or “the Queen” includes Her Majesty the Queen, her Heirs and Successors;

“immovable property” includes land, benefits to arise out of

land, and things attached to the earth or permanently fastened to anything attached to the earth;

“import” means to bring or cause to be brought into the Islands by air, land or water;

“individual” means a natural person;

“the Islands” means the Islands of Pitcairn, Henderson, Ducie and Oeno;

[“judge” means the Chief Justice or another judge of the Supreme Court, the President of the Court of Appeal, a Justice of Appeal, or an acting judge of the Supreme Court;]

(Repealed and replaced by No. 2 of 2016)

“law” means any law for the time being in force in, having legislative effect in, extending to, or applicable in, the Islands;

[“marriage” —

(a) includes marriage of a same sex couple; and

(b) includes a registered civil partnership that is entered into outside of Pitcairn in accordance with the laws of that place;

and “married” and “married person” have corresponding meanings;]

(Inserted by Ordinance No. 1 of 2015)

“master” means and includes any person in charge of a vessel or aircraft;

“month” means calendar month;

“motor vehicle” means any mechanically propelled vehicle intended or adapted for use on roads and includes a trailer attached to or towed by any such vehicle;

“movable property” means property of every description except immovable property;

“oath” and “affidavit”, in the case of persons allowed by law to affirm instead of swearing, include affirmation; and “swear”, in the like case, includes affirm;

“occupy” includes use, inhabit, be in possession of or enjoy the land or premises to which the word relates, otherwise than as a mere servant or for the mere purpose of the care, custody or charge thereof;

“offence” includes any crime, unlawful act or contravention or other breach of, or failure to comply with, any provision of any law, for which a penalty is provided;

“Official Printer” includes any printer purporting to be the printer authorised to print ordinances and other official documents;

“or”, “other” and “otherwise” shall be construed disjunctively and not as implying similarity, unless the word “similar” or some other word of like meaning is added;

“ordinance” shall include any order, proclamation, rule, regulation, or by-law, duly made under the authority of an ordinance and in force; and the expression “the ordinance”, when used in any such order, proclamation, rule, regulation, or by-law means the ordinance under the authority of which such order, proclamation, rule, regulation, or by-law, as the case may be, has been made;

“person” includes any company or association or body of persons, corporate or unincorporate;

“power” includes any privilege, authority and discretion;

“prescribed” means prescribed by the ordinance in which the word occurs or by any rules made thereunder;

“property” includes—

- (a) money, goods, choses in action and land; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a) of this definition;

“public” includes any class or section of the public;

“public office” means any office constituted under the provisions of [section 32 of the Constitution of Pitcairn]; but shall not include any office to which any person is elected or appointed under the provisions of the Local Government Ordinance;

cap. 11

(Amended by Ordinance No. 4 of 2010)

“public officer” means and includes any person from time to time appointed to hold any public office;

“public place” includes every place to which the public are entitled or permitted to have access whether on payment or otherwise;

“publication” means—

- (a) all written and printed matter;
- (b) any record, tape, wire, perforated roll, cinematograph, film or other contrivance by means of which any words or ideas may be mechanically, electronically or electrically produced, reproduced, represented or conveyed;
- (c) anything whether of a similar nature to the foregoing or not, containing any visible

- representation, or by its form, shape or in any manner, capable of producing, reproducing, representing or conveying words or ideas; and
- (d) every copy and reproduction of any publication as defined in paragraphs (a), (b) and (c) of this definition;
- “registered” used with reference to a document means registered under the provisions of the law for the time being applicable to the registration of such document;
- “repeal” includes rescind, revoke, cancel or replace with or without amendment;
- “rule” includes by-law and regulation;
- “rules of court”, when used in relation to any court, means rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court;
- “Secretary of State” means one of Her Majesty’s Principal Secretaries of State;
- “sell” includes exchange and barter;
- [“Senior Magistrate” means a person appointed as a magistrate of the Magistrate’s Court under the provisions of sub-sections (1) and (4) of the Judicature (Courts) Ordinance;]
- (Inserted by Ordinance No. 5 of 2005)**
- “ship” includes every description of vessel in navigation not propelled by oars;
- “sign”, with its grammatical variations and cognate expressions, with reference to a person who is unable to write his name, includes “mark”, with its grammatical variations and cognate expressions;
- [“spouse”—
- (a) includes a person who is married to a person of the same sex; and
- (b) unless otherwise specified, includes a person who is a party to a registered civil partnership that is entered into outside of Pitcairn in accordance with the laws of that place;
- and “husband” and “wife” have corresponding meanings;]
- (Inserted by Ordinance No. 1 of 2015)**
- “statutory declaration” if made—
- (a) in the Islands, means a declaration made under the Statutory Declarations Act, 1835 of the Parliament of the United Kingdom;
- (b) in the United Kingdom or any British possession beyond the Islands, means a

declaration made before a justice of the peace, notary public or other person having authority therein under any law for the time being in force to take or receive a declaration;

- (c) in any other place, means a declaration made before a British Consul or vice-consul, or before any person having authority under any Act of Parliament for the time being in force to take or receive a declaration;

“subsidiary legislation” means any order in council, proclamation, rule, regulation, order, notice, by-law or other instrument made under any ordinance or other lawful authority and having legislative effect;

“Supreme Court” means the Supreme Court of Pitcairn, Henderson, Ducie and Oeno Islands;

“surname” includes a clan or family name;

[“territorial waters” means the inland waters of the Islands, together with any part of the sea within 12 nautical miles of the Islands, measured from:

- (a) in the case of Pitcairn and Henderson Islands, the nearest point of the low water line along the coast; and
(b) in the case of Ducie and Oeno Islands the nearest point of the seaward low water line of the reef;]

(Repealed and replaced by No. 3 of 2016)

“United Kingdom” means Great Britain and Northern Ireland;

“vessel” includes any ship or boat or any other description of vessel used in navigation;

“will” includes any testamentary instrument;

“writing” and expressions referring to writing include printing, photography, lithography, typewriting and any other modes of representing or reproducing words in visible form;

“year” means a year reckoned according to the British calendar.

(2) Where any ordinance authorizes or requires any document to be served by post, whether or not the expression “serve” is used, then, unless a contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting, by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time of which the letter would be delivered in the ordinary course of the post.

(3) Words importing the masculine gender include females;

words in the singular include the plural and words in the plural include the singular; words includes figures, symbols and punctuation.

(4) Reference to a child includes an adopted child.

Ordinances to be public ordinances.

3. Every ordinance shall be a public ordinance and shall be judicially noticed as such, unless the contrary is expressly provided by the ordinance.

Ordinances to be divided into sections without any introductory words.

4. All ordinances shall be divided into sections, if there be more enactments than one, which sections shall be deemed to be substantive enactments without any introductory words.

Mode of citing.

5. Where any ordinance is referred to, it shall be sufficient for all purposes to cite such ordinance either by the short title, if any, by which it is made citable, or by the year in which it was made and its number among the ordinances of that year, or, in the case of any revised edition of the ordinances issued under any ordinance providing for the issue of a revised edition, by its short title or its number; and the reference may in all cases be made according to the copies of ordinances printed in England or by the Official Printer.

Time when ordinance or subsidiary legislation comes into operation.

6. Where any ordinance, or part of an ordinance, or any subsidiary legislation, came or comes into operation on a particular day, it shall be deemed to have come or shall come into operation immediately on the expiration of the day next preceding such day.

Judicial notice of proclamations, rules and orders.

7. Judicial notice shall be taken of every proclamation, rule or order by the Governor made or purporting to be made in pursuance of an ordinance or any Act of the Parliament of the United Kingdom.

Repealed Ordinances not revived.

8. Where any ordinance repealing in whole or in part any former ordinance is itself repealed, such last repeal shall not revive the ordinance or provisions before repealed unless words be added reviving such ordinance or provisions.

Repeal and substitution.

9. Where an ordinance repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation.

Provisions with respect to amended ordinance and effect of repealing.

10.—(1) Where in any ordinance a reference is made to another ordinance, such reference shall, except where the context otherwise requires, be deemed to include a reference to such last mentioned ordinance as the same may from time to time be amended.

(2) Where an ordinance repeals and re-enacts, with or without modification, any provision of a former ordinance,

references in any other ordinance to the provision so repealed shall, unless the contrary intention appears, be construed as references to the provision so re-enacted.

(3) Where an ordinance repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceedings, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding, or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing ordinance had not been made.

11.—(1) Where one ordinance amends another ordinance, the amending ordinance shall, so far as it is consistent with the tenor thereof, and unless the contrary intention appears, be construed as one with the amended ordinance.

Construction of amending ordinance or rules with amended ordinance or rules.

(2) Where rules amend other rules the amending rules shall, so far as is consistent with the tenor thereof, and unless the contrary intention appears, be construed as one with the amended rules.

12. Where an ordinance confers power on any authority to make subsidiary legislation the following provisions shall, unless the contrary intention appears, have effect with reference to the making of such subsidiary legislation—

General provisions with respect to power given to any authority to make subsidiary legislation.

- (a) subsidiary legislation may at any time be amended, varied, rescinded or revoked by the same authority and in the same manner by and in which it was made;
- (b) there may be annexed to the breach of any subsidiary legislation such penalty not exceeding two hundred dollars or such term of imprisonment not exceeding two months, or both, as the authority making the subsidiary legislation may think fit, subject to disallowance by Her Majesty;
- (c) no subsidiary legislation shall be inconsistent with the provisions of any ordinance;

- (d) subsidiary legislation shall be published in such manner as the Governor may from time to time direct and shall have the force of law upon such publication thereof or from the date named therein, subject to disallowance by Her Majesty;
- (e) where any ordinance confers power on any authority to make subsidiary legislation for any general purpose, and also for any special purposes incidental thereto, the enumeration of the special purposes shall not be deemed to derogate from the generality of the powers conferred with reference to the general purpose.

Construction of subsidiary legislation.

13. Where any ordinance confers power to make any subsidiary legislation, expressions used in the subsidiary legislation shall, unless the contrary intention appears, have the same respective meanings as in the ordinance conferring the power.

Effect of repeal of ordinance on subsidiary legislation made under it.

14. Where any ordinance or part of an ordinance is repealed, subsidiary legislation issued under or made in virtue thereof shall remain in force so far as it is not inconsistent with the repealing ordinance and, unless the contrary intention appears, until it has been revoked or repealed by subsidiary legislation, issued or made under the provisions of such repealing ordinance.

Acts done under subsidiary legislation to be deemed done under ordinance by which subsidiary legislation authorized.

15. An act shall be deemed to be done under any ordinance or by virtue of the powers conferred by any ordinance or in pursuance or execution of the powers of or under the authority of any ordinance, if it is done under or by virtue of or in pursuance of subsidiary legislation made under any power contained in that ordinance.

Deviation from forms.

16. Save as is otherwise expressly provided, whenever any form is prescribed, an instrument or document which purports to be in such form, shall not be void by reason of any deviation therefrom which does not affect the substance of such instrument or document, or which is not calculated to mislead.

Appointment of officers by name or office.

17. Where by or under an ordinance the Governor or any public officer or body is empowered to appoint or name a person to have and exercise any powers or perform any duties, the Governor or such public officer or body may either appoint a person by name or direct the person for the time being holding any office designated by the Governor, or by such public officer or body, to have and exercise such powers and perform such duties; and thereupon, or from the

date specified by the Governor or by such public officer or body, the person appointed by name or the person holding the office aforesaid shall have and may exercise such powers and perform such duties accordingly.

18. Where by or under any ordinance a power to make any appointment is conferred, then, unless the contrary intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of the power.

Power to appoint to include power to suspend or dismiss.

19. Where by or under any ordinance, any powers are conferred or any duties are imposed upon a public officer, the Governor may direct that if during any period owing to absence or inability to act from illness or any other cause such public officer shall be unable to exercise the powers or perform the duties of his or her office in any place under his or her jurisdiction or control, such powers shall be had and may be exercised and such duties shall be performed in such place by a person named by or by the public officer holding any office designated by the Governor; and thereupon such person or public officer, during any period as aforesaid, shall have and may exercise the powers and shall perform the duties aforesaid, subject to such conditions, exceptions and qualifications as the Governor may direct.

Power of Governor to provide for execution of duties of public officer during temporary absence or inability.

20.—(1) Where reference is made in any ordinance to any public officer by the term designating his office, such term shall include the officer for the time being executing the duties of such office or any portion of such duties.

Official designation to include officer executing duties.

(2) Any civil or criminal proceedings taken by or against any person in virtue of his office shall not be discontinued or abated by his death, resignation, or absence or removal from office, but may be carried on by or against, as the case may be, the person appointed to perform the duties of the office.

21.—(1) When by any ordinance or subsidiary legislation the Governor is empowered to exercise any powers or perform any duties he may, unless by law expressly prohibited from so doing, depute any person by name or the person for the time being holding the office designated by him to exercise such powers or perform such duties on his behalf subject to such conditions, exceptions and qualifications as the Governor may prescribe, and thereupon or from the date specified by the Governor the person so deputed shall have and exercise such powers and perform such duties subject as aforesaid:

Power of Governor to delegate authority.

Provided that nothing herein contained shall authorize the Governor to depute any person to make rules under the

power in that behalf conferred upon him by any ordinance or subsidiary legislation.

(2) Any delegation made from time to time under the provisions of the last preceding subsection—

- (a) may be varied or cancelled by the Governor at any time; and
- (b) shall not exclude the exercise of such powers or the performance of such duties by the Governor.

Powers to be exercised and duties to be performed from time to time.

22. Where any law confers any power or imposes any duty, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

Power to make regulations, etc., under ordinance not immediately in force.

23. Where any ordinance which is not to come into operation immediately on the passing thereof confers power to make rules, regulations, or by-laws, or to issue orders with respect to the application of the ordinance, or for the appointment of any officer, or for the establishment of any office thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the ordinance, the power may be exercised at any time after the passing of the ordinance, but the rules, regulations or by-laws so made or the orders so issued shall not take effect until the ordinance comes into operation.

Computation of time.

24. In computing time for the purposes of any ordinance, unless the contrary intention appears—

- (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
- (b) if the last day of the period is Saturday or a public holiday (which days are in this section referred to as excluded days) the period shall include the next following day, not being an excluded day;
- (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;
- (d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

25. Where any expression of time occurs in any ordinance, deed or other legal instrument, the time referred to shall, unless it is otherwise expressly provided, be held to signify the standard time adopted for the Islands.

Time.

26. Where no time is prescribed or allowed within which anything shall be done, such thing shall be done with all convenient speed, and as often as the prescribed occasion arises.

Provision where no time prescribed.

27. In the measurement of any distance for the purposes of any ordinance, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Measurement of distances.

28. Where by any Order of the Queen in Council or ordinance, any Act of the Parliament of the United Kingdom or the law of any other country is extended or applied to the Islands such Act or law shall be read with such formal alterations as to names, localities, courts, officers, persons, moneys, penalties or otherwise as may be necessary to make the same applicable to the circumstances.

Imperial Acts and other applied laws to be read with necessary modifications.

29. Where an act or omission constitutes an offence under two or more ordinances, or both under an ordinance and under any other law which applies to the Islands the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those ordinances or under such other law, but shall not be liable to be punished twice for the same offence.

Provisions as to offences under two or more laws.

30. Save as is otherwise expressly provided by any ordinance, where any act or thing is required to be done by more than two persons, a majority of them may do it.

Power of majority of more than two persons.

31. In any ordinance, references to the Sovereign reigning at the time of the passing of the ordinance or to the Crown shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being.

References to Crown.

32.—(1) Where under the provisions of any ordinance any animal or any thing is adjudged by any court or other authority to be forfeited, it shall, unless the contrary is otherwise provided or unless it is expressed by law to be forfeited to any person, be forfeited to the Crown, and the net proceeds thereof, if it is ordered by a competent authority to be sold, shall be paid as the Governor may direct.

Disposal of forfeits.

33. A provision which constitutes an offence shall, unless the contrary intention appears, be deemed to provide also that an attempt to commit such offence shall be an offence against

Attempt to commit an offence to be deemed an offence.

such provision, punishable as if the offence itself had been committed.

Penalties prescribed to be maximum penalties.

34. Where in any ordinance a penalty is prescribed for an offence against that ordinance such provision shall indicate that, unless the contrary intention appears, the offence shall be punishable by a penalty not exceeding the penalty prescribed.

Statement of penalty at foot of section to indicate maximum penalty provided for contravention of section.

35. Where in any ordinance a penalty is set out at the foot of any section the same shall indicate that any contravention of the section whether by act or omission shall be an offence against that ordinance and shall, unless the contrary intention appears, be punishable upon conviction by a penalty not exceeding the penalty so set out.

Saving of rights of Crown in ordinances.

36. No ordinance shall in any manner whatsoever affect the rights of the Crown unless it is therein expressly provided, or unless it appears by necessary implication that the Crown is bound thereby.

Section 21

DELEGATION BY THE GOVERNOR

Ordinance	Section	Subject	To whom delegated
cap. 20, Marriage ordinance	10	Power to grant licence to marry	Administrator*
cap. 7, Prisons Regulations	16(2), 18, 19(6), 24, 26(1), 29(5), 53(6), 54(1)(d)	Powers relating to administration of prisons	Administrator

*changed pursuant to Office of Administrator Order, 28 November 2014

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2017

CHAPTER II

JUDICATURE (COURTS) ORDINANCE

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- 25. Court Registries
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JUDICATURE (COURTS) ORDINANCE

An ordinance to repeal and replace the Judicature Ordinance 1970; for the continuation of a Supreme Court of Judicature and the establishment of a Magistrate’s Court for the Islands

[1st February, 2000]

PART I—PRELIMINARY

No. 2 of 1999
No. 2 of 2000
No. 12 of 2000
No. 6 of 2001
No. 14 of 2002
No. 11 of 2003
No. 1 of 2005
No. 6 of 2006
No. 1 of 2008
No. 4 of 2010
No. 6 of 2010
No. 1 of 2011
No. 2 of 2016.

Citation.

1. This ordinance may be cited as the Judicature (Courts) Ordinance.

Interpretation.

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

[“Administrator” means the person appointed by the Governor to hold the public office of Administrator;

“Court of Appeal” means the Court of Appeal as constituted by section 49 of the Constitution of Pitcairn;

“Deputy Registrar” in relation to any court means a person appointed as Deputy Registrar of that court in accordance with section 21;]

(Inserted by Ordinance No. 2 of 2016)

“Magistrate’s Court” means the Court established under the provisions of section 10 of this ordinance;

“Supreme Court” means the Supreme Court of Pitcairn [as constituted by section 45 of the Constitution of Pitcairn];

(Amended by Ordinance No. 4 of 2010)

[“Pitcairn Public Service” and “officer of the Pitcairn Public Service” have the same meanings as in section 61 of the Constitution of Pitcairn;]

(Inserted by Ordinance No. 2 of 2016)

[“Proceeding” includes any application to a Pitcairn court or Registrar for the exercise of civil or criminal jurisdiction;]

(Inserted by Ordinance No. 6 of 2010)

“Public Prosecutor” means the person appointed by the Governor to be Public Prosecutor for the Islands;

[“Registrar” in relation to any court means a person appointed as Registrar of that court in accordance with section 21;]

(Repealed and replaced by Ordinance No. 2 of 2016)

[“Registry” in relation to any court means the registry of that court as appointed under section 25;]

(Inserted by Ordinance No. 2 of 2016)

[“Step in a proceeding” —

- (a) in relation to any criminal matter, includes—
- (i) investigative steps involving a Pitcairn Court or a Pitcairn Magistrate or Registrar (for example the issuing of a search warrant)
 - (ii) the institution of a criminal proceeding by the signing of a formal charge;
 - (iii) any preliminary or interlocutory hearings (for example committal proceedings, remand hearings, callovers, inquiries into fitness to stand trial, or other procedural hearings);
 - (iv) the entering of any plea;
 - (v) the taking of evidence;
 - (vi) conducting or continuing a proceeding to determine guilt;
 - (vii) giving judgment in a proceeding;
 - (viii) sentencing or otherwise dealing with a person;
 - (ix) any appeal or review;
 - (x) any other associated matters; and

- (b) in relation to any civil matter, includes any interlocutory or procedural step of any sort as well as any substantive hearing, and any appeal or related matter.]

(Inserted by Ordinance No. 6 of 2010)

PART II—SUPREME COURT

Number of judges of the Supreme Court

3.—(1) The judges of the Supreme Court shall be the Chief Justice and up to four other judges or acting judges.

(2) The Supreme Court shall be deemed to be duly constituted notwithstanding any vacancy in the office of any judge thereof.

(Section 3 repealed and replaced by Ordinance No. 4 of 2010)

(Sections 4–6 repealed by Ordinance No. 4 of 2010)

(Sections 7–8 repealed by Ordinance No. 2 of 2016)

Mode of trial.

9.—(1) Trials before the Supreme Court in its civil or criminal jurisdiction shall be by a judge alone, provided that the Court may, if it thinks it expedient and practicable so to do, sit with assessors.

(2) Where the Supreme Court proceeds to hear any civil or criminal cause with assessors, the Court shall nominate and summon as assessors not less than two nor more than four indifferent persons subject to the jurisdiction of the Court and of good repute.

(3) When in any trial held with the aid of assessors the case on both sides is closed, the judge may sum up the evidence and shall then require each of the assessors to state his or her opinion orally and the judge shall record each such opinion and shall then give judgment but in so doing shall not be bound to conform to the opinion of the assessors.

(4) Nothing in subsection (3) shall be construed as prohibiting the assessors or any of them from retiring to consider their opinion if they so wish, or, during such retirement or at any time during the trial, from consultation with one another.

Sittings of Supreme Court outside of the Islands

[9A. The Supreme Court may sit outside of Pitcairn—

(a) when making an order under section 15E of this Ordinance; or

(b) in accordance with an order that has been made under section 15E of this Ordinance; or

(c) in any other circumstances prescribed by law.]

(Inserted by Ordinance No. 6 of 2010)

PART III—MAGISTRATE’S COURT

10.—(1) There shall be for the Islands a court subordinate to the Supreme Court to be styled “the Magistrate’s Court” which shall be presided over by a magistrate appointed under the provisions of section 11 of this ordinance.

Establishment of
Magistrate’s Court.

(2) (Repealed by Ordinance No. 2 of 2016)

11.—(1) Subject to this section, the Governor may appoint any fit and proper person to be a magistrate of the Magistrate’s Court.

Magistrates.

(2) A magistrate, to be known as the Island Magistrate, shall be appointed from among the permanent residents of the Islands, who shall not be required to be professionally qualified in law but who must have been resident in the Islands at the time of his or her appointment for not less than 5 years.

(3) The Island Magistrate may exercise the jurisdiction and shall have the powers set out in Part II of the Justice Ordinance.

cap. 3

(4) Magistrates of the Court, other than the Island Magistrate, shall be required to be qualified in law and to have practised in any Commonwealth country for not less than 5 years prior to the date of his or her appointment.

(5) Every magistrate shall be subject at all times to the authority and directions of the Chief Justice or other judge of the Supreme Court and shall hold [office on] such terms as the Governor may prescribe.

(Amended by Ordinance No. 1 of 2005)

[11A.] (Inserted by Ordinance No. 11 of 2003) (Repealed by Ordinance No. 4 of 2010)

[11B.] Every magistrate shall retire from office on attaining the age of [75 years; but the Governor may permit any such person to remain in office for such fixed period, not exceeding two years, as may be agreed between that person and the Governor].]

Retirement

(Inserted by Ordinance No. 11 of 2003)

(Amended by Ordinance No. 6 of 2005)

(Repealed and replaced by Ordinance No. 1 of 2011)

(Amended by Ordinance No. 2 of 2016)

12.—(1) Subject to this section and to Part II of the Justice Ordinance, the Magistrate’s Court shall have the like original jurisdiction in criminal matters as is vested by [the Constitution of Pitcairn] in the Supreme Court, save that it shall not have jurisdiction to entertain proceedings in respect of treason, piracy, murder, manslaughter, rape or arson.

Criminal jurisdiction.
cap. 3

(Amended by Ordinance No. 4 of 2010)

(2) In respect of any offence of which a person has been convicted before it, the Magistrate's Court shall have the power to pass such sentence on that person or make such other order in respect of him or her as may be provided in that behalf by any law for the time being in force in the Islands, save that, subject to subsection (3)—

- (a) any term of imprisonment to which it sentences him or her; or
- (b) where the defendant is convicted, in the same proceedings, of two or more offences and is sentenced to two or more terms of imprisonment which are to run consecutively, the aggregate of such terms, may not exceed 7 years and any fine or other pecuniary penalty which it imposes in respect of any one offence may not exceed \$20,000.

(3) The Governor may, by order which shall be published, vary the list of offences set out in subsection (1) in respect of which the Magistrate's Court may not entertain proceedings and may likewise vary the limits set out in subsection (2) on the penalties which the Magistrate's Court may impose:

Provided that an order made under this subsection shall not affect—

- (a) the jurisdiction of the Magistrate's Court in any case in which the accused person was charged and remanded for trial before the publication of the order or such later date as the order may specify for that purpose;
- (b) the punishment for an offence committed before such publication or such date as aforesaid.

(4) Where under any law in that behalf for the time being in force in the Islands, the Magistrate's Court commits a person to prison for default in the payment of any sum adjudged to be paid by a conviction, the period for which he or she may be so committed may not exceed 7 years (or the period for the time being substituted for 7 years under subsection (3) in respect of that conviction) or, if the sum (or the aggregate of the sums) due at the time of committal is less than the maximum fine which the Magistrate's Court could then impose under subsection (2), may not exceed that proportion of 7 years (or the period substituted as aforesaid) which that sum (or aggregate) bears to that maximum fine.

13.—(1) Subject to Part II of the Justice Ordinance and to subsections (2) and (3) and to any law for the time being in force in the Islands which vests jurisdiction in respect of any particular matter exclusively in the Supreme Court, the

Magistrate's Court shall have the like original jurisdiction in civil matters as is vested by [the Constitution of Pitcairn] in the Supreme Court other than the jurisdiction vested in the Supreme Court as a Court of Admiralty or a Prize Court.

(Amended by Ordinance No. 4 of 2010)

(2) Subject to subsection (4), the Magistrate's Court shall not have jurisdiction to entertain proceedings where the matter in dispute amounts to or is of the value of more than \$10,000 or which involve, directly or indirectly, some claim or question regarding property, or some civil right, amounting to or of the value of more than \$10,000:

Provided that the jurisdiction of the Magistrate's Court shall not be ousted by this subsection if the relief claimed by the plaintiff consists only of liquidated damages not exceeding \$10,000.

(3) Subject to subsection (4), where, in proceedings commenced in the Magistrate's Court founded in contract or tort, the plaintiff claims liquidated damages exceeding \$6,000 (with or without other relief), the defendant may, within such time as may be prescribed by rules of court, apply to the Magistrate for a certificate that some question of fact or law of general or public importance is likely to arise in the proceedings and for the proceedings to be transferred to the Supreme Court; and if—

- (a) the Magistrate gives that certificate; and
- (b) the defendant gives security approved by the Magistrate for the liquidated damages claimed and for the costs of the proceedings in the Supreme Court,

the Magistrate or (if the Magistrate declines to do so) the Chief Justice of the Supreme Court may order the proceedings to be transferred to the Supreme Court.

(4) The Governor may, by order which shall be published, vary from time to time the sums specified in subsections (2) and (3) by reference to which limits are set on, respectively, the jurisdiction of the Magistrate's Court to entertain proceedings and the right of a defendant to apply for proceedings to be transferred to the Supreme Court:

Provided that an order under this subsection shall not affect any proceedings instituted in the Magistrate's Court before the publication of the order or such later date as the order may specify for that purpose.

14. Subject to any rules of Court made under the provisions of section 20 of this ordinance, an appeal shall lie to the Supreme Court in respect of any judgment, sentence or order of the Magistrate's Court.

Appeal from
Magistrate's Court.

Reconciliation.

15.—(1) In criminal cases, the Magistrate’s 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 not aggravated in degree, on terms of payment of compensation or other terms approved by such Court, and may thereupon order the proceedings to be stayed or terminated.

(2) In civil cases, the Magistrate’s Court and the officers thereof shall, as far as there is proper opportunity, promote reconciliation among persons subject to its jurisdiction and encourage and facilitate settlement in an amicable way and without recourse to litigation of matters in difference between them.

(Sections 15A and 15B were repealed by Ordinance No. 6 of 2010)

PART IIIA — APPEALS TO THE PITCAIRN COURT OF APPEAL IN CIVIL CASES

Pitcairn Court of Appeal may hear appeals from judgments and orders of the Supreme Court

15C. The Pitcairn Court of Appeal shall have jurisdiction and power to hear and determine appeals from any final judgment, decree, or order of the Supreme Court subject to the provisions of this ordinance, the Justice Ordinance, [the Constitution of Pitcairn] and to such rules and directions for regulating the terms and conditions on which such appeals shall be brought as may from time to time be promulgated by the President in accordance with [section 51] of [the Constitution of Pitcairn].

(Amended by Ordinance No. 4 of 2010)

Appeals against decisions of Supreme Court on appeal

15D—(1) The decision of the Supreme Court on appeal from an inferior court is final, unless a party, on application, obtains leave to appeal against that decision to the Pitcairn Court of Appeal.

(2) An application under subsection (1) for leave to appeal to the Pitcairn Court of Appeal must be made to the Pitcairn Court of Appeal.

(3) In this section the term “inferior court” means the Magistrate’s Court and the Lands Court.

(PART IIIA: Inserted by Ordinance No. 1 of 2008)

PART IV — GENERAL

Place of sitting of Supreme Court and Magistrate’s Court

[15E.—(1) A judge of the Supreme Court or a magistrate may make an order that any proceeding, or any step in any proceeding, be held—

- (a) in the Islands, or
- (b) in the United Kingdom; or

- (c) in New Zealand.
- (2) An order under this section may be made—
 - (a) on the application of any party or intended party to the proceeding, or
 - (b) of the Court's own motion;and may be made either before or after the commencement of a proceeding.
- (3) In determining whether to make an order under this section, the Court must take into account:
 - (a) the nature of the proposed step or hearing; and
 - (b) the interests of justice; and
 - (c) the interest in the efficient disposal of Court business.

15F.—(1) A judge of the Supreme Court or magistrate may, in respect of a proceeding over which that judge or magistrate has jurisdiction, order that any person involved in the proceeding or any step in the proceeding may participate in that proceeding by way of live-link television where—

Participation by live-link television

- (a) the Court is sitting within the Islands and the person concerned is outside the Islands, or
 - (b) the Court is sitting outside the Islands and the person concerned is in the Islands or is in any other place; and he or she is satisfied that it is in the interests of justice to make such an order.
- (2) For the purposes of subsection (1), the Court shall be deemed to be sitting in the place from which the judge or magistrate is to preside over the proceeding or step in the proceeding.
- (3) The persons who may participate by way of live-link television under subsection (1) may include, but are not limited to—
- (a) a party to the proceedings, including a defendant or accused;
 - (b) counsel for any party to the proceedings;
 - (c) a witness;
 - (d) any officer of the Court;
 - (e) any person whose name is on the list of assessors created in accordance with section 9 of the Justice Ordinance;
 - (f) any assessor selected under section 29 of the Justice Ordinance;
 - (g) any other person requested or authorised by the presiding judge or magistrate to be present or to participate.
- (4) An order under subsection (1) in relation to a witness

may—

- (a) specify the person or persons who may be present with the witness while the witness gives evidence by way of live television link; and
- (b) specify that the evidence be given in the presence of a particular named person who is able and willing to answer under oath or affirmation any questions a magistrate or judge of the Court may put as to the circumstances in which the evidence is given and which may affect the giving of evidence.

(5) In this Ordinance, “live-link television” means a television link or other arrangement whereby a person who is not in the courtroom is able to see and hear a person there and is also able to be seen and heard by the judge or judges and the other persons participating in the proceeding.

(6) Reference in subsection (5) to a person being able to see and hear, and to be seen and heard by, another person are to be read as not applying to the extent that any such person is unable to see or hear by reason of impairment of eyesight or hearing.

(7) A person who participates in proceedings by way of live-link television by virtue of this section is to be deemed to be present at the proceedings.

(8) A statement made on oath by a witness and given in evidence by way of live-link television shall be treated for the purposes of the Perjury Act 1911 (UK) as having been made in the proceedings in which it is given as evidence.

(9) A proceeding that is being conducted by way of live-link television by virtue of this section may be adjourned from time to time with such conditions concerning bail as the judge or magistrate thinks fit.

(10) Nothing in this section affects the operation of Part VIIA of the Justice Ordinance.

Matters to be considered under s15F in all cases

15G. A judge or magistrate, in determining whether to make an order under s15F for the appearance of a person by way of live-link television, must consider the potential impact of the use of live-link television on the effective maintenance of the rights of all parties to the proceeding, including—

- (a) the ability to assess the credibility of witnesses and the reliability of evidence presented to the court; and
- (b) the level of contact with other participants.

Matters to be considered under s15F in criminal cases

15H. A judge or magistrate, in determining whether to make an order under s15F for the appearance of a person by way of live-link television in a criminal proceeding, must consider the potential impact of the use of live-link television

on the effective maintenance of the right of the defendant to a fair trial, and in particular—

- (a) the ability of the defendant—
 - (i) to comprehend the proceedings; and
 - (ii) to participate effectively in the conduct of his or her defence; and
 - (iii) to consult and instruct counsel privately; and
 - (iv) to access relevant evidence; and
 - (v) to examine the witnesses for the prosecution; and
- (b) the level of contact the defendant has with other participants.]

(Section 15E, 15F, 15G and 15H inserted by Ordinance No. 6 of 2010)

16.—(1) No information, charge, summons, conviction, sentence, order, bond, warrant or other document and no process or proceeding shall be quashed, set aside or held invalid by any Court or quasi-judicial authority by reason only of any defect, irregularity, omission or want of form unless the Court or authority is satisfied that there has been a substantial miscarriage of justice;

Documents and proceedings not to be held invalid except where there has been a substantial miscarriage of justice

(Repealed and replaced by Ordinance No. 4 of 2010)

17.—(1) Subject to this section, the practice and procedure of the Supreme Court, whether in civil or criminal matters, shall be as prescribed by rules of Court made under section 20 and subject to such rules or if there are no such rules governing the question, as the Chief Justice or other Judge of the Supreme Court may from time to time direct.

Practice and procedure.

(2) Directions given by the Chief Justice or other Judge of the Supreme Court under subsection (1) may be general or may be with respect to any particular step in particular proceedings; and any party to any proceedings before the Supreme Court (including the Crown or the accused person in any criminal proceedings) and any person seeking to institute such proceedings may at any time apply to the Chief Justice or other Judge of the Supreme court for particular directions.

(3) In formulating any directions which he or she may give under subsection (2) and generally in the conduct of proceedings before the Supreme Court and of the business of that Court, the Chief Justice or other Judge shall be guided, so far as the circumstances of the Islands permit and so far as is appropriate to the circumstances of any particular proceedings in question, by the practice and procedure, in comparable circumstances, of the High Court of Justice in England or of the Crown Court in England or (where the Supreme Court

is exercising an appellate or supervisory jurisdiction and if the case so requires) of the Court of Appeal in England; and in pursuing any proceedings in the Supreme Court any party thereto shall likewise (but subject always to any applicable rule of court and to any direction given under this section) be so guided.

(4) For the purposes of their application in accordance with subsection (3), the practice and procedure of the High Court of Justice in England, of the Crown Court in England and of the Court of Appeal in England shall be interpreted with such modifications, adaptations, qualifications and exceptions as local circumstances render necessary.

[17A.]

(Inserted by Ordinance No. 14 of 2002)

(Repealed by Ordinance No. 2 of 2016)

Enlargement or
abridgement of time

[17B.]—(1) Any Court may, in its discretion, enlarge or abridge the time appointed by this ordinance or any other ordinance or any rules made thereunder, for doing any act or taking any proceedings or step in any proceeding, on such terms (if any) as the Court thinks just.

(2) Any Court may order an enlargement of time although the application for the enlargement of time is not made until after the expiration of the time appointed.

Correction of
accidental slip or
omission

17C.—(1) If any judgment or order contains a clerical mistake or an error arising from any accidental slip or omission, whether the mistake, error, slip or omission was made by an officer of the Court or not, or if any judgment or order is so drawn up as not to express what was actually decided and intended, the judgment or order may be corrected by the Court.

(2) The correction may be made by the Court of its own motion or on an interlocutory application made for that purpose.

Power to amend
defects and errors

17D.—(1) A Court may, either before, at, or after the hearing of any proceedings, amend any defects and errors in the pleadings or procedure in the proceedings, whether or not there is anything in writing to amend, and whether or not the defect or error is that of the party (if any) applying to amend.

(2) The Court may, at any stage of any proceedings, make, either of its own motion or on the application of any party to the proceedings, such amendments to any pleading or the procedure in the proceedings as are necessary for determining the real controversy between the parties.

(3) All amendments made under sub-sections (1) and (2) shall be made with or without costs and on such terms as the Court thinks fit.]

(Inserted by Ordinance No. 6 of 2005)

18. No Judge, Magistrate, [Registrar, Deputy Registrar,] or other person acting judicially shall be liable to be sued in any Court for any act done or ordered to be done by him or her in the discharge of judicial duty, whether or not within the limits of such jurisdiction, provided that he or she at the time, in good faith, believed himself or herself to have jurisdiction to do or order the act complained of and no officer of any Court or other person bound to execute the lawful warrants or orders of any such Judge, Magistrate, [Registrar, Deputy Registrar,] or other person acting judicially shall be liable to be sued in any 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 the same.

Protection of judicial officers.

(Amended by Ordinance No. 2 of 2016)

19.—(1) The functions and powers conferred upon the Attorney General of England in respect of civil or criminal causes or matters arising in England may be exercised by the [Attorney General] in respect of civil or criminal causes or matters occurring or arising in the Islands.

Attorney General and Public Prosecutor.

(2) The Public Prosecutor shall have and may exercise the functions and powers of the Director of Public Prosecutions in England.

(3) The [Attorney General], the Public Prosecutor and the Deputy Public Prosecutor shall have *ex officio* the right of audience in all Courts of the Islands and shall have the same protection and immunity from suit in respect of the performance of their duties as is conferred upon judicial officers by section 18 of this ordinance.

(Amended by Ordinance No. 4 of 2010)

20. The Governor may on the advice of the Chief Justice make rules of court for the purpose of carrying the provisions of this ordinance into effect and in particular for all or any of the following matters—

Power to make rules.

- (a) for regulating the sittings of the Supreme Court and the Magistrate's Court and the despatch of business therein;
- (b) for regulating the pleading, practice and procedure in the Supreme Court and the Magistrate's Court;
- (c) for regulating the hours of opening and closing of the [registries] of the Supreme Court and the Magistrate's Court;

(Amended by Ordinance No. 2 of 2016)

- (d) for regulating the forms to be used in the Supreme Court and the Magistrate's Court and for all matters connected therewith;
- (e) for regulating the receipt of money paid into the Supreme Court or the Magistrate's Court or received or recovered under or by virtue of any process of execution or distress;
- (f) for regulating the payment out of the Supreme Court or the Magistrate's Court of all moneys to the persons entitled thereto;
- (g) for prescribing the books and forms of account to be kept and used in the Supreme Court or the Magistrate's Court;
- (h) for prescribing fees, costs and amounts for service and execution of process which may be demanded and received by officers of the Supreme Court or the Magistrate's Court in accordance with the practice and procedure of those Courts;
- (i) for prescribing the manner of acceptance, retention and disposal of fees and costs;
- (j) for providing for the taxation of the fees and costs of legal practitioners;
- (k) for regulating the professional practice, conduct and discipline of legal practitioners;
- (l) generally for regulating any matters relating to the practice and procedure of the Supreme Court or the Magistrate's Court or to the duties of the officers thereof or the conduct of proceedings therein.

**[PART V – OFFICERS OF THE COURT
AND COURT OFFICES**

Officers of the court

Appointment of
Registrars and other
officers

21.–(1) Registrars, Deputy Registrars and other officers of the court may be appointed by the Governor, after consultation with the Chief Justice, for the conduct of business of any court.

(2) In the exercise of powers under subsection (1), the Governor may appoint a person –

- (a) by name; or
- (b) by reference to any office, in which case the person for the time being holding that office shall be appointed to the relevant office under subsection (1).

(3) Registrars and Deputy Registrars are judicial officers,

and every appointment to such an office shall be according to section 55 of the Constitution of Pitcairn.

(4) Every Registrar and Deputy Registrar appointed under subsection (1) shall make an oath or affirmation of allegiance and the judicial oath or affirmation in the form set out in the Schedule to the Constitution of Pitcairn, and such oaths or affirmations shall be administered by the Chief Justice or other judge or magistrate.

(5) Every Registrar and Deputy Registrar shall retire from office on attaining the age of 75 years; but the Governor may permit any such person to remain in office for such fixed period, not exceeding five years, as may be agreed between that person and the Governor.

(6) The same person may be appointed under this section to multiple offices in relation to one or more courts.

(7) A person who is an officer of the Pitcairn Public Service may be appointed as a Registrar, Deputy Registrar or other officer of the court, but in the exercise of any powers and functions conferred by this Part, any such person shall not be subject to the direction or control of the Governor, the Island Council, or any officer of the Pitcairn Public Service.

(8) Any Judge or Magistrate may, subject to any directions of the Governor, appoint any person temporarily to perform, with or without remuneration, in relation to any particular causes or matters, the duties of the Registrar or of any other officer of the court in which that judge is sitting.

(9) A Judge or Magistrate may act as the Registrar of the court in which that Judge or Magistrate is sitting if there is no other person appointed to be the Registrar or if the Registrar is for any reason unable to perform his or her functions.

22. The following persons shall have power to administer oaths and take affidavits, declarations and affirmations:

- (a) any Judge or Magistrate;
- (b) any Registrar or Deputy Registrar;
- (c) any officer of the court designated in that behalf by a Judge or Magistrate;
- (d) the Governor, Deputy Governor, or Administrator;
- (e) any other officer of the Pitcairn Public Service designated in that behalf by the Governor.

Oaths, affirmations,
affidavits, and
declarations

23.—(1) A Registrar has the duties and powers –

- (a) conferred by this Ordinance, any other enactment, or any rules made under section 20 of this Ordinance;
- (b) in relation to the Registrar of the Court of Appeal, conferred by any rules made under section 51 of the Constitution:

Powers of Registrars
and Deputy Registrars

(c) necessary or desirable to ensure the efficient and effective administration of the business of the court to which that Registrar is appointed.

(2) A Deputy Registrar has and may perform and exercise the same duties and powers as a Registrar of the same court.

(3) Subsection (2) is subject to any provision to the contrary in any rules made under section 20 or any other enactment.

(4) Without affecting the generality of subsection (1)(c) of this section, the Registrar of the Supreme Court shall discharge such duties as are respectively performed by the Master, Registrar, Taxing Master or Keeper of the Records of Her Majesty's High Court of Justice in England and shall be Registrar of the Supreme Court in its Admiralty jurisdiction.

Officers of the Court
subject to judicial
orders

24.—(1) Registrars, Deputy Registrars and other officers of the court shall be subject to such orders as they shall from time to time receive from any Judge or Magistrate of the court to which they are appointed.

(2) Registrars and Deputy Registrars are not subject to direction by the Governor or any member of the Pitcairn Public Service in the exercise of any judicial function.

Court Registries

Court Registries

25.—(1) For every court there shall be an office for the transaction of business relating to proceedings in the court, to be known as the registry, which shall be in the charge of the Registrar of that court.

(2) The registry of each court shall be situated at such place as the Governor, acting in accordance with the advice of the Chief Justice, directs.

(3) The place appointed to be a registry under subsection (2) may be either inside or outside of Pitcairn.

(4) The same place may be appointed as the registry for two or more courts.

(5) The Governor may, on the advice of the Chief Justice, make rules regarding the operation of any registry appointed under this section, including rules specifying the hours that the registry shall be open to receive documents for filing.

Filing and service of
documents

26.—(1) Any document relating to the business of any court may be filed at the registry by personal delivery, post, facsimile, email or other accepted form of electronic transmission.

(2) Notwithstanding the appointment of a registry of any court in another place, the Registrar of any court may, when that court is sitting at any place whether inside or outside of Pitcairn, receive any letter or accept for filing any notice,

document or thing that relates to the matter before the court at that place.

(3) Any warrant, order, direction, minute, or other such document issued by the court may be served on relevant parties by personal delivery, post, facsimile, email or other accepted form of electronic transmission.

(4) This section is subject to any rules prescribing procedure for filing and service of documents made under sections 20 and 25(5) of this Ordinance, or section 51 of the Constitution.]

(Part V inserted by Ordinance No. 2 of 2016)

**PITCAIRN, HENDERSON, DUCIE & OENO
ISLANDS**

**NOTICE OF APPOINTMENT
OF COURT REGISTRY**

IN EXERCISE of the powers conferred by section 25(2) of the Judicature (Courts) Ordinance and in accordance with the advice of the Chief Justice, I hereby direct that

the offices of BELL GULLY located at Level 21, Vero Centre, 48 Shortland Street, Auckland, New Zealand

shall be the Registry of the Magistrate's Court, the Supreme Court and the Court of Appeal of Pitcairn, Henderson, Ducie and Oeno Islands.

This direction shall have effect from the 1st day of November 2016 whereupon any prior notices of appointments of registries for Pitcairn Courts shall be revoked.

Dated the 31st day of October 2016

**Jonathan Sinclair
Governor**

**PITCAIRN, HENDERSON, DUCIE & OENO
ISLANDS**

JUDICATURE (COURT REGISTRY) RULES 2016

Made by the Governor upon the advice of the Chief Justice,
in exercise of the powers conferred by sections 20 and
25(5) of the Judicature (Courts) Ordinance.

[31 October 2016]

RULES

PART I – PRELIMINARY

Citation and
commencement

1. These rules may be cited as the Judicature (Court Registry) Rules 2016 and shall come into operation on the day after they are published.

Interpretation

2. In these rules:

“business day” in relation to a court registry, means any day that is not a court holiday;

“business hours”, in relation to a court registry, means the hours that the registry is required to be open under rule 3(3);

“court” means –

(a) the Magistrate’s Court established under section 10 of the Judicature (Courts) Ordinance;

(b) the Supreme Court constituted by section 45 of the Constitution of Pitcairn; or

(c) the Court of Appeal constituted by section 49 of the Constitution of Pitcairn.

“court holiday” means the days listed in rule 3(2);

“public holiday” in a given place means a day that is recognised as a public holiday or bank holiday under the laws in force in that place;

“Registrar” and “Deputy Registrar” in relation to any court means the person appointed as Registrar or Deputy Registrar of that court in accordance with section 21 of the Judicature (Courts) Ordinance;

“registry” in relation to any court means the registry of that court appointed under s 25 of the Judicature (Courts) Ordinance;

PART II – COURT REGISTRY BUSINESS HOURS

Business hours of
court registries

3.–(1) The registry of each court will be open on every day of the year except for court holidays.

(2) The following are court holidays:

(a) Saturdays and Sundays;

(b) 25 December (Christmas Day);

- (c) 26 December (Boxing Day);
 - (d) 1 January (New Year's Day);
 - (e) 2 January;
 - (f) Good Friday;
 - (g) Easter Monday; and
 - (h) any other day which is a public holiday in the place where a court registry is located.
- (3) The registry of each court will be open from 10 am to 4 pm on every business day.
- (4) In this rule, a reference to a specific time of day is a reference to the standard time adopted in the location in which the registry is located.

PART III – FILING OF DOCUMENTS

4. A document may be filed with a court by – Methods of filing

- (a) handing it to the Registrar, Deputy Registrar, or a person authorised by the Registrar to receive it;
- (b) personal delivery or post to the registry;
- (c) sending it by facsimile to a number provided by the Registrar; or
- (d) sending it by electronic means to an address provided by the Registrar.

5. A document is filed – Date of filing

- (a) in the case of a document filed under rule 4(a), on the day it is handed over;
- (b) in the case of a document filed by personal delivery to the registry, –
 - (i) on the day on which it is delivered, if it is delivered within the business hours of that registry;
 - (ii) otherwise, on the next business day after it is delivered;
- (c) in the case of a document sent by post, on the business day on which it is received at the registry;
- (d) in the case of a document sent by facsimile or electronic means, –
 - (i) on the day on which it is sent, if that day is a business day and if it is sent by no later than 2.30pm that day,
 - (ii) otherwise, on the next business day after it was sent; and
- (e) in any case, on the day on which the Registrar or Deputy Registrar responds to it, if that is earlier.

6.–(1) This rule applies to the calculation of any period of time for filing a document in a court. Computation of time

-
- (2) Where a period of time is expressed as a number of days—
- (a) the period shall be computed as clear days;
 - (b) section 24(d) of the Interpretation and General Clauses Ordinance applies.
- (3) A period of time expressed as a month or number of months means a calendar month or number of months.
- (4) If the last day of the period is a court holiday, the period shall include the next business day.
- (5) In this rule ‘clear days’ means that in computing the number of days, the following days are not included –
- (a) the day on which the period begins; and
 - (b) if the end of the period is defined by reference to an event, the day on which that event occurs.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2017

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JUSTICE ORDINANCE

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FIRST SCHEDULE

SECOND SCHEDULE

JUSTICE ORDINANCE

An ordinance to define the jurisdiction of the Island Magistrate, to prescribe the procedure of the Magistrate’s Court and to make provision for evidence and procedure in all criminal proceedings and other matters incidental to the administration of justice.

[1st February, 2000]

PART I—PRELIMINARY

- 1. This ordinance may be cited as the Justice Ordinance.
- 2. In this ordinance, unless the context otherwise requires—

“Council” means the Island Council constituted under the provisions of the Local Government Ordinance;

“Court” means the Magistrate’s Court;

“islander” means any inhabitant, whether temporary or permanent, of the Islands or any of them;

“Island Magistrate” means the person appointed under subsection (2) of section 11 of the Judicature (Courts) Ordinance to hold the office of Island Magistrate;

“Island Secretary” means the person from time to time appointed by the Governor to hold the public office of Island Secretary;

“Magistrate’s Court” has the same meaning as it has in the Judicature (Courts) Ordinance;

“Medical Officer” means the person for the time being holding the office of Medical Officer;

“police officer” means any person from time to time appointed by the Governor to hold the public office of a police officer and includes any person duly appointed as an assistant to such police officer;

“Sabbath Day” means the period between sunset on any Friday and sunset on the next succeeding Saturday.

PART II—THE MAGISTRATE’S COURT

3.—(1) The Court shall have and use as occasion may require a seal or stamp of such nature and pattern as the Governor may direct and all writs and processes issuing out of the Court shall be stamped or sealed therewith.

(2) Subject to this ordinance, the Court shall be constituted by a Magistrate sitting with two assessors to be appointed in the manner hereafter provided.

(3) Notwithstanding the provisions of subsection (2),

(a) a Magistrate may sit without assessors to hear—

No. 3 of 1999
No. 1 of 2000
No. 3 of 2000
No. 10 of 2000
No. 13 of 2000
No. 16 of 2000
No. 4 of 2001
No. 12 of 2002
No. 3 of 2003
No. 6 of 2003
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No. 2 of 2009
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No. 2 of 2012
No. 2 of 2014
No. 1 of 2016
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Constitution of Court.

- (i) any criminal case in which the penalty does not exceed a fine of [four hundred] dollars; or **(Amended by Ordinance No. 7 of 2005)**
- (ii) any civil case in which the amount in dispute does not exceed one hundred dollars; [or
- (iii) any dispute under the Marriage Ordinance;] **(Inserted by Ordinance No. 2 of 2012)**
- (b) a Magistrate shall sit without assessors—
 - (i) in all criminal cases within his or her jurisdiction in which the defendant admits the truth of the charge; and
 - (ii) in all enquiries held under the provisions of Parts VI, VII and VIII of this ordinance; and
 - [(iii) in all criminal cases within his or her jurisdiction in which it has not been possible under the procedure prescribed in subsection (2) of section 29 to select two assessors; and] **(Added by Ordinance No. 7 of 2005)**
- (c) in all criminal cases the punishment to be awarded shall be decided by the Magistrate alone.

Registrar.

4.—(1) [Without prejudice to the general powers and duties conferred by section 23 of the Judicature (Courts) Ordinance,] the Registrar shall, subject to the general directions of the Chief Justice, be under the immediate direction and control of the presiding Magistrate.

(Amended by Ordinance No. 2 of 2016)

- (2) The duties of the Registrar shall be—
 - (a) to attend all sittings of the Court as the Magistrate may direct;
 - (b) to fill up or cause to be filled up summonses, warrants, orders, convictions, recognizances, writs of summons, writs of execution and other documents and submit the same for signature by the Magistrate;
 - (c) to issue civil process in accordance with the provisions of this ordinance;
 - (d) to make or cause to be made copies of proceedings when required to do so by the Magistrate and to record the judgments, convictions and orders of the Court;
 - (e) to receive or cause to be received all fees, fines and penalties and all other moneys paid or deposited in respect of any proceedings in the Court and to keep or cause to be kept accounts of the same; and
 - (f) to perform or cause to be performed such other duties connected with the Court as may be assigned to him by the Chief Justice or the Magistrate.

5.—(1) Subject to the provisions of this or any other ordinance, the Island Magistrate shall have jurisdiction—

Jurisdiction of Island Magistrate.

- (a) in civil cases—
 - (i) in all personal suits whatsoever between islanders where the amount in dispute or the value of any property in dispute does not exceed one thousand dollars or, with the consent of all parties interested therein, where the amount in dispute or the value of any property in dispute does not exceed two thousand dollars;
 - (ii) in all suits between landlord and tenant for the possession of any lands or houses claimed under any agreement or refused to be delivered up, where the annual value or rent does not exceed one thousand dollars or, with the consent of all parties interested therein, where such annual value or rent does not exceed two thousand dollars;
 - [(iii) to hear and determine any proceedings concerning the care or protection of a child and to make any necessary orders and directions under the Children Ordinance or any rules made under it;]
 - (Replaced by Ordinance No. 7 of 2005)**
 - (iv) to make orders for the maintenance of any [spouse];
 - (Amended by Ordinance No. 2 of 2014)**
 - (v) to appoint guardians of the person and of the estate of persons of unsound mind and to make orders for the detention, care, custody and maintenance of persons of unsound mind; and
 - (vi) to make orders for the care, custody and maintenance of sick and aged persons:

Provided that the Island Magistrate shall not exercise jurisdiction in—

- (i) any suits wherein the title to any right, duty or office is in question;
- (ii) any suits wherein the ownership of any land is in dispute;
- (iii) any suits wherein the legitimacy of any person is in question or, except as may be specifically provided in any ordinance for the time being in force, in suits wherein the validity or dissolution of any marriage is in question; or
- (iv) in any action for malicious prosecution, libel or slander;

- (b) in criminal cases over all offences committed within the Islands or in the territorial waters thereof against the provisions of this or any other ordinance except insofar as the jurisdiction of the Island Magistrate is therein expressly excluded:

Provided that—

- (i) the maximum penalty which the Island Magistrate may impose shall be a fine of [four hundred] dollars or imprisonment for one hundred days or both such fine and imprisonment; and
- (ii) the Island Magistrate shall not hear or determine any offence unless the complaint relating to it is brought within six months from the time when the matter of such complaint arose; and
- (iii) the Island Magistrate shall not exercise jurisdiction in respect of any offence arising only by virtue of the provisions of [section 42 of the Constitution of Pitcairn]; and
- (iv) the Island Magistrate shall not exercise jurisdiction in any inquiry under Part VII of this ordinance;

For the avoidance of doubt, the remand of an accused person to a later sitting of the Court prior to the commencement of a preliminary enquiry shall not be construed as an exercise of jurisdiction for the purposes of sub-paragraph (iv) hereof or of subsection (1) of section 12 of the Judicature (Courts) Ordinance;

- (c) to make all such orders as may be necessary or expedient for the execution of any judgment or order of the Island Magistrate made in the exercise of the jurisdiction conferred upon him or her by the provisions of this or any other ordinance.

(Amended by Ordinance No. 7 of 2005)

(Amended by Ordinance No. 4 of 2010)

[(2) The Island Magistrate shall be entitled at his discretion, before or during the hearing of any proceedings, to consult or to seek the advice of any Senior Magistrate, whether within or outside the Islands, on any question or questions of law, procedure or legal principle, in accordance with the following conditions—

- (a) the Island Magistrate shall notify the parties in advance of his or her intention to do so and shall adjourn the proceedings if necessary for this purpose;

- (b) the Island Magistrate shall if possible conduct his enquiry by email or facsimile and seek a reply by the same means.
- (c) the resulting emails or facsimile messages, or if there are none the Magistrate's note of his or her exchanges with the Senior Magistrate, shall be shown to the parties and incorporated in the decision of the Court, so that in the event of an appeal to the Supreme Court they shall be taken to be part of the Island Magistrate's judgment.]

(Inserted by Ordinance No. 7 of 2005)

6. The Governor may by order authorise an increased jurisdiction in any civil or criminal case to be exercised by the Island Magistrate to the extent specified in such order and any such order may at any time be revoked by the Governor by order.

Extension of jurisdiction.

7. Every Magistrate shall have power to issue writs of summons for the commencement of actions in the Court, to administer oaths and take solemn affirmations and declarations, to receive production of books and documents and to make such decrees and orders and issue such process and exercise such powers, judicial and administrative, in relation to the administration of justice as may from time to time be prescribed by any ordinance or by any special order of the Chief Justice.

General powers of Magistrates.

8.—(1) The Governor may, in case of illness or incapacity of the Island Magistrate, or for any other good and sufficient reason, appoint any other fit and proper person to act as Island Magistrate for the purpose of presiding over the Magistrate's Court in his or her place.

Provision for appointment of acting Island Magistrate before Court.

(2) Every appointment under subsection (1) shall continue in force until revoked by the Governor or by expiration of any time prescribed in such appointment for its determination.

(3) Where the Island Magistrate is a party to or has any personal interest in any case, whether civil or criminal, before the Court, he or she shall not hear such case and the fact that the Island Magistrate is a party to or has a personal interest in the case shall be deemed to be a good and sufficient reason within the meaning of subsection (1) for the appointment by the Governor of another fit and proper person to act as Island Magistrate for the purpose of hearing such case.

9.—(1) Not less than 24 hours before the time appointed for the hearing of a case by the Court, the Island Secretary shall cause the names of all persons entitled to vote in any

List of assessors.

cap. 11

elections held under the provisions of the Local Government Ordinance and who are present on Pitcairn Island (excepting those persons disqualified from selection as assessors under the provisions of the next succeeding subsection) to be written on separate pieces of paper of equal size and put into a box and the Island Magistrate shall thereupon draw from the box by lot the names of six persons recording such names on a list to be known as the “list of assessors” and cause summonses to be served on each of such persons requiring them to attend at the time and place appointed in and by such summons for the hearing of such case.

(2) The following persons are disqualified from selection as assessors —

- (a) the Mayor;
- (b) the Chairman of the Internal Committee;
- (c) the Island Secretary;
- (d) the Medical Officer;
- (e) the Education Officer;
- (f) any minister of religion;
- (g) any police officer;
- (h) any other person who is a party to the case before the Court or is intended to be called as a witness in such case by either party;
- [(i) the registrar or deputy-registrar or any person acting as such;
- (j) the Island Magistrate, when the hearing is presided over by a Senior Magistrate;
- (k) the spouse or partner of the Island Magistrate, when the Island Magistrate is presiding over the hearing;
- (l) the parents, siblings and children of any party or witness;
- (m) any person unfit by reason of age or health to serve;
- (n) any person convicted of a criminal offence whose sentence has not yet been completed.]

(Inserted by Ordinance No. 7 of 2005)

Appeal to Supreme
Court,
cap. 2

10. For the avoidance of doubt, the provisions of section 14 of the Judicature (Courts) Ordinance (which confer a right of appeal to the Supreme Court in respect of any judgment, sentence or order of the Magistrate’s Court) apply with respect to proceedings presided over by the Island Magistrate under this Part.

Sittings of the Court.

11.—(1) The Court shall sit at such places and at such times and on such days as may from time to time be directed by the Chief Justice and in the absence of any such directions as shall be determined by the Magistrate.

(2) All sittings of the Court shall be open to the public so far as the available seating accommodation permits:

Provided that, in any case in which the Court deems it necessary or appropriate for the preservation of order, decency or the protection of witnesses, it shall have power to conduct a sitting *in camera* and to order that the names of witnesses, other particulars leading to disclosure of their identity and the contents of their evidence shall be suppressed and publication thereof prohibited.

(3) The presiding Magistrate may adjourn the Court from day to day or to any convenient day.

PART III—EVIDENCE

12. Subject to the provisions of this ordinance, every person who wishes or is required to give evidence before the Court shall, before giving such evidence, take an oath which shall be administered by the Magistrate by taking the Bible in his or her right hand and swearing as follows:—

Form of oath and affirmation.

“I swear that I will speak the truth, the whole truth and nothing but the truth. So help me God.”:

Provided that the Magistrate may permit such person instead of taking such oath to make a solemn declaration and affirmation by raising his or her right hand and saying as follows:—

“I do solemnly and sincerely and truly declare and affirm that I will speak the truth the whole truth and nothing but the truth.”,

which declaration and affirmation shall be of the same force and effect as an oath.

13. The question whether a child may give evidence before the Court without taking the oath or making the affirmation required under the provisions of the last preceding section shall be determined by the Court in accordance with the provisions of sections 70B and 70C of this ordinance.

Evidence of children.

14.—(1) In any cause or matter before the Court the Magistrate may, by a summons, either of his or her own motion or on the application of any party, require any person within the Islands to attend the Court and give evidence or to produce any documents in his or her possession.

Compelling attendance of witnesses before the Court.

(2) Any person summoned to attend the Court under the provisions of the last preceding subsection who, having reasonable notice of the time at which he or she is required to attend the Court, fails to attend accordingly and does not excuse such failure to the satisfaction of the Court, shall be in

contempt of Court and, in addition to any other penalty arising under the provisions of this ordinance, the Court may issue a warrant to arrest that person and bring him or her before the Court at such time as shall be specified in such warrant.

(3) Any person before the Court who, on being required to give evidence on oath or affirmation, refuses to take the oath or make the affirmation, or refuses, without reasonable cause to the satisfaction of the Court, to answer any question lawfully put to him or her, or to produce any document in his or her possession lawfully required to be produced may be committed to prison by the Court for any period not exceeding fourteen days unless in the meantime such person agrees to take the oath or make the affirmation or to answer the question as the case may be.

Service of Pitcairn process overseas.

14A.—(1) A summons or order requiring a person to attend before a court in the Islands for the purpose of giving evidence in criminal proceedings may be issued or made notwithstanding that the person in question is outside the Islands and may be served outside the Islands in accordance with arrangements made by the Governor.

(2) Service of any process outside the Islands by virtue of this section shall not impose any obligation under the law of the Islands to comply with it and accordingly failure to do so shall not constitute contempt of any court or be a ground for issuing a warrant to secure the attendance of the person in question.

(3) Subsection (2) is without prejudice to the service of any process (with the usual consequences for non-compliance) on the person in question if subsequently effected in the Islands.

PART IV — CRIMINAL PROCEEDINGS

Jurisdiction of Magistrate's Court.

15. Subject to this ordinance, the Magistrate's Court shall have and may exercise jurisdiction in criminal cases—

(1) in proceedings under Part VII of this ordinance in which the Court is sitting to enquire into an information alleging that the accused person has committed an offence which may be tried only by the Supreme Court (hereinafter referred to as “committal proceedings”);

(2) in proceedings in which the Court is sitting to try an information alleging that the accused person has committed an offence which may be tried only summarily (hereinafter referred to as “summary proceedings”).

Summary offences and other offences.

16.—(1) The offences which are triable only summarily are—

(a) the offences specified in the Schedule to this

ordinance;

- (b) any other offence which any law for the time being in force in the Islands prescribes shall be triable only summarily.

(2) All offences which are not triable only summarily are triable only by the Supreme Court:

[Provided that an offence which any law for the time being in force in the Islands prescribes shall be triable either summarily by the Magistrate's Court or on information by the Supreme Court shall be triable either way at the election of the Public Prosecutor.]

(Amended by Ordinance No. 6 of 2003)

(3) The Governor may by order amend the First Schedule to this ordinance but no such order shall affect the trial of any offence which was committed before the publication of the order or such later date as it may specify for that purpose.

17.—(1) Except as may be provided by this or any other ordinance all criminal proceedings shall be taken by [the Public Prosecutor or by] a police officer in the name of Her Majesty the Queen.

Commencement of proceeding.

(Inserted by Ordinance No. 3 of 2003)

(2) Proceedings may be instituted by making complaint either orally or in writing to a Magistrate.

(3) The person making any complaint shall tender to the Magistrate a formal charge or, if so requested, the Magistrate shall draw up or cause to be drawn up a formal charge, which shall in either case be signed by the Magistrate and shall contain—

- (a) a statement of the offence with which the accused person is charged;
- (b) the statute, ordinance or other written law and the number of the section thereof creating the offence; and
- (c) such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

(4) Every charge shall be for one offence only but it shall be lawful for any complainant to lay one or more charges against the same person at the same time.

18. Upon receiving a complaint and having signed the charge in accordance with the provisions of the last preceding section, the Magistrate shall issue a summons or, in his or her discretion, a warrant of arrest to compel the attendance of the accused person (hereinafter in this Part referred to as “the defendant”) before the Court:

Issue of summons or warrant.

Provided that if the charge is for the offence of murder or treason the Magistrate must issue a warrant for the arrest of the accused person.

Summonses.

19.—(1) Every summons issued by the Magistrate shall be in writing in duplicate signed by him or her and shall bear the date on which it is issued.

(2) Every summons requiring the attendance of a defendant before the Court shall be directed to the defendant and shall require him or her to appear at the time therein appointed before the Court. It shall state shortly the offence with which the defendant is charged, the statute, ordinance or other written law and the number of the section thereof creating the offence and such other particulars as may be necessary for giving reasonable information to the defendant as to the offence alleged.

Service of summonses.

20. Every summons shall be served two clear days at least before the date appointed in and by it for [the initial appearance of the defendant before the Court] and shall if possible be served personally on the defendant by delivering or tendering one of the duplicates.

(Amended by Ordinance No. 7 of 2005)

Warrants of arrest.

21.—(1) Every warrant for the arrest of any person (hereinafter referred to as a “warrant of arrest”) shall be in writing signed by the Magistrate and shall—

- (a) bear the date on which it was issued;
- (b) name or otherwise describe the person against whom it is issued; and
- (c) order the person or persons to whom it is directed to apprehend the person against whom it is issued and bring him or her before the Court to be dealt with according to law;

and every warrant of arrest to compel the attendance of a defendant before the Court shall also state shortly the offence with which he or she is charged.

(2) Every warrant of arrest may be executed at any place within the Islands and shall remain in force until it is executed or until it is cancelled by the Court or by the Supreme Court.

(3) A warrant of arrest shall normally be directed to a police officer:

Provided that, if in the opinion of the Magistrate the immediate execution of such a warrant is necessary and no police officer is reasonably available, he or she may direct it to any other person or persons who shall execute the same.

(4) When a warrant of arrest is directed to more persons than one it may be executed by all or any of them.

(5) A police officer or other person or persons executing a warrant of arrest shall notify the substance thereof to the person who is to be arrested.

(6) The person arrested under a warrant of arrest shall without unnecessary delay be taken before the Court and, unless released on bail or the Court otherwise orders, shall be detained in custody until the conclusion of the proceedings before the Court.

22. Where any person, for whose appearance or arrest the Magistrate is empowered to issue a summons or warrant, is confined in any prison, the Magistrate may issue an order to the officer in charge of that prison requiring him or her to bring such person in proper custody, at a time to be specified in the order, before the Court and, on receipt of such order, the officer in charge of such prison shall provide for the safe custody of the prisoner during his or her absence from the prison for the purpose of attending the Court in accordance with the provisions of such order.

Powers of Court to order prisoner to be brought before it.

23.—(1) Where the Magistrate is satisfied by evidence on oath that there is reasonable cause to believe that any thing upon, by or in respect of which an offence has been committed or any thing which is necessary to the conduct of an investigation into any offence, is in any building, ship, vehicle, box, receptacle or place, the Magistrate may issue a search warrant authorising a police officer to search the building, ship, vehicle, box, receptacle or place (which shall be named or described in the search warrant) for any such thing and, if any thing searched for is found, or any other thing which there is reasonable cause to suspect to have been stolen or unlawfully obtained is found, to seize it and bring it before the Court to be dealt with according to law.

Search Warrants.

(2) Whenever any building or other place liable to search is closed, any person residing in or being in or being in charge of such building or place shall, on demand of a police officer and on production of the search warrant, allow him or her free ingress and egress and afford all reasonable facilities for a search.

[24. Nothing in this Part shall be construed so as to prevent a magistrate other than the magistrate who issued the charge or charges against the defendant in accordance with the provisions of section 17 from subsequently exercising further jurisdiction in the proceedings including the hearing and determination of the charge or charges against the defendant.]

Other Magistrate may sit

(Inserted by Ordinance No. 7 of 2005)

[Initial appearance of defendant

25. If the defendant appears at the time and place appointed for the initial appearance of the defendant before the Court, the Magistrate shall undertake such enquiries as are possible to ascertain the time required for the preparation of the cases of both parties in order that a date can be fixed for the hearing.]

(Repealed and replaced by Ordinance No. 7 of 2005)

Failure of defendant to appear.

26. If the defendant does not appear at the time and place appointed for his or her initial appearance before the Court and if it be proved on oath that the summons was duly served on him or her not less than two clear days before the time appointed for his or her initial appearance before the Court, the Court may either issue a warrant to apprehend the defendant and cause him or her to be brought before the Court or proceed to hear and determine the case in the absence of the defendant in accordance with the provisions of paragraph (c) of section 28 of this ordinance as though the defendant had appeared and not admitted the truth of the charge:

Provided that if the Court convicts the defendant in his or her absence, it shall set aside such conviction on being satisfied that the absence of the defendant was from any cause over which he or she had no control and that there exists a possible defence on the merits of the case.

Adjournments.

27. Before or during the hearing of any case, it shall be lawful for the Court in its discretion to adjourn the hearing to a certain time and place to be then appointed and stated in the presence of the party or parties then present:

[Provided that any such adjournment for a period greater than thirty clear days shall be notified in writing by the Magistrate to the Registrar of the Supreme Court for the attention of the Chief Justice together with a statement of the reasons therefor.]

(Amended by Ordinance No. 7 of 2005)

Plea.

28. If both parties appear [before the Court on the date fixed by the Court for the hearing—]

- (a) the Registrar shall read the charge to the defendant and shall ask whether he or she admits or denies the truth of the charge;
- (b) if the defendant admits the truth of the charge, such admission shall be recorded as nearly as possible in the words used and the Magistrate shall convict the defendant and pass sentence upon him or her unless there shall appear to be sufficient cause to the contrary;

- (c) if the defendant does not admit the truth of the charge, the Magistrate shall record a plea of not guilty and—
 - (i) in the case of the Magistrate sitting without assessors, proceed to hear and determine the charge; or
 - (ii) in the case of the Magistrate sitting with assessors, the Court shall proceed to select assessors in the manner hereinafter provided and, having done so, proceed to hear and determine the charge.

(Amended by Ordinance No. 7 of 2005)

29.—(1) In cases in which the Magistrate sits with assessors, the procedure set out in subsection (2) shall be followed.

Selection of assessors.

- (2) (a) The Registrar shall inform the defendant and the prosecutor that the assessors for that case are about to be selected, that they each have the right to object to any person serving as an assessor in the case without assigning any reason for such objection and that if either of them has any objection it must be raised as each person's name is called before being sworn.
- (b) The Registrar shall then call out in alphabetical order the names of the persons appearing on the list of assessors for that case.
- (c) As each name is called out, the defendant shall be asked by the Registrar if he or she has any objection to that person serving as an assessor in the case. The prosecutor shall then be asked if he or she has any objection to that person serving as an assessor in the case. If neither the defendant nor the prosecutor has any objection, the person called shall then be sworn in as an assessor for the case. If either the defendant or the prosecutor objects to the person whose name is called serving as an assessor in the case, the next name shall be called from the list of assessors and the same procedure followed until two assessors have been selected.
- (d) If all the names on the list of assessors are called without two assessors being selected, the names of the persons objected to shall be again called in alphabetical order by the Registrar who shall ask first the defendant and then the prosecutor if they have any objections to such person serving as an assessor in the case and their reasons for such objection. The same procedure shall be followed

with each name on the list of assessors until two assessors are selected against whom neither the defendant nor the prosecutor has any reason for objection.

- [(e) if all the names on the list of assessors are again called without two assessors being selected, the Magistrate shall direct that a supplementary list of assessors be forthwith prepared in the manner provided by subsection (1) of section 9 and the procedure set out in paragraphs (b), (c) and (d) hereof shall be followed until two assessors have been selected.]

(Repealed and replaced by Ordinance No. 7 of 2005)

- (f) When two assessors have been selected, the Magistrate shall discharge the other persons whose names appear on the list of assessors and the Registrar shall read the charge brought against the defendant to the two persons selected as assessors for the case and then swear each of them in on the following oath:—

“I swear that I will well and truly serve as an assessor in this case and a true verdict on the evidence give.”

Evidence for prosecution.

30. The Court shall proceed first to hear the evidence for the prosecution. Counsel for the defendant shall have the right to put questions to each witness called for the prosecution and for that purpose the Magistrate shall at the close of the examination of each witness by the prosecutor ask counsel for the defendant if he or she wishes to ask any questions of that witness and shall record the answer. After any cross-examination on behalf of the defendant, the prosecutor will be entitled to re-examine the witness on any point arising out of that cross-examination:

Provided that, in any case where the defendant is not represented by counsel, every such question in cross-examination shall be directed to the Magistrate who may to the extent that he or she considers it to be proper ask the said question on behalf of the defendant.

Procedure at close of evidence for prosecution.

- 31.** At the close of the evidence for the prosecution—
- (a) if it appears to the Court that a case is made out against the defendant sufficiently to require the defendant to make a defence to the charge, the Magistrate shall—
- (i) again explain the substance of the charge to the defendant and shall inform the defendant that he or she has the right to give evidence

but does not have to do so and that if the defendant wishes to give evidence he or she may give such evidence on oath, in which case he or she will be liable to be cross-examined by the prosecutor and asked questions by the Court; and

- (ii) ask the defendant if he or she has any witnesses to call,

and the Court shall then hear the defendant and any witnesses called for the defence. If the defendant states that he or she has witnesses to call but they are not present in Court and the Magistrate is satisfied that the absence of such witnesses is not due to any fault or neglect of the defendant, and that there is a likelihood that they could, if heard, give material evidence on behalf of the defendant, the Magistrate may adjourn the trial and take steps to secure the attendance of such witnesses;

- (b) if it appears to the Court that a case is not made out sufficiently to require the defendant to make a defence to the charge, the Court shall dismiss the charge and shall forthwith acquit the defendant.

32.—(1) In cases in which the Magistrate sits with assessors— Close of hearing.

- (a) the Magistrate shall at the conclusion of the evidence require the assessors to state their opinions and such opinions shall be recorded;
- (b) the Magistrate shall then give the decision of the Court and in so doing shall not be bound to conform with the opinions of the assessors, provided that, if the decision of the Court is given against the opinions of the assessors, the Magistrate shall record his or her reasons for giving such decision and shall forthwith after the conclusion of the case send a copy of the record to the Chief Justice; and
- [(c) after giving the decision of the Court, the Magistrate shall discharge the assessors and proceed to deal with the defendant by determining the penalty or process then to follow.]

(Repealed and replaced by Ordinance No. 7 of 2005)

(2) In cases in which the Magistrate sits without assessors, he or she shall, at the conclusion of the evidence, give a decision and shall make such order as he or she shall think appropriate and just in accordance with that decision.

(Amended by Ordinance No. 7 of 2005)

Sentence.

33.—(1) If the defendant admits the truth of the charge or is found guilty by the decision of the Court, the Magistrate shall, after convicting the defendant, ask if he or she has anything to say in mitigation of penalty or as to the nature thereof; but the omission so to ask shall not affect the validity of the proceedings.

(Amended by Ordinance No. 7 of 2005)

(2) Having heard the defendant on the question of sentence, the Magistrate shall pass sentence upon the defendant stating the reasons for so doing and such reasons shall be recorded.

Imprisonment.

34.—(1) In all cases where the Court has jurisdiction under the provisions of this or any other ordinance to impose a sentence of imprisonment, the Magistrate may impose a sentence of imprisonment on the defendant.

(2) When the Court is of opinion that a higher sentence should be passed in respect of the offence than it has power to pass, it may commit the offender for sentence to the Supreme Court and shall remand the offender in custody or on bail to appear before the Supreme Court for sentence as though he or she had been convicted by that Court.

Punishment of children.

35.—(1) Unless otherwise specified, no child convicted of an offence shall be liable to be imprisoned or to pay a fine exceeding five dollars.

(2) Where a child is ordered to pay a fine, the payment thereof may be enforced against the parent or guardian of the child.

(3) When a child is convicted of an offence, the Magistrate may discharge such child without inflicting any punishment.

Sentence where person convicted is already undergoing imprisonment.

36. (Repealed by Ordinance No. 1 of 2016)

Form of warrant of commitment.

37. A warrant of commitment to prison shall be in writing in such form as may be appropriate and shall be signed by the Magistrate and bear the date upon which it is issued.

Powers of Court on conviction.

38.—(1) When a defendant is, upon conviction, ordered to pay a sum of money only, the Magistrate may —

- (a) allow time for payment of such sum or any part thereof;
- (b) direct payment of such sum or any part thereof by instalments and order imprisonment in default of payment of any of such instalments; or
- (c) order the defendant to work on the public roads or on such other public service as the Magistrate may direct for eight hours a day from the day following the date of conviction, crediting the defendant at

the rate of ten dollars a day for such work until the full amount of the sum ordered is thus paid:

Provided that no such work shall be done on the Sabbath Day nor on any public holiday; or

- (d) accept payment of the sum in such goods useful for public services as may be approved by the Magistrate at an amount to be assessed by the Magistrate:

Provided that where the amount assessed is less than the amount ordered to be paid on conviction, the Magistrate may make any such other order under the provisions of this section in respect of the amount still due; or

- (e) issue a warrant for the levy of the sum on the real and personal property of the defendant by distress and sale under warrant.

(Amended by Ordinance No. 2 of 2014)

(2) When a defendant is, upon conviction, sentenced to imprisonment for a period not exceeding forty days, the Magistrate may direct that, in lieu of such imprisonment, the defendant shall work on the public roads or on such other public service as the Magistrate may direct for eight hours a day commencing on the day following the date of conviction and continuing until the expiration of such period of imprisonment:

Provided that no such work shall be done on the Sabbath Day nor on any public holiday.

(Amended by Ordinance No. 2 of 2014)

(3) The Magistrate may direct that any person ordered to be imprisoned or to work on the public roads or other public service, under the provisions of this ordinance shall be allowed to attend to his or her plantation for one day in every week during the period of such imprisonment or work.

[(4) In this section, a reference to imprisonment includes detention in a home detention residence under a sentence of home detention given in accordance with section 76A of the Sentencing Ordinance 2002.]

(Inserted by Ordinance No. 1 of 2016)

39. The period of imprisonment which may be imposed by the Magistrate under the provisions of this or any other ordinance in respect of the non-payment of any sum of money ordered to be paid, or in respect of default in payment of any instalment of that sum or in respect of any portion of that sum which remains unpaid when a part of the sum ordered is paid in goods as provided in the last preceding section, shall

Scale of imprisonment
in default of payment
of a fine.

be according to the scale of one day's imprisonment for each five dollars or part thereof of the sum unpaid.

Disposal of fines.

40. All fines shall be paid to the Registrar and shall be credited to the public revenue.

Magistrate may order person convicted to enter into recognizance.

41. The Magistrate, in sentencing a person convicted of any offence against the provisions of this or any other ordinance, may, instead of or in addition to imposing a fine or term of imprisonment, make an order that the person convicted enter into a recognizance in such amount not exceeding one hundred dollars as the Magistrate thinks fit, on condition that the person entering in to such recognizance shall keep the peace and be of good behaviour for a term not exceeding one year, to be fixed by the Magistrate.

Complaint for recognizance.

42.—(1) Any person may make a complaint on oath before a Magistrate that any other person is likely to commit a breach of the peace or do any wrongful act likely to cause a breach of the peace.

(2) The Magistrate, on receiving such a complaint, may issue a summons requiring the person against whom the complaint is made to appear before the Court at the time and place appointed in such summons to show cause why he or she should not be ordered to enter into a recognizance in such amount not exceeding one hundred dollars and for such period, not exceeding one year, as the Magistrate sees fit.

(3) At the time and place appointed in the summons, the Court, which shall comprise the Magistrate sitting with two assessors to be selected in the manner as hereinbefore provided, shall inquire into the truth of the complaint on which the summons has been issued, and such inquiry shall be conducted in the same manner as that prescribed for conducting trials and recording evidence in criminal cases.

(4) If, upon such inquiry, it is proved to the satisfaction of the Court that it is necessary for keeping the peace or for maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognizance, the Magistrate shall make an order accordingly and the recognizance so ordered shall be in an amount not exceeding one hundred dollars and for a period not exceeding one year.

Imprisonment for failure to enter into recognizance.

43. The Magistrate may order that any person ordered to enter into a recognizance under the provisions of sections 41 or 42 of this ordinance be imprisoned until such recognizance is entered into; but so that the period of imprisonment for not entering into such recognizance shall not exceed forty days.

44. When it is proved on oath to the satisfaction of the Magistrate that the conditions of a recognizance have not been observed, the Magistrate shall record the grounds of such proof and may order the person bound by the recognizance to pay the sum for which he or she is bound. The payment of such sum may be enforced in the same manner as a fine.

Enforcement of recognizance.

PART V—CIVIL PROCEEDINGS

45. Every civil case shall be commenced by a writ of summons to be issued by a Magistrate at the request of the person making the claim (hereinafter referred to as the “plaintiff”). A writ of summons may issue without any application in writing.

Civil case to commence with writ of summons.

46.—(1) Every writ of summons shall be in writing and shall contain the name, address and occupation of the plaintiff and of the person against whom the claim is made (hereinafter referred to as the “defendant”) and the date and place of hearing and there shall be endorsed on each writ of summons particulars of the claim in respect of which it is issued, signed by the plaintiff, which shall state briefly and clearly the subject matter of the claim and the relief sought.

Form and service of writ of summons.

(2) Every writ of summons shall bear the date on which it is issued.

(3) Every writ of summons shall be served eight clear days at least before the date appointed in and by it for the hearing and shall be served in the same manner as a summons in a criminal case.

47. If neither party appears on the day appointed for the hearing of a civil case, the Magistrate shall, unless there is good reason to the contrary, dismiss the case.

Procedure if neither party appears.

48. If the defendant appears and the plaintiff does not appear, the Magistrate shall, unless there is good reason to the contrary, dismiss the case:

Appearance by defendant but not by plaintiff.

Provided that, if the defendant admits the truth of the claim, the Magistrate may give judgment for the plaintiff against the defendant as if the plaintiff had appeared.

49. If the defendant admits the truth of the plaintiff’s claim, the Magistrate shall give judgment for the plaintiff.

Admission of claim by defendant.

50. If the plaintiff appears and the defendant does not appear and does not admit the truth of the plaintiff’s claim, the Magistrate may, on proof on oath of the service of the writ of summons upon the defendant—

Appearance by plaintiff but not by defendant.

- (a) in cases in which the Magistrate sits without assessors, proceed to hear and determine the case

and give judgment on the evidence of the plaintiff and his or her witnesses (if any);

- (b) in cases in which the Magistrate sits with assessors, the Court shall proceed to select the two assessors in the same manner as that prescribed for criminal cases, and, having done so, proceed to hear and determine the case giving judgment on the evidence of the plaintiff and his or her witnesses, if any:

Provided that in either of such cases the Court may, instead of proceeding to hear and determine the case, postpone the hearing thereof to another date and direct that notice of such postponement be served on the defendant.

Appearance by both parties.

51.—(1) If both parties appear, the Magistrate shall read the particulars of the plaintiff's claim to the defendant and ask if he or she admits the truth of the claim or not.

- (2) If the defendant denies the truth of the plaintiff's claim—
 - (a) in cases in which the Magistrate sits without assessors, he or she shall proceed to hear and determine the claim in the manner hereinafter provided; and
 - (b) in cases in which the Magistrate sits with assessors, the Court shall proceed to select two assessors in the same manner as that prescribed for criminal cases and, having done so, proceed to hear and determine the case in the manner hereinafter provided.

Evidence.

52. The evidence of the parties shall be taken in the same manner as that prescribed for criminal cases and shall be recorded by the Court.

Adjournment.

53. The Magistrate may, at any time and whether either or both of the parties be present or not, adjourn the hearing of any case.

Enforcement of judgment.

54. Upon a judgment of the Court for the payment of money by any person the Magistrate may—

- (a) order the sum to be forthwith paid by or levied on the real and personal property of such person and, in default, that such person be imprisoned; or
- (b) order the sum to be paid by instalments and, in default of the payment of any instalment, that such person be imprisoned:

Provided that—

- (i) any imprisonment ordered shall be on the scale prescribed in section 39 of this ordinance subject, however, to a maximum of forty-two days imprisonment;
- (ii) no imprisonment may be ordered unless the

- Magistrate is satisfied by evidence on oath before ordering such imprisonment that the person against whom the order is made is able to pay the sum and will not do so, or that since the date of judgment he or she has been able to pay and has neglected or refused to do so;
- (iii) imprisonment in default of payment shall not release the judgment debtor from liability to pay the same after his or her release and successive orders for imprisonment may be made in respect of the same judgment debt;
 - (iv) any judgment debtor sentenced to imprisonment under this section who pays the whole amount due during the course of imprisonment shall forthwith be released from prison;
 - (v) in the case of payment of part of the judgment debt during the course of imprisonment, the judgment debtor shall be released from such proportion of the term of imprisonment as the payment made bears to the whole judgment debt.

PART VI—DEATH AND FIRE INQUIRIES

55.—(1) Wherever there is reason to believe or suspect that the death of any person occurring, or who may be found dead, in any of the Islands, has been brought about or accelerated by any unnatural cause, it shall be lawful for the Court, if it shall think fit, at such time and place as it shall appoint, to hold an inquiry into the cause of such death.

Enquiry into cause of death.

(2) If a body shall have been interred before an inquiry has been held under the provisions of the last preceding subsection, it shall be lawful for a Magistrate by warrant to order the disinterment of such body for the purpose of holding such inquiry and such disinterment shall be made accordingly.

56. Where any property has been damaged or destroyed by fire on any of the Islands it shall be lawful for the Court, if it shall think fit, to hold an inquiry into the cause and origin of such fire.

Inquiry into cause of fire.

PART VII—COMMITTAL OF PERSONS FOR TRIAL BEFORE THE SUPREME COURT

57. Subject to this ordinance, the Court may commit any person for trial before the Supreme Court.

Power to commit for trial.

Court to hold preliminary enquiry.

58. Whenever any charge has been brought against any person of an offence not triable by it, the Court may hold a preliminary inquiry for the purpose of determining whether there is sufficient evidence to put such person on trial by the Supreme Court.

General nature of committal proceedings.

59.—(1) Every preliminary inquiry into an offence shall be conducted by a Magistrate (other than the Island Magistrate) sitting without assessors.

(2) The Magistrate shall sit in open court except where any enactment contains an express provision to the contrary and except where it appears to the Magistrate as respects the whole or any part of a preliminary inquiry that the ends of justice would not be served by sitting in open court.

(3) Subject to subsection (4) of this section, evidence tendered before the Magistrate shall be tendered in the presence of the accused.

(4) The Magistrate may allow evidence to be tendered in the absence of the accused if—

- (a) the Magistrate considers that by reason of his or her disorderly conduct it is not practicable for the evidence to be tendered in his or her presence; or
- (b) he or she cannot be present for reasons of health but is represented by a legal representative and has consented to the evidence being tendered in his or her absence.

(5) The Magistrate's Court may, before beginning to inquire into an offence or at any time during the inquiry, adjourn the hearing and if it does so shall remand the accused.

(6) The Court shall when adjourning fix the time and place at which the hearing is to be resumed and the time fixed shall be that at which the accused is required to appear or be brought before the Court in pursuance of the remand or would be required to be brought before the Court but for section 128(3A) of the Magistrates' Courts Act 1980.

Defendant may plead guilty before or during preliminary inquiry.

59A.—(1) Notwithstanding the provisions of this Part, if a defendant is represented by a barrister or solicitor, he or she may, at any time before or during the preliminary inquiry into any information, request that he or she be brought before the Court (or if at that time before the Court, that he or she be permitted) to plead guilty to the offence charged.

(2) As soon as practicable after such request (which shall be in writing if made before the commencement of the preliminary hearing), the defendant shall be brought before the Court to be dealt with (or if before the Court at the time of such request, shall be dealt with) under this section.

(3) If the defendant is not before the Court at the time of such request and is not in custody, notice shall be given to him or her of the time and place for attendance before the Court for the purpose of being dealt with under this section.

(4) On the defendant's (or, where the defendant is a corporation, the defendant's representative's) attendance before a Court for the purposes of this section, the charge to which the defendant is required to plead shall be read to the defendant and the defendant shall then be called upon to plead either guilty or not guilty.

(5) If the defendant does not plead guilty, or if he or she (or where the defendant is a corporation, a representative of the defendant) does not personally attend the proceedings, he or she shall be treated in all respects as if he or she had not made any request to plead guilty, and no comment shall be made at the preliminary hearing or any subsequent proceedings on the fact that such a request has been made, nor shall the request be admissible in evidence against him or her in any proceedings.

(6) If the defendant pleads guilty, the Court shall commit the defendant to the Supreme Court for sentence.

(7) Where the defendant pleads guilty and is committed to the Supreme Court for sentence pursuant to this section, the relevant provisions of law as to bail, as far as they are applicable and with the necessary modifications, shall apply as if the defendant had pleaded guilty and been committed to the Supreme Court for sentence at the close of a preliminary hearing.

60.—(1) Evidence falling within subsection (2) of this section and only that evidence, shall be admissible by a Magistrate inquiring into an offence.

Evidence which is admissible.

(2) Evidence falls within this subsection if it—

- (a) is tendered by or on behalf of the prosecutor; and
- (b) falls within subsection (3) of this section.

(3) The following evidence falls within this subsection—

- (a) written statements complying with section 61 of this ordinance;
- (b) the documents or other exhibits (if any) referred to in such statements;
- (c) depositions complying with section 62 of this ordinance;
- (d) the documents or other exhibits (if any) referred to in such depositions;
- (e) statements complying with section 63 of this ordinance;
- (f) documents falling within section 64 of this ordinance.

(4) In this section “document” means anything in which information of any description is recorded.

Written statements.

61.—(1) For the purposes of section 60 above, a written statement complies with this section if—

- (a) the conditions falling within subsection (2) of this section are met; and
- (b) such of the conditions falling within subsection (3) of this section as apply are met.

(2) The conditions falling within this subsection are that—

- (a) the statement purports to be signed by the person who made it;
- (b) the statement contains a declaration by that person to the effect that it is true to the best of his or her knowledge and belief and that it was made in the knowledge that, if it were tendered in evidence, he or she would be liable to prosecution if in it anything had been wilfully stated which the person making the statement knew to be false or did not believe to be true;
- (c) before the statement is tendered in evidence a copy of the statement is given, by or on behalf of the prosecutor, to each of the other parties to the proceedings.

(3) The conditions falling within this subsection are that—

- (a) if the statement is made by a person under 18 years of age, it gives his or her age;
- (b) if it is made by a person who cannot read it, it is read to him or her before it is signed and is accompanied by a declaration by the person who so read the statement to the effect that it was so read;
- (c) if it refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2)(c) of this section is accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect the document or a copy of it.

(4) So much of any statement as is admitted in evidence by virtue of this section shall, unless the Court commits the accused for trial by virtue of section 65A(2) or the Court otherwise directs, be read aloud at the hearing; and, where the Court so directs, an account shall be given orally of so much of any statement as is not read aloud.

(5) Any document or other object referred to as an exhibit and identified in a statement admitted in evidence by virtue of this section shall be treated as if it had been produced as an exhibit and identified in Court by the maker of the statement.

(6) In this section “document” means anything in which information of any description is recorded.

62.—(1) For the purposes of section 60 a deposition complies with this section if—

Depositions.

- (a) a copy of it is sent to the prosecutor under section 97A(9) of the Magistrates’ Courts Act 1980;
- (b) the condition falling within subsection (2) of this section is met; and
- (c) the condition falling within subsection (3) of this section is met, in a case where it applies.

(2) The condition falling within this subsection is that before the Magistrate begins to inquire into the offence concerned a copy of the deposition is given, by or on behalf of the prosecutor, to each of the other parties to the proceedings.

(3) The condition falling within this subsection is that, if the deposition refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2) of this section is accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect that document or a copy of it.

(4) So much of any deposition as is admitted in evidence by virtue of this section shall, unless the Court commits the accused for trial by virtue of section 65A(2) or the Court otherwise directs, be read aloud at the hearing; and, where the Court so directs, an account shall be given orally of so much of any deposition as is not read aloud.

(5) Any document or other object referred to as an exhibit and identified in a deposition admitted in evidence by virtue of this section shall be treated as if it had been produced as an exhibit and identified in Court by the person whose evidence is taken as the deposition.

(6) In this section “document” means anything in which information of any description is recorded.

63.—(1) For the purposes of section 60, a statement complies with this section if the conditions falling within subsections (2) to (4) are met.

Statements.

(2) The condition falling within this subsection is that, before the preliminary inquiry begins, the prosecutor notifies the Magistrate’s Court and each of the other parties to the proceedings that he or she believes—

- (a) that the statement might by virtue of section 23 or 24 of the Criminal Justice Act 1988 (statements in certain documents) be admissible as evidence if the case came to trial; and
- (b) that the statement would not be admissible as

evidence otherwise than by virtue of section 23 or 24 of that Act if the case came to trial.

- (3) The condition falling within this subsection is that—
- (a) the prosecutor's belief is based on information available to him or her at the time the notification is made;
 - (b) he or she has reasonable grounds for this belief; and
 - (c) he or she gives the reasons for this belief when the notification is made.

(4) The condition falling within this subsection is that, when the Court or a party is notified as mentioned in subsection (2) of this section, a copy of the statement is given, by or on behalf of the prosecutor, to the Court or to the party concerned.

(5) So much of any statement as is in writing and is admitted in evidence by virtue of this section shall, unless the Court commits the accused for trial by virtue of section 65A(2) or the Court otherwise directs, be read aloud at the hearing; and where the Court so directs, an account shall be given orally of so much of any statement as is not read aloud.

Other documents.

- 64.**—(1) The following documents fall within this section—
- (a) any document which by virtue of any enactment is evidence in proceedings before the Magistrate's Court when conducting a preliminary inquiry into an offence;
 - (b) any document which by virtue of any enactment is admissible, or may be used, or is to be admitted or received, in or as evidence in such proceedings;
 - (c) any document which by virtue of any enactment may be considered in such proceedings;
 - (d) any document whose production constitutes proof in such proceedings by virtue of any enactment;
 - (e) any document by the production of which evidence may be given in such proceedings by virtue of any enactment.
- (2) In subsection (1) of this section—
- (a) references to evidence include references to prima facie evidence;
 - (b) references to any enactment include references to any provision of this ordinance or the Magistrates' Courts Act 1980.

(3) So much of any document as is admitted in evidence by virtue of this section shall, unless the Court commits the accused for trial by virtue of section 65A(2) or the Court otherwise directs, be read aloud at the hearing; and where the Court so directs an account shall be given orally of so much of any document as is not read aloud.

(4) In this section “document” means anything in which information of any description is recorded.

65.—(1) Where a statement, deposition or document is admissible in evidence by virtue of section 61, 62, 63 or 64, it may be proved by production of—

Proof by production of copy.

- (a) the statement, deposition or document; or
- (b) a copy of it or the material part of it.

(2) Subsection (1)(b) of this section applies whether or not the statement, deposition or document is in existence.

(3) It is immaterial for the purposes of this section how many removes there are between a copy and the original.

(4) In this section “copy”, in relation to a statement, deposition or document, means anything on to which information recorded in the statement, deposition or document has been copied, by whatever means and whether directly or indirectly.

65A.—(1) The Magistrate’s Court conducting a preliminary inquiry into an offence shall on consideration of the evidence—

Discharge or committal for trial.

- (a) commit the accused for trial if it is of the opinion that there is sufficient evidence to put him or her on trial for any offence triable by the Supreme Court on information; or
- (b) discharge the accused if it is not of that opinion and he or she is in custody for no other cause than the offence under inquiry

but the foregoing provisions of this subsection have effect subject to the provisions of this and any other law relating to the summary trial of offences triable on information by the Supreme Court.

(2) If the Magistrate’s Court conducting a preliminary inquiry into an offence is satisfied that all the evidence tendered by or on behalf of the prosecutor falls within section 60(3) of this ordinance it may commit the accused for trial for the offence without consideration of the contents of any statements, depositions or other documents and without consideration of any other exhibits which are not documents, unless—

- (a) the accused or one of the accused has no legal representative acting for him or her in the case; or
- (b) a legal representative for the accused or one of the accused, as the case may be, has requested the Court to consider a submission that there is insufficient evidence to put the accused on trial for the offence

and subsection (1) of this section shall not apply to a committal for trial under this subsection.

Procedure where
s.65A(2)(a) or (b)
applies.

65B. If the accused or one of the accused has no legal representation in the case or a legal representative for the accused or one of the accused, as the case may be, has requested the Court to consider a submission that there is insufficient evidence to put that accused on trial for the offence, the Court shall enter upon a consideration of the evidence in the proceedings in accordance with the following procedure—

- (i) the Court shall permit the prosecutor to make an opening submission to the Court either orally or in writing, if he or she so wishes, before any evidence is tendered;
- (ii) after such opening address, if any, the Court shall cause evidence to be tendered in accordance with sections 61(4), 62(4), 63(5) and 64(3) of this ordinance;
- (iii) the Court may view any exhibits produced before the Court and may take possession of them;
- (iv) after the evidence has been tendered, the Court shall hear or receive any submission which the accused may wish to make as to whether there is sufficient evidence to put him or her on trial before the Supreme Court for any offence;
- (v) the Court shall permit the prosecutor to make a submission, either orally or in writing,
 - (a) in reply to any submission made by the accused in pursuance of paragraph (iv); or
 - (b) where the accused has not made any such submission but the Court is nevertheless minded not to commit him or her for trial;
- (vi) after hearing or receiving any submission made in pursuance of paragraph (iv) or (v), the Court shall, unless it decides not to commit the accused for trial, cause the charge to be written down, if this has not already been done and, if the accused is not represented by counsel, shall read the charge to him and explain it in ordinary language.

Right to object to
written evidence at
trial without further
proof.

65C.—(1) A person committed by the Magistrate's Court for trial shall have the right to object, by written notification to the prosecutor and the Supreme Court within 14 days of being committed, unless the Court in its discretion permits such an objection to be made outside that period, to a statement or deposition being read as evidence at the trial without oral evidence being given by the person who made the statement or deposition and without the opportunity to cross-examine that person.

(2) Upon making a decision to commit the accused for trial, the Magistrate shall remind the accused in open court of the right to object conferred on him or her by subsection (1) of this section.

66.—(1) Upon committing any accused person for trial before the Supreme Court, the Court shall, until the trial, either admit him or her to bail or remand him or her in custody and in such case the warrant of the Magistrate's Court shall be sufficient authority to the officer in charge of any prison appointed for the custody of prisoners committed for trial.

Procedure on committal for trial.

(2) The Court shall bind by recognizance with or without sureties, as it considers necessary, every witness called on behalf of the prosecution to appear at the trial and to give evidence and also to appear and to give evidence if required at any further examination concerning the charge which may be held by direction of the Public Prosecutor.

(3) If any person required to enter into a recognizance under the provisions of the last preceding subsection refuses to enter into the same, the Court may admit that person to prison until after the trial unless, in the meantime, he or she enters into such recognizance; but, if afterwards, from want of sufficient evidence or any other cause, the accused person is discharged, the Court shall order that any person so imprisoned shall also be discharged.

(4) The Court shall, upon the application of the accused person (but not otherwise), take steps described in subsections (2) and (3) to secure the attendance of any witnesses called on behalf of the accused person at the trial to give evidence and to give evidence if required at any further examination directed by the Public Prosecutor and shall take the names and addresses of persons whom the accused person wishes to give evidence at the trial, other than those whose evidence has been recorded at the committal proceedings, so that they may be summoned to appear at the trial.]

(Replaced by Ordinance No. 12 of 2002)

67. Any person who has been committed for trial before the Supreme Court under the provisions of this Part of this ordinance shall without payment, before the commencement of such trial, be supplied with a copy of the record of the proceedings resulting in such committal for trial and of the record of proceedings in any further examination held at the direction of the Public Prosecutor.

Accused person entitled to copy of record of proceedings.

68.—(1) Whenever it appears to a Magistrate that any person dangerously ill, or hurt and not likely to recover, is able

Preservation of testimony of persons dangerously ill.

and willing to give material evidence relating to any offence triable by the Supreme Court and that it shall not be practicable to take the depositions of such person in accordance with the provisions of this Part of this ordinance, the Magistrate may take in writing the statement on oath or affirmation of such person and shall sign the same and certify that it contains accurately the whole of the statement made by such person and shall add a note of the reasons for taking such statement and of the date and place when and where it was taken, and shall preserve such statement and file it for record.

(2) If any statement taken under the provisions of this section relates or is expected to relate to an offence for which any person has been charged or committed for trial, reasonable notice of the intention to take such statement shall be served upon the police officer and on the accused person and, if in custody, the accused person shall be brought by the person in whose charge he or she is, under an order in writing of the Magistrate, to the place where the statement is to be taken.

(3) If any statement taken under the provisions of this section relates to any offence for which any person is then or subsequently committed for trial, it shall be sent by the Magistrate to the Registrar of the Supreme Court and a copy of such statement shall be supplied to the Public Prosecutor.

(4) Any statement taken under the provisions of this Part of this ordinance may afterwards be used in evidence on the trial of any person accused of an offence to which such statement relates, if the person who made the statement is then dead, or if the Court before which the trial takes place is satisfied that for any sufficient cause the attendance of such person cannot be procured, and if reasonable notice of the intention to take such statement was served upon the person (whether prosecutor or accused person) against whom it is proposed to be read in evidence and that person had or might have had, if he or she had chosen to be present, full opportunity of cross-examining the person making the same.

Record to be sent to the Registrar of the Supreme Court and to Public Prosecutor.

69. In the event of any person being committed for trial as the result of an inquiry under the provisions of this Part of this ordinance, the Magistrate shall without delay cause the record of proceedings, which shall include the written charge, the depositions, the statement of the accused person, the recognizances of all witnesses, the recognizances of bail (if any) and all documents or things which have been put in evidence in the course of the inquiry to be sent to the Registrar of the Supreme Court and an authenticated copy of such record of proceedings shall be supplied to the Public Prosecutor.

70.—(1) If, after receipt of the authenticated copy of the record of proceedings provided for by the last preceding subsection and before the trial, the Public Prosecutor is of the opinion that further investigation is required before such trial or that the depositions of any material or necessary witnesses for the prosecution or the defence have not been taken, then he or she may direct that the inquiry be reopened and that the depositions of any material or necessary witnesses be taken and on receipt of any such direction, the Court shall thereupon reopen the inquiry and may deal with it in all respects as if the accused person had not been committed for trial.

(2) If, after receipt of the authenticated copy of the record of proceedings and of any additional depositions taken under the provisions of the last preceding subsection, the Public Prosecutor considers that the evidence against the accused person is not sufficient to put him or her on trial, the Public Prosecutor shall direct that the accused person be discharged and, upon receipt of such direction, the Court shall cause the accused person to be discharged and shall release all persons bound by recognizance to appear at the trial of the accused person by the Supreme Court from all further obligations under any such recognizance:

Provided that the discharge of the accused person under the provisions of this subsection shall not be a bar to any subsequent charge in respect of the same facts.

(3) If, after receipt of the authenticated copy of the record of proceedings and of any additional depositions taken under the provisions of subsection (1) of this section, the Public Prosecutor is of the opinion that the evidence against the accused person is sufficient to put him or her on trial on a charge of any offence disclosed thereby, he or she may—

- (a) if the Public Prosecutor is of the opinion that the case is one which should be tried on information before the Supreme Court, cause an information to be drawn up, signed by him or her and filed in the registry of the Supreme Court; or
- (b) if the Public Prosecutor is of the opinion that the case is one which may suitably be dealt with by the Magistrate's Court notwithstanding any other provision of law, cause the record of proceedings to be retained in that Court for the trial of the accused person on any charge which in his or her opinion is disclosed by the record of proceedings, either in addition to or in substitution for the offence upon which the accused person was originally committed for trial and thereafter the Magistrate's Court shall

proceed to try the accused person accordingly:
Provided that in every such case, the accused person shall be entitled to have recalled for cross-examination or further cross-examination all witnesses for the prosecution whom he or she may require to be recalled.

[(4) A count in an information filed by or on behalf of the Public Prosecutor in accordance with paragraph (a) of subsection (3) shall not be deemed objectionable on the ground that it charges in the alternative several different matters, acts or omissions which are stated in the alternative in the enactment describing any offence or declaring the matters, acts or omissions charged to be an offence, or on the ground that it is double or multiple.

(5) The accused may at any stage of the trial apply to the Court to amend or divide any such count on the ground that it is so framed as to embarrass the accused in his or her defence and the Court, if satisfied that the ends of justice require it, may order any count to be amended or divided into two or more counts.

(6) Any number of counts for any offences whatever may be joined in the same information:

Provided that to a count charging murder, no count charging any offence other than murder shall be joined.

(7) If the Court thinks it conducive to the ends of justice to do so it may order that the accused shall be tried upon any one or more of such counts separately.

(8) If an information does not state in substance an offence, the Court may on application made before the accused pleads, in its discretion, quash or amend the information; but on a defect appearing during the course of the trial, the Court may either amend the information or in its discretion quash the information or leave the objection to be taken in arrest of judgment.

(9) If on the trial of an information there appears to be a variance between the proof and the charge in any count of the information either as presented or as amended, or as it would have been if amended in conformity with any such further particulars, the Court before which the case is tried or the Court of Appeal may amend the information or any count in it, in order to make it conformable with the proof.

(10) If the Court is of opinion that the accused has not been misled or prejudiced in his or her defence by such variance it shall make the amendment.

(11) If it appears that there is in the information or in any count in it an omission to state or a defective statement of anything requisite to constitute the crime or an omission to

negative any exception which ought to be negated but that the matter omitted is proved by the evidence, the Court before which the trial takes place or the Court of Appeal, if of opinion that the accused has not been misled or prejudiced in his or her defence by the error or omission, shall amend the information or count as may be necessary.

(12) In any such case the trial or the appeal may then proceed in all respects as if the information or count had been originally framed as amended.

(13) If the Court is of opinion that the accused has been misled or prejudiced in his or her defence by any such variance, error, omission or defective statement as aforesaid, but that the effect of his or her being misled or prejudiced might be removed by adjourning or postponing the trial, the Court may in its discretion make the amendment and adjourn the trial to a future day, on such terms as it thinks just.

(14) Where an amendment of any information or count is made under this section by the Court of Appeal, that Court may, in its discretion in making the amendment, either affirm the sentence or direct a new trial.

(15) In determining whether the accused has been misled or prejudiced in his or her defence, the Court which has to determine the question shall consider the contents of the documents, depositions and statements, as well as the other circumstances of the case.

(16) The propriety of making or refusing to make any such amendment shall be deemed a question for the Court and the decision of the Court upon it may be reserved for the Court of Appeal or may be brought on appeal before the Court of Appeal in the same manner as any other decision on a point of law.]

(Added by Ordinance No. 12 of 2002)

PART VIIA—SPECIAL PROVISIONS FOR PROCEDURE AND EVIDENCE IN CRIMINAL PROCEEDINGS

70A. Notwithstanding the provisions of section 17(1) of the Judicature (Courts) Ordinance, the provisions of this Part shall apply and have effect in all criminal proceedings in the Magistrate's Court, whether on the summary trial of any offence or in committal proceedings under Part VII, and in the Supreme Court on the trial of any person on information for an indictable offence.

Application of Part.
cap. 2

[70AA.—(1) Where any person is [to be tried for a criminal offence] and—

Interlocutory
order relating to
admissibility of
evidence

- (a) the prosecutor or the accused wishes to adduce any particular evidence at the trial; and

(b) he or she believes that the admissibility of that evidence may be challenged—

he or she may at any time before the trial apply to a [Magistrate or] Judge of the Court by or before which the [case] is to be tried for an order to the effect that the evidence is admissible.

(2) The [Magistrate or] Judge shall give each party an opportunity to be heard in respect of the application before deciding whether or not to make the order.

(3) The [Magistrate or] Judge may make an order under this section on such terms and subject to such conditions as he or she thinks fit.

(4) Nothing in this section nor in any order made under this section shall affect the right of the prosecutor or the accused to seek to adduce evidence that he or she claims is admissible during the trial, nor the discretion of the trial [Magistrate or] Judge to allow or exclude any evidence in accordance with any rule of law.]

(Inserted by Ordinance No. 12 of 2002)

(Amended by Ordinance No. 7 of 2005)

Determining whether witness to be sworn.

70B.—(1) Any question whether a witness in criminal proceedings may be sworn for the purpose of giving evidence on oath, whether raised—

(a) by a party to the proceedings, or

(b) by the Court of its own motion,

shall be determined by the Court in accordance with this section.

(2) The witness may not be sworn for that purpose unless—

(a) he or she has attained the age of 14; and

(b) he or she has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.

(3) The witness shall, if able to give intelligible testimony, be presumed to have a sufficient appreciation of those matters if no evidence tending to show the contrary is adduced (by any party).

(4) If any such evidence is adduced, it is for the party seeking to have the witness sworn to satisfy the Court that, on a balance of probabilities, the witness has attained the age of 14 and has a sufficient appreciation of the matters mentioned in subsection (2)(b).

(5) Expert evidence may be received on the question mentioned in subsection (1).

(6) Any questioning of the witness (where the Court considers that necessary) shall be conducted by the Court in

the presence of the parties.

(7) For the purposes of this section a person is able to give intelligible testimony if he or she is able to—

- (a) understand questions put to him or her as a witness, and
- (b) give answers to them which can be understood.

70C.—(1) Subsections (2) and (3) apply to a person (of any age) who—

Reception of unsworn evidence.

- (a) is competent to give evidence in criminal proceedings, but
- (b) (by virtue of section 70B(2)) is not permitted to be sworn for the purpose of giving evidence on oath in such proceedings.

(2) The evidence in criminal proceedings of a person to whom this subsection applies shall be given unsworn.

(3) A deposition of unsworn evidence given by a person to whom this subsection applies may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.

(4) A court in criminal proceedings shall accordingly receive in evidence any evidence given unsworn in pursuance of subsection (2) or (3).

(5) Where a person (“the witness”) who is competent to give evidence in criminal proceedings gives evidence in such proceedings unsworn, no conviction, verdict or finding in those proceedings shall be taken to be unsafe by reason only that it appears to the Court of Appeal that the witness was a person falling within section 70B(2) (and should accordingly have given evidence on oath).

(Sections 70CA, 70CB and 70CC repealed by Ordinance No. 6 of 2010)

70D.—(1) For the purposes of this section, “case of a sexual nature” means proceedings in which a person is charged with, or is to be sentenced for—

Special provision in cases of sexual nature.

- (a) any offence against the person of a sexual nature;
- (b) being a party to the commission of any offence referred to in paragraph (a) of this subsection;
- (c) conspiring with any person to commit any such offence.

(2) While the complainant in a case of a sexual nature is giving oral evidence (whether in chief or under cross-examination or on re-examination), no person shall be present in the courtroom except the following—

- (a) the Magistrate or Judge and assessors (if any);
- (b) the accused and any person who is for the time being

- acting as custodian of the accused;
- (c) any barrister or solicitor engaged in the proceedings;
 - (d) any officer of the Court;
 - (e) any person who is for the time being responsible for recording the proceedings;
 - (f) any member of the police in charge of the case;
 - (g) any accredited news media reporter;
 - (h) any person whose presence is requested by the complainant;
 - (i) any person expressly permitted by the Magistrate or Judge to be present.
- (3) Before the complainant in a case of a sexual nature commences to give evidence, the Magistrate or Judge shall—
- (a) ensure that no person other than one referred to in subsection (2) of this section is present in the courtroom; and
 - (b) advise the complainant of the complainant’s right to request the presence of any person under paragraph (h) of that subsection.
- (4) When in a case of a sexual nature the Court is of the opinion that the interests of the complainant so require, it may make an order forbidding publication of any report or account giving details of the criminal acts alleged to have been performed on the complainant or of any acts that the complainant is alleged to have been compelled or induced to perform or consent to or acquiesce in.
- (5) The breach of any order made under subsection (4) of this section, or any evasion or attempted evasion of it, may be dealt with as contempt of court.
- (6) Nothing in this section shall limit or affect the powers of the Court to exclude any person or forbid any report or account of any evidence under any other enactment.
- (7) Subject to this section, every accused person shall be entitled to be present in Court during the whole of the proceedings unless he or she commits misconduct by so interrupting the proceedings as to render their continuance in his or her presence impracticable.
- (8) The Court may permit the accused to be out of Court during the whole or any part of the proceedings on such terms as it thinks proper.

Evidence of complainant in sexual cases.

70E.—(1) For the purposes of this section, “cases of a sexual nature” means proceedings in which a person is charged with, or is to be sentenced for—

- (a) any offence against the person of a sexual nature;
- (b) being a party to the commission of any offence referred to in paragraph (a) of this subsection;

- (c) conspiring with any person to commit any such offence.
- (2) In any case of a sexual nature, no evidence shall be given and no question shall be put to a witness relating directly or indirectly to—
- (a) the sexual experience of the complainant with any person other than the accused; or
 - (b) the reputation of the complainant in sexual matters, except by leave of the Court.
- (3) The Court shall not grant leave under subsection (2) of this section unless satisfied that the evidence to be given or the question to be put is of such direct relevance to—
- (a) facts in issue in the proceeding; or
 - (b) the issue of the appropriate sentence,
- as the case may require, that to exclude it would be contrary to the interests of justice:
- Provided that any such evidence or question shall not be regarded as being of such direct relevance by reason only of any inference it may raise as to the general disposition or propensity of the complainant in sexual matters.
- (4) Notwithstanding subsection (2) of this section, leave shall not be required—
- (a) to the giving of evidence or the putting of a question for the purpose of contradicting or rebutting evidence given by any witness, or given by any witness in answer to a question relating directly or indirectly, in either case, to—
 - (i) the sexual experience of the complainant with any person other than the accused; or
 - (ii) the reputation of the complainant in sexual matters, or
 - (b) where the accused is charged as a party, and cannot be convicted unless it is shown that a person other than the accused committed an offence referred to in subsection (1) of this section against the complainant, to the giving of evidence or the putting of a question relating directly or indirectly to the sexual experience of the complainant with that other person.
- (5) An application for leave under subsection (2) of this section—
- (a) may be made from time to time whether before or after the commencement of the proceeding; and
 - (b) if made in the course of a proceeding before assessors, shall be made and dealt with in the absence of the assessors; and

- (c) if the accused or the accused's counsel so requests, shall be made and dealt with in the absence of the complainant.

(6) Nothing in this section shall authorise evidence to be given or questions to be put that could not be given or put apart from this section.

(7) Subject to this section, the restrictions imposed upon the cross-examination of prosecution witnesses by the accused in person provided by section 30 of this ordinance shall apply also to the cross-examination of complainants in the trial of cases of a sexual nature.

Address and occupation of complainant not to be disclosed in open Court.

70F.—(1) This section applies to proceedings in which a person is charged with, or is to be sentenced for, any offence specified in section 70E(1) of this ordinance.

(2) In any proceedings to which this section applies, the following provisions shall apply;

- (a) except where leave is given under paragraph (c) of this subsection, the complainant shall not be required to state his or her address or occupation in Court;
- (b) except where leave is given under paragraph (c) of this subsection, no barrister, solicitor, officer of the Court or other person involved in the proceedings shall state the address or occupation of the complainant in Court;
- (c) no oral evidence shall be given and no question shall be put to a witness relating to the address or occupation of the complainant except by leave of the Court.

(3) The Court shall not grant leave under subsection (2) of this section unless the satisfied that the evidence to be given or the question to be put is of such direct relevance to facts in issue that to exclude it would be contrary to the interests of justice.

(4) An application for leave under subsection (2) of this section—

- (a) may be made from time to time, whether before or after the commencement of any hearing or other proceeding; and
- (b) shall, where practicable, be made and dealt with in Chambers.

Corroboration in sexual cases.

70G.—(1) Where any person is tried for an offence against the person of a sexual nature, no corroboration of the complainant's evidence shall be necessary for that person to be convicted; and in any such case the Court shall not be

required to give any warning to the assessors, if any, relating to the absence of corroboration.

(2) If, in any such case, the Court decides to comment on the absence of any evidence tending to support any other evidence, no particular form of words shall be required.

70H. Where, during the trial of any person for any offence against the person of a sexual nature, evidence is given or a question is asked or a comment is made that tends to suggest an absence of complaint in respect of the alleged offence by the person upon whom the offence is alleged to have been committed or to suggest delay by that person in making any such complaint, the Court may tell the assessors, if any, that there may be good reasons why the victim of such offence may refrain from or delay in making such a complaint.

Delay in making complaint in sexual cases.

70I. Sections 70J to 70P of this ordinance apply to every case where a person is charged with—

Application of sections 70J to 70P.

- (a) any offence against the person of a sexual nature; or
- (b) being a party to the commission of any offence referred to in paragraph (a) of this section; or
- (c) conspiring with any person to commit any such offence.

70J.—(1) Where, in any case to which this section applies, the accused is charged with a summary offence before the Magistrate’s Court or is the subject of committal proceedings before the Magistrate’s Court or has been committed for trial by the Supreme Court on any indictable offence, the prosecutor shall, before the hearing, apply to the Court by or before which the hearing is to take place for directions under section 70K of this ordinance as to the mode by which the complainant’s evidence is to be given at the hearing.

Directions as to mode by which complainant’s evidence is to be given.

(2) The Court shall hear and determine the application in Chambers and shall give each party an opportunity to be heard in respect of the application.

(3) The Court may call for and receive any reports from any persons whom the Court considers to be qualified to advise on the effect on the complainant of giving evidence in person in the ordinary way or in any particular mode described in section 70K of this ordinance.

(4) In considering what directions (if any) to give under section 70K of this ordinance, the Court shall have regard to the need to minimise stress on the complainant while at the same time ensuring a fair trial for the accused.

(5) For the purposes of this section, the reference to a “hearing” shall include any application for remand,

adjournment or any other interlocutory relief.

Modes in which
complainant's
evidence may be
given.

70K.—(1) On an application under section 70J of this ordinance, the Court may give any of the following directions in respect of the mode in which the complainant's evidence is to be given at the trial—

- (a) where a videotape of the complainant's evidence has been previously made, a direction that the complainant's evidence be admitted in the form of that videotape, with such excisions (if any) as the Court may order under subsection (2) of this section;
- (b) where the Court is satisfied that the necessary facilities and equipment are available, a direction that the complainant shall give his or her evidence outside the courtroom but within the court precincts, the evidence being transmitted to the courtroom by means of closed circuit television;
- (c) a direction that, while the complainant is giving evidence or is being examined in respect of his or her evidence, a screen or one-way glass be so placed in relation to the complainant that—
 - (i) the complainant cannot see the accused; but
 - (ii) the assessors (if any) and counsel for the accused can see the complainant;
- (d) where the Court is satisfied that the necessary facilities and equipment are available, a direction that, while the complainant is giving evidence or is being examined in respect of his or her evidence, the complainant be placed behind a wall or partition, constructed in such a manner and of such materials as to enable those in the courtroom to see the complainant while preventing the complainant from seeing them, the evidence of the complainant being given through an appropriate audio link;
- (e) where the Court is satisfied that the necessary facilities and equipment are available, a direction—
 - (i) that the complainant give his or her evidence at a location outside the Court precincts; and
 - (ii) that those present while the complainant is giving evidence include the Court, the accused, counsel and such other persons as the Court thinks fit; and
 - (iii) that the giving of evidence by the complainant be recorded on videotape and that the complainant's evidence be admitted in the form of that videotape with such excisions (if any) as the Court may order under subsection

(2) of this section.

(2) Where a videotape of the complainant's evidence is to be shown at the trial, the Court shall view the videotape before it is shown and may order to be excised from the videotape any matters that, if the complainant's evidence were to be given in person in the ordinary way, would be excluded either—

- (a) in accordance with any rule of law relating to the admissibility of evidence; or
- (b) pursuant to any discretion of the Court to order the exclusion of any evidence.

(3) Where a videotape of the complainant's evidence is to be shown at the trial, the Court shall give such directions under this section as the court may think fit relating to the manner in which any cross-examination or re-examination of the complainant is to be conducted.

(4) Where the complainant is to give his or her evidence in the mode described in paragraph (b) or paragraph (d) of subsection (1) of this section, the Court may direct that any questions to be put to the complainant shall be given through an appropriate audio link to a person approved by the Court, placed next to the complainant, who shall repeat the question to the complainant.

(5) Where the complainant is to give his or her evidence at a location outside the Court precincts, the Court may also give any directions under paragraph (c) or paragraph (d) of subsection (1) of this section that the Court may think fit.

(6) Where a direction is given under this section, the evidence of the complainant shall be given substantially in accordance with the terms of the direction; but no such evidence shall be challenged in any proceedings on the ground of any failure to observe strictly all the terms of the direction.

70L.—(1) Subject to the succeeding provisions of this section, the accused shall not be entitled in any case to which this section applies to cross-examine the complainant.

Cross-examination and questioning of accused.

(2) Nothing in subsection (1) of this section nor any direction given under section 70K of this ordinance shall affect the right of counsel for the accused to cross-examine the complainant.

(3) Where the accused is not represented by counsel, the accused may put questions to the complainant (whether by means of an appropriate audio-link or otherwise as the Court may direct) by stating the questions to a person, approved by the Court, who shall repeat the questions to the complainant.

(4) No direction given under section 70K of this ordinance shall affect the right of the Court to question the complainant.

(5) Where the complainant is being cross-examined by counsel for the accused or any questions are being put to

the complainant by the accused, the Court may disallow any question put to the complainant that the Court considers is, having regard to the age or emotional condition of the complainant, intimidating or overbearing.

- (6) The Court shall forbid any question it regards as—
- (a) indecent or scandalous, although such question may have some bearing on the case before the Court, unless the question relates to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed; or
 - (b) intended to insult or annoy or needlessly offensive in form, notwithstanding that such question may be proper in itself.

Expert witnesses.

70M.—(1) For the purposes of this section, a person is an expert witness if that person is—

- (a) a medical practitioner holding vocational registration in the speciality of psychiatry, practising or having practised in the field of psychiatry and with experience in the professional treatment of sexually abused persons; or
- (b) a psychologist registered in any Commonwealth country practising or having practised in the field of psychology and with experience in the professional treatment of sexually abused persons.

(2) In any case to which this section applies, an expert witness may give evidence on the following matters—

- (a) the intellectual attainment, mental capability and emotional maturity of the complainant, the witness's assessment of the complainant being based on—
 - (i) examination of the complainant before the complainant gives evidence; or
 - (ii) observation of the complainant giving evidence, whether directly or on a videotape.
- (b) the general development level of persons of the same age group as the complainant;
- (c) the question whether any evidence given during the proceedings by any person (other than the expert witness) relating to the complainant's behaviour is, from the expert witness's professional experience or from his or her knowledge of the professional literature, consistent or inconsistent with the behaviour of sexually abused persons of the same age group as the complainant.

Directions to assessors (if any).

70N. Where a case to which this section applies is tried in the Supreme Court with assessors, the following

provisions shall apply in respect of the Judge's directions to the assessors—

- (a) Where the evidence of the complainant is given in any particular mode described in section 70K of this ordinance, the Judge shall advise the assessors that the law makes special provision for the giving of evidence by complainants in sexual cases and that the assessors are not to draw any adverse inference against the accused from the mode in which the complainant's evidence is given;
- (b) The Judge shall not give any warning to the assessors relating to the absence of corroboration of the evidence of the complainant;
- (c) The Judge shall not instruct the assessors on the need to scrutinise the evidence of complainants in sexual cases generally with special care nor suggest to the assessors that such complainants generally have tendencies to invention or distortion;
- (d) Nothing in paragraph (b) or paragraph (c) of this section shall limit the discretion of the Judge to comment on—
 - (i) specific matters raised in any evidence during the trial; or
 - (ii) matters, whether of a general or specific nature, included in the evidence of an expert witness to whom section 70M of this ordinance applies.

700.—(1) The Registrar of the Supreme Court and the Registrar of the Magistrate's Court (including in each case any Deputy-Registrar) shall be entitled respectively to possession on behalf of the Court of every document and other exhibit produced by any witness in evidence in the course of any committal proceeding or trial and shall be responsible for the security and preservation thereof.

Powers and duties of Registrar as to exhibits.

(2) For the purposes of subsection (1), the Registrar shall have such powers and authority as may be necessary to maintain the safe possession of such exhibits and, if it is necessary to remove the exhibits from the precincts of the Court, may enlist the aid of any bailiff or police officer to take them into custody accordingly.

(3) In the event of the removal of the exhibits from the precincts of the Court, the Registrar shall report the same to the presiding Judge or Magistrate and seek his or her direction as to their further safekeeping.

Regulations.

70P. The Governor may from time to time make regulations for all or any of the following purposes—

- (a) prescribing the procedure to be followed, the type of equipment to be used and the arrangements to be made where the evidence of a complainant is to be given by videotape;
- (b) providing for the approval of interviewers or classes of interviewers in such cases, providing for the proof of any such approval to be by production of a certificate and prescribing the form of that certificate and prescribing the form of certificate by which the interviewer is to formally identify the videotape;
- (c) providing for the consent of the complainant to being videotaped and specifying who may give consent on behalf of the complainant;
- (d) prescribing the uses to which any such videotapes may be put and prohibiting their use for any other purposes;
- (e) providing for the safe custody of any such videotapes;
- (f) providing for such other matters as are contemplated by any of the sections of this Part or as may be necessary for the due administration of those provisions.

**PART VIII—MAINTENANCE AND THE CARE
AND CUSTODY OF CHILDREN, SICK AND AGED
PERSONS AND PERSONS OF UNSOUND MIND**

Meaning of spouse

[70Q. For the purposes of this Part –

“spouse” means a person’s husband or wife, and where that person’s marriage has been dissolved under Part VIII of the Marriage Ordinance, includes a person who was a spouse before that marriage was dissolved.]

(Inserted by Ordinance No. 2 of 2012)

Maintenance of spouse and children

71.—[(1) Any person, whose spouse has deserted them or has willfully neglected or refused to sufficiently maintain them or any of their children (including adopted children) may apply to the Court for an order against the spouse containing all or any of the following provisions –

- (a) maintenance for the applicant;
- (b) the legal custody and guardianship of any such children;
- (c) maintenance for any such children;

and, upon receipt of any such application, the Magistrate shall issue a summons to compel the attendance of the spouse of the applicant before the Court at the time and place appointed in and by such summons.]

(Repealed and replaced by Ordinance No. 2 of 2012)

(2) If, upon inquiry in the manner hereinafter provided into any complaint made under the provisions of this section, the Court is satisfied that the substance of such complaint has been proved, it may make an order against the [spouse] of the complainant containing all or any of the provisions specified in the last preceding subsection:

Provided that in exercising its discretion with respect to orders under paragraph (a) and (b) of subsection (1) the Court shall take the conduct of the parties into account.

(Amended by Ordinance No. 2 of 2012)

72.—(1) Any person having the care or custody of any child, [a parent] of whom has wilfully neglected or refused to maintain such child, may, by a complaint on oath, apply to the Court for an order against [that parent] for the maintenance of the child and, upon receipt of such complaint, the Magistrate shall issue a summons to compel the attendance of [that parent] before the Court at the time and place appointed in and by such summons.

Maintenance of children.

(2) If, upon inquiry in the manner hereinafter provided into any complaint made under the provisions of this section, the Court is satisfied that the substance of such complaint has been proved, it may make an order against [a parent] for the maintenance of such child.

(Amended by Ordinance No. 2 of 2012)

73.—(1) The mother of any child may, at any time within twelve months after the birth of such child, by a complaint on oath, apply to the Court for an order against any man alleged to be the father of such child to whom she was not married at the time of the birth, for the maintenance of such child, and, upon receipt of any such complaint, the Magistrate shall issue a summons to compel the attendance of the man alleged to be the father of such child before the Court at the time and place appointed in and by such summons.

Paternity of children.

(2) If, upon inquiry in the manner hereinafter provided into any complaint made under the provisions of this section, the Court is satisfied on the evidence of the mother, confirmed in some material particular by other evidence to the satisfaction of the Court, it may adjudge the man alleged to be the father of such child to be the putative father thereof and may make an order against him for the maintenance of such child.

74.—(1) Any person who is unable to provide himself with the necessaries of life by reason of sickness or age, or any person having the care or custody of any such person, or the Medical Officer, may, by a complaint on oath, apply to the Court for an order against any one or more of the parents, brothers, sisters or

Sick and aged persons.

children (including any adopted children) of such sick or aged person for the maintenance of such sick or aged person, and, upon receipt of any such complaint, the Magistrate shall issue a summons to compel the attendance of the person or persons against whom such complaint is made before the Court at the time and place appointed in and by such summons.

(2) If, upon inquiry in the manner hereinafter provided into any complaint made under the provisions of this section, the Court is satisfied that the substance of such complaint has been proved, it may make an order against the person or persons against whom such complaint is made, or any of them, for the maintenance of such sick or aged person.

Persons of unsound mind.

75.—(1) Wherever it is alleged that any person is of unsound mind and incapable of managing his or her personal welfare and property, the Court may, on the complaint on oath of—

- (a) any person having the care or custody of such person;
- (b) any of the parents, brothers, sisters or children (including any adopted children) of such person;
- (c) any police officer; or
- (d) the Medical Officer,

hold an inquiry for the purpose of determining whether the person alleged to be of unsound mind is or is not of unsound mind and incapable of managing his or her personal welfare and property.

(2) Upon receipt of any complaint made under the provisions of the last preceding subsection, the Magistrate shall issue a summons to compel the attendance before the Court of the person alleged to be of unsound mind:

Provided that, if it appears that the person alleged to be of unsound mind is in such a state that personal service of such summons would be ineffectual or unduly distressing, the Magistrate may direct such substituted service of the summons as he shall think proper or, instead of issuing such a summons, may issue a warrant of arrest to compel the attendance before the Court of the person alleged to be of unsound mind.

(3) In addition to any summons or warrant issued under the provisions of the last preceding subsection, the Magistrate may, if he or she thinks fit, issue a summons to compel the attendance before the Court at the time and place appointed for the hearing of an inquiry, of any person having the care and custody of the person alleged to be of unsound mind, or of any of the parents, brothers, sisters or children (including any adopted children) of the person alleged to be of unsound mind.

(4) At any time after receipt of any complaint made under the provisions of subsection (1) of this section, the Magistrate may, by order, require the person alleged to be of unsound mind to attend at such convenient time and place as the Magistrate may appoint for the purpose of being personally examined by the Court or by any person from whom the Court may desire to have a report and the Magistrate may also make an order authorising any person or persons named therein to have access to the person alleged to be of unsound mind for the purpose of any such personal examination.

(5) On the day appointed for the hearing of any inquiry held under the provisions of this section, after receiving such representations and hearing such evidence and arguments as it may think fit, the Court shall determine whether the person alleged to be of unsound mind is or is not of unsound mind and incapable of managing his or her personal welfare and property, and if the Court finds that such person is so of unsound mind it may—

- (a) order the detention of the person found to be of unsound mind in such place and subject to such conditions as the Court may consider appropriate having regard to his or her welfare and treatment:

Provided that—

- (i) no such order shall be made except on the recommendation of the Medical Officer and unless the Court is of the opinion that the person found to be of unsound mind is dangerous to self or others and that no other method of dealing with such person would be appropriate to the circumstances of the case;
- (ii) the Court shall forthwith after making any such order report that fact to the Governor and such report shall include a full statement as to the personal particulars of the person found to be of unsound mind, the date when the order was made, the circumstances in which it was made and the place where and the conditions under which such person is to be detained;
- (iii) every such order shall be sent forthwith to the Governor who may direct that the record of proceedings in such case be submitted to the Supreme Court for examination in order that the Supreme Court may satisfy itself as to the correctness, legality and propriety of the proceedings, the findings and the order made;

- (iv) the Supreme Court on reviewing the record may make such orders and give such directions as it considers necessary or expedient in the interests of the person affected and remit the record to the Magistrate's Court for amendment in compliance with such orders or directions.
 - (b) if any friend or relative of such person shall undertake to the satisfaction of the Court that such person shall be properly taken care of and prevented from doing injury to self or others, appoint such friend or relative to be the welfare guardian of the person found to be of unsound mind and commit that person to the care and custody of such guardian;
 - (c) appoint a guardian of the estate of the person found to be of unsound mind with such powers as to the management of the property and affairs of that person as the Court may consider necessary;
 - (d) make an order against any one or more of the parents, brothers, sisters or children (including adopted children) upon whom a summons has been served under the provisions of subsection (3) of this section, of the person found to be of unsound mind, for the maintenance of such person.
- (6) Wherever it is alleged that any person found to be of unsound mind under the provisions of this section is no longer of unsound mind, the Court may on the application of any such person or of any other person, hold an inquiry for the purpose of determining whether such unsoundness of mind has ceased and, if as a result of such inquiry it is found that such unsoundness of mind has ceased, the Court shall order that all previous orders made by it under the provisions of this section in relation to such person or his or her estate are to be set aside on such terms and conditions as may be appropriate.
- (7) An inquiry held under the provisions of the last preceding subsection shall be conducted in the same manner as an inquiry held under the provisions of subsection (1) of this section and such other of the foregoing provisions of this section as are appropriate shall apply *mutatis mutandis* to any such inquiry.

Procedure in inquiries held under Parts VI and VII
Form of order and the enforcement of payment thereof.

76. (Repealed by Ordinance No. 2 of 2012)

77.—(1) Any order for the maintenance of any person made under the provisions of this Part of this ordinance shall include provision for—

- (a) the payment of a weekly sum in accordance with the means of the defendant; or
- (b) the provision of such accommodation, food, clothing and other necessities as to the Court seems fit;

and shall, in the case of an order for the maintenance of any child, specify the period during which the order is to remain in force:

Provided that no order for the maintenance of any child shall remain in force after such child attains the age of [16] years.

(2) Any order made under the provisions of this Part of this ordinance may be enforced in accordance with the procedure prescribed for the enforcement of judgments of the Court under the provisions of section 54 of this ordinance.

(Amended by Ordinance No. 2 of 2009)

78. No proceedings taken under any of the provisions of this Part of this ordinance shall be a bar to the prosecution of any person under the provisions of any law creating a criminal offence in respect of the same facts.

Proceedings under this Part not a bar to prosecution.

PART IX—POLICE OFFICERS

79. Every police officer shall, subject to the orders and directions of the Governor—

Duties of police officers.

- (a) be employed in and throughout the Islands for preserving the peace, for the prevention and detection of crime and for the apprehension of offenders against the law;
- (b) in the name of Her Majesty the Queen, conduct prosecutions for offences against the provisions of this or any other ordinance:

Provided that all prosecutions and applications made on behalf of the Council under the provisions of any regulations made under the Local Government Ordinance shall be conducted by a police officer in the name of the Council;

cap. 11

- (c) be charged with the service and execution within the Islands of all summonses, warrants, writs of summons, orders and process of the Magistrate's Court and of the Supreme Court and for that purpose shall have the same powers and authority as may be conferred upon any sheriff or bailiff by any law for the time being in force in the Islands; and
- (d) be on duty at all times and obey all lawful directions in respect of the execution of his or her office given by the Governor, any Magistrate or the Council.

PART X—OFFENCES

Contempt of Court.

- 80.**—(1) Any person who—
- (a) within or in the vicinity of any room in which the Court is sitting, is insulting towards or shows disrespect in speech or manner to the Magistrate, any assessor, the Registrar or a police officer;
 - (b) wilfully refuses or neglects to appear before the Court when summoned to do so;
 - (c) having attended the Court for the purpose of giving evidence in any case before it, remains in the room on which the Court is sitting after having been asked to leave such room;
 - (d) causes any obstruction or disturbance in the course of the hearing of any case before the Court;
 - (e) commits any other act of intentional disrespect to any case before the Court or to any officer of the Court,

is guilty of an offence and liable to a fine not exceeding one hundred dollars or to imprisonment for a period not exceeding twelve days or to both such fine and imprisonment.

(2) Any person who enters the room in which the Court is sitting carrying firearms whether concealed or not shall be guilty of an offence and liable to a fine not exceeding one hundred dollars or to imprisonment for a period not exceeding twelve days or to both such fine and imprisonment.

(3) Any person who, having appeared before the Court and, being called upon to give evidence, refuses to take the oath or affirmation or, having taken the oath or affirmation, refuses without reasonable excuse to answer any question lawfully put to him or her or to produce any document, shall be guilty of an offence and shall be liable in addition to any period of imprisonment imposed under the provisions of subsection (3) of section 14 of this ordinance, to a fine not exceeding one hundred dollars or to imprisonment for a period not exceeding twelve days or to both such fine and imprisonment.

Witness intimidation.

80A.—(1) Any person who intentionally intimidates or threatens another person knowing or believing that other person to be assisting in the investigation of an offence, or knowing that person to be a witness or potential witness in any legal proceedings, and intends that the investigation or the course of justice shall be thereby obstructed commits an offence punishable on conviction by imprisonment for a term not exceeding five years.

- (2) For the purposes of subsection (1)—
- (i) reference to the investigation of an offence includes any police investigation;
 - (ii) “offence” includes any alleged or suspected offence;
 - (iii) “legal proceedings” means any civil or criminal cause or intended cause issued or to be issued out of any court of the Islands or other judicial or quasi-judicial tribunal and includes a commission of inquiry;
 - (iv) the act of intimidation or threat may be made by any means and may be expressed directly or indirectly through the medium of a third party.

(3) The offence prescribed by subsection (1) shall be justiciable in the Supreme Court notwithstanding that the acts constituting the offence or any of those acts may have taken place outside the territorial limits of the Islands.

81. Any person lawfully sworn or affirmed as a witness in any case before the Court who wilfully makes any statement in evidence material to that case which he or she knows to be false or does not believe to be true, with the intention of deceiving or misleading the Court, shall be guilty of an offence and liable to a fine not exceeding two hundred dollars or to imprisonment for any period not exceeding thirty days or to both such fine and imprisonment. Perjury.

82.—(1) Any person who, being in lawful custody either in prison or in the custody of a police officer, escapes from such custody, shall be guilty of an offence and shall be liable to imprisonment for any period not exceeding one hundred days. Escapes and rescues.

(2) Any person who by force rescues or attempts to rescue any other person from lawful custody shall be guilty of an offence and liable to imprisonment for any period not exceeding one hundred days.

83. Any person who—

- (a) assaults, resists or wilfully obstructs a police officer in the due execution of his or her duty or any other person acting in aid of such officer; or
- (b) assaults any person on account of any act done by him or her in the execution of any duty imposed by law,

shall be guilty of an offence [triable either **summarily** by the Magistrate’s Court and liable to a fine not exceeding two hundred and fifty dollars or to imprisonment for any period not exceeding one hundred days or to both such fine and imprisonment,

or

Assaulting, resisting or obstructing a police officer.

on information by the Supreme Court and liable to a fine not exceeding one thousand dollars or imprisonment for any term not exceeding five years or to both such fine and imprisonment.]

(Amended by Ordinance No. 7 of 2005)

SCHEDULE

Section 16(1)(a)

OFFENCES TRIABLE ONLY SUMMARILY

1. In this Schedule

“certified by the Public Prosecutor” means certified by the Public Prosecutor, in any particular case, as appropriate to be tried summarily in that case;

reference to any “Act” means an Act of the Parliament of the United Kingdom.

2. The following offences, in addition to those referred to in section 16(1)(b), are triable only summarily.

(Deleted by Ordinance No. 4 of 2005)

- (b) Offences under the following provisions of the Offences Against the Person Act 1861, if certified by the Public Prosecutor—
 - (i) section 16 (threats to kill);
 - (ii) section 20 (inflicting bodily injury, with or without a weapon);
 - (iii) section 38 (assault with intent to resist apprehension); and
 - (iv) section 47 (assault occasioning actual bodily harm).
- (c) An offence under the Prevention of Crime Act 1953 (having an offensive weapon in a public place).
- (d) An offence under section 14 or section 15 of the Sexual Offences Act 1956 (indecent assault), if certified by the Public Prosecutor.
- (e) All offences under the Theft Act 1968 (not otherwise triable only summarily) if certified by the Public Prosecutor except—
 - (i) robbery;
 - (ii) burglary (including aggravated burglary);
 - (iii) assault with intent to rob; and
 - (iv) blackmail.
- (f) Offences under the following provisions of the Criminal Damage Act 1971, if certified by the Public Prosecutor—
 - (i) section 1(1) (destroying or damaging property);
 - (ii) section 1(1) and (3) (arson);
 - (iii) section 2 (threats to destroy or damage property); and
 - (iv) section 3 (possessing anything with intent to destroy or damage property).
- (g) All offences under the Theft Act 1978, if certified by the Public Prosecutor.
- (h) Offences under the following provisions of the Public Order Act 1986, if certified by the Public Prosecutor—
 - (i) section 2 (violent disorder); and
 - (ii) section 3 (affray).
- (i) Aiding, abetting, counselling or procuring the commission of any offence (the “substantive offence”) which—
 - (i) is triable only summarily by virtue of section 16(1)(b); or
 - (ii) is mentioned in this Schedule (other than incitement as mentioned in sub-paragraph (j):
Provided that if the substantive offence is triable summarily by virtue of that mention only if certified by

- the Public Prosecutor the offence of aiding, abetting, counselling or procuring it shall be so triable only if it is itself so certified.
- (j) Incitement to commit any offence (the “substantive offence”) which—
- (i) is triable only summarily by virtue of section 16(1)(b); or
 - (ii) is mentioned in this Schedule (other than aiding, abetting, counselling or procuring as mentioned in subparagraph (i):
Provided that if the substantive offence is triable only summarily by virtue of that mention only if certified by the Public Prosecutor, the offence of incitement to commit it shall be so triable only if it is itself so certified.
- (k) The offence, under the Criminal Attempts Act 1981, of attempting to commit another offence (the “substantive offence”) if the substantive offence is one which would, under the law of England as for the time being in force in England and if all the relevant circumstances had occurred in England, be triable either way but which, by virtue of its being specified in this Schedule, is triable in the Islands only summarily:
Provided that if the substantive offence is specified in this Schedule subject to its being certified by the Public Prosecutor the offence of attempting to commit it shall be so triable only if it is itself so certified.

(Second Schedule deleted by Ordinance No. 3 of 2003)

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

**MAGISTRATE'S COURT (FORMS IN CRIMINAL
CASES) RULES**

Made by the Governor in exercise of the powers conferred by paragraph (d) of section 20 of the Judicature (Courts) Ordinance and upon the advice of the Chief Justice.

[22 March 2003]

Arrangement of sections

Section

1. Citation and commencement
 2. Forms in Schedule to be used in criminal cases in Magistrate's Court
 3. Variations may be made in forms if required
 4. Strict compliance with forms not necessary
- Schedule

RULES

1. These rules may be cited as the Magistrate's Court (Forms in Criminal Cases) Rules.

Citation

2. Subject to these rules, the forms prescribed in the Schedule shall be used in criminal proceedings to which they relate in the Magistrate's Court and all matters connected therewith.

Forms in Schedule to be used in criminal cases in Magistrate's Court

3. Such variations may be made in any prescribed form as the circumstances of any particular case may require

Variations may be made in forms if required

4. Strict compliance with the prescribed forms is not necessary and substantial compliance, or such compliance as the particular circumstances of the case allow, is sufficient.

Strict compliance with forms not necessary

SCHEDULE

Rule 2

Form 1

Justice Ordinance

(Section 17)

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
at 20

CHARGE

(a) of (b)

is charged on the complaint of (c)

with the following offence:—

Statement of Offence

(d)

contrary to (e)

Particulars of Offence

(f)

Dated at this day of 20
Magistrate

- (a) Insert name of accused person
- (b) Insert address of accused person
- (c) Insert name of person making complaint
- (d) Insert a brief statement of offence
- (e) Insert section or regulation number and short title of Ordinance or Regulations under which charge made
- (f) Insert brief particulars of offence in ordinary language

Form 2

Justice Ordinance

(section 19)

In the Pitcairn Islands Magistrate’s Court Criminal Case No. of
at 20

SUMMONS TO DEFENDANT

To (a) of (b)

You are hereby commanded to appear before the Court at o’clock
in the noon of the day of 20 , there to answer the
following charge(s) made on the complaint of (c)

Statement of Offence

(d)

contrary to (e)

Particulars of Offence

(f)

and be dealt with according to law.

Dated at this day of 20
Magistrate

- (a) Insert name of defendant
- (b) Insert address of defendant
- (c) Insert name of complainant
- (d) Insert a brief statement of offence
- (e) Insert section or regulation number and short title of Ordinance or Regulations under which charge made
- (f) Insert brief particulars of offence in ordinary language

Form 3

Justice Ordinance

(sections 18 and 21(1))

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
at 20

WARRANT OF ARREST

To all police officers authorised to act on behalf of Pitcairn Island
You are hereby commanded to arrest and as soon as practicable, bring

(a) of (b)
before this Court at to answer the following charge(s)

Statement of Offence

(c)
contrary to (d)

Particulars of Offence

(e)
and be dealt with according to law.

Dated at this day of 20
Magistrate

- (a) Insert name of defendant
- (b) Insert address of defendant
- (c) Insert a brief statement of offence
- (d) Insert section or regulation number and short title of Ordinance or Regulations under which charge made
- (e) Insert brief particulars of offence in ordinary language

Form 4

Justice Ordinance

(section 21 (6))

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
 at 20

WARRANT FOR DETENTION OF DEFENDANT

To all police officers authorised to act on behalf of Pitcairn Island

Whereas (a) of (b)

has been brought before me under arrest to answer the following charge(s)

Statement of Offence

(c)

contrary to (d)

Particulars of Offence

(e)

Now therefore you are commanded to take the said (a) safely
 to the Prison and there deliver him/her together with this
 warrant to the warden/superintendent in charge of the said prison who is
 hereby directed to receive the said (a) and keep
 him/her safely there until the day of 20 , at o'clock
 in the noon and then bring him/her before this Court to answer the
 said charge(s) and be dealt with according to law.

Dated at this day of 20

Magistrate

- (a) Insert name of defendant
- (b) Insert address of defendant
- (c) Insert a brief statement of offence
- (d) Insert section or regulation number and short title of Ordinance
 or Regulations under which charge made
- (e) Insert brief particulars of offence in ordinary language

Form 6

Justice Ordinance

(section 24)

In the Pitcairn Islands Magistrate’s Court Criminal Case No. of
at 20

BAIL RECOGNIZANCE

On the day of 20 ,
(a) of (b)

as principal (c)

of (d) as surety and (e)
of (f)

as surety severally acknowledged themselves to owe to Her Majesty the Queen the several sums following, that is to say:

the said (a) the sum of dollars;

the said (c) the sum of dollars; and

the said (e) the sum of dollars.

to be paid by them if the said (a)

shall fail in the Condition hereunder written :—

CONDITION

The Condition of this recognizance is that if the said (a) shall personally appear on the day of 20 at o’clock in the noon at this Court to answer a charge(s) of (g)

and shall continue to attend from day to day at each adjournment of the said Court and not to depart therefrom without leave this recognizance shall be void.

(h)
Principal

(i)
Surety

(j)
Surety

.....
Magistrate

- (a) Insert name of defendant surety
- (b) Insert address of defendant
- (c) Insert name of first surety (if any)
- (d) Insert address of first surety (if any)
- (e) Insert name of second surety (if any)
- (f) Insert address of second surety (if any)
- (g) Insert statement of offence s on the charge
- (h) Defendant to sign as principal
- (i) Surety to sign
- (j) Surety to sign

Form 7

Justice Ordinance

(section 9)

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
at 20

SUMMONS TO ASSESSOR

To (a) of (b)

Whereas a charge has been made on the complaint of (c)

that (d) of (e)

did commit the following offence(s)

Statement of Offence

(f)

contrary to (g)

Particulars of Offence

(h)

And whereas your name has been selected by lot for inclusion in the list of assessors for the hearing of that case you are therefore commanded to attend at this Court on the day of 20 at the hour of o'clock in the noon and to continue to attend from day to day at each adjournment of the Court and not to depart therefrom without leave of the Court until the hearing of the said charge has been completed or you have been previously discharged by the Court.

Dated at this day of 20

Magistrate

- | | |
|---------------------------------|---|
| (a) Insert name of assessor | (f) Insert statement of offence as in the charge |
| (b) Insert address of assessor | (g) Insert number of section or regulation and short title of Ordinance or Regulations under which charge made as in the charge |
| (c) Insert name of complainant | |
| (d) Insert name of defendant | (h) Insert the particulars of offence as in the charge |
| (e) Insert address of defendant | |

Form 8

Justice Ordinance

(sections 14 (1) and 14A(1))

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
 at 20

SUMMONS TO WITNESS

To (a) of (b)

Whereas a charge has been made on the complaint of (c)

that (d) of (e)

did commit the following offence(s)

Statement of Offence

(f)

contrary to (g)

Particulars of Offence

(h)

and it appearing to me that you are likely to give or produce material evidence on behalf of (i) and will not voluntarily appear for that purpose you are therefore commanded to appear before this Court at on the day of 20 at the hour of o'clock in the noon or such other time and/or place as may be notified to you in writing by the Registrar to testify what you know in the matter and to bring with you and produce thereat (j)

Dated at this day of 20

Magistrate

- | | |
|--|---|
| (a) Insert name of witness | (g) Insert number of section or regulation and short title of the the Ordinance or Regulations under which charge made as in the charge |
| (b) Insert address of witness | (h) Insert the particulars of offence as in the charge |
| (c) Insert name of complainant | (i) Insert "complainant" or "defendant" as is appropriate |
| (d) Insert name of defendant | (j) Give descriptions of any documents that the witness is required to produce |
| (e) Insert address of defendant | |
| (f) Insert statement of address as in the charge | |

Form 9

Justice Ordinance

(section 14 (2))

In the Pitcairn Islands Magistrate’s Court Criminal Case No. of
at 20

WARRANT FOR ARREST OF WITNESS

To all police officers authorised to act on behalf of Pitcairn Island

Whereas (a) of (b)

has not appeared in answer to a summons requiring his/her attendance at
this Court at on the day of 20 to give evidence
on behalf of (c)

You are therefore commanded to arrest and bring the said (a)

before me at o’clock in the noon on the day
of 20 to be dealt with according to law.

Dated at this day of 20

Magistrate

- (a) Insert name of witness
- (b) Insert address of witness
- (c) Insert “complainant” or “defendant” as is appropriate

Form 10

Justice Ordinance

(section 14 (3))

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
 at 20

WARRANT TO COMMIT WITNESS

To all police officers authorised to act on behalf of Pitcairn Island

Whereas (a) of (b)

having this day refused without reasonable cause to the satisfaction of this Court to

(* be examined on oath (or solemn affirmation) as a witness at the hearing of a charge against (c)

(* being duly sworn (or affirmed) as a witness at the hearing of a charge against (c) to answer certain questions lawfully put to him/her

You the said police officers are therefore commanded to take the said (a) safely to the Prison and there deliver him/her together with this warrant to the warder or superintendent in charge of the said prison who is hereby directed to receive the said (a) and keep him/her safely there for a period of days unless he/she sooner consents to do what is required and then to bring him/her before this Court.

Dated at this day of 20

Magistrate

- (a) Insert name of witness
- (b) Insert address of witness
- (* Delete whichever is inappropriate
- (c) Insert name of defendant

Form 11

Justice Ordinance

(section 66)

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
at 20

**RECOGNIZANCE TO APPEAR AND GIVE EVIDENCE AT
TRIAL BEFORE THE SUPREME COURT**

Each of us the undermentioned persons acknowledges for himself/herself that he/she owes to Her Majesty the Queen the sum of dollars, payment thereof to be enforced against him/her by due process of law if he/she fails to comply with the condition hereunder written:

CONDITION

The Condition of this recognizance in respect of each of the undermentioned persons is that he/she appear at the Supreme Court at (a) at such time and on such day as may be notified to him/her in writing by the Registrar or by the Registrar of the Supreme Court to give evidence upon the trial of a charge or information to be preferred against (b) and appear at every time and place to which during the course of the proceedings the said trial may be from time to time adjourned, unless the said Court otherwise orders in the meantime; AND also appear and give evidence, if required by any such notice, at any further examination concerning the charge against the said (b) which may be held by direction of the Prosecutor then this recognizance shall be void but otherwise shall remain in full force.

(c)

Taken before me at this day of 20
Magistrate

- (a) Insert place of sitting of Supreme Court.
- (b) Insert name of accused person
- (c) Here name of each witness to be inserted and each witness to sign

Form 12

Justice Ordinance

(section 65)

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
at 20

BAIL RECOGNIZANCE ON COMMITTAL FOR TRIAL

On the day of 20
(a) of (b) as principal
(c) of (d) as surety
and (e) of (f) as surety
severally acknowledged themselves to owe to Her Majesty the Queen the
several sums following, that is to say
the said (a) the sum of dollars;
the said (b) the sum of dollars; and
the said (e) the sum of dollars,
to be paid by them if the said (a)
shall fail in the Condition hereunder written :—

CONDITION

The condition of this recognizance is that whereas the above-bounden
principal was this day charged before me and committed for trial to the
Supreme Court at (g) if the said
(a) shall personally appear before the Supreme Court
at such time and on such day as may be notified to him/her in writing by
the Registrar of this Court or by the Registrar of the Supreme Court and
there and then surrender himself/herself into custody of police at that Court
and plead to and take his/her trial in respect of a charge or information in
respect of the offence of (h) and not depart the said Court
without leave then the said recognizance shall be void but otherwise shall
remain in full force.

- (i)
- (j)
- (k)

Magistrate

- | | |
|--|--|
| (a) Insert name of accused person | (g) Insert place of sitting of Supreme Court |
| (b) Insert address of accused person | (h) Insert statement of offence and section under which charge made as in the charge |
| (c) Insert name of first surety (if any) | (i) Accused person to sign here |
| (d) Insert address of first surety (if any) | (j) First surety (if any) to sign here |
| (e) Insert name of second surety (if any) | (k) Second surety (if any) to sign here |
| (f) Insert address of second surety (if any) | |

Form 13

Justice Ordinance

(section 65)

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
 at 20

WARRANT OF COMMITMENT FOR TRIAL

To all police officers authorised to act on behalf of Pitcairn Island

Whereas (a) of (b)

was this day charged before me with the following offence:—

Statement of Offence

(c)

contrary to (d)

Particulars of Offence

(e)

and was duly committed for trial to the Supreme Court

You are therefore commanded to take the said (a) and
 safely convey him/her to the Prison and there deliver him/
 her to the warder/superintendent in charge of the said prison and keep him/
 her safely there until he/she shall thence be delivered in due course of law.

Dated at this day of 20

Magistrate

- (a) Insert name of accused person
- (b) Insert address of accused person
- (c) Insert statement of offence as in the charge
- (d) Insert the number of the section or regulation and the short title of the ordinance or regulations under which the charge is made
- (e) Insert the particulars of offence as in the charge

Form 14

Justice Ordinance

(section 59A)

**REQUEST BY DEFENDANT TO ENTER PLEA PRIOR TO
PRELIMINARY HEARING**

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
at 20

I (a) being represented by counsel, hereby
request that I be brought before the Court to plead guilty to the offence
of (b)

with which I am charged, pursuant to section 59A of the Justice Ordinance
(cap 3).

My counsel is (c)

Dated at the day of 20

.....
Signature of defendant

.....
Witnessed by counsel

- (a) Insert name of defendant
- (b) Insert brief statement of offence charged
- (c) Insert name of defendant's counsel

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2017

CHAPTER IV

**JUDICATURE (APPEALS IN CRIMINAL CASES)
ORDINANCE**

Arrangement of sections

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**An ordinance to provide for appeals in criminal cases
from the judgments and orders of the Magistrate’s
Court and the Supreme Court**

No. 4 of 1999
No. 5 of 2000
No. 14 of 2000
No. 13 of 2002
No. 17 of 2002
No. 2 of 2003
No. 10 of 2003
No. 5 of 2004
No. 4 of 2010
No. 1 of 2016.

[15 June 2000]

PART I—PRELIMINARY

1. This ordinance may be cited as the *Judicature (Appeals in Criminal Cases) Ordinance*.

Citation.

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

Interpretation.

“Court of Appeal” means the Pitcairn Court of Appeal [as constituted by section 49 of the Constitution of Pitcairn];

“Magistrate’s Court” means the Magistrate’s Court of Pitcairn, Henderson, Ducie and Oeno Islands established by section 10 of the *Judicature (Courts) Ordinance*;

cap. 2

“Supreme Court” means the Supreme Court of Pitcairn [as constituted by section 45 of the Constitution of Pitcairn].

(Amended by Ordinance No. 4 of 2010)

**PART II—APPEALS FROM THE
MAGISTRATE’S COURT**

3.—(1) Save as hereinafter provided, any person convicted on a trial held by the Magistrate’s Court may appeal to the Supreme Court against conviction or sentence or both.

Appeal to the Supreme Court.

(2) An appeal to the Supreme Court may be on a question of fact as well as on a question of law.

4. No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by the Magistrate’s Court, except as to the extent or legality of the sentence.

No appeal on plea of guilty.

5.—(1) Every appeal shall be brought by notice in writing which shall be lodged with the Magistrate’s Court within 14 days after the date of the order or sentence appealed against.

Procedure on appeal.

(2) Such notice shall be signed or marked by the appellant or, if the appellant is represented by counsel, the notice may be signed by such counsel.

(3) Within 14 days of the filing of such notice of appeal, the appellant shall lodge with the Magistrate’s Court a memorandum of appeal.

(4) Every memorandum of appeal shall be signed or marked

by the appellant or signed by his or her counsel and shall contain particulars of the matters of law or of fact in regard to which the Magistrate's Court appealed from is alleged to have erred, and, except by leave of the Supreme Court, the appellant shall not be permitted on the hearing of the appeal, to rely on any ground of appeal other than those set forth in the memorandum:

Provided that nothing in this subsection shall restrict the power of the Supreme Court to make such order as the justice of the case may require.

(5) If a memorandum is not lodged within the time prescribed by subsection (3), the appeal shall be deemed to have been withdrawn but nothing in this subsection shall be deemed to limit or restrict the power of the Supreme Court to extend time.

(6) The Supreme Court shall have power to extend any time herein provided for the taking of any necessary step on appeal, as it may deem fit.

Appellant in prison.

6.—(1) If the appellant is in prison, he or she shall be deemed to have complied with the requirements of section 5 on giving to the officer in charge of the prison notice of intention to appeal and the particulars required to be included in the memorandum of appeal within the times prescribed by such section.

(2) Such officer shall forthwith record the date of receipt of such notice or memorandum and shall forward the same to the Registrar.

Documents to be sent to Registrar.

7. The Magistrate's Court shall transmit the notice and memorandum of appeal and the record of the case to the Registrar of the Supreme Court as soon as possible.

Summary rejection of appeal.

8.—(1) When a memorandum of appeal has been lodged, the Chief Justice shall peruse the same together with the record of the case and if he or she considers that there is not sufficient ground for interfering, may, notwithstanding the provisions of section 11, reject the appeal summarily:

Provided that no appeal shall be rejected summarily except in the case mentioned in subsection (2), unless the appellant or his or her counsel has had the opportunity of being heard in support of the same.

(2) Where an appeal is brought on the ground that the conviction is against the weight of evidence, or that the sentence is excessive, and it appears to the Chief Justice that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was

right or lead to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order of the Chief Justice certifying that he or she has perused the record and is satisfied that the appeal has been lodged without any sufficient ground of complaint.

(3) Whenever an appeal is summarily rejected notice of such rejection shall forthwith be given to the Public Prosecutor and to the appellant or his or her counsel.

9.—(1) If the Supreme Court does not dismiss the appeal summarily, the appeal shall be set down for hearing by the Registrar on a date to be fixed by the Registrar.

Fixing of appeal and presence of appellant.

(2) The appellant has no right to be present at the hearing of an appeal to the Supreme Court outside the Islands.

10. The order of the Registrar fixing the date of the appeal, together with a copy of the notice and memorandum of appeal, shall be served upon the Public Prosecutor, at the expense of the appellant not later than twenty-one clear days before the day fixed for the hearing.

Order of Registrar to be served on respondent.

11.—(1) After hearing the appellant or his or her counsel, if appearing, and the Public Prosecutor, if appearing, the Supreme Court may, if it considers that there is not sufficient ground for interfering, dismiss the appeal, or may—

Powers of Supreme Court.

- (a) in an appeal from a conviction—
 - (i) reverse the finding and sentence and acquit or discharge the accused, or order the accused to be retried on the same charge by a Court of competent jurisdiction, or commit the accused for trial on any other charge which appears to be disclosed by the evidence; or
 - (ii) alter the finding, maintaining the sentence or, with or without altering the finding, reduce or increase the sentence to any sentence which could have been imposed by the Magistrate's Court; or
 - (iii) with or without such reduction or increase and with or without altering the finding, alter the nature of the sentence;
- (b) in an appeal from any other order, alter or reverse such order and, in either case, make any amendment or any consequential or incidental order as to costs or otherwise that may appear just and proper.

(2) On any appeal the Supreme Court may exercise the same powers in relation to suspended sentences as are conferred on the Court of Appeal by section 41 of this ordinance.

Order of Supreme Court to be certified.

12.—(1) When a case is decided on appeal by the Supreme Court, it shall certify its judgment or order to the court by which the conviction, sentence or order appealed against was recorded or passed.

(2) The Court to which the Supreme Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the Supreme Court and, if necessary, the record shall be amended in accordance therewith.

Admission to bail or suspension of sentence pending appeal.

13.—(1) After the entering of an appeal by a person entitled to appeal, the Supreme Court or the Magistrate's Court which convicted or sentenced such person, may order that he or she be released on bail with or without sureties or, if such person is not released on bail, shall, at the request of such person order that the execution of the sentence or order appealed against shall be suspended pending the hearing of the appeal. Section 16(2) of this ordinance shall apply to bonds taken under this subsection.

(2) An application for bail under this section may be heard in Chambers. In the Supreme Court such application shall be by motion served on the Public Prosecutor. In the Magistrate's Court such application may be made without formal process on sufficient notice to the person who conducted the prosecution.

(3) Either party to a decision of the Magistrate's Court under this section may appeal to the Supreme Court.

(4) If the appeal is ultimately dismissed and the original sentence confirmed or some other sentence of imprisonment [or sentence of home detention] substituted therefor, the time during which the appellant has been released on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment [or term of home detention] to which he or she is finally sentenced.

(Amended by Ordinance No. 1 of 2016)

Further evidence.

14.—(1) In dealing with an appeal from the Magistrate's Court, the Supreme Court, if it thinks additional evidence is necessary, shall record its reasons and may either take such evidence itself or direct it to be taken by the Magistrate's Court.

(2) When the additional evidence is taken by the Magistrate's Court, such court shall certify such evidence to the Supreme Court which shall thereupon proceed to dispose of the appeal.

(3) Unless the Supreme Court otherwise directs, the accused or his counsel shall be present when the additional evidence is taken.

(4) Evidence taken in pursuance of this section shall be taken as if it were taken at a trial before the Magistrate's Court.

Reservation or points of law.

15. It shall be lawful for the Magistrate irrespective of

any appeal or whether a case is appealable or not to reserve for the consideration of the Supreme Court any point of law arising during any proceeding in the court or on which the said Magistrate may entertain a doubt as to the correctness of the decision. The question of law so reserved shall be stated in the form of a case prepared and signed by the Magistrate and such case shall be transmitted to the Registrar:

Provided that nothing herein contained shall exempt the Magistrate from giving his or her own judgment on such questions.

16.—(1) Whenever a case shall have been so reserved and stated by the Magistrate, the execution of the judgment shall be stayed until the decision of the Supreme Court has been delivered. Any person under detention shall be released on sufficient bail to be furnished before the Magistrate pending the consideration by the Supreme Court of any point reserved.

Cases reserved how dealt with.

(2) A bond taken under this section may contain such conditions, whether as to surrender of passport or otherwise, as may be expedient to ensure that the person released appears before the Magistrate's Court if so required.

17. The Supreme Court shall have power, if it thinks fit, to return the case for amendment and thereupon the same shall be amended accordingly and judgment shall be delivered after it shall have been so amended.

Cases may be sent back for amendment.

18. After the decision of the Supreme Court, the Magistrate shall cause the judgment of the Supreme Court to be enforced as if it were a judgment of the Magistrate's Court and as if the same had not been appealed against.

Judgment of appellate court how enforced.

19. When the Supreme Court has allowed costs of appeal, such costs, when taxed by the Registrar, shall be recovered by execution in the Magistrate's Court.

Costs of appeal how recovered.

20. Every appeal from the Magistrate's Court (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

Abatement of appeals.

21.—(1) Any party to an appeal from the Magistrate's Court may appeal against the decision of the Supreme Court in its appellate jurisdiction to the Court of Appeal on a matter of law (not including severity of sentence) but not on a matter of fact or mixed fact and law.

Appeals to Court of Appeal.

For the purposes of this section the expression "decision of the Supreme Court in its appellate jurisdiction" shall include a decision of that Court made in revision or on a case stated.

(2) On any such appeal, the Court of Appeal may, if it thinks that the judgment of the Magistrate's Court or of the

first appellate Court should be set aside or varied on the ground of a wrong decision on any question of law, make any order which the Magistrate's Court or the first appellate court could have made; or may remit the case, together with its judgment or order thereon, to the first appellate court or the Magistrate's Court for determination, whether or not by way of re-hearing, with such directions as the Court of Appeal may think necessary:

Provided that in the case of an appeal against conviction, if the Court of Appeal dismisses the appeal and confirms the conviction appealed against, it shall not (save as in subsection (3) provided) increase, reduce or alter the nature of the sentence imposed in respect of that conviction, whether by the Magistrate's Court or by the first appellate court, unless the Court of Appeal thinks that such sentence was an unlawful one or was passed in consequence of an error of law, in which case it may impose such sentence in substitution therefor as it thinks proper and as could have been imposed by the court of trial for the offence of which the appellant has been convicted.

(3) If it appears to the Court of Appeal that a party to an appeal, though not properly convicted on some count of the information, has been properly convicted on some other count of the information, the Court may, in respect of the count of the information on which the Court considers that the appellant has been properly convicted, either affirm the sentence passed by the Magistrate's Court or by the first appellate court, or pass such other sentence (whether more or less severe) in substitution therefor as it thinks proper and as could have been passed by the court of trial.

(4) Where a party to an appeal has been convicted of an offence and the Magistrate's Court or the first appellate court could on the information have found that person guilty of some other offence and, on the finding of the Magistrate's Court or of the first appellate court, it appears to the Court of Appeal that the court must have been satisfied of facts which proved that person guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the conviction entered by the Magistrate's Court or by the first appellate court a conviction of guilty of that other offence, and pass such sentence in substitution for the sentence passed by the Magistrate's Court or the first appellate court as could have been passed by the court of trial for that other offence, not being a sentence of greater severity.

(5) On any appeal brought under this section, the Court of Appeal may, notwithstanding that it may be of opinion that the point raised in the appeal might be decided in favour of the

appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

22. The [Supreme Court] may, in any case in which an appeal from a decision of the Supreme Court in its appellate jurisdiction to the Court of Appeal is filed, grant bail pending the hearing of such appeal. Section 16(2) of this ordinance shall apply to bonds taken under this section.

Admission to bail pending appeal.

(Amended by Ordinance No. 1 of 2016)

23. The Supreme Court may call for and examine the record of any criminal proceedings before the Magistrate's Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the Magistrate's Court.

Power of Supreme Court to call for records.

24.—(1) Where any ordinance authorises the revision by the Supreme Court of any proceedings in the Magistrate's Court, the Supreme Court may—

Powers of Supreme Court on revision.

- (a) in the case of an order of acquittal, reverse such order and direct that further inquiry be made or direct that the accused be retried;
- (b) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 11, 13, and 14 of this ordinance and may enhance sentence;
- (c) in the case of any other order, alter or reverse such order.

(2) No order under this section shall be made to the prejudice of an accused person unless he or she has had an opportunity of being heard either personally or by counsel.

(3) Where the sentence dealt with under this section has been passed by the Magistrate's Court, the Supreme Court shall not inflict a greater punishment for the offence which, in the opinion of the Supreme Court, the accused has committed than might have been inflicted by the court that imposed the sentence.

(4) Nothing in this section shall be deemed to authorise the Supreme Court to convert a finding of acquittal into one of conviction.

(5) Where an appeal lies from any finding, sentence or order and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

25. No party has any right to be heard either personally or by counsel before the Supreme Court when exercising its powers of revision:

Discretion of Court as to hearing parties.

Provided that such court may, if it thinks fit, when exercising such powers, hear any party either personally or by counsel, and that nothing in this section shall be deemed to affect section 24(2) of this ordinance.

Order on revision to be certified to lower court.

26. When a case is revised by the Supreme Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified and, if necessary, the record shall be amended in accordance therewith.

Case stated by the Magistrate's Court.

27. After hearing and determination by the Magistrate's Court of any summons, charge, information or complaint, either party to the proceedings before the Magistrate's Court may, if dissatisfied with the determination as being erroneous in point of law, or as being in excess of jurisdiction, apply in writing within thirty days after the determination to the Magistrate's Court to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the Supreme Court and such party (hereinafter called the "appellant") shall—

- (a) within fourteen days after receiving the case transmit the same to the Supreme Court; and
- (b) within thirty days after receiving the case serve a copy of the case so stated and signed on the other party to the proceedings in which the determination was given (hereinafter called "the respondent"):

Provided always that no application shall be made under this section by a prosecutor other than the Public Prosecutor without the previous consent in writing of the Public Prosecutor.

Recognizance to be taken.

28.—(1) The appellant, at the time of making such application and before the case shall be stated and delivered to the appellant by the Magistrate's Court, shall in every instance enter into a recognizance before the Magistrate's Court with or without surety or sureties and in such sum not exceeding \$500.00 as to the Magistrate's Court shall seem just, conditioned to prosecute without delay such appeal, and to submit to the judgment of the Supreme Court and to pay such costs as may be awarded by it; and before the appellant shall be entitled to have the case delivered, he or she shall pay to the Registrar of the Magistrate's Court the fees for and in respect of the case and recognizances and any other prescribed fees to which the Registrar shall be entitled.

(2) If the appellant is then in custody, the Court may liberate

the appellant upon the recognizance being further conditioned for his or her appearance before the Court within fourteen days after the judgment of the Supreme Court shall have been given to abide by such judgment unless the determination appealed against be reversed.

(3) If the appellant is ultimately sentenced to imprisonment, the time during which he or she is so released shall be excluded in computing the term of the sentence.

(4) Nothing in this section shall apply to an application for a case stated by or under the direction of the Public Prosecutor.

(5) Section 16(2) of this ordinance shall apply to bonds taken under this section

29. If the Magistrate's Court is of opinion that the application is merely frivolous or vexatious, it may refuse to state a case and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal:

Refusal of frivolous application.

Provided that the Magistrate's Court shall not refuse to state a case when the application for that purpose is made by or under the direction of the Public Prosecutor who may require a case to be stated with reference to proceedings to which the Public Prosecutor was not a party.

30. When the Magistrate's Court has refused to state a case as aforesaid, it shall be lawful for the appellant to apply to the Supreme Court within two months of such refusal, upon an affidavit of the facts, for a *rule nisi* calling upon the Magistrate's Court and also upon the respondent to show cause why such case should not be stated and the Supreme Court may make the same *absolute* or discharge it with or without payment of costs as to the Court shall seem fit and the Magistrate's Court, upon being served with such *rule absolute* shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

Procedure on refusal of Court to state case.

31. The Supreme Court shall (subject to the provisions of section 32 of this ordinance) hear and determine the question or questions of law arising on the case stated and shall thereupon reverse, affirm or amend the determination in respect of which the case has been stated or remit the matter to the Magistrate's Court with the opinion of the Supreme Court thereon or may make such order as to costs as to the Court may seem fit and all such orders shall be final and conclusive on all parties:

Hearing and determination by the Supreme Court.

Provided always that no Magistrate who shall state and deliver a case in pursuance of this Part or *bona fide* refuse to state one shall be liable to any costs in respect or by reason of such appeal against his determination or refusal.

Case may be sent back for amendment or rehearing.

- 32.** The Supreme Court shall have power, if it thinks fit—
- (a) to cause the case to be sent back for amendment or restatement and thereupon the same shall be amended or restated accordingly and judgment shall be delivered after it has been so amended or restated;
 - (b) to remit the case to the Magistrate’s Court for rehearing and determination with such directions as it may deem necessary.

Appellant may not proceed both by case stated and by appeal.

33. No person who has appealed under section 3 of this ordinance shall be entitled to have a case stated and no person who has applied to have a case stated shall be entitled to appeal.

Contents of case stated.

- 34.** A case stated by the Magistrate’s Court shall set out—
- (a) the charge, summons, information or complaint;
 - (b) the facts found by the Magistrate’s Court to be admitted or proved;
 - (c) any submission of law made by or on behalf of the complainant during the trial or inquiry;
 - (d) any submission of law made by or on behalf of the accused during the trial or inquiry;
 - (e) the finding and, in case of conviction, the sentence of the Magistrate’s Court;
 - (f) any question or questions of law which the Magistrate’s Court or any of the parties may desire to be submitted for the opinion of the Supreme Court;
 - (g) any question or questions of law which the Public Prosecutor may require to be submitted for the opinion of the Supreme Court.

Supreme Court may enlarge time.

35. The Supreme Court may, if it deems fit, enlarge any period of time prescribed by sections 27, 28 or 30 of this ordinance.

[PART IIA GENERAL PROVISIONS AS TO APPEALS TO THE COURT OF APPEAL

Decisions about mode of hearing

- 35A.—**(1) An appeal or application for leave to appeal must be dealt with by way of a hearing involving oral submissions unless the Judge or Court making the decision on the mode of hearing determines, on the basis of the information contained in the notice of appeal, notice of application or other written material provided by the parties that the appeal or application—
- (a) can be fairly dealt with on the papers; and
 - (b) either has no realistic prospect of success or clearly should be allowed;
- (2) In determining whether an appeal or application can

be fairly dealt with on the papers, the Judge or Court may consider any matters relevant to the decision on the mode of hearing, including such matters as—

- (a) whether the appellant has been assisted by counsel in preparing the appeal or application;
- (b) whether the appellant has been provided with copies of the relevant trial documentation;
- (c) the gravity of the offence;
- (d) the nature and complexity of the issues raised by the appeal or application;
- (e) whether evidence should be called;
- (f) any relevant cultural or personal factors.

(3) A Judge of the Court of Appeal, acting alone, may make a decision about the mode of hearing a particular appeal or application but no Judge acting alone may reverse a decision on mode that has been made by the Court.

(4) The Court of Appeal may, at any time, either on its own initiative or on the application of any party, change the mode of hearing a particular appeal or application to an oral hearing, having regard to any written submissions made by the parties concerning the mode of hearing.

(5) The Court or Judge making the decision on the mode of hearing must apply section 35B (2) to (5) (with all necessary modifications) in the same way as the Court would apply them in determining an appeal or application for leave to appeal.

(6) Every decision about the mode of hearing an appeal or application must be in writing, be accompanied by reasons (unless the decision is that the hearing will be an oral hearing) and be provided by the Registrar to the parties.

35B.—(1) This section applies to appeals and applications for leave to appeal which are disposed of by the Court of Appeal by way of a hearing on the papers.

Hearings on the papers

(2) The parties to the appeal or application may make written but not oral submissions to the Court and may include in their submissions—

- (a) additional relevant written material; and
- (b) responses to any submissions made by the other party.

(3) Neither the parties nor their representatives may appear before the Court.

(4) The appeal or application must be determined by the Court on the basis of the written material before it.

(5) Consideration of the written material may be undertaken in whatever manner the Court thinks fit.

35C. The powers of the Court of Appeal to give leave

Certain powers exercisable by Judge of Court of Appeal

to appeal against conviction or sentence, to extend the time within which notice of appeal or of an application for leave to appeal may be given, to allow the appellant to be present at any proceedings in cases where he or she is not entitled to be present without leave, to issue a warrant for the detention of the accused pending a new trial and to grant bail to an appellant may be exercised by any Judge of the Court of Appeal in the same manner as they may be exercised by the Court and subject to the same provisions; but if the Judge refuses an application on the part of the appellant to exercise any such power in his or her favour, the appellant shall be entitled to have the application determined by the Court of Appeal.

Evidence for Court of Appeal

35D.—(1) On any appeal or application for leave to appeal under this ordinance, the Court before which the appellant was convicted shall, if it thinks necessary or if the Court of Appeal so desires, send to the Court of Appeal a copy of the whole or of such part as is material of the notes taken by the Judge presiding at the trial.

(2) The Court of Appeal may, if it considers the notes defective, refer to such other evidence of what took place at the trial as it thinks fit.]

(Inserted by Ordinance No. 17 of 2002)

PART III APPEALS FROM THE SUPREME COURT

Applications for stay of proceedings

Right of appeal against decision on application for stay

35DD.—(1) At any time before or during the course of any trial either the prosecutor or the accused person, with the leave of the Court of Appeal, may appeal to that Court against the decision of a Judge of the Supreme Court

- (a) to make or to refuse to make an order staying the proceedings on the ground of abuse of process or any other ground; or
- (b) to give or refuse to give any other interlocutory judgment having the effect of bringing the proceedings to an end.

(2) On any appeal under this section, the Court of Appeal may confirm the decision of the Judge or vary it or set it aside and make such other order as the Court of Appeal thinks ought to have been made by the Judge.

(3) For the purposes of an appeal under this section, the person seeking leave to appeal shall give notice of such application in such manner as may be directed by rules of Court (or, if there are none, in a form approved by the

Registrar) within 28 days after the decision of the Judge, irrespective of whether reasons for that decision have been given at that time and whether any formal steps to perfect the judgment have been taken.]

(Inserted by Ordinance No. 10 of 2003)

(Subsection (4) repealed by Ordinance No. 5 of 2004)

[Appeal on Matters Arising Before Trial

35E.—(1) At any time before the trial either the prosecutor or the accused person, with the leave of the Court of Appeal, may appeal to that Court—

Right of appeal in certain cases

- (a) against the decision of a Judge of the Supreme Court to make or to refuse to make, an order changing the venue of the trial under section 15B of the Judicature (Courts) Ordinance;
 - (b) against the making of an order or the refusal to make an order concerning the admissibility of evidence under section 70AA of the Justice Ordinance;
 - (c) against the making of an order under subsection (5) (concerning the amendment or division of any count in an information) or under subsection (7) (concerning the trial of the accused upon one or more counts separately) of section 70 of the Justice Ordinance or against a refusal to make any such order;
 - (d) against the making of an order under subsection (2) of section 8 or section 10 of the Victims of Offences Ordinance 2002 or the refusal to make any such order;
 - (e) against the quashing or amendment of an information under subsection (8) of section 70 of the Justice Ordinance, or against a refusal to quash or amend the information under that subsection;
 - (f) against the making of an order directing separate trials of persons jointly charged or against a refusal to make such an order;
 - (g) against the granting of leave under subsection (2) of section 70E of the Justice Ordinance restricting the cross-examination of the complainant in a case of a sexual nature or the granting of leave under section 70F of the Justice Ordinance in relation to the address and occupation of a complainant in a case of a sexual nature or against the refusal to grant leave in either case.
- (2) At any time before the trial, the accused person, with the leave of the Court of Appeal, may appeal to that Court—
- (a) against the imposition by a Judge of any condition on an order for change of venue under subsection (1)

of section 15B of the Judicature (Courts) Ordinance made under subsection (3) of that section;

- (b) against a refusal by the Court to order that further particulars of any information or of any count in any information be furnished in writing by the prosecutor.

(3) On any appeal under this section, the Court of Appeal may confirm the decision of the Court or Judge, as the case may be, or vary it or set it aside and make such other order as the Court of Appeal thinks ought to have been made in the first place.

(4) Where a person desires to obtain the leave of the Court of Appeal to appeal to that Court under this section, he or she shall give notice of application for leave to appeal in such manner as may be directed by rules of Court (or if there are no such rules in a form approved by the Registrar) within [28] days after the decision of the Court or Judge is given, irrespective of whether reasons for the decision are given at a later date and irrespective of whether any formal steps to sign, enter or otherwise perfect the decision are necessary or are afterwards taken.

(Amended by Ordinance No. 2 of 2003)

(5) The time within which notice of an application for leave to appeal under this section may be given may be extended at any time by the Court of Appeal.

(6) Notwithstanding that an application for leave to appeal under subsection (1)(b) has been made, the Court may, if it is satisfied that it is in the interests of justice to do so, proceed with the trial without awaiting the determination of the application.]

(Inserted and amended by Ordinance No. 13 and No. 17 of 2002)

36.—(1) Any person convicted on a trial held by the Supreme Court may appeal to the Court of Appeal—

- (a) against conviction—
- (i) on any ground of appeal whenever the penalty awarded shall exceed six months' imprisonment or a fine of \$1,000.00;
 - (ii) on any ground of appeal which involves a question of law alone;
 - (iii) with the leave of the Court of Appeal or upon a certificate of the Chief Justice that it is a fit case for appeal, on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or on any other ground which appears to the Court to

be a sufficient ground of appeal;

- (b) against sentence with the leave of the Court of Appeal unless the sentence is one fixed by law.

[(1A) The Public Prosecutor, with the leave of the Court of Appeal, may appeal to the Court of Appeal against the sentence passed on the conviction of any person on information in the Supreme Court, unless the sentence is one fixed by law. For the purpose of this subsection, the term “sentence” includes any method of disposing of a case following conviction.]

(Inserted by Ordinance No. 13 of 2002)

(2) Any person who has been dealt with by the Supreme Court under section 34(2) of the Justice Ordinance may appeal to the Court of Appeal as set out in subsection (1)(a) and (b) of this section as if he or she had been both convicted and sentenced by the Supreme Court.

(3) Notwithstanding a right of appeal, the Chief Justice may reserve for the consideration of the Court of Appeal any question of law decided by him or her in the course of any trial. The question or questions so reserved shall be stated in the form of a case prepared and signed by the Chief Justice; and such case shall be transmitted by him or her at the earliest opportunity to the Court of Appeal.

(4) The [Supreme Court or Court of Appeal] may, in any case in which an appeal to the Court of Appeal is filed or in any case in which a question of law has been reserved for the decision of the Court of Appeal, grant bail pending the hearing of the appeal or the decision upon the case reserved.

(Amended by Ordinance No. 1 of 2016)

(5) Section 16(2) of this Ordinance shall apply to bonds taken under subsection (4).

(6) An application for bail under this section shall be by motion, supported by affidavit served on the Public Prosecutor and may be heard in Chambers.

[36A.—(1) Every appeal under section 36(1)(a)(i) or (ii) shall be brought by notice in writing lodged with the Court of Appeal in such manner as may be directed by rules of Court (or if there are no such rules in a form approved by the Registrar) within 28 days after the date of the conviction appealed against.

Time for appeal or application

(2) Every application by the Public Prosecutor for leave to appeal against sentence under section 36(1A) shall be brought by notice in writing lodged with the Court of Appeal in such manner as may be directed by rules of Court (or if there are no such rules in a form approved by the Registrar) within 28 days after the date of the sentence in respect of which leave to appeal is applied for.

(3) The time within which a notice of appeal or a notice

of application for leave to appeal under this section may be given may be extended at any time by the Court of Appeal.]

(Inserted by Ordinance No. 2 of 2003)

Grounds for allowing appeal under s. 36.

37.—(1) Except as provided by this ordinance, the Court of Appeal shall allow an appeal against conviction if it thinks—

- (a) that the decision of the court should be set aside on the ground that under all circumstances of the case it is unsafe or unsatisfactory; or
- (b) that such decision should be set aside on the ground of a wrong decision of any question of law; or
- (c) that there was material irregularity in the course of the trial,

and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no [substantial] miscarriage of justice has occurred.

(Inserted by Ordinance No. 13 of 2002)

(2) In the case of an appeal against conviction the Court shall, if it allows the appeal, quash the conviction.

(3) Where the Court of Appeal allows an appeal against conviction, it may order the appellant to be retried on the same charge by a court of competent jurisdiction.

(4) The Court of Appeal may, on ordering a retrial, make such orders as appear to it to be necessary or expedient—

- (a) for the custody or admission to bail of the person ordered to be retried pending the retrial;
- (b) for the retention pending the retrial of any property or money forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.

Power to substitute conviction of alternative offence.

38.—(1) This section applies to an appeal against conviction where the appellant has been convicted of an offence and the court could on the information have found the appellant guilty of some other offence and it appears to the Court of Appeal that the court must have been satisfied of facts which proved him or her guilty of the other offence.

(2) The Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court a finding of guilty of the other offence, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity.

Sentence when appeal allowed on part of an information.

39.—(1) This section applies where, on an appeal against conviction, on an information containing two or more counts, the Court of Appeal allows the appeal in respect of part of the

information.

(2) Except as provided by subsection (3), the Court may, in respect of any count on which the appellant remains convicted, pass such sentence in substitution for any sentence passed thereon at the trial as it thinks proper.

(3) The Court shall not, under this section, pass any sentence such that the appellant's sentence on the information as a whole will, in consequence of the appeal, be of greater severity than the sentence (taken as a whole) which was passed at the trial.

40. Where, on an appeal against conviction, the Court of Appeal is of the opinion—

Substitution of finding of insanity or unfitness to plead.

- (a) that the proper decision would have been one of not guilty by reason of insanity; or
- (b) that the case is not one where there should have been an acquittal but that there should have been a finding that the accused was of unsound mind and thereby unfit to plead;

the Court shall enter a substituted verdict accordingly and order that the appellant be detained in appropriate care as a person of unsound mind pending the further directions of the Governor.

41.—(1) On an appeal against sentence, the Court of Appeal, if it considers that the sentence of the appellant should be altered, may—

Supplementary provisions as to appeals against sentence.

- (a) quash any sentence or order which is the subject of the appeal; and
- (b) in place of it pass such sentence or such order as it thinks appropriate for the case which the court appealed from had power to pass;

but the Court shall so exercise its powers under this subsection that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the court appealed from.

42. A person tried and adjudged by the Supreme Court to be not guilty by reason of insanity may appeal to the Court of Appeal against the decision—

Appeal against decision of not guilty by reason of insanity.

- (a) on any ground of appeal which involves a question of law alone; and
- (b) with the leave of the Court of Appeal, on any ground which involves a question of fact alone or a question of mixed law and fact or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal:

Provided that if the Chief Justice grants a certificate that the case is fit for appeal on a ground which involves a question of

fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

Disposal of appeal under section 42.

43.—(1) Subject to the provisions of this section, the Court of Appeal shall allow an appeal under section 42 of this ordinance if it is of the opinion—

- (a) that the decision should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
- (b) that the decision should be set aside on the ground of a wrong decision on any question of law; or
- (c) that there was a material irregularity in the course of the trial and in any other case shall dismiss the appeal.

(2) The Court of Appeal may dismiss an appeal under section 42 of this ordinance if of the opinion that, notwithstanding that the point raised in the appeal might be decided in favour of the appellant, no miscarriage of justice has occurred.

(3) Where, apart from this subsection—

- (a) an appeal under section 42 of this ordinance would fall to be allowed; and
- (b) none of the grounds for allowing it relates to the question of the insanity of the accused,

the Court of Appeal may dismiss the appeal if it is of the opinion that, but for the insanity of the accused, the proper decision would have been that he or she was guilty of an offence other than the offence charged.

(4) Where an appeal under section 42 of this ordinance is allowed, the following provisions apply:—

- (a) if the ground, or one of the grounds, for allowing the appeal is that the finding as to the insanity of the accused ought not to stand and the Court of Appeal is of the opinion that the proper finding would have been that the accused was guilty of an offence (whether the offence charged or any other offence of which the court could have found him guilty), the Court—
 - (i) shall substitute for the finding of not guilty by reason of insanity a finding of guilty of that offence; and
 - (ii) shall have the like powers of punishing or otherwise dealing with the appellant and such other powers as the court of trial would have had if it had come to the substituted finding; and
- (b) in any other case the Court of Appeal shall substitute

for the finding an acquittal.

(5) Where, on an appeal under section 42 of this ordinance, the Court of Appeal is of opinion that the case is not one where there should have been an acquittal but that there should have been a finding that the accused was unfit to plead, the Court shall remit the proceedings to the Supreme Court accordingly.

44.—(1) Where there has been a finding that an accused person is unfit to plead, the accused person may appeal to the Court of Appeal against the finding.

Right of appeal against finding of unfitness to plead.

(2) An appeal under this section may be—

- (a) on any ground of appeal which involves a question of law alone; and
- (b) with the leave of the Court of Appeal, on any ground which involves a question of fact alone, or a question of mixed law and fact or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal:

Provided that, if the Chief Justice grants a certificate that the case is fit for appeal on a ground which involves a question of fact or a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

45.—(1) The Court of Appeal shall allow an appeal under section 44 of this ordinance if it is of opinion—

Disposal of appeal under section 44.

- (a) that the finding should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
- (b) that the finding should be set aside on the ground of a wrong decision on any question of law; or
- (c) that there was a material irregularity in the course of the determination of the question of fitness to be tried;

and in any other case (except one to which subsection (2) below applies) shall dismiss the appeal; but it may dismiss the appeal if of opinion that, notwithstanding that the point raised in the appeal might be decided in favour of the appellant, no miscarriage of justice has occurred.

(2) An appeal under section 44 of this ordinance may, in a case where the question of fitness to be tried was determined later than on arraignment, be allowed by the Court of Appeal (notwithstanding that the finding was properly come to) if the Court is of opinion that the case is one in which the accused should have been acquitted before the question of fitness to be tried was considered; and if an appeal is allowed under this subsection, the Court of Appeal shall, in addition to quashing the finding, direct an acquittal to be recorded, not being a finding of not guilty by reason of insanity.

Supplementary powers of Court of Appeal.

46. The Court of Appeal shall have the same powers *mutatis mutandis* as to the awarding of costs, the hearing of further evidence and admission to bail as the Supreme Court has on an appeal from the Magistrate's Court under sections 11, 14 and 22 of this ordinance.

References to the Court of Appeal by the Governor.

47.—(1) The Governor on an application made by a person convicted on a trial held by the Supreme Court or without such application may at any time either—

- (a) refer the whole case to the Court of Appeal and the case shall then be treated for all purposes as an appeal to that Court by the person convicted; or
- (b) if the Governor desires the assistance of the Court of Appeal on any point arising in the case, refer that point to the Court of Appeal for its opinion thereon and that Court shall consider the point so referred and furnish the Governor with its opinion accordingly.

(2) A reference to the Court of Appeal may be made under this section irrespective of any appeal or whether the case is appealable or not.

(3) Nothing in this section shall affect the prerogative of mercy.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2009

CHAPTER V

SUMMARY OFFENCES ORDINANCE

Arrangement of sections

PART I—PRELIMINARY

Section

1. Short title
2. Interpretation

PART II—OFFENCES AGAINST PUBLIC ORDER

3. Profane or abusive language
4. Disorderly conduct
5. Indecent behaviour
6. Fighting in public place
7. Importing drugs
8. Indecent and obscene material

PART III—OFFENCES AGAINST THE PERSON

9. Assault
10. Threatening language
11. False report
12. Responsibility of person in charge of another
13. Repealed
14. Repealed
15. Leaving child without supervision etc.

PART IV—OFFENCES AGAINST PROPERTY

16. Stealing and receiving
17. Malicious damage
18. Causing fires
19. Rock carvings and “Bounty” relics
20. Trespass

PART V—OTHER OFFENCES

21. Failure to vote
22. Failure to furnish particulars

- 23. Failure to ensure attendance of child at school
- 24. Supplying tobacco

PART VI—ARREST AND JURISDICTION

- 25. Arrest
- 26. Jurisdiction

An ordinance relating to summary offences

[4th December 2000]

Ordinances:
No. 15 of 2000
No. 4 of 2005
No. 4 of 2009**PART I—PRELIMINARY**

1. This ordinance may be cited as the Summary Offences Ordinance.

Short title.

2.—(1) In this ordinance, unless the context otherwise requires—

Interpretation.

“assault” means the act of intentionally applying or attempting to apply force to the person of another, directly or indirectly, or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has, or causes the other person to believe on reasonable grounds that he or she has, present ability to effect that purpose; and “to assault” shall be construed accordingly;

“Court” means the Magistrate’s Court;

“police officer” means a person appointed by the Governor as a police officer for the purposes of the Justice Ordinance.

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(2) Every person who, having an intent to commit an offence, does or omits an act for the purpose of committing that offence, is guilty of an attempt to commit the offence intended, whether in the circumstances it was possible to commit the offence or not.

The question whether an act done or omitted with intent to commit an offence is or is not only preparation for the commission of that offence and too remote to constitute an attempt to commit it, is a question of law.

An act done or omitted with intent to commit an offence may constitute an attempt if it is immediately or proximately connected with the intended offence, whether or not there was any act unequivocally showing the intent to commit that offence.

(3) Every person who aids, abets, advises or causes another to commit an offence constituted under the provisions of this ordinance, shall be liable to be proceeded against and convicted for the same, either with the principal offender or before or after that offender’s conviction, and shall also be liable on conviction to the same penalties and punishments and to make the same payments as those to which the principal offender would be liable.

PART II—OFFENCES AGAINST PUBLIC ORDER

3. Any person who uses profane or abusive language in

Profane or abusive language.

any public place shall be guilty of an offence and liable to a fine not exceeding fifty dollars.

Disorderly conduct.

4. Any person who in any public place is drunk or behaves in a riotous or disorderly manner shall be guilty of an offence and liable to a fine not exceeding fifty dollars or both such fine and imprisonment.

Indecent behaviour.

5. Any person who behaves in an indecent manner in any public place shall be guilty of an offence and liable to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding forty days.

Fighting in public place.

6. Any person who fights in a public place is guilty of an offence and liable to a fine not exceeding fifty dollars.

Importing drugs.

7.—(1) Any person, other than the Medical Officer, who imports drugs of any kind into Pitcairn Island shall be guilty of an offence and liable to a fine not exceeding two hundred dollars:

Provided that—

- (a) any person may, with the consent of the Medical Officer or upon the written prescription of a duly qualified medical practitioner, import any drug for medical purposes within the family of that person; and
- (b) the proviso to this section shall not apply to any drugs generally or specifically exempted therefrom by the Medical Officer.

(2) Any drugs imported in contravention of the provisions of subsection (1) may be confiscated and destroyed in such manner as the Court may direct.

Indecent and obscene material.

8.—(1) Any person who imports into the Islands, or who has in his or her possession, any indecent or obscene books, cards, photographs, casts, figures, pictures, lithographic or other engravings, cinematographic or other films or any other indecent or obscene article shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty dollars or imprisonment for a term not exceeding one hundred days or to both such fine and imprisonment and any such article may be confiscated and destroyed in such manner as the Court shall direct.

(2) Any person who without lawful excuse by means of any form of electronic technology transmits or receives visual images which are indecent or obscene shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty dollars or imprisonment for a term not exceeding one hundred days or to both such fine and imprisonment and any electronic

equipment used in the commission of such an offence may if the Court so directs be confiscated and forfeited to the Crown.

(3) No prosecution for an offence under this section may be commenced by any person without the consent of the Public Prosecutor.

PART III—OFFENCES AGAINST THE PERSON

9. Any person who without lawful excuse assaults any other person shall be guilty of an offence and liable to a fine not exceeding one hundred dollars.

Assault.

(Deleted by Ordinance No. 4 of 2005)

10. Any person who uses any threatening language in any place to the annoyance of any other person, or by reason whereof an assault may be committed or any person may fear that an assault may be committed shall be guilty of an offence and liable to a fine not exceeding fifty dollars.

Threatening language.

11. Any person who spreads any report about any other person knowing or having reason to believe the same to be untrue which may cause or is likely to cause such other person to suffer in reputation shall be guilty of an offence and liable to a fine not exceeding fifty dollars.

False report.

12. It is the duty of every person having charge of another who is unable to provide himself or herself with the necessaries of life by reason of age, sickness, unsoundness of mind, detention or any other cause, to provide such person of whom he or she has charge with the necessaries of life and any person, having such charge of any other person who fails to provide such other person with the necessaries of life or abuses or maltreats such other person shall be guilty of an offence and liable to a fine not exceeding one hundred and fifty dollars or to imprisonment for any period not exceeding seventy-five days or to both such fine and imprisonment.

Responsibility of person in charge of another.

(Sections 13 and 14 repealed by Ordinance No. 9 of 2003)

15. Any person who, being a parent or guardian or a person for the time being having the care of a child under the age of fourteen years, leaves that child without making reasonable provision for the supervision and care of the child for a time that is unreasonable or under conditions which are unreasonable having regard to all the circumstances, shall be guilty of an offence and liable to a fine not exceeding one hundred and fifty dollars or to imprisonment for a term not exceeding ninety days or to both such fine and imprisonment.

Leaving child without supervision etc.

PART IV—OFFENCES AGAINST PROPERTY

Stealing and receiving.

16. Any person who steals any property the value of which in the opinion of the Court, does not exceed the sum of two hundred dollars, or who receives any such property knowing the same to have been stolen, shall be guilty of an offence and liable to a fine not exceeding one hundred and fifty dollars or to imprisonment for any period not exceeding one hundred days or to both such fine and imprisonment, and upon the conviction of any such person the Court may, in addition to any such penalty, order that such property or its value be restored or paid to the owner thereof.

Malicious damage.

17. Any person who wilfully and unlawfully damages or destroys any property, or sets on fire any tree or other vegetation, the value of which in the opinion of the Court does not exceed two hundred dollars, shall be guilty of an offence and liable to a fine not exceeding one hundred and fifty dollars or to imprisonment for any period not exceeding ninety days or to both such fine and imprisonment, and upon the conviction of any such person the Court may, in addition to any such penalty, order such person to pay to the owner thereof, the value of any property so damaged or destroyed.

Causing fires.

18.—(1) Any person who negligently causes any fire shall be guilty of an offence and liable to a fine not exceeding fifty dollars, and upon the conviction of any such person the Court may, in addition to any such penalty, order such person to pay to the owner thereof, the value of any property destroyed or damaged by such fire.

(2) Any person who causes any fire within five yards of the boundary of any land in the occupation of any person without first obtaining the permission of such other person, or who leaves any such fire before it is extinguished, shall be guilty of an offence and liable to a fine not exceeding fifty dollars.

Rock carvings and "Bounty" relics.

19.—(1) Any person removing, defacing or otherwise mutilating or injuring any of the prehistoric rock carvings at Rope or St. Paul's shall be guilty of an offence and liable to a fine not exceeding two hundred dollars.

(2) Any person removing or attempting to remove or conspiring with any other person, whether resident in the Islands or not, to remove or attempt to remove from the Islands any relic of the ship "Bounty" without the written consent of the Governor, shall be guilty of an offence and liable to a fine not exceeding two hundred dollars.

Trespass.

20. Any person who—

- (a) enters into or upon any plantation, garden, orchard, land or house in the possession of another with intent

to commit an offence or to intimidate or annoy any person lawfully in possession thereof,

(b) without lawful excuse enters or remains in any plantation, garden, orchard, land or house after being warned not to enter, or to depart therefrom;

(c) without lawful excuse enters by night any house or any verandah or passage attached thereto or any yard, garden or any land adjacent thereto;

shall be guilty of an offence and liable to a fine not exceeding two hundred dollars or to imprisonment for any period not exceeding sixty days or both such fine and imprisonment.

PART V—OTHER OFFENCES

21. Any person whose name appears on the Register of Voters, who, without lawful excuse, fails to record his or her vote in any poll for the election of an Island Officer under the provisions of Part III of the Local Government Ordinance, shall be guilty of an offence and liable to a fine not exceeding twenty-five dollars.

Failure to vote.

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22. Any person who, on being required by the Island Secretary to furnish any particulars needed by the Island Secretary for the purpose of preparing any official return, neglects or refuses to furnish any such particulars within fourteen days after being requested to do so, shall be guilty of an offence and liable to a fine not exceeding twenty-five dollars.

Failure to furnish particulars.

[23. Any person who:

- (a) is the parent or guardian of any child who resides on Pitcairn Island and has attained the age of 5 years but not yet attained the age of 16 years; and
- (b) without just cause, refuses or neglects to keep that child in regular attendance at the public school on Pitcairn Island

Failure to ensure attendance of child at school

shall be guilty of an offence and liable to a fine not exceeding \$200.]

(Inserted by Ordinance No. 4 of 2009)

24. Any person who supplies tobacco in any form whatsoever to another person under the age of eighteen years shall be guilty of an offence and liable to a fine not exceeding twenty five dollars.

Supplying tobacco.

PART VI—ARREST AND JURISDICTION

25. A police officer with the aid of all persons called to the assistance of the police officer may arrest and take into custody without a warrant any person whom he or she has good cause to suspect of having committed an offence

Arrest.

against any of the provisions of this ordinance punishable by imprisonment.

Jurisdiction.

26. Every offence against this ordinance shall be triable only summarily by the Magistrate's Court.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2010

CHAPTER VI

An ordinance to provide for the proof of written laws

[15 August 2000]

Ordinances:
No. 11 of 2000
No. 4 of 2010

1. This ordinance may be cited as the Evidence (Proof of Written Laws) Ordinance 2000.

Citation.

2. Subject to this ordinance, judicial notice shall be taken by every Court of written laws alleged by a party to any proceedings to be in force in the Islands which are available to the Court in the following form—

Judicial notice to be taken of written laws.

statutes of the Parliament of the United Kingdom	published by Her Majesty's Stationery Office, the Stationery Office Limited or included in Halsbury's Statutes of England and Wales
Statutory Instruments of the United Kingdom	published by Her Majesty's Stationery Office or the Stationery Office Limited
The Revised Edition of the Laws of the Islands of Pitcairn, Henderson, Ducie and Oeno 1971, 1985 or 2001	certified in writing by the [Attorney General] to be a true copy thereof and lodged with the Registrar of the Court
ordinances made by the Governor under section 5 of the Pitcairn Order 1970 after the 31st day of December 2000	certified in writing by the [Attorney General] to be a true and correct copy of the original ordinance duly made on the date shown thereon
[ordinances made by the Governor under section 36 the Constitution of Pitcairn	certified in writing by the Attorney General to be a of true and correct copy of the original ordinance duly made on the date shown thereon]
subsidiary legislation made under any ordinance	certified in writing by the [Attorney General] to be a true and correct copy of the original subsidiary legislation

(Amended by Ordinance No. 4 of 2010)

Certificate to be
conclusive evidence
of facts stated etc.

3. A certificate in writing purporting to be made by the [Attorney General] for the purposes of section 2 that a copy of the Revised Edition of the Laws 1971, 1985 or 2001, any ordinance made by the Governor under section 5 of the Pitcairn Order 1970 after the 31st day of December 2000[, any ordinance made by the Governor under section 36 of the Constitution of Pitcairn] or any subsidiary legislation made under any ordinance is a true and correct copy of the original thereof shall be conclusive evidence without further proof of the facts stated therein and of the due making of the certificate by the [Attorney General] and those facts and the making of the certificate shall not be called into question in any court in any proceedings.

(Amended by Ordinance No. 4 of 2010)

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2010

CHAPTER VII

PRISONS ORDINANCE

An ordinance to make provisions for prisons

[1 April 2001]

Ordinance:
No. 5 of 1999
No. 11 of 2002
No. 4 of 2010

1. This ordinance may be cited as the Prisons Ordinance.

Citation.

[2. The Governor may by order declare that any place or building in the Islands, or in any other place where a court established under [section 43(4) of the Constitution of Pitcairn] may sit, shall be a prison, or that any place or building shall be part of a prison, although such place or building may be locally separate from such prison.]

Governor may declare prisons.

**(Replaced by Ordinance No. 11 of 2002)
(Amended by Ordinance No. 4 of 2010)**

3. Pending the declaration of a prison under section 1 any place or building which has been used, or is at the commencement of this ordinance being used, as a place of detention for persons in custody in consequence of arrest or the order of a court, may continue to be so used and shall be deemed, unless the Governor otherwise directs, to be a place of lawful custody in respect of any period whether before or after the commencement of this ordinance and while being so used shall be deemed to be a prison.

Temporary arrangements.

4.—(1) Any judgment of imprisonment or warrant or order for the remand in custody or the committal to prison of any person, given or issued by any Court, Judge or Magistrate in the Islands, may be executed by imprisonment in any prison, anything in such judgment, warrant or order to the contrary notwithstanding.

Judgment may be executed in any prison.

(2) Persons arrested in execution of a warrant of arrest or without warrant may be detained in a prison until they are brought before a Magistrate.

5.—(1) The Governor may appoint a person to be a Superintendent and to have the direction and management of all or any of the prisons in the Islands. The Superintendent shall be responsible for the well-being and proper treatment of prisoners and for carrying out any regulations made under

Management of prisons.

this ordinance.

(2) The Governor may appoint persons to act as prison officers. Every police officer shall be a prison officer *ex officio*.

Treatment of
prisoners.

6.—(1) Male and female prisoners shall be confined separately in any prison or in separate prisons. Female prisoners shall be segregated from male prisoners at all times and shall be managed and supervised only by a female prison officer.

(2) Prisoners shall receive suitable and adequate bedding, food and drink and shall be allowed out of prison for not less than one hour per day for exercise and also, if necessary, for meals.

(3) Any written representations from prisoners about their treatment whilst in lawful custody shall be promptly brought to the attention of the Governor.

Legal custody.

7. A prisoner shall be deemed to be in legal custody whenever he or she is in a prison or being taken to or from any prison in which he or she may lawfully be confined or whenever he or she is beyond the limits of any such prison in the custody or under the control of a prison officer,

Regulations.

8.—(1) The Governor may make regulations for the effective administration of this ordinance and for the good management and government of prisons and the discipline and safe custody of prisoners both when within a prison and when outside a prison for any purpose.

(2) Regulations made under this section may provide that contravention of or failure to comply with any such regulations shall be an offence and may prescribe penalties for such offences not exceeding imprisonment for three months or a fine of two hundred dollars or both such fine and imprisonment.

**PITCAIRN, HENDERSON, DUCIE & OENO
ISLANDS**

ORDER DECLARING PRISON

In exercise of the powers conferred by section 2 of the Prisons Ordinance, I hereby declare that the land and buildings described in the Schedule hereto shall be a prison.

Made this 19th day of August 2016

Jonathan Sinclair
Governor

SCHEDULE

All that land comprising 1370 square metres more or less being Section No. 76 Block 1, Adamstown, Pitcairn Island situate at Coffee Valley and registered in the ownership of the Land Court

**PITCAIRN, HENDERSON, DUCIE & OENO
ISLANDS**

ORDER DECLARING PRISON

IN EXERCISE of the powers conferred by section 2 of the Prisons Ordinance (2001 Revised Edition cap.7)

I HEREBY DECLARE that the land and buildings described in the Schedule hereto shall be a prison.

Made this 18th day of December 2002

L.S.

M. Forbes
Acting Governor

SCHEDULE

Mt. Eden Prison
Newmarket
Auckland
New Zealand

PITCAIRN, HENDERSON, DUCIE AND OENO
ISLANDS

PRISONS REGULATIONS

Made by the Governor in exercise of the powers conferred by section 8 of the Prisons Ordinance (cap. 7)

[3 July 2003]

PART I—PRELIMINARY

1. These regulations may be cited as the Prisons Regulations.

Citation and commencement

2. In these regulations—

Interpretation

adjudged term means the length of imprisonment by a Court on passing sentence and, where it passes two or more sentences of imprisonment to be served consecutively by a prisoner, means the aggregate length of all those sentences;

Committee means the Visiting Committee established under Part VII;

Medical Officer, in relation to prisons, means a medical practitioner or other health professional appointed by the Governor for the purposes of these regulations;

ordinance means the Prisons Ordinance;

cap. 7

Pitcairn Court has the same meaning it bears in the Judicature Amendment Ordinance;

cap.38

prison means any place declared pursuant to section 2 of the ordinance to be a prison for the confinement in the Islands of prisoners sentenced by any Pitcairn Court;

sentence means the sentence of imprisonment being served in the Islands by a prisoner pursuant to an order of a Pitcairn Court made upon his or her conviction for a criminal offence, and includes any such sentence being served in default of payment of a fine or other monetary penalty imposed by the court upon his or her conviction;

Superintendent means the Superintendent of Prisons appointed in accordance with section 5 of the ordinance;

unconvicted prisoner means a prisoner awaiting a trial, a prisoner on remand, a prisoner committed for contempt of court, a prisoner convicted but not sentenced or a prisoner under lawful temporary detention without charge but does not include a

prisoner detained for an indeterminate term at the pleasure of the Governor and **convicted prisoner** shall be construed accordingly.

Application

3. These regulations shall apply for the good management and governance of any prison, the discipline and safe custody of prisoners both within and outside any prison and generally for the implementation of the ordinance.

Official Visitors

4. The Chief Justice and other Judges of the Supreme Court, the Governor or his or her nominated representative, every Magistrate and the Members of the Island Council shall be official visitors to all prisons.

Release

5.—(1) In any sentence of imprisonment the word **month** shall, unless the contrary is expressed, be construed as meaning a calendar month.

(2) A prisoner whose sentence expires on the Sabbath, Christmas Day, New Year's Day, the Sovereign's Birthday or Bounty Day shall be discharged on the preceding day.

Death

6. The Superintendent of Prisons shall give immediate notice of the death of any prisoner to the Registrar of the Magistrate's Court, and a Magistrate shall hold an inquiry thereon pursuant to section 55 of the Justice Ordinance as though the death were not due to natural causes.

cap. 3

Sickness

7. If a certificate signed by the Medical Officer is delivered to the Superintendent of Prisons stating that the removal of a prisoner for medical treatment is necessary, the prisoner shall be so removed after notification to the Island Magistrate and the Governor or his or her nominated representative.

PART II—OFFENCES

Escape

8. Any prisoner who escapes or is unlawfully absent from a prison, or who escapes from or leaves any prison officer under whose charge he or she may be shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding \$200.00 or both.

Aiding escape

9. Any person who—

- (i) aids a prisoner in escaping or attempting to escape from prison; or
- (ii) conveys anything into a prison or to a prisoner with intent to facilitate the escape of any prisoner; or
- (iii) places anything outside a prison with a view to its coming into the possession of a prisoner; or

(iv) harbours or conceals or assists in harbouring or concealing any prisoner shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding \$200.00 or both.

10. Any prison officer who knowingly and wilfully allows a prisoner to escape shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding \$200.00 or both.

Allowing escape

11. Any person who unlawfully conveys or attempts to convey into a prison or to a prisoner any article shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding \$200.00 or both.

Forbidden articles

12. Where any person sentenced to imprisonment is unlawfully at large during the period for which he or she is liable to be detained in pursuance of a sentence, no account shall be taken, in calculating the period for which he or she is liable to be so detained, of the period of being unlawfully at large.

Unlawful absence

13. Any person who resists or assaults or aids or incites any other person to resist or assault any prison officer in the execution of his or her duty shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding \$200.00 or both.

Violence

PART III—RELEASE OF YOUNG PERSONS

14. The Governor may release on conditional licence any prisoner serving a term of imprisonment who was under twenty-one years of age at the commencement of his or her sentence:

Young prisoners

Provided that—

- (a) such licence shall not have effect until the prisoner has become eligible for parole under the Parole Ordinance;
- (b) a person so licensed shall until the expiration of his or her sentence be under the supervision of another person who shall be specified in the licence, and shall comply with such requirements as may be stated in the licence;
- (c) the Governor may at any time vary or cancel any requirement stated in such licence;
- (d) if the Governor is satisfied that a person so licensed has failed to comply with any requirement specified in the licence, such person may be recalled and detained in a prison until the expiration of the

cap.34

sentence or his or her release on parole.

PART IV – GENERAL PROVISIONS FOR ADMINISTRATION OF PRISONS

Admission, search
and briefing of
prisoners

15.—(1) Immediately upon the admission of a prisoner into a prison, the Superintendent shall cause to be entered—

- (a) in the Prisoners Admission Book the name of the prisoner, whether he or she is convicted, and, if so, the date of commencement and expiration of the sentence, the age, height, weight and other details relevant to the identification of the prisoner;
- (b) in the Reconviction Book the name of every prisoner admitted into prison on a second or subsequent conviction; and
- (c) in the Prisoners' Property Book any property found upon the prisoner at the time of admission into prison.

(2) Immediately upon the admission of a prisoner into prison the prisoner shall be searched by a prison officer of the same gender as the prisoner concerned, in as seemly a manner (out of sight of other prisoners) as is appropriate for the discovery of anything concealed.

(3) Every prisoner shall be provided, within 24 hours of admission into prison, with sufficient information about these regulations and any other matters which it is necessary for him or her to know, including the proper method of making requests and complaints.

(4) The Superintendent may require that any prisoner admitted into prison be photographed or fingerprinted or both.

(5) A copy of these regulations shall be made available to any prisoner who requests it.

Classification
and separation of
prisoners

16.—(1) The Superintendent shall, at intervals of not more than three months, assess prisoners according to their age, temperament and record, with a view to classifying them in accordance with the security ratings set out in the First Schedule.

(2) In pursuance of subregulation (1), the Superintendent shall keep, maintain and make available for inspection by the Governor or the Committee at their request a Prisoners Classification Book.

(3) As far as reasonably possible, unconvicted prisoners shall be kept apart from convicted prisoners, unless any unconvicted prisoner consents to associating with convicted prisoners.

Female prisoners

17.—(1) Female prisoners shall be kept entirely separate

from male prisoners.

(2) The Superintendent may, subject to any conditions he or she thinks fit, permit a female prisoner to nurse or tend her infant child in prison, in which case everything necessary for the child's maintenance and care shall be provided there.

18.—(1) For the encouragement of the good conduct, industry and rehabilitation of prisoners the Superintendent shall, subject to the approval of the Governor, establish a system of privileges for the prison, including schemes for the employment of prisoners.

Privileges

(2) The Governor shall determine how money earned under any approved scheme for the employment of prisoners shall be used, including the percentage payable to prisoners participating in the scheme.

19.—(1) The Superintendent may, subject to any conditions he sees fit to impose, authorise the temporary unsupervised release of a convicted prisoner, to enable him or her to engage in employment, to receive training, or to participate in any special activity, which would be of assistance in the prisoner's transition to freedom.

Temporary release

(2) Subregulation (1) shall apply to any prisoner serving an adjudged sentence of 9 months or more.

- (a) if the prisoner has served at least fifty percent of his adjudged sentence and has demonstrated satisfactory behaviour as a prisoner; and he or she has obtained or arranged, as the case may be, paid employment, self employment, training, or a special activity, which is consistent with his or her being required to spend evenings and nights at the prison; and the prisoner has demonstrated that such employment, training or special activity would assist in his or her rehabilitation; or

- (b) otherwise at the discretion of the Superintendent .

(3) Subregulation (1) shall also apply to any convicted prisoner or class of convicted prisoners exempted by order of the Governor in the public interest.

(4) Any unauthorised absence by any prisoner from any employment, training or special activity permitted under this regulation, may lead to the immediate withdrawal of such prisoner's temporary release privileges.

(5) During any period of temporary release under subregulation (1), a prisoner shall return to prison immediately at the conclusion of the session of work, training or special activity, for which such release is authorised under this

regulation.

(6) The Governor shall determine how any money earned by a prisoner under this regulation shall be disposed of, including the proportions to be applied towards his or her upkeep, retained to be available for his or her other benefit upon release and be available for personal use.

(7) A prisoner temporarily released under subregulation (1) may be recalled to prison at any time, whether the conditions of release have been broken or not.

Requests by prisoners
to see certain
authorities

20.—(1) Every request by a prisoner to see the Superintendent or the Committee shall be recorded in the Application Book by the prison officer to whom it is made and promptly communicated to the Superintendent.

(2) The Superintendent, as soon as practicable after being informed of a request under subregulation (1), shall—

- (a) if the request is addressed to the Superintendent, be available to hear it on any day other than Saturday, Sunday, or a public holiday;
- (b) if the request is addressed to the Committee, inform a member of the Committee of the request.

Religious ministrations

21.—(1) A prisoner shall be treated as being of the religious denomination (if any) stated on his or her record upon admission into prison or otherwise disclosed to a prison officer.

(2) The Superintendent shall approve the choice by any recognised religious denomination of a pastor to a prison or any minister of religion and shall also approve the nomination of any substitute for the pastor or minister if absent.

(3) A pastor or minister of religion may—

- (a) interview every prisoner individually as soon as practicable after the prisoner's admission into and release from prison;
- (b) unless other arrangements are made, read the burial service at the funeral of any prisoner of that denomination who dies in prison;
- (c) visit prisoners of that denomination as regularly as practicable; and
- (d) conduct divine service for the prisoners of that denomination at such intervals as may be approved by the Superintendent and on the special days of religious observance pertaining to the denomination.

(4) Where a prisoner belongs to a denomination for which no minister has been appointed, the Superintendent shall do what he reasonably can, if so requested by the prisoner, to arrange that he or she be visited by a minister or representative of that denomination.

(5) The Superintendent shall not require prisoners to do non-essential work on the Sabbath Day.

(6) So far as is reasonably practicable, there shall be available for the personal use of every prisoner such religious books as are approved by the Superintendent for use in prisons.

22.—(1) The Medical Officer shall have the responsibility for the care of the mental and physical (including dental) health of the prisoners.

Illness and death of
prisoners

(2) Every request by a prisoner to see the Medical Officer shall be recorded in the Medical Book by the prison officer to whom it is made and promptly communicated to the Medical Officer.

(3) The Medical Officer may by any means available call another medical or dental practitioner into consultation, and shall do so, if time permits, before instituting any significant treatment.

(4) If an unconvicted prisoner desires the attendance of a private medical or dental practitioner and will pay any expense incurred, the Superintendent shall, if satisfied that there are reasonable grounds for the request, allow the prisoner to be attended by such medical practitioner or dentist.

(5) The Medical Officer shall report in writing immediately to the Superintendent in the case of any prisoner—

- (a) suffering from a contagious disease; or
- (b) whose health is likely to be injuriously affected by continued imprisonment or any conditions of imprisonment,

and the Superintendent shall thereupon without delay send a copy of the report to the Governor with his recommendation as to what should be done.

(6) The Medical Officer shall report in writing to the Superintendent in the case of any prisoner whose mental condition appears to require that special arrangements be made for the prisoner's supervision or care and the Superintendent may approve any such arrangements.

(7) The Medical Officer shall inform the Superintendent if he or she suspects any prisoner of having suicidal intentions and such prisoner shall thereupon be placed under special observation.

(8) If a prisoner dies, becomes seriously ill, sustains any severe injury or is removed to a hospital on account of mental or physical disorder, the Superintendent shall, if the address concerned is known, inform the prisoner's spouse or next of kin and also any person who the prisoner may reasonably have asked should be informed.

Clothing of prisoners

23.—(1) An unconvicted prisoner may wear his or her own clothing and arrange for it to be supplied from outside the prison, if such clothing is adequate, clean and tidy, but this regulation shall otherwise apply to him or her as to a convicted prisoner.

(2) A convicted prisoner shall be provided with clothing adequate for the climate and consistent with good health in accordance with a scale approved by the Superintendent.

(3) The clothing referred to in subregulation (2) includes protective clothing for use at work where it is needed.

(4) Subject to subregulation (5), a convicted prisoner shall wear only the clothing provided under this regulation unless the Superintendent directs otherwise.

(5) A prisoner required to be taken in custody to any court shall wear his or her own clothing or clothing different from that worn in prison.

Food

24.—(1) Subject to any directions of the Governor, an unconvicted prisoner may arrange at his own expense for food to be supplied to him or her from outside the prison.

(2) Subject to any directions of the Governor, or as advised by the Medical Officer, no convicted prisoner shall—

(a) be allowed to have any food other than that ordinarily provided;

(b) be given less food than is ordinarily provided:

Provided that the Superintendent in his discretion may permit a prisoner to receive prepared food.

(3) The food provided shall be wholesome, nutritious, well prepared and served, reasonably varied and sufficient in quantity.

(4) The Medical Officer shall whenever practicable inspect the food both before and after it is prepared, and shall report any deficiency or defect to the Superintendent.

Alcohol and tobacco

25.—(1) No prisoner shall be allowed to have any intoxicating liquor except under a written order of the Medical Officer specifying the quantity permitted and the name of the prisoner.

(2) No prisoner shall be allowed to smoke or have any tobacco except as a privilege under regulation 18 and in accordance with any directions of the Superintendent.

Accommodation and hygiene

26.—(1) No room or cell shall be used as sleeping accommodation unless certified by the Governor—

(a) as being capable of accommodating a specified maximum number of prisoners who may sleep or be confined at one time therein, which number shall not be exceeded without the authority of the

Governor; and

- (b) as being otherwise suitable for the confinement of any prisoner.
- (2) Each prisoner shall be provided with a separate bed and with separate bedding adequate for warmth and health.
- (3) Every prisoner shall be provided with toilet articles necessary for his or her health and cleanliness, which shall be replaced as necessary.

(4) Every prisoner shall be required to wash at proper times, have a shower on admission into prison and thereafter at regular intervals consistent with his or her personal hygiene and, in the case of a male prisoner not exempted by the Superintendent, to shave or be shaved daily and to have his hair cut as may be necessary for neatness:

Provided that a male prisoner shall not be required to have his hair cut or any beard or moustache usually worn by him shaved off if he keeps the same tidy, unless the Medical Officer directs this to be done for the sake of health or cleanliness.

(5) A female prisoner's hair shall not be cut without her consent except where the Medical Officer certifies in writing that this is necessary for the sake of her health or cleanliness.

27.—(1) A prison officer shall have the power to search—

Power of search

- (a) any prisoner; or
 - (b) the cell occupied by any prisoner,
- for the purpose of ascertaining whether a prisoner has possession of any prohibited or unauthorised article.

(2) A prison officer searching a prisoner or cell by virtue of this regulation—

- (a) shall have every regard for decency and if conducting a strip search shall do so out of sight of other prisoners;
- (b) may use reasonable force where necessary; and
- (c) may seize and detain any prohibited or unauthorised article found on the prisoner or in his or her cell during the course of the search.

(3) In this regulation prohibited or unauthorised article, in relation to a prison, means any article which the prisoner is not authorised by these regulations or by the Superintendent to have in his or her possession or, as the case may be, in his or her possession in any particular part of the prison.

(4) The Superintendent may direct the Medical Officer, or deputy being of the same gender as the prisoner concerned,—

- (a) to conduct, with or without the consent of the prisoner, an intrusive bodily search of him or her for the purpose of discovering any prohibited or unauthorised article; and

- (b) to obtain samples from a prisoner of such bodily samples as may be necessary to detect illness or drug abuse:

Provided that no sample other than urine or saliva may be obtained from the prisoner without his or her consent.

(5) Every search of a person authorised by this regulation shall be conducted by a prison officer of the same gender as the prisoner.

[Rules for strip searches.

27A. On any occasion when a strip search is conducted of a prisoner that search shall be conducted in accordance with the provisions of the Second Schedule.]

(Inserted by Regulations 13.10.04)

Daily exercise

28.—(1) Subject to section 6(2) of the ordinance, a prisoner not engaged in outdoor work shall be given exercise in the open air for not less than one hour each day, if health permits:

Provided that exercise consisting of physical training may be given indoors instead of in the open air.

(2) The period of exercise referred to in subregulation (1) may be reduced in special circumstances by the Superintendent.

(3) The Medical Officer shall decide upon the fitness of every prisoner for exercise and physical training and may excuse a prisoner from or modify any activity on medical grounds.

Work

29.—(1) A convicted prisoner may be required to do useful work for not more than the whole of the morning on any weekday and arrangements shall be made to allow prisoners to work where possible outside the cells and in association with one another.

(2) The Medical Officer may excuse a prisoner from work on medical grounds, and no prisoner shall be set to do work which is not of a class for which he or she has been passed by the Medical Officer as being fit.

(3) No prisoner shall work in the service of another prisoner or a prison officer, or for the private benefit of any person, without the authority of the Governor.

(4) An unconvicted prisoner may, if he or she wishes, with the approval of the Superintendent, perform work as if he or she were a convicted prisoner.

(5) Prisoners may be paid for their work at rates approved by the Governor, either generally or in relation to particular cases.

(6) Every prisoner shall be searched immediately on return from outside work.

(7) Prisoners at work outside the prison shall at all times be under supervision of a prison officer or of a person approved

by the Superintendent as being responsible for the supervision of any prisoner.

(8) No prisoner classified as a Category A or B prisoner in the Schedule shall be permitted to work outside the prison except with the consent of the Governor.

30.—(1) Every prisoner able to benefit from any educational facilities at a prison shall be encouraged to do so.

Education and social welfare

(2) Programmes of daytime and evening educational classes may be arranged and, subject to the directions of the Superintendent, reasonable facilities may be afforded to prisoners who wish to do so at their own expense to improve their education by correspondence courses or private study, or to practise handicrafts in their spare time.

(3) Special attention shall be paid to the education of illiterate prisoners and if necessary they shall be taught to read and write within the hours normally allotted to work.

(4) Subject to the direction of the Superintendent, every prisoner shall be allowed to have library books and exchange them at the Public Library.

31.—(1) The Superintendent shall endeavour to facilitate such relations between a prisoner and his or her family as are desirable in the best interests of both.

Outside contacts and aftercare

(2) A prisoner shall be encouraged and assisted to establish and maintain such relations with persons and agencies in the prison as may, in the opinion of the Superintendent, best promote the interests of his or her family and his or her own social rehabilitation.

(3) From the beginning of a prisoner's sentence, consideration shall be given, whenever possible, in consultation with the appropriate agencies, to the prisoner's future and the assistance to be given to him or her after release.

32.—(1) The Superintendent may with a view to securing discipline or the prevention of crime or in the interests of any persons impose restrictions, either generally or in a particular case, upon the communications to be permitted between a prisoner and other persons.

Letters and visits

(2) Except as provided by this regulation a prisoner shall not be permitted to communicate with any person outside the prison, or that person with the prisoner, without the leave of the Superintendent.

(3) Except as provided by this regulation every letter or communication to and from a prisoner may be read or examined by the Superintendent or a prison officer deputed by him or her, and the Superintendent may, at his or her discretion, stop any letter or communication on the ground

that its contents are objectionable or could lead to a breach of prison security.

(4) Every visit to a prisoner shall take place within the sight and, except as provided by regulation 33, the hearing of a prison officer unless the Superintendent otherwise directs.

(5) The Superintendent may give directions, generally or in relation to any visit or class of visit, concerning the days and times when prisoners may be visited.

(6) An unconvicted prisoner may send and receive as many letters and receive as many visits as he or she wishes within such limits and subject to such conditions as the Superintendent may direct either generally or in a particular case.

(7) A convicted prisoner shall be entitled—

- (a) to send and receive a letter on admission into prison and thereafter once a week; and
- (b) to receive a visit every Sunday between the hours of 1pm and 4pm.

(8) The Superintendent may allow a prisoner an additional letter or visit where necessary for the welfare of the prisoner or his or her family.

(9) The Superintendent may allow a prisoner entitled to a visit to send and receive a letter instead.

(10) The Superintendent may defer the right of a prisoner to a visit until the expiration of any period of cellular confinement.

(11) The Committee may allow a prisoner an additional letter or visit in special circumstances and may direct that a visit may extend beyond the normal duration.

(12) The Superintendent may allow additional letters and visits in relation to any class of prisoner.

(13) A prisoner shall not be entitled under this regulation to receive a visit from any person other than a relative or friend except with the leave of the Superintendent.

33.—(1) A police officer may, with the consent of the Superintendent, interview any prisoner willing to see him.

(2) A person detained in prison in default of payment of a sum of money may communicate with and be visited at any reasonable time on a weekday by any relative or friend to arrange for payment in order to secure his release from prison.

(3) The legal adviser of a prisoner in any legal proceedings, civil or criminal, to which the prisoner is a party shall be afforded reasonable facilities for interviewing him or her in connection with those proceedings out of hearing but in the sight of a prison officer.

(4) A prisoner's legal adviser may, with the leave of the

Superintendent, interview the prisoner in connection with any legal business in the sight and hearing of a prison officer.

(5) A prisoner who is a party to any legal proceedings may correspond with his legal adviser in connection with the proceedings and unless the Superintendent has reason to suppose that any such correspondence contains matter not relating to the proceedings it shall not be read or stopped under regulation 32 (3).

(6) A prisoner shall on request be provided with any writing materials necessary for the purpose of subregulation (5).

(7) Subject to any directions given in the particular case by the Superintendent, a medical practitioner selected by or on behalf of a prisoner who is a party to legal proceedings shall be afforded reasonable facilities for examining him or her in connection with the proceedings and may do so out of hearing but in the sight of a prison officer who shall be of the same gender as the prisoner.

(8) Subject to any directions of the Superintendent, a prisoner may correspond with a lawyer for the purpose of obtaining legal advice concerning any cause of action in relation to which the prisoner may become a party to civil proceedings or for the purpose of instructing the lawyer to issue such proceedings.

34.—(1) A person being taken to or from a prison in custody shall be exposed as little as possible to public observation and proper care shall be taken to protect him or her from curiosity and insult.

Custody outside
prison

(2) A prisoner required to be taken in custody anywhere outside a prison shall be kept in the custody of a prison officer.

35.—(1) Subject to any directions of the Superintendent, an unconvicted prisoner may be supplied at his or her own expense with books, newspapers, writing material and any other means of occupation except any that appear objectionable to the Visiting Committee or, pending consideration by them, to the Superintendent.

Prisoners' property

(2) Anything other than cash or other property which a prisoner is allowed to retain shall be taken into the Superintendent's custody. An inventory of the prisoner's property shall be kept and he or she shall be required to sign it after having a proper opportunity to see that it is correct.

(3) Any cash which a prisoner has at a prison shall be paid to the Government Treasurer for safe keeping during the term of imprisonment or, if the prisoner so requests, to the spouse or dependants of the prisoner.

(4) Any article belonging to a prisoner which remains

unclaimed for a period of more than three years after he or she leaves prison or dies may be sold or otherwise disposed of and the nett proceeds of any sale shall be paid into the general revenues of the Islands.

(5) The Superintendent may confiscate any unauthorised article found in the possession of a prisoner after his or her admission into prison or concealed or deposited anywhere within the prison.

Money and articles
received by post

36.—(1) Any money or other article (other than a letter or other communication) sent to a convicted prisoner through the post office shall be dealt with in accordance with the provisions of this regulation, and the prisoner shall be informed of the manner in which it is dealt with.

(2) Any cash shall, at the discretion of the Superintendent be—

- (a) dealt with in accordance with regulation 35(3); or
- (b) returned to the sender; or
- (c) in a case where the sender's name and address are not known paid into the general revenue of the Islands:

Provided that in relation to a prisoner committed to prison in default of payment of any sum of money, the prisoner shall be informed of the cash and, unless he or she objects to it being so applied, it shall be applied in or towards the satisfaction of the amount due to the judgment creditor.

(3) Any security for money shall at the discretion of the Superintendent—

- (a) be delivered to the prisoner or placed with his or her property at the prison; or
- (b) be returned to the sender; or
- (c) in a case where the sender's name and address are not known or the article is of such a nature that it would be unreasonable to return it be sold or otherwise disposed of and the nett proceeds of any sale applied in accordance with subregulation (2).

PART V—DISCIPLINE

Removal from
association

37.—(1) Where it appears desirable for the maintenance of good order and discipline or in his or her own interests that a prisoner should not associate with other prisoners, either generally or for particular purposes, the Superintendent may arrange for such prisoner's removal from association accordingly.

(2) A prisoner shall not be removed under this regulation for a period of more than 24 hours without the authority of a member of the Committee. An authority given under this

subregulation shall be for a period not exceeding one month but may be renewed from month to month.

(3) The Superintendent may arrange at his or her discretion for such a prisoner to resume association with other prisoners and shall do so if in any case the Medical Officer so advises on medical grounds.

38.—(1) A prison officer in dealing with a prisoner shall not use force unnecessarily and when the application of force to a prisoner is necessary no more force than is necessary shall be used.

Use of force

(2) No prison officer shall act deliberately in a manner calculated to provoke a prisoner towards indiscipline.

39. The Superintendent may order a refractory or violent prisoner to be confined temporarily in a special cell (if available) but a prisoner shall not be so confined as a punishment or after he or she ceases to be refractory or violent.

Temporary confinement

40.—(1) The Superintendent may order a prisoner to be put under restraint where this is necessary to prevent the prisoner from causing injury, damaging property or creating a disturbance.

Restraints

(2) Notice of such an order shall be given without delay to a member of the Committee and to the Medical Officer.

(3) On receipt of the notice the Medical Officer shall inform the Superintendent whether or not he or she concurs in the order. The Superintendent shall give effect to any recommendations which the Medical Officer may make.

(4) A prisoner shall not be kept under restraint longer than is necessary nor be so kept for longer than 24 hours without a direction in writing given by a member of the Committee. Such a direction shall state the grounds for the restraint and the time during which it may continue.

(5) Particulars of every case of restraint under the foregoing provisions of this regulation shall be forthwith recorded.

(6) Except as provided by this regulation no prisoner shall be kept under restraint otherwise than for safe custody during removal or on medical grounds by direction of the Medical Officer. No prisoner shall be put under restraint as a punishment.

41. A prisoner commits an offence against discipline if he or she

Offences against discipline

- (a) mutinies or incites another prisoner to mutiny;
- (b) commits an assault;
- (c) detains any person against his or her will;
- (d) denies access to any part of the prison to any prisoner

- officer;
- (e) fights with any person;
- (f) intentionally endangers the health or personal effects of others or by his or her conduct is reckless whether such health or personal safety is endangered;
- (g) intentionally obstructs an officer in the execution of his or her duty;
- (h) escapes from prison or legal custody;
- (i) fails
 - (i) to return to prison when he or she should return after being temporarily released under regulation 19;
 - (ii) to comply with any condition upon which he or she is so released;
- (j) has in his or her possession—
 - (i) any prohibited article; or
 - (ii) a greater quantity of any article than he or she is authorised to have;
- (k) sells or delivers to any person any prohibited article;
- (l) sells or without permission delivers to any person any article which he or she is allowed to have only for personal use;
- (m) takes improperly any article belonging to any other person or to the prison;
- (n) intentionally or recklessly sets fire to any part of the prison or any other property, whether or not his or her own;
- (o) destroys or damages any part of the prison or any other property other than his or her own;
- (p) is absent from any place where he or she is required to be or is present at any place where he or she is not authorised to be;
- (q) is disrespectful to the Superintendent or to any prison officer or to any person visiting the prison;
- (r) uses threatening, abusive or insulting words or behaviour;
- (s) intentionally fails to work properly or, being required to work, refuses to do so;
- (t) disobeys any lawful order;
- (u) disobeys or fails to comply with any rule or regulation applying to him or her;
- (v) makes any false and malicious allegation against a prison officer;
- (w) repeatedly makes groundless complaints;
- (x) in any way offends against good order and discipline;
- (y) attempts to commit, or incites another prisoner to

commit, or assists another prisoner to commit, any of the foregoing disciplinary offences.

42.—(1) Where a prisoner is to be charged with an offence against discipline, the charge shall be laid as soon as possible and, save in exceptional circumstances, within 48 hours of the discovery of the offence.

Disciplinary charges

(2) A prisoner who is to be charged with an offence against discipline may be kept apart from other prisoners pending adjudication of the case.

(3) Every charge shall be inquired into by the Superintendent.

(4) Save in exceptional circumstances every charge shall be first inquired into not later than the next day, not being a Saturday, Sunday or public holiday, after it is laid.

43.—(1) Where a prisoner is charged with an offence against discipline, he or she shall be informed of the charge as soon as possible and, in any case, before the time when it is inquired into by the Superintendent.

Rights of prisoners charged

(2) At any enquiry into a charge against a prisoner, he or she shall be given a full opportunity of hearing what is alleged and of presenting his or her own case.

44.—(1) If the Superintendent finds a prisoner guilty of an offence against discipline, he or she may, subject to regulation 46, impose one or more of the following punishments—

Punishments

- (a) a caution;
- (b) forfeiture for a period not exceeding 28 days of any privileges under regulation 18;
- (c) exclusion from associated work for a period not exceeding 14 days;
- (d) stoppage of earnings for a period not exceeding 28 days;
- (e) cellular confinement for a period not exceeding 3 days;
- (f) in the case of an unconvicted prisoner, forfeiture for any period of the right under regulation 35(1) to have the articles there mentioned;
- (g) in the case of an unconvicted prisoner guilty of escaping or attempting to escape, forfeiture of the right to wear his or her own clothing under regulation 23(1).

(2) If a prisoner is found guilty of more than one offence, punishments may be ordered to run consecutively.

(3) In the case of an offence against discipline committed by a prisoner who was under the age of 21 years when it was committed, subregulation (1) shall have effect but—

- (a) the maximum period of forfeiture of privileges shall

be 14 days; and

- (b) the maximum period of stoppage of earnings shall be 14 days.

[Regulation 45 repealed by Prisons (Amendment) Regulations 2007 on 6 July 2007]

Particular
punishments

46.—(1) A punishment of stoppage of earnings may, instead of forfeiting all a prisoner's earnings for a specified period not exceeding 28 days, be expressed to forfeit a proportion (being not less than one half) of such earnings for that period.

(2) No punishment of cellular confinement shall be imposed unless the Medical Officer has certified that the prisoner is in a fit state of health to be so dealt with.

Suspension, remission
and mitigation of
punishments

47.—(1) Subject to any directions of the Governor, the power to impose a punishment (other than a caution) under this Part, shall include the power to suspend up to six months the operation of the punishment unless within the period of the suspension the prisoner commits another offence against discipline.

(2) Where a prisoner upon whom a suspended punishment is imposed commits another offence against discipline the Superintendent may—

- (a) direct that the suspended punishment take effect;
- (b) direct that it take effect subject to a specified reduction of its period or amount;
- (c) suspend the operation of the suspended punishment for a further period of up to six months; or
- (d) give no directions with respect to the suspended punishment.

(3) The Governor may quash any finding of guilt and may remit any punishment or mitigate it either by reducing it or by substituting another which is in his or her opinion less severe.

[Subsection 4 deleted by Prisons (Amendment) Regulations 2007 on 6 July 2007]

**PART VI—FUNCTIONS AND CONDUCT OF
PRISON OFFICERS**

General conduct of
prison officers

48.—(1) It shall be the duty of every prison officer to conform to these regulations, to assist and support the Superintendent in their observance and to obey the lawful instructions of the Superintendent.

(2) A prison officer shall inform the Superintendent promptly of any abuse or impropriety which comes to his or her knowledge.

Search of prison
officers

49. A prison officer shall submit to being searched in the prison by a person of the same gender if so required by the

Superintendent.

50.—(1) No prison officer shall take part in any business or pecuniary transaction with or on behalf of a prisoner without leave of the Superintendent.

Dealings with prisoners

(2) No prison officer shall without the knowledge of the Superintendent communicate with any person whom he knows to be a relative or friend of a prisoner.

51.—(1) No prison officer shall make directly or indirectly any unauthorised communication to a representative of the press or any other news media concerning matters that have become known to him or her in the course of duty.

Communications to the press etc.

(2) No prison officer shall without authority publish any matter or make any public pronouncement relating to the prison administration.

52. The Governor may approve a code of discipline which shall have effect in relation to the conduct of all prison officers.

Code of discipline

PART VII—VISITING COMMITTEE

53.—(1) For the purpose of exercising the functions conferred upon it by these regulations, there shall be a body to be known as the Visiting Committee which shall consist of a chairperson and no fewer than two or more than six other members appointed by the Governor.

Constitution and proceedings of Visiting Committee

(2) A person appointed to be a member of the Committee shall hold office for such term, not exceeding two years, as may be determined by the Governor at the time of appointment but any member shall be eligible for reappointment and may at any time resign his office by notice in writing to the Governor.

(3) At any meeting of the Committee any three members shall constitute a quorum.

(4) The chairperson shall preside at meetings of the Committee but in the event of his or her absence from any meeting the members present shall appoint any other member to preside at that meeting.

(5) No person interested in any contract for the supply of goods or services to a prison shall be a member of the Committee.

(6) The Committee shall meet at the prison once each month or, if it resolves for reasons specified in the resolution that less frequent meetings are sufficient, not fewer than eight times over a period of 12 months. A member unable to be present on the Island may, if necessary, attend any meeting by appropriate means of communication from beyond the Island if the Governor so approves.

(7) The proceedings of the Committee shall not be invalidated by any vacancy in the membership or any defect in the appointment of a member.

(8) Decisions of the Committee shall be reached by a majority of the members present and voting and, in the case of an equality of votes, the chairperson or member presiding shall have a casting vote.

(9) The Committee shall otherwise regulate its procedure as it thinks fit.

Duties of committee

54.—(1) The Committee shall satisfy itself as to the state of prisons and the treatment of prisoners and in particular it shall—

- (a) hear any complaint or request that a prisoner wishes to make to it or any member;
- (b) arrange for the food of the prisoners to be inspected by a member of the Committee at frequent intervals;
- (c) inquire into any report made to it that a prisoner's health, mental or physical, is likely to be injuriously affected by any conditions of imprisonment;
- (d) inquire into and report upon any matter into which the Governor may ask them to inquire;
- (e) direct the attention of the Superintendent to any matter which calls for consideration and report to the Governor on any matter expedient to report upon;
- (f) inform the Governor immediately of any abuse that comes to its knowledge.

(2) The Committee shall, in a case of any abuse or neglect by a prison officer of his or her functions involving any prisoner, immediately report the matter to the Superintendent who shall have power to suspend the officer until such time as an enquiry into the matter has been completed.

Visiting of prisons

55.—(1) The members of the Committee shall arrange a roster whereby at least one member visits a prison at least once in every three months.

(2) A member of the Committee shall have access to the records of any prisoner.

Annual report

56. The Committee shall make an annual report to the Governor at the end of each year concerning the state of prisons and their administration and including any recommendations it considers appropriate.

PART VIII—SUPPLEMENTARY

Control of access to and viewing of prisons

57.—(1) Any person entering or leaving a prison may be

stopped, examined and searched.

(2) The Superintendent may direct the removal from a prison of any person who does not leave upon being required to do so.

(3) No person outside a prison shall be permitted to view it unless authorised by the Superintendent.

(4) No person shall be permitted to take a photograph or make a sketch of the prison nor to communicate with a prisoner unless authorised by the Superintendent.

58. Where by these regulations powers and duties are conferred or imposed upon the Superintendent he or she may, unless expressly prohibited from so doing, depute any subordinate officer to exercise such powers and perform such duties on his or her behalf subject to such conditions, exceptions and qualifications as may be prescribed.

Delegation by
Superintendent

[FIRST] SCHEDULE
SECURITY CLASSIFICATION

(Regulation (16)(1))

Category A

A prisoner who must be held in accommodation to the highest level of security available and whose escape would be a danger to the public or the police.

Category B

A prisoner who needs to be held in accommodation to the highest level of security available but whose escape should be prevented if possible.

Category C

A prisoner who does not have the resources or inclination to escape but who cannot be held in open accommodation.

Category D

A prisoner who is not considered to be a security risk and who can serve his or her sentence in open accommodation.

**[SECOND SCHEDULE
RULES GOVERNING STRIP SEARCH OF
PRISONERS**

(Regulation 27A)

- | | |
|--|-----------------------------|
| 1. A strip search means search where the person conducting the search may require the person being searched to remove, raise, lower or open all or any of his or her clothing. | Definition |
| 2. For the purpose of carrying out a strip search the prisoner may be required to:
open his or her mouth
show the open palms of his or her hands
lift or ruffle his or her hair
show the soles of his or her feet
raise his or her arms to show his or her armpits
with his or her legs apart bend his or her knees. | Powers of searching officer |
| 3. The person conducting the search may make a visual examination and, if necessary, may use an illuminating or magnifying instrument to inspect the mouth, nose and ears but may not insert it into such place. No other body cavity may be searched | Means of search |
| 4. A strip search may be made only
(i) for the purpose of detecting any unauthorised item; and
(ii) if it is necessary, in place of a scanner or rubdown search, in the particular circumstances involved. | Authority for strip search |
| 5. Subject to paragraph 3, a prisoner must be required to undergo a strip search
(i) when first admitted to a prison;
(ii) immediately before transfer to another prison
(iii) on being received in a prison on transfer from another prison. | Mandatory searches |
| 6. Subject to paragraph 3, a prisoner may be required to undergo a strip search
(i) when any prison officer has reasonable grounds to believe that the prisoner has any unauthorised item in his or her possession;
(ii) when any prisoner is locked in a cell under report or punishment, or for observation;
(iii) on return of the prisoner to the prison from work or otherwise;
(iv) on return from any part of the prison that is not supervised;
(v) immediately before the prisoner leaves the prison;
(vi) at any time while the prisoner is being transferred to another prison;
(vii) at any time while the prisoner is away from the prison in the custody of a prison officer;
(viii) immediately before the prisoner is brought before any officer of the prison for any disciplinary hearing or appeal;
(ix) immediately before and/or after any person visits the prisoner. | Discretionary searches |
| 7. Every strip search must comply with the following conditions —
(i) it must be carried out by a prison officer of the same gender as the person being searched;
(ii) a second officer, who may be a police officer or an authorised security officer must be present as the witnessing officer; | Conditions of strip search |

- (iii) the searching officer shall be visible to the witness at all times;
 - (iv) the search shall not be carried out in the view of any person of the opposite gender;
 - (v) the search shall not be carried out in the view of another prisoner.
- Search procedure 8. The procedure for any strip search shall be as follows—
- (i) as each article of clothing is removed, lowered, raised or opened by the person being searched, it shall be checked to establish whether or not it contains an unauthorised item and it may be searched;
 - (ii) the person being searched is not to be required to have more than half of his or her body naked, unless good reason so requires;
 - (iii) as each article of clothing is removed and when an area is unclothed, a visual scan is to ensure whether or not any unauthorised article is disclosed;
 - (iv) any item carried by, or in the possession of, the prisoner may be searched.]

(Inserted by Regulations 13.10.04)

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

CHAPTER VIII

COMMISSIONS OF INQUIRY ORDINANCE

An ordinance to provide for Commissions of Inquiry

Ordinances:
No. 6 of 1999

1. This ordinance may be cited as the Commissions of Inquiry Ordinance.

Citation.

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

Interpretation.

“commission” means a commission of inquiry issued under this ordinance;

“commissioner” means a commissioner appointed under section 3;

“inquiry” means an inquiry held under this ordinance.

3.—(1) It shall be lawful for the Governor at any time to issue a commission appointing one or more commissioners and authorising such commissioners, or any quorum of them, to inquire into any such matter in which an inquiry would, in the opinion of the Governor, be for the public welfare.

Issue of commissions of inquiry.

(2) Each such commission shall specify the subject of inquiry and may, if there is more than one commissioner, direct which such commissioner shall be chairman; it shall direct where and when such inquiry shall be made and the report thereof rendered; it shall prescribe how such commission shall be executed and may direct whether the inquiry shall or shall not be held in public.

(3) In the absence of a direction to the contrary, the inquiry shall be held in public, but the commissioners shall nevertheless be entitled to exclude any particular person or persons for the preservation of order or for any other reason.

4.—(1) The Governor may, at any time, if he considers it advisable so to do, revoke or issue a commission amending a commission previously issued; without prejudice to the generality of the foregoing power, the Governor may by any such amending commission appoint an additional commissioner or commissioners, vary the designation of the chairman of the commissioners, or appoint a new commissioner in the place of any commissioner who is or becomes unable or unwilling to act or dies or is, in the opinion of the Governor, for any reason unsuitable to continue to

Power to appoint new commissioner and to revoke or amend commission.

serve as a commissioner.

(2) Where the Governor issues an amending commission under subsection (1), it shall not be necessary, unless in the amending commission the Governor otherwise directs, for the inquiry to be begun afresh and any proceedings which have taken place under or in pursuance of the commission before such amendment shall be deemed, for all the purposes of this ordinance, to be part of the proceedings taking place under or in pursuance of the commission as so amended.

Commissions not affected by change of Governor.

5. No commission shall lapse by reason of, or be otherwise affected by the death, absence or removal of the Governor who has issued the same.

Commissioner's oath of office.

6. It shall be the duty of each commissioner appointed under this ordinance to make and subscribe an oath or affirmation in Form 1 in the schedule hereto, which oath or affirmation may be taken before the Governor or before such person as the Governor may appoint.

Secretary of commission.

7. The Governor may appoint a secretary to attend the sittings of the commissioners, to record their proceedings and keep their papers, to summon witnesses and minute their testimony and generally to perform such duties connected with an inquiry as the commissioners may require.

Duties of commissioners.

8.—(1) It shall be the duty of the commissioners, after making and subscribing the oath or affirmation under section 6, to make a full, faithful and impartial inquiry into the matter into which they are commissioned to inquire and to continue such inquiry in accordance with the directions, if any, in the commission and also, if so required by the Governor, to furnish the Governor with a full record of the proceedings of such commission.

(2) The commissioners may, in their discretion, and shall, if so directed by the commission, include in their report recommendations as to any matter into which they are commissioned to inquire or any matter arising out of or connected with the inquiry.

Division of opinion of commissioners.

9. If in any case the commissioners are divided on any question that arises during the proceedings of or in relation to their inquiry, the divergent views of the commissioners and the reasons therefor shall be recorded in the proceedings of the inquiry and in the event of any equal division on any question requiring to be decided by the commissioners collectively, the chairman of the commissioners shall have a second or casting vote:

Provided that nothing in this section shall be construed as

preventing any commissioner from submitting to the Governor a minority report on any matter in regard to which he or she dissents from the views or conclusions of all or any of the other commissioners.

10. The commissioners may make such rules, not inconsistent with the provisions of this ordinance and the terms of the commission, for the conduct and management of the proceedings of the inquiry and specifying the hours and times and places for sittings as they may from time to time think fit; and they may from time to time adjourn for such time and to such place as they may think fit, subject to such provisions as aforesaid and to the terms of the commission.

Commissioners' powers to regulate proceedings.

11.—(1) Commissioners acting under this ordinance shall have the powers of the Magistrate's Court to summon witnesses, and to call for the production of books, plans and documents and to examine witnesses and parties concerned on oath.

Power to summons and examine.

(2) Where the commissioners consider it desirable for the purpose of avoiding expense or delay or for any other special reason, they may receive evidence by affidavit or administer interrogatories and require the person to whom the interrogatories are administered to make a full and true reply to such interrogation.

(3) Summonses for attendance of witnesses or other persons or the production of documents may be in Form 2 in the schedule hereto and shall be signed by one of the commissioners or by the secretary and oaths and affirmations may be administered by one of the commissioners or the secretary.

(4) No person giving evidence in the proceedings of any inquiry shall be compellable to incriminate himself or herself and every person shall, in respect of evidence so given, be entitled to all the privileges and immunities to which a witness giving evidence before the Supreme Court is entitled in respect of evidence given by him or her before that Court.

(5) Any person who shall without just cause fail to answer and comply with a summons issued under subsection (1) or having attended at the inquiry shall refuse to take the oath or make an affirmation or to answer any questions lawfully put to him or her or to answer interrogatories administered under subsection (2) shall be guilty of an offence punishable by a fine of one hundred dollars.

12.—(1) Commissioners shall not be entitled to any remuneration, unless sanctioned by the Governor, beyond the actual expenses incurred in holding the inquiry but the

Remuneration of commissioners and secretary and expenses of inquiry and witnesses.

Governor may direct what remuneration, if any, shall be paid to the secretary and to any other person employed in or about a commission and may direct payment of any other expenses of the commission.

(2) All persons summoned to attend and give evidence or to produce books, plans or documents at any sitting of the commissioners shall be entitled to the same expenses as they would have been entitled to if they had been summoned to attend at the Court in a criminal trial and, subject to any regulations made under section 19, payment thereof shall be made in such manner as the Governor may direct.

(3) Sums of money so directed to be paid shall be paid out of the general revenue of the Islands.

Protection of
reputation and
character

13. Save in so far as the commissioners consider it essential for ascertaining the truth of the matter into which they are commissioned to inquire and record their reasons for so considering—

- (a) evidence adversely affecting the reputation of any person or tending to reflect in any way upon the character or conduct of any person shall not be received unless the commissioners are satisfied that it is relevant to the inquiry and that all reasonable efforts have been made to give such person prior warning of the general nature of the evidence and that, where no such warning has been given, the general nature of the evidence has been communicated to such person;
- (b) such person shall be given such opportunity as is reasonable and practicable to appear in person or to be represented by counsel or solicitor or, with the leave of the commissioners, by any other person at the hearing of such evidence to cross-examine any witness testifying thereto and to adduce without unreasonable delay material evidence in his or her behalf in relation to such evidence;
- (c) hearsay evidence which adversely affects the reputation of any person or tends to reflect in any way upon the character or conduct of any person shall not be received;
- (d) no expression of opinion shall be received in evidence of the character, conduct or motives of any person.

Right of appearance
and representation

14. Any person whose conduct is the subject of inquiry under this ordinance or who is in any way implicated or concerned in any manner under inquiry shall be entitled to

appear in person and to be represented by counsel or solicitor or, with the leave of the commissioners, by any other person in the proceedings of the inquiry or any part thereof and any other person who desires to appear or to be represented may, by leave of the commissioners, appear or be so represented.

15.—(1) A commissioner and the secretary to any commissioner shall not be liable to any civil action or suit for or in respect of any matter or thing done or omitted to be done by him or her in good faith as such commissioner or secretary, as the case may be.

Protection of
commission and
secretary

(2) No commissioner shall be liable to arrest under civil process while going to, presiding in or returning from the place where an inquiry under this ordinance is being held by him or her.

16. No person shall be liable to any action, suit, indictment or proceedings by reason of his or her publishing a true account of any evidence taken in public in pursuance of the powers conferred by this ordinance or of any report of the commissioners made public by the authority of the Governor

Protection of
publication of
evidence

17. The Governor may direct that a police officer shall attend upon commissioners to preserve order during the proceedings of the inquiry, to serve summonses on witnesses and to perform such administrative duties as the commissioners may direct.

Police officer may
be detailed to attend
commissioners

18. The Governor may make regulations for the better carrying out of the provisions and purposes of this ordinance.

Regulations

SCHEDULE

Form 1

(Section 6)

FORM OF OATH OR AFFIRMATION TO BE TAKEN BY A COMMISSIONER.

I, _____, having been appointed under a Commission issued by the Governor and dated the _____ day of _____ 20____, to be a commissioner to inquire into the matters specified in the said Commission, do swear [or do solemnly and sincerely affirm] that I will faithfully, fully, impartially and to the best of my ability discharge the trust and perform the duties devolving upon me by virtue of the said Commission.

[In the case of an oath]
So help me God

Commissioner

Form 2

(Section 11(3))

SUMMONS TO A WITNESS

To A.B. [name of person summoned and his or her calling and residence if known]

You are hereby summoned to appear before [here name the commissioners] appointed by the Governor to inquire into [state briefly the subject of the inquiry] at _____ day of _____ 20____, at _____ of the clock in the _____ noon and to give evidence respecting the said inquiry [if the person summoned is to produce any documents, add]

And you are required to bring with you [specify books and documents required]

Therefore fail not at your peril.

Given under the hand of _____, [a Commissioner or secretary],
this _____ day of _____ 20____.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

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CHAPTER IX

**LEGAL AID (CRIMINAL PROCEEDINGS)
ORDINANCE**

Arrangement of sections

PART I—PRELIMINARY

Section

1. Short title
2. Interpretation

PART II—LEGAL AID IN CRIMINAL PROCEEDINGS

3. Legal aid for persons committed for trial
4. Legal aid on appeal
5. Legal aid in Magistrate's Court
6. Legal aid for appellants in certain cases
7. Application by letter
8. Duty to give information
9. Counsel
10. Copies of record of preliminary inquiry etc.
11. Rules

PART III—GENERAL

12. Nature of legal aid
13. Relationship etc. of barrister and client not affected
14. Counsel not to accept remuneration other than as authorised
15. Costs or compensation applied towards reimbursement of legal aid

Ordinances
1 of 2001,
11 of 2002,
7 of 2003.

An ordinance to make provision in criminal cases for the granting of legal aid to persons of insufficient means, to enable the cost of such legal aid to be defrayed out of official sources and for purposes connected therewith.

[1 June 2001]

PART I—PRELIMINARY

Short title.

1. This ordinance may be cited as the Legal Aid (Criminal Proceedings) Ordinance.

Interpretation.

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

“certificate” means a certificate for legal aid;

“indictable offence” means an offence triable on information by the Supreme Court.

PART II—LEGAL AID IN CRIMINAL PROCEEDINGS

Legal aid for persons
committed for trial.

3.—(1) Any person committed for trial for an indictable offence shall be entitled to legal aid in the preparation and conduct of his or her defence at the trial and shall have counsel assigned for that purpose if a certificate is granted in respect of that person under this section.

(2) A certificate may, subject to the provisions of subsection (3), be granted in respect of any person

(a) by the committing magistrate, upon the person being committed for trial; or

(b) by the Chief Justice, at any time after reading the record of the preliminary inquiry (whether or not an application has previously been made to the committing magistrate).

(3) A certificate shall not be granted under this section in respect of any person unless it appears to the committing magistrate or the Chief Justice that his or her means are insufficient otherwise to obtain legal representation.

Legal aid on appeal.

4. The Chief Justice or the Court of Appeal may at any time assign counsel to an appellant in any appeal, or proceedings preliminary or incidental to an appeal, in which, in the opinion of the Chief Justice or the Court of Appeal, it appears desirable in the interests of justice that the appellant should be legally represented and that he or she has insufficient means otherwise to obtain legal representation.

Legal aid in
Magistrate’s Court.

5. Any person who appears or is brought before an examining magistrate or the Magistrate’s Court charged with an

indictable offence or an offence which is punishable on summary conviction with imprisonment, other than imprisonment in default only of payment of a fine, may apply to the magistrate or Court, as the case may be, for legal aid in the preparation and conduct of his or her defence before that magistrate or Court and, if on such application the magistrate or Court is satisfied that the applicant has insufficient means otherwise to obtain legal representation, the magistrate or Court shall grant in respect of the applicant a certificate which shall entitle him or her to have counsel assigned for that purpose.

6.—(1) Any person who has been convicted by the Magistrate's Court of an offence which is punishable with imprisonment other than imprisonment in default only of payment of a fine and who desires to appeal to the Supreme Court against the conviction or the sentence imposed on such conviction or both may apply to such Court for legal aid for the preparation and conduct of such appeal and, if on such application the Court is satisfied that the applicant has insufficient means to enable him or her to obtain legal representation for the purpose aforesaid, the Court shall grant in respect of the applicant a certificate which shall entitle him or her to have counsel assigned for that purpose.

Legal aid for appellants in certain cases.

(2) Any person who has been convicted by the Magistrate's Court of any offence other than an offence mentioned in subsection (1) and who desires to appeal to the Supreme Court against the conviction or the sentence imposed on such conviction or both may apply to such Court for legal aid for the preparation and conduct of such appeal, and if on such application the Court is satisfied that the applicant has insufficient means to enable him or her to obtain legal representation for the purpose aforesaid and that by reason of exceptional circumstances it is desirable in the interests of justice that he or she should have such legal aid, the Court may grant in respect of the applicant a certificate which shall entitle him or her to have counsel assigned for that purpose.

(3) Where, on an application made under subsection (1) or subsection (2), the Court has refused to grant such certificate, the applicant may apply to the Chief Justice and the Chief Justice shall have the like power, exercisable on the like grounds, of granting a certificate as the Supreme Court or the Magistrate's Court.

(4) The provisions of this section shall apply *mutatis mutandis* to any applicant or respondent in any proceedings by way of mandamus, habeas corpus or case stated or to any appellant or respondent in any criminal case or matter or to any person brought before the Magistrate's Court on

extradition proceedings.

Application by letter.

7.—(1) An application for legal aid under section 5 or 6 may be made by letter and may be so made by any person arrested or summoned for an offence, as well as by a person charged with an offence before the Magistrate's Court or examining magistrate.

(2) A letter applying for legal aid by virtue of this section shall be addressed to the Registrar of the Magistrate's Court and shall contain particulars of the offence charged and the grounds of the application.

(3) Where an application is made by virtue of this section, any magistrate shall have the like power, exercisable on the like grounds, of granting a certificate as the Magistrate's Court or examining magistrate would have if the applicant had been charged with an offence before them.

(4) The refusal of a certificate on an application made by letter shall not prevent the applicant being granted a certificate at the hearing.

Duty to give information.

8.—(1) Before a person is granted legal aid under any of the sections contained in this Part, he or she may be required to furnish a written statement in the prescribed form set out in the schedule about matters relevant for determining whether his or her means are insufficient otherwise to obtain legal representation.

(2) A person who, in furnishing a written statement in accordance with the provisions of subsection (1) or in applying for legal aid in accordance with the provisions of this Part, knowingly makes any false statement or false representation is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding one hundred days.

Counsel.

9.—(1) Subject to this section, a list of barristers willing to act for persons receiving legal aid under this Part shall be prepared and maintained in accordance with the directions of the Chief Justice.

[(2) Every barrister named in the list referred to in subsection (1) shall be classified according to his or her experience and skill, as senior counsel, intermediate counsel or junior counsel, for the purpose of this ordinance and any rules made thereunder.]

(Replaced by Ordinance No. 11 of 2002)

(3) The Chief Justice may at any time approve and direct the inclusion on the list of such further counsel [and the classification of counsel as referred to in subsection (2),] as he or she may think fit.

(Amended by Ordinance No. 11 of 2002)

(4) The name of any legal practitioner may be removed from the list for good and sufficient cause on the direction of the Chief Justice.

(5) Counsel shall be assigned to any person applying for legal aid under this Part in such manner as the Chief Justice may direct and shall be remunerated from official sources in accordance with such scale as may be prescribed by rules made by the Governor.

10. Where counsel has been assigned to any person under the provisions of section 3 or section 6, that person shall be entitled to receive without charge

Copies of record of preliminary inquiry etc.

- (a) if he or she has been committed for trial, a copy of the record of the preliminary inquiry; or
- (b) if he or she is appealing against conviction or sentence by the Magistrate's Court, a copy of the notes of the proceedings at the trial before that Court, and, in either case, a copy of any documents which were exhibits in such proceedings.

11. The Chief Justice may make such rules as appear to him or her necessary or desirable for giving effect to this Part.

Rules.

PART III—GENERAL

12. Legal aid shall consist of representation by counsel assigned by the Registrar, including all such advice and assistance as is usually given by counsel in the steps preliminary or incidental to any criminal proceedings against the applicant to which Part II applies.

Nature of legal aid.

13. The fact that the services of counsel are provided by way of legal aid shall not affect the relationship between, or the rights of, barrister and client or any privilege arising out of such relationship.

Relationship etc. of barrister and client not affected.

14. Counsel assigned to represent a person with respect to any criminal proceedings to which Part II applies shall not accept payment or any other advantage or benefit by way of remuneration for the legal services rendered by him or her other than the fees and expenses authorised to be paid by the provisions of this ordinance and rules made thereunder.

Counsel not to accept remuneration other than as authorised.

15. Any sum received by a person to whom legal aid has been granted by way of costs or compensation against the prosecution or the police shall be applied in the first place towards reimbursement of the costs of legal aid provided from official sources.

Costs or compensation applied towards reimbursement of legal aid.

[SCHEDULE

(section 8(1))

Declaration of assets, liabilities and income relevant to application for grant of legal aid in criminal proceedings

A Statement of assets

- 1. Bank accounts—give particulars and total credit value in \$NZ
.....
.....
..... \$NZ.....
 - 2. Building societies and other financial institutions of any kind—give details and state present cash value
.....
.....
..... \$NZ.....
 - 3. Cash in any currency wherever held—give particulars and total current value in \$NZ
.....
.....
..... \$NZ.....
 - 4. Interests in land beyond Islands—give particulars and nett market value after repayment of mortgage(s), other charges and costs
.....
.....
..... \$NZ.....
 - 5. Other assets, excluding personal clothing, family and household belongings, and tools or vehicles of trade—give particulars and present sale value
.....
.....
..... \$NZ.....
- Total value** \$NZ

B. Statement of liabilities and expenses

- 1. Debts charged upon any asset listed above—
give particulars and present loan balance
.....
.....
..... \$NZ.....
 - 2. Cost of living in the Islands or elsewhere
estimated per month including support of spouse
or dependant children if appropriate—give
particulars of dependants
.....
.....
..... \$NZ.....
 - 3. Unsecured debts of any kind, including tax, duty
and fines—give particulars and specify date for
repayment by instalments or as lump sum
.....
.....
..... \$NZ.....
- Total monthly payments** \$NZ

C Statement of income

- 1. Income from employment—state whether gross
or tax-paid—give amount of tax
.....
.....
..... \$NZ.....
- 2. Other benefits from employment—describe
benefit and give cash value per month,
e.g. house, car etc.
.....
.....
..... \$NZ.....
- 3. Self-earned income—give particulars of work
and total earnings by calculating monthly
average over past twelve months, state whether
gross or after payment of expenses caused by the
production of income and payment of tax
.....
.....
..... \$NZ.....

4. Other sources of income, including rent received, interest from mortgages or other loans, an interest in any trust or partnership, dividends from shares, stock or other investment of any kind—state whether tax-paid

.....
.....
..... \$NZ

Total monthly income \$NZ

Note: I understand that I must disclose my assets, property and sources of income both within the Islands and elsewhere, including any money or property which may be held by another person or body on my behalf or as trustee or nominee for my benefit.

I,
(full name)

of
(place of residence)

hereby make this declaration in support of my application for Legal Aid under the Legal Aid (Criminal Proceedings) Ordinance and do solemnly and sincerely declare that to the best of my knowledge and belief the foregoing is a true and correct statement of my financial means. I acknowledge that I am aware that if it should contain any false statement or representation knowingly made I would be guilty of an offence punishable on conviction by imprisonment for a term not exceeding one hundred days.

Dated the day of 20

.....
Applicant

.....
Witness to signature of applicant
(Registrar/Deputy Registrar)]

(Schedule repealed and replaced by Ordinance No. 7 of 2003)

**LEGAL AID (CRIMINAL PROCEEDINGS)
ORDINANCE
LEGAL AID (CRIMINAL PROCEEDINGS) RULES**

**Rules made by the Chief Justice in exercise of the power
conferred by section 11 of the Legal Aid (Criminal
Proceedings) Ordinance**

[1 June 2001]

1. These rules may be cited as the Legal Aid (Criminal Proceedings) Rules.

Short title.

2.—(1) Lists shall be kept containing the names of legal practitioners who are willing to be assigned in pursuance of certificates for legal aid granted under Part II of the ordinance in accordance with the following provisions

Lists of counsel willing to be assigned.

- (a) the Registrar of the Supreme Court shall keep a list of legal practitioners who are willing to appear as counsel in trials in the Supreme Court for the purposes of section 3 of the ordinance and who are willing to appear as counsel in appeals to the Supreme Court and the Court of Appeal for the purposes of sections 4 and 6 of the ordinance;
- (b) the Registrar of the Magistrate's Court shall keep a list of legal practitioners who are willing to appear as counsel in committal proceedings in the Magistrate's Court for the purposes of section 5 of the ordinance.

(2) The name of any legal practitioner shall be removed from all or any of such lists either on the application of the legal practitioner or for good and sufficient cause by direction of the Chief Justice.

3. Lists of all applications for a certificate for legal aid under Part II of the ordinance shall be kept by the Registrar of the Supreme Court and the Magistrate's Court respectively and there shall be entered in such lists the following particulars

Lists of applications for legal aid certificates.

- i. the name of the applicant;
- ii. the name and subject of the proceedings in respect of which legal aid is applied for; and
- iii. the date and result of the application.

4. The Chief Justice, Court or Magistrate granting a certificate for legal aid shall, as soon as may be after granting a certificate and after taking into consideration any representations made by the person in respect of whom it is granted, forward the certificate to the Registrar who shall assign to him or her from one of the lists referred to in rule

Assignment of counsel.

2 as may be relevant counsel to whose services that person shall be entitled.

Form and disposal of.

5. (1) A certificate for legal aid under Part II of the ordinance shall be in the form set out in the Schedule to these rules with such adaptations or amendments as may be necessary.

(2) Whenever a certificate for legal aid is granted by a committing magistrate under section 3 of the ordinance or by the Magistrate's Court under section 6 of the ordinance, the Registrar of the Magistrate's Court shall, as soon as may be, send the certificate to the Supreme Court together with the name of the counsel assigned.

SCHEDULE

(Rule 5(1))

Legal Aid Certificate under Part II of the Legal Aid (Criminal Proceedings) Ordinance 2001

I, Chief Justice/Magistrate,
having considered the application ofand
being satisfied that he/she has insufficient means to obtain legal
representation, do hereby grant him/her this Certificate for Legal Aid

Dated this day of 20.....

.....
Chief Justice/Magistrate
Supreme/Magistrate’s Court
Pitcairn, Henderson, Ducie and
Oeno Islands

**LEGAL AID (CRIMINAL PROCEEDINGS)
ORDINANCE
LEGAL AID (FEES AND EXPENSES) RULES**

**Rules made by the Governor in exercise of the power
conferred by section 9(5) of the Legal Aid (Criminal
Proceedings) Ordinance to provide for the remuneration
of assigned counsel**

[1 June 2001]

- Short title. **1.** These rules may be cited as the Legal Aid (Fees and Expenses) Rules.
- Interpretation. **2.** In these rules unless the context otherwise requires —
“counsel” means a barrister or solicitor entitled to appear and act as an advocate before the Supreme Court, the Court of Appeal or the Magistrate’s Court;
“taxing officer” means the Registrar of the Supreme Court, the Registrar of the Court of Appeal or the Registrar of the Magistrate’s Court, as the case may be.
- Taxation of fees. **3.** Subject to the other provisions of these rules, the fees to be allowed for counsel assigned after the commencement of these rules under any of sections 3, 4, 5 and 6 of the ordinance shall be taxed in accordance with or within the limits set out in the Schedule.
- Factors relevant to taxation. **4.** In taxing the sums payable to counsel under these rules, the taxing officer shall take into account all the relevant circumstances, including the nature, importance, complexity and difficulty of the work and the time involved and including time lost as a result of any adjournment, other than an adjournment for the convenience of counsel.
- Assignment to more than one person. **5.** Where counsel has been assigned to two or more persons whose cases are heard together, the taxing officer shall allow the full sum payable to counsel in respect of the person to whom the highest fees would have been allowed if the cases had been heard separately and shall allow such amount as appears proper for the second and each other of those persons not exceeding for the second person 40% and for each other person 20% of the amount allowed for the first.
- Queen’s Counsel. **6.—(1)** The fees payable to counsel under these rules may, in the case of Queen’s Counsel, be increased by one half.
 (2) Subject to any direction of the Chief Justice in any case, every such assignment shall be to Queen’s Counsel alone without junior counsel.

7.—(1) In addition to the fees payable under these rules, there shall be allowed to counsel all disbursements reasonably and necessarily made by him or her in connection with the defence or the appeal as the case may be.

Disbursements.

(2) Notwithstanding subrule (1), counsel shall not, except in case of dire necessity, make disbursements in excess of \$NZ 100 without the previous approval in writing of the taxing officer.

8. Notwithstanding rule 3, the judge or magistrate presiding in the Court of Appeal, the Supreme Court or the Magistrate's Court, as the case may be, may at the conclusion of a case, on application, certify that the case was one of exceptional difficulty or complexity, and in that event the taxing officer shall allow such fees as appear to him to represent reasonable remuneration for the work done by counsel but so that such fees shall not be more than twice the fees prescribed in the Schedule.

Exceptional cases.

9. Counsel aggrieved by a decision of the taxing officer may within 30 days apply to the Supreme Court for a review of the decision and the determination of the Chief Justice thereon shall be final.

Appeals.

*Legal Aid (Fees and Expenses) Rules***SCHEDULE**

[(Rule 3)]

Fee No.		Hourly Rate	Fee
1.	On assignment (inclusive of taking instructions)		
	(a) in the Magistrate's Court	senior	[\$225]
	(b) in the Supreme Court or the Court of Appeal	intermediate junior	[\$179] [\$141]
2.	For any necessary attendance upon the defendant/appellant		
	(a) for the first hour or part thereof	senior	[\$225]
	(b) for each subsequent hour or part thereof	intermediate junior	[\$179] [\$141]
3.	For attending any Chambers hearing or pre-trial conference in the Magistrate's or Supreme Court or Court of Appeal	senior intermediate junior	[\$225] [\$179] [\$141]
4.	For appearing in the Magistrate's or Supreme Court or Court of Appeal per half day	senior intermediate junior	[\$900] [\$716] [\$564]
5.	Preparation time for and including any Chambers hearing, pre-trial conference, contested bail application, plea of guilty, committal proceeding, sentencing, appeal or trial		
	(a) in the Magistrate's Court	senior	[\$225]
	(b) in the Supreme Court or the Court of Appeal	intermediate junior	[\$179] [\$141]
6.	For instruction of other counsel (flat fee)		
	(a) in the Magistrate's Court	senior	[\$225]
	(b) in the Supreme Court or the Court of Appeal	intermediate junior	[\$179] [\$141]
7.	Travel and lost time	senior intermediate junior	[\$163] [\$129] [\$101]
[7A.	Preparation for any appeal or application for leave to appeal to the Privy Council (per hour)	senior intermediate junior	[\$225] [\$179] [\$141]
7B.	For appearing in the Privy Council (fee per half day)	senior intermediate junior	[\$900] [\$716] [\$564]
7C.	For time spent in relation to Privy Council appearances: such amount approved in advance by the taxing officer.]		

(Inserted by Rules 04.09.04)
(Amended by Rules dated 04.01.05 and by Rules dated 15.09.06)

8. Special circumstances

In any case where, on the written application of counsel, the taxing officer is satisfied that an above-scale payment is justified or appropriate, he or she may approve the application in such terms as considered fair and reasonable or he or she may refer the matter to the Chief Justice for directions or determination.]

(Replaced by Amendment Rules 2003)

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

CHAPTER X

**An ordinance to make provision for the admission of
legal practitioners**

Ordinances:
No. 3 of 2001

[9th March 2001]

1. This ordinance may be cited as the Legal Practitioners Ordinance.

Short title.

2. In this ordinance unless the context otherwise requires—

Interpretation.

certificate of admission means a certificate of entitlement to practise law in the Islands approved by the Chief Justice under section 5;

legal practitioner means a barrister or solicitor;

practising certificate means a current certificate issued by the appropriate authority in any Commonwealth country entitling the holder to act as a legal practitioner in that country.

3. No person shall act or hold himself or herself out as entitled to act as a legal practitioner in the Islands without being the holder of a valid certificate of admission.

Restriction upon legal practitioners.

Penalty: a fine of \$1000.00 or imprisonment for six months or both.

4.—(1) Subject to this section, any person holding a practising certificate may, upon proof thereof, apply in writing to the Registrar of the Supreme Court to be admitted to practise as a legal practitioner.

Persons eligible to apply for certificate.

(2) Every such application shall include a summary of the applicant's qualifications and experience together with any other information as may be relevant to his or her fitness to practise law in the Islands.

(3) The Registrar may obtain any such further information as may be required from the applicant or any other person or body.

5.—(1) The application of any person under section 4 shall then be submitted to the Chief Justice who shall in his or her absolute discretion decide whether or not the application should be approved.

Approval of application by Chief Justice.

(2) If the Chief Justice shall indicate his or her approval of an

application, a certificate of admission shall thereupon be granted by the Registrar under the seal of the Supreme Court.

(3) Every certificate of admission shall be issued to the applicant upon payment of such fee as the Governor may by order prescribe. On each anniversary thereof the applicant shall pay an annual practising fee as shall be prescribed by the Governor by order.

Power of Chief Justice to revoke certificate.

6. The Chief Justice shall have power at any time upon good cause shown to revoke the certificate of admission granted to any person under section 5.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2017

CHAPTER XI

LOCAL GOVERNMENT ORDINANCE

Arrangement of sections

PART I—PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II—ISLAND OFFICERS, ISLAND COUNCIL

3. Island Officers.
- 3A. Suspension from office.
4. Election of Mayor and provisions relating to casual vacancies.
5. Election of other Island Officers and provisions relating to casual vacancies.
6. Island Council.
7. Powers and duties of Council.
8. Incorporation of the Council.
9. Internal Committee.
10. Chief Executive Officer, Island Secretary, and Government Treasurer.

PART III—ELECTION OF ISLAND OFFICERS

- 10A. Interpretation.
11. Qualification of voters.
- 11A. Election year defined.
12. Preparation of Register of Voters.
13. Election day.
14. Qualification for election of Island Officers.
- 14A. Disqualifications for election and holding office as an Island Officer.
15. Nomination of candidates.
16. Elections.
17. Absentee voting.
18. Appointment of proxy to vote.

PART IV—ELECTION OFFENCES

19. Interfering with or influencing voters.
20. Offences in respect of official documents.

21. Voting offences.
22. Bribery.
23. Undue influence.
24. Infringement of secrecy.
25. Criminal proceedings.

PART V—DISPUTED ELECTIONS

26. Application for recount.
27. Scrutineers.
28. Conduct of recount.
29. Application for leave to bring petition for inquiry.
30. Hearing of election petition.
31. Who may be respondent.
32. Time for inquiry.
33. Powers of Magistrate.
34. Result of inquiry.
35. Election not void by reason of certain irregularities.
36. Costs of inquiry.
37. New election if declared void.
38. Order to be final.
39. Elections not to be questioned other than by petition.

An ordinance relating to the Local Government of Pitcairn, Henderson, Ducie and Oeno Islands.

[8th November, 1964]

PART I—PRELIMINARY

1. This ordinance may be cited as the Local Government Ordinance.

2. In this ordinance unless the context otherwise requires—

 [“Administrator” means the person appointed by the Governor to hold the public office of Administrator;]

(Inserted by Ordinance No. 4 of 2014)

 “civic obligations” means work or services performed from time to time by inhabitants of the islands for the common benefit of the islanders;

(Inserted by Ordinance No. 5 of 2010)

 “Council” means the Island Council constituted under the provisions of this ordinance;

 “Councillor” means any person from time to time holding the office of Councillor under the provisions of this ordinance;

 [“election year” has the meaning set out in 11A;]

(Inserted by Ordinance No. 6 of 2009)

Ordinances Nos:

1 of 1964.
1 of 1967.
1 of 1982.
1 of 1983.
6 of 1983.
2 of 1985.
1 of 1986.
1 of 1987.
1 of 1990.
1 of 1992.
4 of 1997.
1 of 2004.
7 of 2004.
2 of 2008.
3 of 2008.
6 of 2009.
4 of 2010.
5 of 2010.
2 of 2011.
1 of 2013.
3 of 2013.
4 of 2014.
1 of 2016.
Short title.

Interpretation.

“Government Treasurer” means the person from time to time appointed by the Governor to hold the public office of Government Treasurer;

“islander” means any inhabitant, whether temporary or permanent, of the Islands or any of them;

“Island Officer” means and includes any person from time to time holding the office of Mayor, [Deputy Mayor] or Councillor under the provisions of this ordinance;

(Amended by Ordinance No. 2 of 2011)

“Island Secretary” means the person from time to time appointed by the Governor to hold the public office of Island Secretary;

“Mayor” means the person from time to time holding the office of Mayor under the provisions of this ordinance;

“official office” means and includes any public office and any office to which any person is elected or appointed under the provisions of this ordinance;

“public office” means any office constituted under the provisions of [section 32 of the Constitution of Pitcairn], but shall not include any office to which any person is elected or appointed under the provisions of this ordinance;

(Amended by Ordinance No. 4 of 2010)

“public officer” means and includes any person from time to time appointed by the Governor to hold any public office;

“Recorder” means [a] person from time to time appointed by the Council, under the provisions of this ordinance, to receive and record votes at polls taken for the election of Island Officers;

(Amended by Ordinance No. 1 of 2013)

“the public notice board” means the notice board maintained on Pitcairn Island for the public notification of matters relating to the Islands.

PART II—ISLAND OFFICERS, ISLAND COUNCIL

3.—[(1) There shall be the following elected officials to be known as Island Officers—

- (a) the Mayor, who shall be:
 - (i) elected for a term of 3 years;
 - (ii) eligible, upon expiry of his or her term of office, to be elected Mayor for a second term of 3 years;
- (b) the Deputy Mayor, who shall be elected for a 2 year

term; and

- (c) [five] Councillors, who shall each be elected for a 2 year term.]

(Repealed and replaced by Ordinance No. 6 of 2009)

(Amended by Ordinance No. 2 of 2011)

(2) (Amended by Ordinance No. 1 of 2013)

(Repealed by Ordinance No. 3 of 2013)

(3) If any Island Officer dies, resigns, or by reason of his or her permanent absence from the Islands or any other permanent incapacity is unable to perform his or her duties the office of such Island Officer shall be deemed to become vacant.

(Amended by Ordinance No. 1 of 2013)

[(3A) Subject to subsection (3B), if any Island Officer is by reason of his or her absence from the Islands or by illness or any other incapacity unable to perform his or her duties for any period of seven months or more such Island Officer shall be deemed to be permanently absent from the Islands or permanently incapacitated as the case may be and the office of such Island Officer shall be deemed to become vacant at the expiration of such period of seven months.

(3B) Subsection (3A) does not apply if a person is absent from the island for more than seven months for medical reasons or on business approved by the Council.]

(Inserted by Ordinance No. 1 of 2013)

[(4) A person who has been elected to the office of Mayor in two consecutive Mayoral elections shall not be eligible to stand for election as Mayor at the next following Mayoral election, but shall be eligible to stand at the next or any subsequent Mayoral election after that.]

(Inserted by Ordinance No. 6 of 2009)

[3A.– (1) If any Island Officer is charged with, or is facing charges for, an offence carrying a term of imprisonment of three months or more, he or she shall be suspended from office until:

- (a) all such charges have reached final resolution and no charge has resulted in conviction; or
 (b) the Island Officer is convicted of any such charge.

(2) If any Island Officer is subject to a recall application under s 57 of the Parole Ordinance, he or she shall be suspended from office until:

- (a) the recall order is refused under s 63(4) of that Ordinance; or
 (b) a final recall order is made under s 63(1) of that Ordinance.

(3) For the purposes of subsection (1), “final resolution” in relation to each charge means–

Suspension from
office

- (a) the withdrawal of the charge;
- (b) an acquittal;
- (c) a stay of prosecution;
- (d) a dismissal for want of prosecution; or
- (e) a conviction.

(4) An Island Officer who is suspended from office under subsection (1) or (2) is deemed to be temporarily unable to perform his or her duties, but shall be entitled to receive full payment as Island Officer for the duration of the suspension.

(5) Following suspension under subsection (1) or (2)–

- (a) if paragraph (1)(a) or (2)(a) applies, the Island Officer shall resume his or her duties as Island Officer;
- (b) if paragraph (1)(b) or (2)(b) applies, the Island Officer's seat shall be deemed vacant unless the Governor gives a direction under subsection (6).

(6) Notwithstanding paragraph (5)(b), the Governor may, after consultation with Council, direct that an Island Officer to whom paragraph (1)(b) applies may resume his or her duties as Island Officer.

(7) For the avoidance of doubt, an appeal filed in relation to any relevant charge does not affect the operation of this section.]

(Inserted by Ordinance No. 3 of 2013)

4.—(1) Between the first and fifteenth days of [November inclusive in every election year] the inhabitants of Pitcairn Island shall elect, in the manner provided therefor in Part III of this ordinance, the Mayor who shall take office on the first day of January in the year following the year of his or her election and remain in office until the 31st day of December in the third year following the year of his or her election.

(Amended by Ordinance No. 1 of 2013)

(2) If any vacancy occurs in the office of Mayor by reason of the death, resignation, permanent absence from the Islands or any permanent incapacity of the Mayor to perform his or her duties the [Deputy Mayor] shall succeed to the office of Mayor and shall be deemed to have been elected to such office for the unexpired balance of the term of office of the person to whom he or she succeeds in such office.

(Amended by Ordinance No. 6 of 2009)

[(3) If the Mayor shall by reason of illness, absence from the Islands or otherwise become temporarily incapable of performing his or her duties, the Deputy Mayor shall act in the office of Mayor until such time as the Mayor resumes his or her duties or the office of the Mayor becomes vacant, and while so acting the Deputy Mayor shall have all of the powers

Election of Mayor and provisions relating to casual vacancies.

and exercise all of the duties of the Mayor as though he or she had been elected to such office under the provisions of this ordinance.]

(Repealed and replaced by Ordinance No. 6 of 2009)

[(4) If the office of any Island Officer becomes vacant and at the time that the vacancy occurs the unexpired period of that Officer's term is 120 days or greater there shall be a by-election for that office and the person or persons elected shall hold office for the remainder of the term that would have been served by the person whose office became vacant.

(Amended by Ordinance No. 1 of 2013)

(5) The by-election shall be conducted in accordance with the provisions of Part III of this Ordinance with the following amendments:

- (a) The Island Secretary shall prepare and publicly notify the list required by s12(1) within 5 days of the vacancy occurring;
- (b) Any objections of the type possible under s12(2) must be made within 3 days of public notification;
- (c) The Council shall at a meeting held not later than 10 days after the vacancy has occurred set and publicly notify an election day on which the by-election shall be held, which shall be a day not earlier than 15 nor later than 20 days after the vacancy occurred.

(6) The office of Deputy Mayor shall be deemed to become vacant when the Deputy Mayor succeeds to the office of Mayor under subsection (2) but not when, in terms of subsection (3), the Deputy Mayor acts in the office of Mayor while the Mayor is temporarily incapable.

(7) If the office of any Island Officer (other than the Mayor) becomes vacant and at the time that the vacancy occurs the unexpired period of that Officer's term is less than 120 days the Council shall at a meeting held not later than 10 days after the vacancy has occurred appoint a person to be a member of the Council for the balance of the term provided that the person so appointed is a person who would be eligible to stand for election to the Council.]

(Inserted by Ordinance No. 6 of 2009)

5.—(1) Between the first and fifteenth days of [November] inclusive in every [election] year the inhabitants of Pitcairn Island shall elect, in the manner provided in Part III of this ordinance, the Island Officers other than the Mayor.

(Amended by Ordinance No. 6 of 2009)

(Amended by Ordinance No. 1 of 2013)

(2) The Island Officers elected under the provisions of this section shall take office on the first day of January in the year

Election of other Island Officers and provisions relating to casual vacancies.

following the year of their election and remain in office [for two years ending on the 31st day of December.]

(Amended by Ordinance No. 1 of 2013)

(3) (Repealed by Ordinance No. 1 of 2013)

(4) If any Island Officer, other than the Mayor, shall by reason of illness, absence from the Islands or otherwise become temporarily incapable of performing his or her duties or is appointed to act in the office of Mayor under the provisions of subsection (3) of section 4 of this ordinance, the Council shall appoint [a person in accordance with subsection (4A)] to act in the office of such Island Officer until such time as such Island Officer resumes his or her duties or such office becomes vacant and while so acting the person so appointed shall have all of the powers and exercise all of the duties of such Island Officer as though elected to such office under the provisions of this ordinance.

(Amended by Ordinance No. 1 of 2013)

[(4A) The person to be appointed under subsection (4) shall be the highest polling unsuccessful candidate at the previous election for Councillors who agrees to their appointment, provided that—

- (a) where two or more persons are eligible to be appointed under this subsection then the candidate to be appointed shall be determined by the toss of a coin; and;
- (b) where for any reason no person is eligible to be appointed under this subsection, the Council shall appoint such suitable person as it sees fit.]

(Inserted by Ordinance No. 1 of 2013)

6.—[(1) There shall be an Island Council which shall consist of: Island Council.

- (a) the following voting members, namely—
 - (i) the Island Officers, who shall be elected members;
- (b) the following non-voting, *ex officio*, members, namely-
 - (i) the Governor;
 - (ii) the Deputy Governor;
 - (iii) the [Administrator.]

(Amended by Ordinance No. 2 of 2011)

(Amended by Ordinance No. 4 of 2014)

(2) (Repealed by Ordinance No. 2 of 2011)

(3) The Island Officers shall hold various portfolios, which shall be assigned by the Council.]

(Repealed and replaced by Ordinance No. 6 of 2009)

(4) The Council shall meet for ordinary meetings once in

every month and for special meetings at such other times as it may be summoned by the Mayor, who shall fix the time of ordinary and special meetings.

(5) The Mayor shall preside at every meeting of the Council. He or she shall have an original vote and, in the case of an equal number of votes on any question before the Council, a second or casting vote.

(6) No business shall be transacted at any meeting of the Council unless at least five voting members [] are present.

(Amended by Ordinance No. 2 of 2011)

(7) Every question before the Council shall be decided by the majority of the votes of the voting members present.

(8) The Council shall have power to adjourn its sittings from time to time.

(9) No act or proceeding of the Council shall be questioned on account of any vacancy in its membership.

(10) All Council meetings shall be open to the public in so far as the seating accommodation permits:

Provided that members of the public may be excluded from any Council meeting whilst such meeting is adjourned into Committee.

(11) The Island Secretary shall be Clerk to the Council and shall record the minutes of all meetings of the Council.

Powers and duties of Council.

7.—(1) Subject to the orders and directions of the Governor [or Administrator], it shall be the duty of the Council to provide for the enforcement of the provisions of this and all other ordinances for the time being in force in the Islands and of any regulations made thereunder and it may make, amend or revoke regulations for the good administration of the Islands, the maintenance of peace, order and public safety and the social and economic betterment of the islanders.

(Amended by Ordinance No. 4 of 2014)

(2) Without derogating from the generality of the provisions of the last preceding subsection the Council may make, amend or revoke regulations relating to—

- (a) public health and keeping the Islands clean;
- (b) town and country planning;
- (c) the use and control of public property;
- (d) [civic obligations];

(Amended by Ordinance No. 5 of 2010)

- (e) plant and animal quarantine;
- (f) the care and control of animals and wild life;
- (g) the care of children and aged persons;
- (h) the conservation of land, soil and food supplies;
- (i) fishing and fishing rights;

- (j) the prison;
- (k) the registration, use, care and demarcation of land;
- (l) **(Repealed by Ordinance No. 4 of 2014)**
- (m) trading by and between islanders and visits to ships; and
- (n) the appointment, powers and duties of such officers, boards and committees as the Council considers necessary for the efficient discharge of any of its duties or the implementation of any regulations made under the provisions of this or any other ordinance.

(3) All regulations made under the provisions of this ordinance shall be signed by the Mayor and by the Island Secretary and publicly notified by affixing copies thereof to the public notice board and shall come into force on the day of such notification.

(4) Copies of all regulations made under the provisions of this ordinance shall be sent forthwith to the Governor [and Administrator, either of whom] may by order, to be publicly notified by affixing a copy of the same to the public notice board, alter, vary or revoke any such regulations.

(Amended by Ordinance No. 4 of 2014)

(5) Any regulations made under the provisions of this ordinance may provide for the charging of fees in respect of anything to be done thereunder and the imposition of penalties for offences against any of such regulations which penalties shall not exceed a fine of one hundred dollars or imprisonment for any term not exceeding forty days for each such offence.

8.—(1) The Council shall be a body corporate and by the name of the Island Council shall have perpetual succession and a common seal.

Incorporation of the Council.

(2) The Council shall have power to hold land in accordance with the provisions of the Lands Court Ordinance, to enter into contracts which are necessary or incidental to the exercise of its powers under this or any other ordinance or which are for the benefit of the inhabitants of the islands and to sue and be sued, in contract or in tort or otherwise, in relation to any of the powers or duties conferred or imposed upon it by or under the provisions of this or any other ordinance:

cap. 15

Provided that the Governor may if he thinks fit vary or rescind any act or decision of the Council resulting in any financial expenditure or obligation.

(3) Service of any document on the Island Secretary shall be deemed to be service on the Council.

9. (Repealed by Ordinance No. 6 of 2009)

10.—(1) The Mayor, in addition to his or her duties as President of the Council, shall be the chief executive officer

Chief Executive Officer, Island Secretary, and Government Treasurer.

of the Islands, and shall discharge such duties as may from time to time be assigned to him or her by the Governor [or Administrator].

(Amended by Ordinance No. 4 of 2014)

(2) The Island Secretary shall, in addition to any other duties required to be performed by him under the provisions of this or any other ordinance

- (a) prepare monthly copies of the minutes of all meetings of the Council for transmission through the Mayor [and the Administrator] to the Governor.
- (b) undertake all official correspondence of the Council [and the Mayor] and ensure that copies of all such correspondence are kept and properly filed in the archives of the Islands; and
- (c) perform such other duties as the Governor[, the Administrator,] or the Mayor may from time to time direct.

(Amended by Ordinance No. 4 of 2014)

(3) The Government Treasurer shall keep the accounts of the Islands and perform such other duties as the Governor[, the Administrator,] or the Mayor may from time to time direct.

(Amended by Ordinance No. 4 of 2014)

(4) For the purposes of subsections (2) and (3) of this section directions given by the Mayor [or the Administrator] to the Island Secretary or to the Government Treasurer for the performance of any duties shall, to be valid, be not inconsistent with the provisions of this ordinance or the provisions or requirements of any other law.

(Amended by Ordinance No. 4 of 2014)

PART III—ELECTION OF ISLAND OFFICERS

Interpretation

[10A. For the purposes of this Part

- (a) the calculation of any qualifying period of continuous residence on Pitcairn Island shall exclude any absences from the Island for any cause of up to [seven months in a twelve month period];

(Amended by Ordinance No. 1 of 2013)

- (b) a person who was born away from Pitcairn Island to parents who were at the time normally resident on the Island and who returned with those parents or either of them during infancy and thereafter lived on the Island indefinitely shall be deemed to have been born there.
- (c) **(Repealed by Ordinance No. 4 of 2014)**

**(Inserted by Ordinance No. 1 of 2004)
(Amended by Ordinance No. 7 of 2004)**

11. The following persons being of or over the age of eighteen years shall be qualified to vote—

Qualification of voters.

- (a) [every person who has the right of abode on Pitcairn, who at the time of the elections is normally resident on the Island and has been so resident for a continuous period of not less than one year, and who intends to remain on the Island indefinitely];

(Repealed and replaced by Ordinance No. 1 of 2013)

- (b) every person who at the time of the elections is normally resident on the Island and has been so resident for a continuous period of not less than three years and intends to remain there indefinitely;
- (c) the spouse of any person qualified to vote under paragraphs (a) or (b) who lives with that person on the Island as his or her spouse and has done so for a continuous period of not less than one year regardless of the nationality of such spouse;
- (d) the de facto marital partner of any person qualified to vote under paragraph (a) or (b) who lives with that person on the Island as his or her partner and has done so for a continuous period of not less than two years regardless of the nationality of such partner.]

(Repealed and replaced by Ordinance No. 1 of 2004)

[11A. The following years shall be election years:

Election year defined

- (a) 2009 and every second year thereafter (for election of Deputy Mayor and Councillors);
- (b) 2010 and every third year thereafter (for election of Mayor).]

(Inserted by Ordinance No. 6 of 2009)

12.—[(1) The Island Secretary shall in the month of [September] in each year determine whether the year is an election year, and, if so, whether the election is for the office of Mayor or for Councillors, or both, and if it is an election year shall prepare a list of all persons qualified to vote which list shall be signed by the Mayor and publicly notified by affixing a copy of the same to the public notice board between the 1st and 7th days of [October].]

Preparation of Register of Voters.

**(Repealed and replaced by Ordinance No. 6 of 2009)
(Amended by Ordinance No. 1 of 2013)**

(2) Any person who desires to make any objection to anything contained in or omitted from any list publicly notified under the provisions of subsection (1) of this section may, not later than the tenth day of [October] in each year, give written notice of such objection to the Mayor who shall forthwith determine such objection. The decision of the Mayor upon such objection shall be final; and, if necessary, the list shall be amended in accordance therewith and the list as so amended shall be publicly notified by affixing a copy of the same on the public notice board not later than the fifteenth day of [October] in the year in which the objection is made.

(Amended by Ordinance No. 1 of 2013)

(3) The list as prepared and publicly notified in accordance with the provisions of subsection (1) of this section and subject to any amendments publicly notified under the provisions of subsection (2) shall be called the Register of Voters and no person whose name does not appear in such Register shall be entitled to vote at any election held in that year.

Election day.

13.—(1) At a meeting to be held not later than the fifteenth day of [October] in each [election] year the Council shall appoint a day between the first and fifteenth days of [November] inclusive of that year, to be known as election day, for the election of Island Officers, and at the same meeting shall appoint a time and place when and where the election of Island Officers is to take place on the election day so appointed. The day, time and place so appointed shall be publicly notified by affixing a notice thereof on the public notice board not less than [17] days before the election day so appointed.

(Amended by Ordinance No. 1 of 2013)

[(2) The Island Council when appointing and notifying the election day shall specify in its public notice whether the election is for the officers of Councillors or Mayor or both.]

(Amended by Ordinance No. 6 of 2009)

Qualification for election of Island Officers

14. Only persons who are qualified to vote under section 11 and not disqualified under section 14A shall be eligible for election to the office of Councillor, Deputy Mayor, or Mayor.]

(Repealed and replaced by Ordinance No. 1 of 2004)

(Amended by Ordinance No. 7 of 2004)

(Amended by Ordinance No. 6 of 2009)

(Repealed and replaced by Ordinance No. 1 of 2013)

Disqualifications for election and holding office as an Island Officer

14A.—(1) A person shall be disqualified from being elected to, or from holding, the office of Mayor, [Deputy Mayor] or Island Councillor if:

- (a) that person is, at the time of nomination or on the election day, detained in a prison pursuant to a sentence of imprisonment of 3 months or more imposed by a Pitcairn Islands court; or
- (b) that person has, within 5 years before the election day or since his or her election, been convicted of any offence by a Pitcairn Islands court and has had passed on him or her a sentence of imprisonment for a period of 3 months or more; or
- (c) that person has, within 5 years before the election day or since his or her election, commenced to serve a sentence of imprisonment for a period of 3 months or more in respect of an offence for which he or she was earlier convicted by a Pitcairn Islands court.

(Amended by Ordinance No. 2 of 2011)

[(2) In this section—

- (a) a reference to a sentence of imprisonment includes a sentence of home detention; and
- (b) a reference to being detained in a prison includes detention in a home detention residence pursuant to a sentence of home detention.]

(Inserted by Ordinance No. 1 of 2016)

[15.—(1) Any person who is eligible for election in accordance with sections 14 and 14A of this Ordinance and who wishes to be a candidate for election to any elected office shall register their name and the office to which they wish to be elected with the Island Secretary not less than 14 days before the election day.

(2) Registration in accordance with subsection (1) may be done in person or in writing, which may include a facsimile message with a signature or any message with signature in electronic form.

(3) All candidates registered in accordance with subsection (1) are deemed to be nominated for the office named in the registration.

(4) The Island Secretary shall prepare a list of:—

- (a) the names of all candidates nominated for election; and
 - (b) the office for which each candidate is nominated;
- and shall publicly notify that list on the public notice board not less than ten days before the election day.]

(Repealed and replaced by Ordinance No. 1 of 2013)

16.—(1) Where only one candidate is nominated for election to the office of Mayor, such candidate shall be deemed to have

Elections.

been elected. Where more than one candidate is nominated for election to such office a poll shall be taken.

(2) Where only one candidate is nominated for election to the office of [Deputy Mayor], such candidate shall be deemed to have been elected. Where more than one candidate is nominated for election to such office a poll shall be taken.

(Amended by Ordinance No. 6 of 2009)

(3) Where only [five] candidates are nominated for election to the office of Councillor, such candidates shall be deemed to have been elected. Where more than [five] candidates are nominated for election to such office a poll shall be taken.

(Amended by Ordinance No. 2 of 2011)

(4) The poll shall be taken on the election day at the time and place appointed under the provisions of section 13 of this ordinance.

(5) If a poll is to be taken for the election of any Island Officers in any year the Council shall, [as soon as possible after publication by the Island Secretary of the list of candidates nominated for election as required by section 15(4)], appoint [two suitable people, who do not appear on the electoral roll, to be known as Recorders] to receive and record all votes tendered at such poll.

(Amended by Ordinance No. 1 of 2013)

(6) Subject to the provisions of subsection (8) of this section, if a poll is to be taken for the election of any Island Officers in any year all persons whose names appear in the Register of Voters shall attend on the election day at the time and place appointed under the provisions of section 13 of this Ordinance and then and there tender their votes for all offices in respect of which a poll is taken by indicating in writing on the voting cards, prepared and then and there handed to them by [a] Recorder, the names of all candidates for whom they wish to vote.

(Amended by Ordinance No. 1 of 2013)

(7) Subject to the provisions of subsection (8) of this section, no person shall be permitted to tender a vote for or on behalf of any other person.

(8) (i) Any person whose name appears on the Register of Voters and who satisfies [a] Recorder that on account of ill health or infirmity or on account of his or her being detained in a prison in the Islands he or she is precluded from attending at the time and place when and where the poll is to be taken may apply in writing under his or her signature for a voting card to be handed to such other person as he may in such application nominate for delivery to him.

(ii) On receipt of such application and being satisfied as aforesaid [a] Recorder shall on the day on which the poll is to be taken hand a voting card to the person nominated in the application.

(iii) On receipt of such voting card the person nominated by the applicant shall forthwith deliver the same to the applicant who shall there and then in the presence of the person nominated by him as aforesaid indicate in writing on the voting card the names of the candidates for whom he wishes to vote, fold the voting card so as to conceal his vote, seal the voting card in an envelope to be supplied by [a] Recorder, sign his or her name across the back of the envelope and hand the envelope to the person nominated by him or her as aforesaid for return to [a] Recorder.

(iv) On receipt of such sealed envelope from the applicant the person nominated by him or her shall forthwith return to the place where the poll is being taken and there in the presence of [a] Recorder shall open the sealed envelope, removing the voting card from the envelope, hand the empty envelope to [a] Recorder, and without unfolding the voting card, tender the voting card in the same way as he or she would his or her own voting card.

(v) In this section a reference to being detained in a prison includes detention in a [home detention] residence pursuant to a [sentence of home detention given in accordance with section 76A of the Sentencing Ordinance 2002].

(Amended by Ordinance No. 1 of 2016)

(Amended by Ordinance No. 1 of 2013)

(9) Immediately after the completion of the voting the votes shall be counted by the [Recorders].

(Amended by Ordinance No. 1 of 2013)

(10) The [Recorders] shall as soon as practicable after all votes have been counted publicly notify the names of the persons elected or deemed to have been elected by announcing the same at the Courthouse and by affixing notice thereof on the public notice board.

(Amended by Ordinance No. 1 of 2013)

[17. Notwithstanding the provisions of section 16, any person temporarily away from the Island at the time of the election, who would if present be eligible to vote, may exercise his or her right as an absentee voter in accordance with the following conditions—

Absentee voting

- (a) it shall be the responsibility of any such person to obtain from the Island Secretary, the office of the Pitcairn Island Administration or the office of the Governor, the nomination list and voting paper issued seven days prior to the elections;
- (b) any such person wishing to vote must attend at the office of the Pitcairn Island Administration or the Governor not less than two clear days prior to the election on the Island and complete the voting paper in the sight and presence of a public officer designated by the Governor for the purpose;
- (c) every such public officer shall forthwith transmit full particulars of the vote to the [Administrator] who will hold the same in a sealed envelope until the election when, provided that the person is eligible to vote and the vote is not invalid, it will be included in the counting process by being tendered to [a] Recorder by the [Administrator] in the same manner as provided by paragraph (iv) of section 16(8) of this ordinance.]

(Inserted by Ordinance No. 1 of 2004)**(Amended by Ordinance No. 1 of 2013)****(Amended by Ordinance No. 4 of 2014)**

[18. A person who intends to be temporarily absent from the Island at the time of the election and who would if present be entitled to vote may, in accordance with the following conditions, apply for appointment of a named person as his or her proxy to cast a vote on election day on his or her behalf:

Appointment of proxy
to vote

- (a) The application for appointment of a proxy must be made in the form set out as appendix 1 to this

Ordinance.

- (b) The person sought to be appointed as proxy must be on the Register of Voters.
- (c) The application form must be signed and delivered to the Island Secretary not earlier than 15 [October] in the year of the election nor later than 7 days before the election day.
- (d) The form may be delivered by hand or by the electronic transmission of a scanned copy of the original form sent to the email address `isec@pitcairn.gov.pn` (or such other email address as may be prescribed by regulations made under this Ordinance) and if delivered by electronic transmission must contain a return email address to which notification of approval of appointment may be sent.
- (e) The Island Secretary must approve an application on the prescribed form if he or she is satisfied that the applicant is a person who if present would be entitled to vote and that the named proxy is on the Register of Voters.
- (f) The Island Secretary shall advise the applicant if the application is approved, either in person (when or shortly after the application is delivered by hand) or by email (when the application is delivered in that manner).
- (g) Not less than 2 days before election day the Island Secretary shall notify the [Recorders] in writing of the names of all persons in respect of whom a proxy vote has been approved (save in respect of appointments that were subsequently revoked in accordance with subparagraph (j) and (k)) and in each case shall name the person who is appointed proxy.
- (h) On election day [a] Recorder shall distribute a voting card to each appointed and approved proxy and shall receive and record the vote of the proxy as if it were the vote of the person who appointed the proxy.
- (i) A person's appointment as a proxy under this section shall end when his or her proxy vote has been made, received and recorded in accordance with subparagraph (h). However, if for any reason that election were disputed in accordance with this Ordinance and a new election ordered, then the appointed proxy may vote in that new election without need for a further appointment unless his or her appointment as a proxy has been terminated

- in accordance with subparagraph (j).
- (j) The appointment of a proxy in accordance with this Ordinance may be revoked only in the following manner:
- (i) when a Recorder has been appointed under s 16(5), by notice to the Recorder provided that such notice is given not later than 2 days before election day;
 - (ii) when a Recorder has not been appointed, by notice to the Island Secretary;
 - (iii) such notice must be signed and state that the person wishes to revoke the appointment of his or her proxy, and the notice shall either be delivered by hand (to Recorder or Island Secretary as applicable) or by way of a scanned copy sent by email to the address specified in subparagraph (d) above, or any replacement address that may be notified by regulations made under this Ordinance.
- (k) Any revocation of the appointment of a proxy shall be effective only upon its receipt by the Island Secretary or Recorder in accordance with subparagraph (j).]

(Inserted by Ordinance No. 2 of 2008)
(Amended by Ordinance No. 1 of 2013)

[PART IV—ELECTION OFFENCES

19.—(1) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000, who—

Interfering with or influencing voters

- (a) interferes in any way with any person who is about to vote with the intention of influencing or advising that person as to whether or how he or she should vote;
- (b) during the period commencing 1 [September] and ending at midnight on election day, gives information that he or she knows to be false to any person with the intention of influencing or advising that person as to how he or she should vote.

(Amended by Ordinance No. 1 of 2013)

20.—(1) Every person commits an offence who—

Offences in respect of official documents

- (a) intentionally removes, obliterates, or alters any official mark or official writing on any voting document, or other official document used at or in connection with an election;
- (b) forges, counterfeits, fraudulently marks, defaces, or fraudulently destroys any voting document, or other

official document used at an election, or the official mark on that document:

- (c) supplies, without authority, a voting document to any person;
- (d) obtains or has possession of any voting document, other than one issued to that person under this ordinance or any regulations made under this ordinance for the purpose of recording his or her vote, without authority;
- (e) intentionally destroys, opens, or otherwise interferes with any ballot box or box or parcel of voting documents without authority.

(2) Every person who commits an offence against subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine of \$2,000 or both.

Voting offences

21. Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 6 months, who—

- (a) votes or applies to vote more than once at the same election; or
- (b) without authority, removes, deletes, or otherwise interferes with any voting document, or other record of a vote that has been cast.

Bribery

22.—(1) Every person commits the offence of bribery who, directly or indirectly, on that person's own or by another person,—

- (a) gives, lends, agrees to give or lend, offers, promises, or promises to obtain any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector, or to or for any other person, in order to induce any elector to vote or refrain from voting; or
- (b) gives or obtains, agrees to give or obtain, offers, promises, or promises to obtain or to try to obtain any office or place of employment to or for any elector, or to or for any person on behalf of any elector, or to or for any other person, in order to induce the elector to vote or refrain from voting; or
- (c) corruptly does any act referred to in paragraph (a) or paragraph (b) on account of an elector having voted or refrained from voting; or
- (d) makes any gift, loan, offer, promise, or agreement referred to in paragraph (a) or paragraph (b) for, or with, any person in order to induce that person to obtain or try to obtain the election of any person or

- the vote of any elector; or
- (e) upon or as a consequence of any gift, loan, offer, promise, or agreement referred to in paragraph (a) or paragraph (b), obtains, or tries to obtain, the election of any person or the vote of any elector; or
 - (f) advances or pays, or causes to be paid, any money to or for the use of any other person, intending that that money or any part of it will be used for bribery at any election; or
 - (g) knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or partly used for bribery at any election.
- (2) An elector commits the offence of bribery if,—
- (a) before or during the voting period at the election, he or she, directly or indirectly, on his or her own or by another person, receives, or agrees or contracts for, any money, gift, loan, or valuable consideration, office, place, or employment for himself or herself or for any other person for voting or agreeing to refrain from voting:
 - (b) after the voting period at the election, he or she directly or indirectly, on his or her own or by another person, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting.
- (3) Every person who commits bribery is liable on summary conviction to imprisonment for a term not exceeding 6 months.

23.—(1) Every person commits the offence of undue influence—

Undue influence

- (a) who, directly or indirectly, on that person's own or by another person, makes use of or threatens to make use of any force, violence, or restraint against any person—
 - (i) in order to induce or compel that person to vote or refrain from voting:
 - (ii) on account of that person having voted or refrained from voting:
 - (b) who, by abduction, duress, or any fraudulent device or means,—
 - (i) impedes or prevents the free exercise of the vote of any elector:
 - (ii) compels, induces, or prevails upon any elector either to vote or to refrain from voting.
- (2) Every person who commits the offence of undue

influence is liable on summary conviction to imprisonment for a term not exceeding 6 months.

Infringement of
secrecy

24.—(1) The [Recorders] and every other electoral official—

- (a) must maintain and assist in maintaining the secrecy of the voting; and
- (b) must not communicate to any person, except for a purpose authorised by law, any information likely to compromise the secrecy of the voting.

(Amended by Ordinance No. 1 of 2013)

(2) No person, except as provided by this ordinance or regulations made under this ordinance, may—

- (a) interfere with or attempt to interfere with a voter when marking or recording his or her vote; or
- (b) attempt to obtain, in the building or other place where the voter has marked or recorded his or her vote and immediately before or after that vote has been marked or recorded, any information as to any candidate for whom the voter is about to vote or has voted; or
- (c) communicate at any time to any person any information obtained in the building or other place where the voter has marked or recorded his or her vote and immediately before or after that vote has been marked or recorded, as to—
 - (i) any candidate for whom, or the proposal for or against which, the voter is about to vote or has voted; or
 - (ii) any number on a voting document marked or transmitted by the voter.

(3) Every person present at the counting of votes must—

- (a) maintain and assist in maintaining the secrecy of the voting; and
- (b) must not, except as is provided by this ordinance or regulations made under this ordinance, communicate any information obtained at that counting as to any candidate for whom, or proposal for or against which, any vote is cast by a particular voter.

(4) Every person commits an offence who contravenes or fails to comply with this section.

(5) Every person who commits an offence against subsection (4) is liable on summary conviction to imprisonment for a term not exceeding 6 months.

Criminal proceedings

25. No person other than the Pitcairn Public Prosecutor may take criminal proceedings for an offence under this ordinance.]

(Inserted by Ordinance No. 3 of 2008)

[PART V—DISPUTED ELECTIONS

26.—(1) [Subject to subsection (1A)] if any candidate has reason to believe that the public declaration by [a Recorder] of one or more of the elected candidates is incorrect, and that on a recount of votes the first-mentioned candidate might be elected, he or she may, within 72 hours after the public declaration and the affixing of the notice of elected candidates referred to in section 16(10), apply to the Island Magistrate for a recount of the votes.

Application for
recount

(Amended by Ordinance No. 1 of 2013)

[(1A) If the Island Magistrate is a candidate in the election, a candidate may instead apply to the [Administrator] for a recount of the votes, and the rest of this section and section 28 apply as though references to the Island Magistrate were references to the [Administrator].]

(Inserted by Ordinance No. 1 of 2013)

(Amended by Ordinance No. 4 of 2014)

(2) An application under subsection (1) must be in writing and specify the grounds upon which it is believed that the counting of votes might be incorrect and shall be deemed to have been made when the application is delivered by hand to the Island Secretary.

(3) Upon receiving an application under subsection (2) the Island Secretary shall immediately transmit it to the Island Magistrate.

(4) If the Island Magistrate is satisfied that the applicant has reasonable grounds to believe that the declaration is incorrect and that on a recount the applicant might be elected, the Island Magistrate must, as soon as practicable after receiving the application—

- (a) cause a recount of the votes to be made; and
- (b) give notice in writing to the [Recorders], Island Secretary and to each of the candidates of the time and place at which the recount will be made.

(Amended by Ordinance No. 1 of 2013)

27. Each candidate may, by notice in writing, appoint 1 scrutineer for the recount.

Scrutineers

28.—(1) At the recount, the [Recorders] must produce to the Island Magistrate all the voting documents used at the election.

Conduct of recount

(2) The recount must be made in the presence of the Island Magistrate, or of a person appointed by him or her for the purpose, and—

- (a) must, as far as is practicable, be made in the manner provided in the case of the original count unless the Island Magistrate orders otherwise; and
- (b) section 24 (relating to security and secrecy) applies,

with any necessary modifications, to the recount.

(3) If, on the recount, the Island Magistrate is satisfied that the public declaration was incorrect, the Magistrate must order the [Recorders] to give an amended announcement and notice under section 16 of the result of the election.

(4) If, on the recount, the Island Magistrate is satisfied that the public declaration was correct, the Island Magistrate must order the [Recorders] to make an announcement to that effect and affix a notice to that effect on the public notice board.

(5) Where the Island Magistrate has made an order under either subsection 3 or subsection 4 no further application for a recount may be made by any person.

(Amended by Ordinance No. 1 of 2013)

Application for leave
to bring petition for
inquiry

29.—(1) Any candidate or any 4 electors with a complaint about the conduct of an election may apply for leave to file a petition in the Magistrate’s Court.

(2) An application for leave under subsection (1) must—

- (a) be filed within 7 days after public notice is given declaring the result or, as the case may be, the amended result of the election (or, in the case of a recount which results in the affirmation of the result of the election, then within 7 days of that affirmation); and
- (b) specify the specific grounds on which the complaint is based.
- (c) be accompanied by a filing fee of \$200.

(3) An application for leave under subsection (1) shall be filed, and the filing fee paid, by hand delivery to the Island Magistrate, provided that if the Island Magistrate is not present on Pitcairn Island then such application may be filed and fee paid by hand delivery to the Island Secretary.

(4) An application for leave shall:

- (a) be determined by a Magistrate other than the Island Magistrate;
- (b) be granted only if the Magistrate is satisfied that there are reasonable grounds for the complaint.

(5) The Magistrate may consider and determine the application for leave in any manner he or she thinks fit, and may give a direction that the application—

- (a) shall be heard and determined on the papers filed in support of the application for leave; or
- (b) shall be heard orally, and in that event the Magistrate may at his or her election call for oral submissions to be presented by way of a live television link at a specified time and place so as to facilitate a hearing at which the Magistrate is outside the Islands.

30.— (1) If the Magistrate grants leave to file a petition the hearing of the petition may then proceed in such manner, and at such time and place, as the Magistrate specifies.

Hearing of election
petition

(2) No grounds other than those stated in the application for leave to file a petition may be investigated, except with the leave of the Magistrate hearing the petition.

(3) Leave may be given under subsection (2) on such terms and conditions (if any) that the Magistrate considers just.

31.— (1) Notice of an intention to oppose a petition may be filed in the Magistrate's Court by—

Who may be
respondent

(a) any candidate or any 2 electors, if the petition concerns an election; or

(b) an electoral officer or other electoral official, if the petition complains of the conduct of the electoral officer or other electoral official.

(2) The person or persons who file a notice under subsection (1) are the respondent or respondents to the petition.

(3) Notices under this section must be given in the same manner as is set out in section 29(2)(b).

32. The inquiry must be commenced within 28 days after the filing of the petition, and not less than 2 days' public notice must be given of the time and place at which the inquiry will be held.

Time for inquiry

33.— (1) For the purposes of the inquiry, the Magistrate conducting it—

Powers of Magistrate

(a) has and may exercise all the powers of citing parties, compelling evidence, and maintaining order that the Magistrate would have in the Magistrate's ordinary civil jurisdiction; and

(b) may, in addition, at any time during the inquiry direct a recount or scrutiny of the votes given at the election; and

(c) must sit on his or her own without assessors; and

(d) may preside over the hearing of evidence and legal submissions by means of a live television link whereby the Magistrate is outside the Islands and the persons presenting evidence or submissions are within the Islands; and

(e) may appoint a delegate within the Islands to inquire into some or all of the facts and otherwise to provide assistance to the Magistrate, and in that event shall record in his or her decision the result of that inquiry or that assistance.

(2) If a recount or scrutiny is conducted under subsection (1) (b), the Magistrate must disallow the vote of every person who—

- (a) has voted, despite not being entitled to vote at the election; or
- (b) has voted more than once at the election.

Result of Inquiry

34. The Magistrate must determine whether,—

- (a) as a result of an irregularity that in the Magistrate's opinion materially affected the result of the election, the election is void; or
- (b) the candidate whose election is complained of, or any and which other candidate, was elected.

Election not void
by reason of certain
irregularities**35.—**(1) If subsection (2) applies, an election must not be declared void on the ground of—

- (a) any irregularity in any of the proceedings preliminary to the voting; or
- (b) any failure to hold the election at any place appointed for holding the election; or
- (c) a failure to comply with the directions contained in this ordinance or any regulations made under this ordinance as to the conduct of the election or the counting of the votes; or
- (d) by any mistake in the use of prescribed forms.

(2) This subsection applies if the Magistrate conducting an inquiry into the conduct of an election considers that the irregularity, failure, or mistake referred to in subsection (1) did not affect the result of the election.

Costs of inquiry

36.—(1) The Magistrate may order that all or part of the expenses of, or incidental to, the inquiry are to be met by—

- (a) any party or parties to the inquiry; or
- (b) any electoral officer or other electoral official if the Magistrate declares the election void on the ground of intentional or reckless misconduct by that electoral officer or other electoral official.

(2) In particular—

- (a) any costs which in the opinion of the Magistrate have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or of the respondent; and
- (b) any needless expense incurred or caused on the part of the petitioner or respondent,
may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether or not they are on the whole successful.

(3) The order may be enforced as a judgment for a debt.

(4) Despite subsection (1), no order may be made against any person who is not a party to the inquiry unless the person has been summoned to appear and give evidence at the inquiry.

37.—(1) If an election is declared void, a new election must be held under the same provisions, as far as practicable, as those applicable to the void election.

New election if
declared void

(2) The new election must be held within 28 days of the election being declared void and the Island Council shall appoint the day for the election in accordance with section 13 with such adjustments as are necessary.

(3) The only persons eligible to vote at the new election are the persons who were eligible to vote at the void election.

(4) The Register of Voters to be used for the new election is the one that was used at the void election, without any amendments or additions.

(5) Despite subsections (3) and (4), if an election is declared void as a result of an irregularity in the electoral roll, the Magistrate may order that, for the purposes of the new election,—

- (a) specified amendments or additions or deletions be made to that Register; or
- (b) specified kinds of amendments or additions or deletions be made to that Register; or
- (c) an updated version of that roll be prepared incorporating 1 or more of the changes authorised under paragraphs (a) or (b).

(6) The only persons eligible to be nominated as candidates at the new election are the persons who were qualified to be nominated as candidates at the void election.

(7) The [Recorders] at the new election shall be the [persons who were Recorders] at the void election unless the Magistrate orders otherwise in which case [a new Recorder or Recorders] shall be appointed by the Island Council at the same time as it sets the new election date under subsection (2).

(Amended by Ordinance No. 1 of 2013)

38.—(1) Every determination or order under this Part is final and may not be removed into the Supreme Court or Court of Appeal by any procedure.

Order to be final

(2) No proceedings may be brought in the Supreme Court questioning the validity of any election under this ordinance.

39.—(1) An election shall not be questioned except by a petition under this Ordinance.]

Elections not to be
questioned other than
by petition

(Inserted by Ordinance No. 3 of 2008)

APPENDIX 1**Application Form to Vote by Proxy in Pitcairn Islands Election**

Please complete in **BLACK INK** and **BLOCK CAPITALS** and return to the Island Secretary by hand, or by sending a scanned signed copy to isec@pitcairn.govt.pn

About you	Who do you want to vote on your behalf?																
First name(s) (in full)	Name (in full)																
Surname	Address																
	Relationship to you (if any)																
Your Date of Birth	Proxy vote for which elections?																
<table border="1" style="width: 100%; text-align: center;"> <tr> <td style="width: 20px; height: 20px;"> </td> <td style="width: 20px; height: 20px;"> </td> <td style="width: 20px; height: 20px;"> </td> <td style="width: 20px; height: 20px;"> </td> <td style="width: 20px; height: 20px;"> </td> <td style="width: 20px; height: 20px;"> </td> <td style="width: 20px; height: 20px;"> </td> <td style="width: 20px; height: 20px;"> </td> </tr> <tr> <td colspan="2">Day</td> <td colspan="2">Month</td> <td colspan="4">Year</td> </tr> </table>									Day		Month		Year				The elections for Island Council and/or Mayor in December ____
Day		Month		Year													
Your Declaration	Reason for this application																
As far as I know, the details on this form are true and accurate. I have asked the person named above who is willing and able to vote for me as my proxy.	I intend to be temporarily absent from Pitcairn Islands at the time of the election																
<p>Signature: Keep within the border below and use BLACK INK</p> <div style="border: 1px solid black; height: 80px; width: 100%;"></div> <p>Date:</p>	Proxy's Declaration (optional)																
	<p>I am capable and willing to be appointed to vote as the applicant's proxy.</p> <p>Signature:</p> <p>Date:</p>																

CHAPTER XI

LOCAL GOVERNMENT

Section 7

LOCAL GOVERNMENT REGULATIONS*Made by the Island Council***Arrangement of parts**

Part

I—Preliminary

- A. Short title.
- B. Interpretation.
- C. Penalties.

II—Public Health and Town and Country Planning

- A. Buildings.
- B. Rubbish.
- C. Water Supplies, Cisterns, Wells and Sanitary Conveniences.
- D. Burials.
- E. Quarantine and Powers of Medical Officer.

III—Plant and Animal Quarantine

IV—Animals and Wildlife

- A. Control of Domestic Animals.
- B. Care of Animals.
- C. Wildlife.

V—Public Work

VI—Government Vessels, Machinery and Equipment.

- A. Inter-Island Voyages.
- B. General Use and Manning of Public Boats.
- C. Maintenance of Public Boats.
- D. Visits to Ships by Children.

VII—Public Telephone

VIII—Public Electricity

IX—Prison

X—The Control of Firearms and Explosives

XI—Control of Traffic

Regulations 1966,
1968, 1976, 1981,
1983, (No.2) 1983,
1986, (No.2) 1986,
1994, 2004, 2010,
2011, 2014.

LOCAL GOVERNMENT REGULATIONS

PART I—PRELIMINARY

A—SHORT TITLE

These Regulations may be cited as the Local Government Regulations.

B—INTERPRETATION

In these Regulations unless the context otherwise requires—

“ammunition” means ammunition for any firearm as hereinafter defined and includes bullets, cartridges and shells;

“animals” includes birds, reptiles, fish, insects and the eggs of birds, reptiles, fish and insects;

“boat” means any long-boat, launch, canoe or other vessel normally owned on or kept at Pitcairn Island;

“building” means any roofed structure and includes any such structure at any stage of its erection whether the roof or any part thereof has been erected or not;

“child” means and includes any person under the age of [18] years;

(Amended by Regulations 16.04.2014)

“court” means the Magistrate’s Court;

“domestic animal” includes any cattle, sheep, goats, horses, pigs, dogs, cats or domestic poultry;

“dwellinghouse” means any building designed, intended or used for human habitation;

“Education Officer” means the person for the time being holding the office of Education Officer on Pitcairn Island;

“firearm” means any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged;

[“forestry land” means land which is held under a Land Allocation Title as forestry land under s 3 of the Land Tenure Reform Ordinance;

“garden land” means land which is held under a Land Allocation Title as garden land under s 3 of the Land Tenure Reform Ordinance;

“house land” means land which is held under a Land Allocation Title as house land under s 3 of the Land Tenure Reform Ordinance;]

(Inserted by Regulations 23.02.2011)

[“inhabitant”, for the purposes of Part V of this

Regulation, means any person who resides on the Island for more than 6 months;]

(Inserted by Regulations 18.04.10)

“Medical Officer” means the person for the time being holding the office of Medical Officer on Pitcairn Island;

[“orchard land” means land which is held under a Land Allocation Title as orchard land under s 3 of the Land Tenure Reform Ordinance;]

(Inserted by Regulations 23.02.2011)

“plants” includes trees, shrubs, plants or portions thereof such as logs, sawn timber, cuttings, buds, roots, tubers, bulbs, corms, seeds, fruit and vegetables;

“police officer” means any person from time to time appointed by the Governor to hold the public office of police officer and includes any person duly appointed as an assistant to such police officer;

“Quarantine Officer” means the person for the time being holding the office of Quarantine Officer on Pitcairn Island;

“Radio Officer” means the person for the time being holding the office of Radio Officer on Pitcairn Island;

“Sabbath Day” means the period between sunset on any Friday and sunset on the next succeeding Saturday.

(Amended by Regulations 16.04.2014)

C—PENALTIES

Any person who contravenes any of the following regulations or fails to comply with any order lawfully made thereunder shall be guilty of an offence and liable on conviction, for the first offence to pay or suffer a penalty, not exceeding that specified therein, and for every second or subsequent offence to pay or suffer a penalty not exceeding double that so specified:

Provided that no such penalty shall exceed a fine of \$100 or imprisonment for a period of 40 days.

PART II—PUBLIC HEALTH AND TOWN AND COUNTRY PLANNING

A—BUILDINGS

1. No person shall erect any building or add to or alter any existing building without the permission of the Council which shall satisfy itself that the site and plans are suitable

to the purpose for which the building is intended to be used. Penalty: \$20.

2. In addition to any penalty imposed for any contravention of the last preceding regulation the Court may, on the application of the Council, make such order as it sees fit for the removal or alteration, within such time as the Court may direct, of any building erected, altered or added to in contravention of that regulation. Penalty: \$50.

3. The owner or occupier of every building (other than an unoccupied temporary building situated more than 10 yards from any dwellinghouse, public road, building or cemetery) shall keep such building in good repair. Penalty: \$20.

4. In addition to any penalty imposed for any contravention of the last preceding regulation the Court may, on the application of the Council, order the owner or occupier of any building in a state of disrepair to repair, within such time as the Court may direct, such building to the satisfaction of the Council:

Provided that if such building—

- (a) should, in the opinion of the Medical Officer, be demolished as being a danger to public health; or
- (b) has been unoccupied for a period of 12 months or longer and the owner cannot be located within one month after the making of such order to repair,

the Court may order that such building be demolished and that all material obtained therefrom be disposed of in such manner as the Court may direct. Penalty: \$50.

B—RUBBISH

1. No person shall throw or deposit any rubbish in any public place or on any public road. Penalty: \$10.

2. All rubbish shall be buried, burnt or otherwise disposed of in a sanitary manner. Penalty: \$10.

3. At the request of the Medical Officer the Council may order the owner, occupier or user of any land to clear such land within such time as the Council may direct of all bush or rubbish likely, in the opinion of the Medical Officer, to encourage the breeding of mosquitoes, flies or rats. Penalty: \$20.

4. No person, being the occupier of any dwellinghouse shall permit mosquito larvae to remain within the precincts of such dwellinghouse. Penalty: \$10.

5. The Council may, at the request of the Medical Officer, order the occupier of any dwellinghouse to take such steps as the Council may direct to prevent the breeding of mosquitoes within the precincts of such dwellinghouse. Penalty: \$20.

C—WATER SUPPLIES, CISTERNS, WELLS AND SANITARY

CONVENIENCES

1. No person shall construct or dig any cistern or well without first obtaining the permission of the Council. Penalty: \$10.

2. In addition to any penalty which may be imposed for contravention of the last preceding regulation the Court may, on the application of the Council, order the destruction or filling in, within such time as the Court may direct, of any cistern or well constructed or dug in contravention of that regulation. Penalty: \$50.

3. At the request of the Medical Officer, the Council may order the owner or user of any cistern or well to destroy or fill in such cistern or well if, in the opinion of the Medical Officer, such cistern or well constitutes a danger to public health. Penalty: \$20.

4. No person shall misuse or waste any water in any public cistern or well. Penalty: \$10.

5. No person shall pollute any public cistern, well or bathing place. Penalty: \$10.

6. The owner or user of every cistern or well shall keep such cistern or well walled or fenced, covered and clean. Penalty: \$10.

7. The Council may order the owner or user of any cistern or well to take such steps within such time as the Council may direct to ensure that the provisions of the last preceding regulation are complied with. Penalty: \$20.

8. No person shall defaecate or urinate within 10 yards of any building, cistern, well or public road, other than in a latrine or urinal approved by the Council. Penalty: \$10.

9. The owner or occupier of every dwellinghouse shall ensure that such dwellinghouse is provided with a latrine approved by the Medical Officer. Penalty: \$10.

D—BURIALS

1. No person shall, without the permission in writing of the Council, bury any dead person in any place other than in a public cemetery approved by the Council. Penalty: \$50.

2. No permission granted under the provisions of the last preceding regulation shall authorize any burial to take place within 50 yards of any inhabited dwellinghouse.

E—QUARANTINE AND POWERS OF MEDICAL OFFICER

1. The Medical Officer, may in the reasonable exercise of his duties, at all such times as he may think fit, enter any building or property whatsoever for the purpose of ensuring that the provisions of these Regulations, or of any other

Ordinance or Regulations relating to public health, are being complied with, and no person shall obstruct or prevent or attempt to prevent the Medical Officer from entering any building or property for such purpose. Penalty: \$50.

2. The Council may, on the recommendation of the Medical Officer, direct the general quarantine of any of the Islands and shall forthwith inform the Governor of such quarantine order.

3. No person shall enter or leave any Island in respect of which a general quarantine order has been made under the provisions of the last preceding regulation. Penalty: \$50.

4. No person shall board any ship or aircraft after having been warned by the master or any medical officer thereof or by the Mayor not to do so because of any sickness thereon. Penalty: \$50.

PART III—PLANT AND ANIMAL QUARANTINE (Revoked by Ordinance No. 3 of 2004)

PART IV—ANIMALS AND WILD LIFE

A—CONTROL OF DOMESTIC ANIMALS

1. No goats may be kept on the Islands of Henderson, Ducie or Oeno. Penalty: \$100 or 40 days' imprisonment.

2. No goats may be kept on Pitcairn Island except by registered goat owners in such parts of the Island as the Council may from time to time appoint. Penalty: \$20.

3. Upon the application of any person, the Council may cause such person to be registered as a goat owner subject to such conditions not inconsistent with the provisions of this Part of these Regulations as the Council sees fit to impose.

4. All goats kept on Pitcairn Island under the provisions of this Part of these Regulations shall be confined within fences or tethered so as to prevent them from straying and any goats not so confined or tethered shall be deemed to be wild goats.

5. No goat suffering from the disease known as "Big Bubby" shall be kept on Pitcairn Island. Penalty: \$20.

6. In addition to any penalty imposed for any contravention of the last preceding regulation, the Court may order that any goat suffering from the disease known as "Big Bubby" be destroyed and the carcass disposed of in such manner as the Court may direct. Penalty: \$50.

7. All domestic poultry shall be confined within fences or pens adequate to prevent them from straying:

Provided that, on the application of any person, the Council may exempt such person from the provisions of this regulation

if in the opinion of the Council any poultry kept by such person are kept far enough away from any dwellings or gardens as to be unlikely to cause any nuisance or damage. Penalty: \$20.

8. All other domestic animals, with the exception of dogs and cats, shall be confined within fences or tethered so as to prevent them from straying. Penalty: \$20.

9. The owner or keeper of any dog shall keep such dog under control at all times so as to prevent such dog from rushing at, attacking or injuring any person in any public place or on any land other than the land of the owner or keeper of such dog. Penalty: \$20.

10. In addition to any penalty imposed under the provisions of the last preceding regulation, the Court may, on the application of any person, order that any dog which has bitten any person, or has been the subject of more than one conviction under the provisions of the last preceding regulation, be destroyed in such manner as the Court may direct. Penalty: \$50.

11. Without prejudice to the right to compensation conferred by the provisions of the next succeeding regulation, if any domestic animal causes damage to any property or crops growing on any land in the possession or occupation of any person, such person may request the owner or keeper of any such animal to remove it forthwith and, if such request is not complied with within a reasonable time, may kill such animal provided that he or she forthwith delivers the carcass to such owner or keeper.

12. In addition to any penalty imposed under the provisions of this Part of these Regulations, the Court may, on the application of any person, who has suffered damage, order the owner or keeper of any domestic animal to replace in kind or to pay compensation for any damage done by such animal whilst straying.

B—CARE OF ANIMALS

1. No person shall cruelly ill-treat any animal or cause or procure, or, being the owner or keeper of any animal, permit or suffer any animal to be cruelly ill-treated. Penalty: \$100 or 40 days' imprisonment.

2. No person, being the owner or keeper of any domestic or captive animal, shall fail to provide such animal with proper and sufficient food, drink or shelter. Penalty: \$20.

3. No person shall keep any domestic or captive animal which is in such a condition that it is cruel to keep it alive. Penalty: \$20.

4. In addition to any penalty imposed under the provisions

of the last preceding regulation, the Court may order any such animal to be destroyed in such manner as the Court may direct. Penalty: \$50.

5. No person shall keep any animal chained or tethered upon an unreasonably short chain or rope for an unreasonable time or use wire to tether any animal. Penalty: \$50.

C—WILD LIFE

1. No person shall kill, take or in any way molest any wild bird or take any eggs of any wild bird except in accordance with the provisions of these Regulations. Penalty: \$50.

2. The provisions of the last preceding regulation shall not apply to the Hawk (*Fregata minor*) or its eggs, except during the months of August to December inclusive, or to the Noddy (*Anous stolidus pileatus*) or its eggs, except during the months of August to January inclusive.

3. Notwithstanding the provisions of the last two preceding regulations, the Council may appoint a committee of its members, to be known as the Wild Bird Protection Committee, which committee shall have authority to declare that all or any of the following birds or their eggs, namely—

- All species of Petrel (*Pterodroma*);
- All species of Noddy (*Anous stolidus pileatus*);
- All species of Booby (*Sula*);
- Bosun Bird (*Phaeton rubicauda* subsp.);
- The Hawk (*Fregata minor*),

may be killed or taken on Oeno Island, and may—

- (a) limit the numbers of all such birds or their eggs that may be killed or taken by any one person;
- (b) restrict the times during which any such birds or their eggs may be killed or taken; or
- (c) restrict the areas within which any such birds or their eggs may be killed or taken.

4. The Council may, with the prior approval of the Governor, wholly or partially exempt any person or persons from any of the provisions of the three last preceding regulations.

5. No person shall take, hunt, fish, capture, harass or intentionally kill, or attempt to take, hunt, fish, capture, harass or kill, any member of the following species—

- blue whale (*balaenoptera masculus*)
- humpback whale (*megaptera novaeangliae*)
- right whale (*eubalaena glacialis*)
- short-tailed albatross (*diomedea albatrus*)
- cahow (*pterodroma cahow*)
- dark-rumped petrel (*pterodroma phaeopygia*)

green sea turtle and related species (*cheloniidae*)
 leather back sea turtle (*dermochelys coriacea*)
 hawksbill turtle (*eretmochelys imbricata*)
 loggerhead turtle (*caretta caretta*)
 Ridley turtle (*lepidochalys olivacea*)

Penalty: \$50.

6. Notwithstanding the provisions of Regulation 5, the Council may appoint a committee of its members, to be known as the Conservation of Migratory Species of Wild Animals Committee which shall have power to authorise any person in a manner not inconsistent with the welfare of the species concerned and to the extent of such number of members of the species and the area and times within which such authorisation shall have effect, as shall be specified therein, to take, hunt, fish, capture, harass or kill any members of any species referred to in Regulation 5—

- (a) for scientific purposes;
- (b) for the purpose of enhancing the propagation or survival of the species concerned;
- (c) in order to accommodate the needs of traditional subsistence users of the species concerned; or
- (d) as required by extraordinary circumstances,

and where any such authorisation has been duly given by the Committee, the person to whom it has been given shall not by reason of any act committed in pursuance thereof be guilty of any offence under Regulation 5.

7. The Committee constituted under Regulation 6 shall be responsible for the implementation within the Islands of the Convention on the Conservation of Migratory Species of Wild Animals as the same shall be applied to Pitcairn.

D – PESTICIDES

1. No person shall import into the Islands any insecticide, herbicide or any other type of pesticide without declaring the same to the Director of Biosecurity. Penalty \$100.

2. Regulation D1 shall not apply to pesticides intended for use on the person or for domestic use inside a dwelling house or commercial premises (for example, insect repellent and fly sprays).

3.—(1) No person within the Islands shall, without a permit, willfully spread by spray or by any other means any insecticide, herbicide or any other type of pesticide. Penalty: \$100

(2) This section shall not apply to spreading on any land which is house land, garden land, orchard land or forestry land, nor to spreading on or within a 5 metre radius of a tree that is

on public land on Pitcairn Island (provided that the spreading is carried out by or on behalf of a person who is recognised as the beneficial owner of that tree).

4. (1) The Council may, upon payment to it by the applicant of a fee prescribed in accordance with regulation D8, approve the issue of a permit authorising a person named in the permit to do anything forbidden by regulation D3, but only if there is or appears to be no other satisfactory course of action.

(2) A permit shall be in the form from time to time approved by the Council, shall record the date on which the Council approved the issue of the permit, and shall be signed by the Director of Biosecurity (or, where the Director of Biosecurity is not available, by the Mayor).

5. A permit shall specify the physical location of the area within the Islands to which it relates, the period for which it is valid, and the nature of the activities that are permitted under that permit.

6. A person authorised by a permit issued under regulation 3 must inform the Council in writing from time to time, but not later than one month after the expiry of the permit, of anything that has been done under the permit.

7. Written records shall be kept by the Council of the following:

- (a) all permits granted including particulars of the period and conditions thereof; and
- (b) all activities conducted under the permit.

8. Council may from time to time prescribe fees for issue of permits under regulation D4 and such fees shall take effect upon approval of the Governor.]

(Subpart D inserted by Regulations 23.02.11)

PART V—PUBLIC WORK

1. The Council [or person(s) designated by the Council for such purpose] may declare any work or services for the common benefit of the inhabitants of Pitcairn Island to be public work:

Provided that no work or services for which financial provisions is made in the annual estimates of the Islands shall be declared public work.

2. The Council shall be responsible for the planning and general supervision of all public work.

3. **(Repealed by Regulations 18.04.10)**

4. Every inhabitant of Pitcairn Island who:

- (a) has attained the age of 16 years and has not attained the age of 65 years, or
- (b) is in paid employment;

shall be liable to perform public work without payment at such times and on such days as the Council, or persons designated by the Council for such purpose, may direct:

Provided that the following persons shall be exempt from the performance of public work—

- (a) any person in fulltime attendance as a student at the public school or undertaking fulltime study by correspondence;
- (b) any person whom the Medical Officer certifies to be temporarily or permanently unfit for work on account of illness or incapacity;
- (c) any person exempted by the Governor or the Council from the performance of public work:

And further provided that no person not exempted from the performance of public work under this Regulation shall be required to perform any physical work for which he or she would not be suited.]

5. All persons liable to perform public work shall assemble in the Public Square, or other such place as may from time to time be appointed by the [Council].

6. No person liable to perform public work shall, without lawful excuse

- (a) fail to attend at the time and place appointed in or under the last preceding regulation;
- (b) fail to perform any public work assigned to him [or her]; or
- (c) perform any such work negligently or carelessly.

Penalty: \$50.

7. No person shall, without lawful excuse, in any way interfere with persons performing public work or hinder them in the performance of such work. Penalty: \$50.

[8.—(1) It shall be a function of the Council to oversee the conditions in which children perform paid or unpaid work, and to ensure that children are not exposed to risks to their health, safety and morals in workplaces on the Islands.

(2) The Council shall annually at its first meeting in each year appoint or reappoint a designated member of the Island Officers to—

- (a) monitor the work conditions of children on the Islands and ensure that no child is exposed to or engaged in work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of that child.
- (b) report annually to the Island Council on the work conditions of children.

(3) In this Regulation “workplace” means any place in which:

- (a) goods (including food) are manufactured for sale or trade;
- (b) construction of roads, buildings or other structures is being undertaken;
- (c) public work is being carried on under these Regulations;
- (d) heavy machinery is being used for any purpose— provided that no part of a private home shall be deemed a workplace on account of subparagraph (a) above unless it is a room or area set aside wholly for the manufacture of goods (including food) for sale or trade.]

(Amended by Regulations 18.04.10)

PART VI—[GOVERNMENT VESSELS, MACHINERY AND EQUIPMENT]

A—INTER-ISLAND VOYAGES

1. No boat shall be used for the purpose of travelling between Pitcairn Island and any other of the Islands without the approval of the Council which, before granting any such approval, shall satisfy itself that such boat is in a seaworthy condition, adequately manned and provided with sufficient serviceable lifesaving equipment which shall consist of not less than—

- (a) one lifejacket for each occupant of such boat;
- (b) one lifeboat compass;
- (c) one electric lantern with spare battery or one oil lantern with filled oil container;
- (d) one lifeboat sea anchor; and
- (e) six lifeboat smoke signals or flares:

Provided that in the discretion of the Council such smoke

signals or flares may be dispensed with in cases of emergency when there are insufficient or no such smoke signals or flares available on Pitcairn Island.

2. In addition to the lifesaving equipment required under the provisions of the last preceding regulation, the Council may require any boat travelling from Pitcairn Island to any other Island to carry a serviceable radio transceiver and prescribe the times at which such boat is to communicate with the Pitcairn Island radio station.

3. No person shall travel between Pitcairn Island and any other of the Islands in any boat either as captain, crew member or passenger except in accordance with the foregoing provisions of this Part of these Regulations. Penalty: \$50.

B—GENERAL USE AND MANNING OF PUBLIC BOATS

1. The Council shall appoint a captain and crew for each public boat.

2. The captain of each public boat shall be responsible—
- (a) for its navigation, working and safety when on the water, and may refuse to take any person or cargo into such boat unless he considers it safe to do so; and
 - (b) for the landing and discharge of passengers and cargo on to and from such boat.

3. The captain of a public boat shall detail one or more members of the crew in rotation to be responsible for the care of such boat whilst lying alongside any other boat or any ship.

[4. No person shall use any public vessel, machinery or equipment without the permission of the Division Manager (Operations) or, in the case of a vessel, its captain. Penalty: \$50.]

(Repealed and replaced by Regulations 18.04.10)

5. No member of the crew of any public boat shall disobey any lawful order given by the captain thereof or perform any work assigned to him by such captain negligently or carelessly. Penalty: \$20.

6. No person being a passenger in any public boat, shall disobey any lawful order given by the captain thereof. Penalty: \$20.

C—MAINTENANCE OF PUBLIC BOATS

1. The captain of each long-boat shall be responsible for all minor repairs to and maintenance of such boat.

2. Subject to the provisions of the last preceding regulation, all repairs to and maintenance of public boats shall be carried out by such persons as the Council may from time

to time appoint for that purpose, and whenever any such boat requires repairs the captain thereof shall report that fact to the [Division Manager (Operations)] informing him [or her] of the nature of the repairs required.

(Amended by Regulations 18.04.10)

D—VISITS TO SHIPS [BY CHILDREN]

1. **(Repealed by Regulations 18.04.10)**
2. **(Repealed and replaced by Regulations 18.04.10)**
3. No child [under the age of 16] may visit any overseas ship calling at Pitcairn Island:

Provided that—

- (a) [children of or above the age of 13 years] may, with the consent of the Mayor, visit any such ship at any time outside school hours for the purpose of instruction in the manning of the public boats; and
- (b) with the approval of the Mayor and of the captain of any public boat, any child may visit any such ship in such boat.

(Amended by Regulations 16.04.2014)

4. Notwithstanding any of the provisions of the foregoing regulations in this Part of these Regulations, any person may, with the permission of the Mayor given on the written recommendation of the Medical Officer, visit any overseas ship for the purpose of obtaining medical advice or attention.

5. The parents or guardian of any child shall be responsible for the observance of the provisions of this Part of these Regulations by such child and shall be liable to pay any penalty imposed for any contravention thereof by such child.

6. The captain of each public boat shall not permit any child to enter his boat except in accordance with the provisions of this Part of these Regulations. Penalty: \$5.

(Amended by Regulations 18.04.10)

PART VII—PUBLIC TELEPHONE

1. No connection may be made to any public telephone line except with the prior approval of the Council which may also, in its discretion, order a disconnection. Penalty: \$10.

2. No person, other than a person approved by the Council for that purpose, shall effect any connection or carry out any maintenance to any public telephone line.

3. The Council shall allot a call signal for each connection to every public telephone line.

4. Any person wishing to convey information of general interest to all persons having connection to any public telephone line may give one sustained ring, in which case all persons

having connection to such telephone line may listen in.

5. Except as provided in the last preceding regulation, no person shall listen to any conversation on any public telephone line other than a call made to his or her own connection. Penalty: \$10.

PART VIII—PUBLIC ELECTRICITY

1. No connection may be made to any public electricity supply except with the prior approval of the Council. Penalty: \$10.

2. The Council shall not approve any connection to the school electricity supply without the prior consent of the Education Officer, or any connection to the radio station electricity supply without the prior consent of the Radio Officer.

3. The Council may refuse its approval to the connection of any building to any public electricity supply or order the disconnection of any building from any such supply if, in the opinion of the Council—

- (a) such building is not suitably constructed or is unsound;
- (b) such connection is likely to endanger the supply of electricity to, or the safety of, other buildings on the same circuit, or the safety of such circuit; or
- (c) insufficient generating capacity is available.

4. No person, other than a person authorized by the Chairman, shall effect any connection to, or carry out any maintenance on, any public electricity supply. Penalty: \$20.

5. No person shall—

- (a) use any electrical appliance connected to any public electricity supply after having been warned not to do so by the Chairman or by any person authorized by him in that behalf; or
- (b) use any electricity from any public electricity supply in such a manner as to interfere with the efficiency of such supply. Penalty: \$20.

6. The Chairman or any person duly authorized by him in that behalf may, at all reasonable times as he or she may think fit, enter any building connected to any public electricity supply for the purpose of inspecting or testing any electrical installation therein, and no person shall obstruct or prevent or attempt to prevent him from entering any such building for that purpose. Penalty: \$50.

7. Charges for the supply of electricity from any public electricity supply shall be such as may be prescribed by the Council from time to time and shall be paid monthly.

PART IX

(Revoked by Prisons Regulations 2003)

PART X

(Revoked by Firearms (Control) Regulations 2003)

PART XI—CONTROL OF TRAFFIC

1. In this Part of these Regulations, unless the context otherwise requires—

“driver” means the driver of a vehicle and includes the rider of a motor cycle or power cycle; and also includes a person in charge of a vehicle which is being towed; and “drive” has a corresponding meaning;

“intersection” means the area within the prolongation of the lateral boundary lines of each of two or more intersecting or meeting roads;

“motor cycle” means a motor vehicle the net weight of which does not exceed eight hundredweight, designed to travel on not more than three wheels;

“motor vehicle” means any vehicle propelled by mechanical power and constructed for use on roads, and includes a trailer attached to or towed by any such vehicle;

“vehicle” means any contrivance equipped with wheels, runners or tracks upon which it moves or is moved and includes a bicycle and a wheelbarrow but does not include a push-cart, perambulator, mowing machine or any other contrivance operated or controlled by a pedestrian, whether or not such contrivance is power driven.

2. No person shall drive a motor vehicle of any class upon any road or in any other place to which the public have access unless he is the holder of a driving licence valid in respect of such class of vehicle and issued under the provisions of this Part of these Regulations, or, being the owner of or having charge of any motor vehicle of any class, permit any other person to drive such vehicle on any road unless such other person is the holder of such a driving licence. Penalty: \$50.

3. Every person wishing to drive any class of motor vehicle on any road or in any other place to which the public have access shall apply to the police officer for a licence to drive such class of motor vehicle and the police officer may, subject to any directions of the Council, if he or she is satisfied that such person is—

- (a) over the age of 15 years;
- (b) not suffering from any disease or physical disability which would be likely to cause the driving by him or her of any motor vehicle of such class to be a source of danger to the public;
- (c) competent to drive a motor vehicle of that class; and
- (d) not disqualified from holding or obtaining a driving licence by an order made under the provisions of these Regulations;

issue such a person with a driving licence to drive motor vehicles of such class as may be specified in such licence.

(Amended by Regulations 16.06.04)

3A. Notwithstanding the foregoing provisions of this Part of these Regulations, the police officer may issue a permit for any period not exceeding three months to any person over the age of 15 years for the purpose of learning to drive a motor vehicle, subject to the conditions that the learner shall not drive any motor vehicle during the currency of such permit—

- (a) unless he or she is directly instructed and supervised by a person of the age of eighteen years or more who has been licensed as a driver for not less than twelve months;
- (b) otherwise than within an area specifically designated from time to time for the purpose of driving instruction by the Council.

Such permit shall during its currency be deemed to be a valid driving licence for the purpose of Regulation 2 of this Part.

[4.—(1) Every driving licence issued under the provisions of these regulations shall be valid

- (a) in the case of every permanent resident of the Islands, upon payment of the sum of twenty-five dollars (\$25.00), for the remainder of his or her lifetime;
- (b) in the case of any other person, upon payment of the sum of ten dollars (\$10.00), until the 31st day of March in the next following year;

in either case, unless withdrawn or cancelled for any cause under any provision of these regulations.

(2) Upon the commencement of this regulation, no refund of any part of any driving licence fee already paid shall become due.

(3) This regulation shall have application with effect from the 1st day of April 2004.]

(Revoked and replaced by Regulations 16.06.04)

5. No person shall drive or ride any vehicle other than a wheelbarrow on any road or in any other place to which the

public have access at any time between sunset and sunrise unless such vehicle is equipped

- (a) in the case of a motor vehicle, other than a motor cycle, with not less than two headlamps of approximately equal candle power, placed on such vehicle in such a manner that they direct a beam of light in front of the vehicle sufficient to illuminate clearly the road ahead for at least fifty yards; and
- (b) in the case of any other vehicle, other than a wheelbarrow, with one headlamp placed on such vehicle in such a manner as to direct a beam of light ahead of the vehicle of sufficient brilliance to be visible under normal atmospheric conditions for a distance of at least three hundred feet and, in the case of a motor cycle, to illuminate clearly the road ahead for at least fifty yards. Penalty: \$20.

6. No person shall drive or ride any vehicle other than a wheelbarrow at any time between sunset and sunrise on any road or in any other place to which the public have access unless such vehicle is carrying not less than one lamp showing a red light to the rear, of such intensity as to indicate clearly within a reasonable distance its presence on the road to other traffic approaching from behind. Penalty: \$20.

7. No person shall drive or ride any vehicle other than a wheelbarrow on any road or in any other place to which the public have access unless such vehicle is equipped with an instrument capable of giving audible and sufficient warning of its approach or position. Penalty: \$20.

8. No person shall drive or ride any vehicle on any road or in any other place to which the public have access, unless—

- (a) such vehicle is so constructed or designed that the driver or rider thereof, while controlling the vehicle, can have a full view of the road and traffic ahead; and
- (b) if such vehicle is equipped with a windscreen, such windscreen is of safety glass and the vehicle is equipped with an efficient mechanically operated windscreen wiper to prevent interference with the driver's vision by weather conditions. Penalty: \$20.

9.—(1) No person shall drive any motor vehicle on any road or in any other place to which the public have access unless such vehicle is equipped with an efficient braking system so constructed and maintained as to bring the vehicle to a stop in a distance of twenty-five feet when running at the rate of twenty miles an hour on level ground. Penalty: \$20.

(2) No person shall ride any bicycle on any road or in

any other place to which the public have access unless it is equipped with at least one efficient brake attached thereto and operating on the rear wheel. Penalty: \$20.

10. The load carried by any vehicle shall be so secured that danger is not likely to be caused to any person on a road or in any other place to which the public have access by reason of the load or any part thereof falling from the vehicle. Penalty: \$20.

11. Every part of every braking system and all of the means of operation thereof, all steering gear, all lights, every windscreen wiper and all tyres fitted to a vehicle shall at all times while such vehicle is used on a road or in any other place to which the public have access be maintained in good and efficient order and in such condition as to be free from any defect which might cause danger to any person. Penalty: \$20.

12. No person while driving or riding any vehicle shall be in such a position that he or she cannot have proper control over the vehicle or that he cannot retain a full view of the road and traffic ahead. Penalty: \$20.

13.—(1) No person having charge of any vehicle, whether as owner, driver, rider or otherwise shall cause or permit such vehicle to stand on a road so as to cause any unnecessary obstruction thereof. Penalty: \$20.

(2) Every person being the driver or rider of any vehicle shall, on leaving such vehicle stationary in any road, park such vehicle as far to the left of such road as is practicable. Penalty: \$20.

14. No person shall, except in the case of a vehicle actually engaged in the construction, maintenance or repair of any road, cause any vehicle to travel backwards for a greater distance or time than is necessary for the safety or reasonable convenience of the occupants of that vehicle or of other traffic on the road. Penalty: \$20.

15.—(1) The Island Council shall from time to time by order in writing prescribe the number of persons (whether adults or children) who may be carried as passengers at one time on any motor-cycle or other powered two-wheeled vehicle and in what manner such passengers shall be seated or secured thereon. Penalty \$20.

(2) Not more than one person shall at any one time ride or be carried on any bicycle. Penalty: \$10.

16. No person shall ride, or being the owner or having charge of any vehicle permit any other person to ride, in any insecure position on any vehicle whilst such vehicle is in motion on a road or in any other place to which the public have access. Penalty: \$20.

17. Subject to the provisions of regulation 18, every vehicle shall be driven or ridden as close to the left side of the road as is practicable. Penalty: \$20.

18. Every vehicle overtaking another vehicle shall be kept to the right-hand side of such vehicle except when the driver or rider of the vehicle being overtaken has signified the intention of turning to the right and has taken up a position on the road leaving ample room for overtaking vehicles to pass on left-hand side. Penalty: \$20.

19. Subject to the provisions of the next succeeding regulation—

(a) every vehicle meeting any other vehicle or any pedestrian or animal in any road or in any other place to which the public have access shall, where necessary to allow safe passage for any reason, slow down and the driver or rider of an unladen vehicle shall give the right of way to any laden vehicle in such circumstances; and

(b) vehicles descending a hill shall where necessary give the right of way to ascending vehicles. Penalty: \$20.

20. The driver or rider of any vehicle approaching or crossing an intersection shall give the right of way to any other vehicle approaching or crossing the intersection on his or her right and to any pedestrian crossing the intersection from his or her right and, if necessary, shall stop the vehicle. Penalty: \$20.

21. Where for any reason any vehicle is proceeding at a slow rate of speed which is causing obstruction to other traffic, the driver or rider of such vehicle shall keep as close as practicable to the left-hand side and permit other vehicles to overtake him. Penalty: \$10.

22. No person shall drive or ride any vehicle on any road or in any other place to which the public have access without due care and attention or without reasonable consideration for other persons using such road or place. Penalty: \$50.

23.—(1) No person shall drive any motor vehicle on a road or in any other place to which the public have access at a speed greater than 30 miles per hour.

(2) No person shall drive any motor vehicle on a road or in any other place to which the public have access recklessly or at a speed or in a manner which is dangerous to the public having regard to all the circumstances of the case, including the nature, condition and use of such road or place and the amount of traffic which is actually at the time or which might reasonably be expected to be on or in such road or place. Penalty: \$100 or 40 days' imprisonment.

24. On the conviction of any person under the provisions of regulation 23, the Court may, in addition to any penalty imposed under that regulation, order that the person convicted be disqualified from holding or obtaining a driving licence, either absolutely or in respect of any particular class or description of motor vehicles, for such period as the Court shall think fit:

Provided that—

- (a) such period of disqualification shall not, in the case of a first conviction for any such offence, exceed a period of two years; and
- (b) any person disqualified under the provisions of this regulation, at any time after the expiration of six months from the date of such order of disqualification, may apply to the Council for removal of the disqualification, and the Council may as it thinks proper, having regard to the character of the person disqualified and his or her conduct subsequent to the making of such order, the nature of the offence and any other circumstances of the case, either by order remove the disqualification as from such date as the Council may direct or refuse the application.

**(The Local Government (Special Election Provisions)
Ordinance 2004 repealed by Ordinance No. 1 of 2007)**

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2014

CHAPTER XII

IMMIGRATION CONTROL ORDINANCE

Arrangement of sections

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2. Interpretation
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Ordinances:
No. 2 of 2006
No. 1 of 2010
No. 1 of 2014

**An ordinance to control immigration of persons into
Pitcairn Island to provide for their status, rights,
obligations and disabilities and for related or incidental
matters**

PART I—PRELIMINARY

Citation

1. This ordinance may be cited as the Immigration Control Ordinance 2006.

Interpretation

2.—(1) In this ordinance, unless the context otherwise requires,

dependant, in relation to a person, means

- (a) the spouse of that person; and
- (b) a child, step-child, adopted child, grandchild, parent, step-parent, grandparent, brother, sister, half-brother or half-sister of the person if the dependant is wholly or substantially dependant upon that person;

former ordinance means the Landing and Residence Ordinance 1954, renamed the Immigration Ordinance in 2003, and, where necessary, includes the Immigration Regulations 2003;

immigration officer means the Chief Immigration Officer or an immigration officer appointed under section 3;

owner, in relation to a vessel, shall include a corporate body;

Pitcairn and **the Island** mean Pitcairn Island;

Pitcairn Islands and **the Islands** mean Pitcairn Island and the territorial waters of the whole Pitcairn Group of Islands;

work permit means a permit granted in accordance with Part IX.

(Amended by Ordinance No. 1 of 2014)

(2) Any notice or other document sent by an immigration officer under this ordinance shall be deemed to have been received by the addressee in the ordinary course of post, delivery, facsimile or other form of communication, as the case may be, without proof thereof.

PART II—INITIAL ADMINISTRATION AND CONTROL

3. (1) The Governor may by notice published in the Islands appoint public officers to be immigration officers under this ordinance provided that the Mayor shall be *ex officio* the Chief Immigration Officer.

Appointment of immigration officers

(2) An immigration officer shall have the rights, powers, privileges and immunities of a police officer in the exercise of his or her duties under this ordinance.

4.—(1) Subject to the following provisions, an immigration officer shall initially determine whether any person who wishes to enter the Island shall be allowed to land.

Powers and duties of immigration officers

(2) Every vessel arriving at Pitcairn Island shall cause its presence to be notified to the Chief Immigration Officer.

(3) The master shall, immediately upon its arrival, deliver to an immigration officer, if so requested by him or her, a correct manifest containing the names and destinations of all passengers on such vessel; a master who fails to comply with this subsection is guilty of an offence.

(4) An immigration officer may board any vessel and search any part thereof for the purpose of exercising any part of his or her duties under this ordinance.

(5) An immigration officer may question and search any person who arrives at Pitcairn Island for the purpose of establishing his or her nationality, identity and status:

Provided that every person shall be searched by an immigration officer of the same gender.

(6) A person arriving at Pitcairn Island wishing to obtain leave to enter shall produce to an immigration officer a valid passport.

(Amended by Ordinance No. 1 of 2014)

[(7) A person arriving at Pitcairn Island must—

- (a) have a valid entry clearance issued by an immigration officer; or
- (b) qualify as a short-term visitor under Part III, section 6 of this Ordinance; or
- (c) qualify as exempt from control under section 15(2) of this Ordinance.]

(Repealed and replaced by Ordinance No. 1 of 2014)

(8) An immigration officer may refuse leave to enter if he or she is not satisfied that the applicant for an entry clearance did not make a false statement to obtain entry.

(9) Where the immigration officer is not satisfied that the requirements of this ordinance have been complied with, he or she may refuse such person seeking to enter Pitcairn Island permission to do so and shall direct the master of the ship on which he or she arrives to remove that person from Pitcairn on that ship. The Chief Immigration Officer shall notify the applicant that leave to enter has been refused and give the reasons for refusal. The Chief Immigration Officer shall also inform the applicant that there is no right of appeal against the decision. Failure by the master to comply with that direction shall be an offence.

(10) Without prejudice to the powers and duties provided for in the foregoing subsections, an immigration officer who reasonably suspects that the presence of any person on the Island is in contravention of any provision of this ordinance may detain such person for a period not exceeding forty-eight hours. Any person so detained shall be deemed to be in lawful custody. [Provided that where such a person is a child then the immigration officer shall ensure that he or she is treated appropriately according to his or her age and that he or she is in the care of his or her parents or another responsible adult.]
(Amended by Ordinance No. 1 of 2014)

Restriction on certain vessels carrying fare-paying passengers

5.—(1) The Master, or any other responsible officer, of any vessel carrying more than four fare-paying passengers must apply to [an immigration officer] at least ten days in advance for permission to call at the Island. In default of permission having been obtained the passengers of the vessel will be ineligible to seek entry clearance on arrival.

(Amended by Ordinance No. 1 of 2014)

(2) Subject to subsection (3), an application under subsection (1) may be refused if the Governor, in his absolute discretion and without stating the reasons, considers that the arrival of the vessel in question may be hazardous on maritime grounds or for any other security risk or that the required landing fees may not be paid or for any other reason the application should not be granted in the public interest.

(3) The Chief Immigration Officer may in his or her discretion exempt any particular vessel carrying more than four fare-paying passengers from the application of this section if this is deemed to be in the public interest.

PART III—CATEGORIES OF ENTRY CLEARANCE

Short-term visitors

6.—(1) The Chief Immigration Officer or any immigration officer or police officer authorised to act on his or her behalf shall be entitled to grant leave to enter to any person arriving and undertaking to depart on the same vessel after a visit not exceeding 14 days.

Grant of short-term
entry clearance

(2) The immigration officer may refuse the application on any of the following grounds

- (a) that he or she is not satisfied that the applicant intends to leave within 14 days on the same vessel;
- (b) that he or she considers the applicant to be likely to pose a security or health risk;
- (c) that the applicant has not arranged adequate accommodation or is likely to become a charge on public funds, including any medical expenses;
- (d) that the applicant is unable to pay the required landing fee;
- (e) that the applicant is prohibited from landing by order of the Governor or by another authority binding upon the officer;
- (f) that the applicant does not hold a valid passport or other travel document;
- (g) that the applicant has arrived on a charter vessel carrying more than four fare-paying passengers for which no prior application has been made nor an exemption granted by the Chief Immigration Officer.

(3) If the applicant meets the criteria in subsection (2), the officer shall endorse his or her passport with a stamp signifying that the applicant has leave to enter for a maximum period of fourteen days.

Long-term visitors

7.—(1) This section applies to persons who do not qualify as short-term visitors under section 5 but intend to remain on the Island for less than six months.

Long-term visitors

(2) Applicants for long-term visit entry clearance must apply on the specified form in advance of arrival to [an immigration officer].

(Amended by Ordinance No. 1 of 2014)

(3) The consideration and disposal of such applications shall be in accordance with the procedure prescribed in this ordinance.

Business visitors

Business visitors

8.—(1) This section applies to professional, business and commercial persons of all varieties who wish to enter Pitcairn by reason of their calling or occupation, whether or not their visit is intended to generate any profit, income, reward or assets whatever.

(2) Every person to whom subsection (1) applies, including news crews, makers of documentary films, researchers, and charter operators, must obtain a business visit entry clearance by application on the specified form to [an immigration officer] upon the disclosure of such information and the payment of such fees as may be prescribed.

(Amended by Ordinance No. 1 of 2014)

(3) The validity of a business entry clearance will expire on the expiration of the stated purpose of the holder's visit or any extension thereof which may in the discretion of the Chief Immigration Officer be permitted under section 10, prior to the expiry of the term of the existing permission. The holder must depart from the Island thereafter as soon as possible. Failure to do so will be an offence.

Grants of long-term or business clearancesGrants of long-term
and business entry
clearances

[9—(1) Where section 7 or 8 applies, an immigration officer, after consultation with the Governor, shall be entitled to grant leave to enter to any person as:

- (a) a long-term visitor with entry clearance for up to 6 months; or
- (b) a long-term visitor with entry clearance for up to 3 months; or
- (c) a business visitor;

as the case may be.

(2) An application for a long-term or business clearance will be refused in all cases where the immigration officer or the Governor are not satisfied that:

- (a) the applicant has truthfully stated his or her circumstances and intentions in wishing to travel to the Islands; and
- (b) the applicant will leave the Islands at the end of the specified stay or will apply for an extension as required; and
- (c) the applicant has sufficient funds for support of the applicant and any dependants and has arranged adequate accommodation; and
- (d) the applicant will not seek work on Pitcairn

- unless prior authorisation has been granted by the Island Council; and
- (e) it is in the public interest to grant entry to the applicant; and
 - (f) in the case of an applicant intending to benefit professionally or commercially, he or she will respect the culture and heritage of Pitcairn; and
 - (g) the person is not otherwise prohibited from entering by order of the Governor or otherwise by reason of any restriction of national or international law; and
 - (h) the applicant holds a valid passport or travel document; and
 - (i) the applicant will not pose a security or health risk.]

(Repealed and replaced by Ordinance No. 1 of 2014)

PART IV—EXTENSIONS FOR SHORT- AND LONG-TERM VISITORS

10.—(1) When any visitor has been granted leave to enter in accordance with the provisions of section 6, he or she may apply, after having landed under that authority but no later than the prescribed duration of that visit, to the Chief Immigration Officer for an extension of the visit by a period of not more than five months.

Short-term clearances may be extended

(2) After ascertaining the grounds upon which an application is made under subsection (1), the Chief Immigration Officer shall refer the application to the Island Council who shall submit the same to the [Governor], together with its recommendation, for decision.

(Amended by Ordinance No. 1 of 2014)

(3) If the application is granted the visitor will thereafter be deemed to be a long-term visitor.

11. Any long-term entry clearance granted under the provisions of section 7 may be extended during, but not after, the term of the visit specified, by application to the Island Council who shall refer the same to the [Governor], together with its recommendation, for decision. The holder of such entry clearance must depart from the Island on the expiry of his or her permitted visit if he or she has not obtained or applied for an extension. Failure to depart will be an offence.

Extension of long-term visits

(Amended by Ordinance No. 1 of 2014)

PART V—ENTRY CLEARANCE FOR SETTLEMENT

12.—(1) This section applies to persons wishing to enter

Permanent settlement

Pitcairn for permanent settlement indefinitely within the following categories

- i. spouses (whether legally married or not) and dependant children of a person lawfully residing on Pitcairn or admitted for settlement;
- ii. persons wishing to join other members of their families, namely, the children or parents or siblings of the applicant who are permanent residents of Pitcairn Island or have been granted entry for settlement;
- iii. persons (including their dependant children) not having the family ties referred to in paragraphs (i) and (ii) but who wish to move to Pitcairn to live and who have relevant skills which would contribute to the welfare of the Pitcairn community.

[(2) Persons within the categories described in subsection (1) must apply for settlement entry clearance on the prescribed form to an immigration officer. The applicant must also provide to the immigration officer a certificate or letter from the Police of every jurisdiction in which they have resided disclosing whether they have any convictions for any offences and if so the nature of those convictions. The immigration officer will refer the application to the Island Council, which will consider the matter and convey its recommendation to the Governor stating the reasons for its decision. The Governor will make the final decision on whether to grant or refuse settlement entry clearance.]

(Repealed and replaced by Ordinance No. 1 of 2014)

(3) Criteria for granting a settlement entry clearance will be—

- (a) proof of the family relationship relied upon under paragraphs (i) or (ii);
- (b) arrangement in advance of adequate accommodation for applicant(s) including dependants and the means to construct a separate dwelling after two years;
- (c) not to be a charge on public funds (including dependants) for any reason including medical condition;
- (d) in the case of category (iii), particulars of ability to support applicants and families and details of their potential contribution to the community, to the satisfaction of the Island Council and the Governor;
- (e) the intention of the applicant to remain permanently on the Island for the indefinite future without retaining a domicile in any other country;
- (f) the conclusion of the Governor in his absolute

discretion that the granting of settlement entry clearance is likely to be in the public interest.

(4) In the event that the Governor approves the granting of a settlement entry clearance the applicant will be issued with an entry clearance permit. This must be presented on arrival at the Island to an immigration officer by the applicant(s) within twelve months of issue. Failure to do so will render it null and void. Subject to the provisions of Section 4(8), the applicant will be granted leave to enter by the immigration officer which shall be reviewed after two years by the Island Council whose recommendation with detailed reasons shall be sent to the Governor for final decision. The recommendation may be that

- i. permanent residence be granted;
- ii. permanent residence be refused;
- iii. the decision should be deferred for a further twelve months for the final decision of the Governor for reasons stated.

(Amended by Ordinance No. 1 of 2014)

(5) If permanent residence is granted, the Governor will convey this in writing and the immigration officer will endorse the applicant's passport accordingly with a stamp signifying the grant of status of permanent resident.

(6) If permanent residence is refused by the Governor the applicant will be informed of the reasons in writing and required to leave the Island;

(7) If the Governor directs in accordance with the recommendation of the Council that the decision be deferred for 12 months, the Governor's decision after that period shall be final and shall not be called into question in any proceedings in any court whatever.

PART VI—PERMANENT RESIDENCE SPECIAL PROVISION

13. Any person born away from Pitcairn to a parent having at that time the status of permanent residence, who returns to the island with that parent whilst under the age of 5 years, shall be entitled to be granted permanent residence.

Status of certain persons born away from Pitcairn.

PART VII—LOSS OF STATUS OF PERMANENT RESIDENCE

14. After the commencement of this ordinance, any person to whom the status of permanent residence has been granted who is absent from Pitcairn for more than an aggregate of 48 months during any continuous period of 5 years shall lose that status by operation of law.

Loss of permanent resident status by absence from Pitcairn

PART VIII—EXEMPTION FROM CONTROL

Exemptions from application of this ordinance

15.—[(1) Subject to subsection (2), no person who arrives at Pitcairn shall enter or remain in Pitcairn unless he or she is authorised to do so by an entry clearance issued under this Ordinance.]

(Inserted by Ordinance No. 1 of 2014)

[(2) Subsection (1)] does not apply to the following

- (a) [Persons who have the right of abode in Pitcairn under the Right of Abode Ordinance 2010];
- (b) any person who immediately before the commencement of this ordinance held the status of permanent resident granted by the Governor under the provisions of section 4(2A) of the former law;
- (c) any person having obtained the status of permanent resident in accordance with the provisions of section 12 or section 13;
- (d) [the Governor, Deputy Governor, Attorney General, judicial officers, public officers and official representatives of the government of the United Kingdom;]
- (e) any person visiting the Islands at the request or with the consent of the Governor for the purpose of providing specialist services or undertaking scientific or other research;
- (f) any class of persons exempted by the Governor.

(Amended by Ordinance No. 1 of 2010)

(Amended by Ordinance No. 1 of 2014)

[(3)] For the avoidance of doubt, nothing in [this section] is intended to affect the provisions of the Local Government Ordinance as to qualification for voting or candidature for office.

(Amended by Ordinance No. 1 of 2014)

PART IX—WORK PERMITS

Restriction on visitors working

16.—(1) This section applies to every person who

- (a) has not been granted entry for settlement; or
- (b) has not been granted the status of permanent resident; or
- (c) is not otherwise exempt from control by any of the provisions of section 15.

(2) No person to whom this section applies shall be entitled to take up paid employment or enter into business on the Island unless his or her intention to do so has been expressly disclosed to the Island Council and has been approved in writing or permission has been later obtained in writing on-Island from the Island Council or the Governor.

(Amended by Ordinance No. 1 of 2014)**PART X—GENERAL PROVISIONS**

17. This ordinance and any regulations made thereunder shall have force and effect on Pitcairn Island and in the territorial waters of the Pitcairn Group of Islands. Application of law

18. The Island Council may from time to time, with the approval of the Governor, make regulations for the proper carrying into effect of the objects and purpose of this ordinance. Regulations

19. All visitors to Pitcairn are required to have adequate travel insurance including medivac cover. Visitors to have travel insurance

20. The Pitcairn Island Office at Auckland and the Chief Immigration Officer at Pitcairn will supply forms free of charge in conformity with the requirements of this ordinance. Forms

21.—(1) Fees payable under this ordinance shall be as prescribed from time to time by notice of the Chief Immigration Officer with the approval of the Governor. No fee payable for an application shall be refundable whatever the outcome. Fees

(Amended by Ordinance No. 1 of 2014)

(2) The parents and the children (including adopted and step-children) of persons lawfully residing on Pitcairn are exempt from all entry clearance landing fees, other than settlement clearance entry/landing fees.

(3) The Island Council may from time to time in exceptional circumstances recommend to the [Governor] that relatives of persons lawfully residing on Pitcairn other than those specified in subsection (2) may be so exempted from fees.

(Amended by Ordinance No. 1 of 2014)

(4) The Chief Immigration Officer has power to waive all landing fees for crews of cruise and cargo ships where they will be working ashore to unload goods or disembark passengers or if he or she deems it to be in the public interest.

22.—(1) Where any person visiting the Islands, whether pursuant to any permit or clearance issued under this ordinance or not, sustains any damage to or loss of property or suffers personal injury or death by accident, there shall be no liability in law for compensation or damages arising directly or indirectly out of such damage, loss, injury or death, notwithstanding any rule of law or any enactment to the contrary, on the part of the Crown, the Governor, the Island Council or any member or members thereof, or any person by virtue of any statutory function or duty, or any Exclusion of official liability

other person acting in any function or capacity as servant, employee, agent or delegate of the Crown, the Governor or the Island Council.

(2) Without prejudice to the generality of subsection (1), the act of visiting the Islands shall be deemed to commence, if landing by means of a Pitcairn boat, at the moment of boarding it from another vessel or, if landing by other means, at the moment of stepping ashore; and to end, if departing by means of a Pitcairn boat, at the moment of leaving it to board another vessel or, if departing by other means, at the moment of leaving the shore.

Ordinance not to affect prohibition of entry by any law

23. Nothing in this ordinance shall be construed so as to confer a right of entry into Pitcairn Island of any person whose entry is expressly forbidden by any law in force in the Islands.

Punishment and mode of trial of offences

24. Every offence prescribed by this ordinance shall be

- (a) punishable by a fine of \$1000 or imprisonment for a period of 6 months or both;
- (b) triable either summarily by the Magistrate's Court or on information by the Supreme Court, in each case at the election of the Public Prosecutor.

Repeals, transition and savings

25.—(1) The former law, namely the Landing and Residence Ordinance 1954 (re-named as the Immigration Ordinance by Ordinance No. 8 of 2003) and the Immigration Regulations 2003 are, subject to subsection (2), hereby repealed.

(2) Any person who immediately before the commencement of this ordinance has been normally resident on Pitcairn for not less than two years may at his or her option continue to so reside until his or her aggregate residence exceeds four years and then to apply to the Governor for a grant of status as a permanent resident as though section 4(2A) of the former law had not been repealed or to seek the recommendation of the Island Council to the Governor under the application of section 12(4) of this ordinance.

(3) All references in other ordinances or subsidiary legislation to the status of permanent resident by reason of a grant under section 4(2A) of the former law shall from the commencement of this ordinance be construed as such a grant or as a decision of the Governor under section 12 (4) of this ordinance.

(4) Notwithstanding the foregoing provisions of this section, any permit or other permission and any notice, form, order, direction or other authority given, issued, granted or made before the commencement of this ordinance shall continue to be valid and have effect for such period as is stated therein or until replaced under the provisions of this ordinance.

SCHEDULE

(Repealed by Ordinance No. 1 of 2014)

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2014

CHAPTER XIII

PROBATE AND ADMINISTRATION ORDINANCE

Arrangement of sections

Section

1. Citation
2. Interpretation and application
3. Court to determine assets etc.
4. Notice to executors
5. Inquiries
6. Revocation or alteration
7. Original will
8. Testamentary papers to be deposited in Court
9. Intestacy
10. Several next-of-kin
11. Property of intestate to be vested in Court until administration granted
12. Crown to take unclaimed estate
13. Registrar of Court may administer estates
14. Small estates
15. Orders of performance of duties by executors or administrators
16. Distribution of intestate estate
17. Penalty
18. Intermeddling
19. Money owing to a deceased person by the Island Council
20. Procedure
21. Transitional provisions
 - First Schedule—Division of intestate estates
 - Second Schedule—Transitional Provisions

Ordinances:
No. 9 of 2000
No. 2 of 2014

**An ordinance to declare the law relating to probate,
administration and intestate succession**

[1st August 2000]

Citation.

1. This ordinance may be cited as the Probate and Administration Ordinance.

Interpretation,
jurisdiction and
application.

2.—(1) In this ordinance—

“administration” means probate of the will of a deceased person and includes letters of administration of the estate of a deceased person, granted with or without a will annexed;

“Court” means the Supreme Court;

“estate” means the estate in the Islands of a deceased inhabitant or former inhabitant thereof;

“immovable property” shall include a chattel real;

“intestate” means without having made a will;

“Land and Estates Court” means the Land and Estates Court established by the Lands and Administration of Estates Ordinance No. 2 of 1967 repealed upon the commencement of this ordinance.

(2) Subject to this ordinance, the Supreme Court shall have exclusive jurisdiction in all matters of probate, administration and intestate succession in estates comprising movable or immovable property or both.

(3) This ordinance shall have no application to the estate of any person who died on a date prior to the commencement of this ordinance.

Court to determine
assets etc.

3. The Court shall determine the assets and liabilities of the deceased and shall ascertain the value of the movable property comprised therein as correctly as the circumstances allow.

Notice to executors.

4. The Court may of its own motion or on the application of any person claiming an interest under a will give notice to the executors (if any) named therein to prove the will or to renounce probate by application to the Court.

Inquiries.

5. The Court may refuse to issue probate or letters of administration until all inquiries which the Court sees fit to institute have been answered to its satisfaction.

Revocation or
alteration.

6. Revocation or alteration of a grant of probate or administration may be made for reasons to be recorded.

Original will.

7. Every original will which has been proved in the Court shall be kept and filed in the Court.

Testamentary papers
to be deposited in
Court.

8. Any person having the possession or control of any

paper or writing of a deceased person being or purporting to be testamentary shall forthwith deliver the original to the Court and deposit it there. Any person failing or neglecting to do so for fourteen days after having knowledge of the death of the deceased shall be liable to such penalty not exceeding two hundred dollars as the Court may think fit to impose.

9. The Court in granting letters of administration shall proceed as far as may be as in cases of probate.

Intestacy.

10. When administration is applied for by one or some only of the next-of-kin, there being other next-of-kin equally entitled thereto, the Court may require proof that notice of the application has been given to the other next-of-kin.

Several next-of-kin.

11. From the death of an intestate until administration be granted, his or her movable property shall be vested in the Court.

Property of intestate to be vested in Court until administration granted.

12. If within three years of the date of any estate having become vested in the Court as provided by section 11 of this ordinance, no claimant or other person has been found to be the next-of-kin to the deceased or to have established a right to the property, the proceeds of such estate shall become the property of the Crown.

Crown to take unclaimed estate.

13. The Registrar of the Court shall have power to administer estates and if so appointed by the Court shall act under the direction of the Court and shall be indemnified thereby.

Registrar of Court may administer estates.

14. Where it appears to the Court that the assets of a deceased person do not exceed movable property to the value of two hundred dollars or immovable property comprising one section of house land or both such movable and immovable property, the Court may without any probate or letters of administration or other formal proceedings, after paying the debts of the estate from the proceeds of such movable property (if any), transfer the nett assets of the estate to such person or persons as may be entitled and shall not be liable to any action or claim in respect of anything done under this ordinance.

Small estates.

15. The Court may of its own motion or on the application of any interested party or creditor issue a summons requiring the executors or administrators to show cause why an order for the administration of the property of the deceased should not be made.

Orders of performance of duties by executors or administrators.

16. The property of an intestate shall be divisible according to the First Schedule hereto.

Distribution of intestate estate.

Penalty.

17. Any person who refuses or neglects to obey an order of the Court pursuant to this ordinance shall be liable to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding one hundred days or to both such fine and imprisonment.

Intermeddling.

18. Any person taking or dealing with the property of a deceased person before the Court has adjudicated thereon shall be liable to a fine not exceeding five hundred dollars recoverable by distress and the Court may in its discretion order such person to be prosecuted for theft.

Money owing to a deceased person by the Island Council.

19. Should the Island Council owe any money to a deceased person whether in the employ of the Council or not such money shall not be paid over until the estate has been adjudicated upon by the Court.

Procedure.

20. The Court shall exercise its jurisdiction in probate and administration under the provisions of this ordinance in accordance with procedure established by rules of Court to be made by the Chief Justice and until such rules have been made or so far as occasion may require the Court shall observe as nearly as local circumstances permit the practice and procedure observed by and before courts of justice in England in the exercise of the corresponding jurisdiction, powers and authority

Transitional provisions.

21. Transitional provisions consequent upon the repeal of the Lands and Administration of Estates Ordinance are set out in the Second Schedule.

FIRST SCHEDULE

DIVISION OF PROPERTY ON AN INTESTACY

Section 16

[If the deceased die leaving	The representatives of the deceased shall take in the following proportions.
1. Husband or wife only	All to husband or wife.
2. Husband or wife and child or children	One third of movable property and the whole of any immovable property to the husband or wife, two thirds of movable property to children in equal shares. In the case of deceased children who have left issue such issue shall take equally amongst them their deceased parent's share.
3. Husband or wife and parents	All to husband or wife.
4. Husband or wife, and sibling(s)	All to husband or wife.
5. Mother or father or both	All to mother or father, or to both mother and father in equal shares.
6. Mother or father or both, and sibling(s)	All to mother or father, or to both mother and father in equal shares.
7. Child(ren) or grandchild(ren) by deceased child(ren)	Amongst children in equal shares, the grandchildren by deceased children taking amongst them their deceased parent's share.
8. Brother(s)/sister(s)/nephew(s)/niece(s)	Amongst brothers or sisters in equal shares, the children of deceased brothers or sisters taking amongst them their deceased parent's share.
9. Brother(s)/sister(s), grandparent(s)	All to brother(s)/sister(s).
10. Brother(s)/sister(s), uncle(s)/aunt(s)	All to brother(s)/sister(s).
11. Grandparent(s) and no nearer relation	All to grandparent(s) in equal shares.
12. Grandparent(s)/uncle(s)/aunt(s)	All to grandparent(s) in equal shares.
13. Great-grandparents(s) and no nearer relation	All to great-grandparent(s).
14. Great-grandparents(s), uncle(s)/aunt(s)	All equally.
15. Uncle(s)/aunt(s)	All equally.

16. Uncle(s)/aunt(s) and deceased All to uncle(s)/aunt(s).
uncle or aunt's child(ren)

17. Cousins All equally.]

(Repealed and replaced by Ordinance No. 2 of 2014)

SECOND SCHEDULE

TRANSITIONAL PROVISIONS

Section 21

1. The estate of any inhabitant or former inhabitant of the Islands who died prior to the date of the repeal of the Lands and Administration of Estates Ordinance which has not at the date of that repeal been fully administered and wound up shall continue to be administered and be wound up by the former Lands and Estates Court as though that ordinance had not been repealed.

2. Any difficulty or uncertainty in so continuing the administration of an estate may be referred by the President of the Court on application by any party; or on his or her own motion to the Supreme Court for determination and the opinion of the Supreme Court thereon shall be binding.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2006

CHAPTER XIV

LAND TENURE REFORM ORDINANCE

Arrangement of sections

PART I—PRELIMINARY

Section

1. Citation
2. Interpretation and purposes

PART II—LAND COMMISSION

3. Land Commission

PART III—ALLOCATION OF LAND

4. Application for allocation of land
5. Nature of title
6. Implied covenants in leasehold estates
7. Termination of leasehold estate and compensation for improvement

PART IV—ABSENTEE LANDOWNERS

8. Departure of owner from Islands after allocation

PART V—ANNUAL LAND TAX

9. Annual land tax

PART VI—MISCELLANEOUS PROVISIONS

10. No compensation payable for loss of freehold estate
11. Prohibition of acquisition of land by non-residents
12. Prohibition of mortgage or sublease
13. Review of decisions by Supreme Court

SCHEDULE

Form of Land Allocation Title

Ordinances:
No. 7 of 2000
No. 5 of 2006

An ordinance for the reform of land tenure on Pitcairn Island

[1st August 2000]

PART I—PRELIMINARY

Citation.

1. This ordinance may be cited as the Land Tenure Reform Ordinance.

Interpretation and purposes.

2. (1) In this ordinance, unless the context otherwise requires—

“Annual Land Tax” means the land tax prescribed and levied in accordance with the provisions of section 9 of this ordinance;

“Court” means the Lands Court established by section 3 of the Lands Court Ordinance;

[“commercial land” means any land which is predominantly used for or is capable of use for commercial or industrial purposes which have the approval of the Island Council and of the Governor;]

(Inserted by Ordinance No. 5 of 2006)

“extended family” means those persons immediately related or living together in the same dwellinghouse;

[“former permanent resident” means a person who, on or after the commencement of the Immigration Control Ordinance, obtained the status of permanent residence in accordance with the provisions of section 12 or section 13 of that ordinance;]

(Repealed and replaced by Ordinance No. 5 of 2006)

“forestry land” means land which is used for or is capable of being used for forestry as a principal purpose;

“garden land” means land which is used for or is capable of being used for gardens;

“house land” means land which is used for or is capable of being used for residential purposes;

“orchard land” means land which is being used for or is suitable for use as orchards and includes any banana plantation;

[“permanent resident” means the status of being exempt from the provisions of the Immigration Control Ordinance 2006 by reason of paragraphs (a), (b) or (c) of subsection (1) of section 15 thereof;]

(Repealed and replaced by Ordinance No. 5 of 2006)

“private land” means all land which is not public land;

“public land” means land which is owned by or on behalf of the Island Council or any other such public

- authority upon trust for the inhabitants of the Islands for any public use or purpose including recreation;
- “reserve land” means land which has been dedicated to a public authority in perpetuity and set aside for environmental or conservation purposes or any significant potential use of public utility;
- “transfer”, in relation to an interest in land, includes every transfer *inter vivos*, whether for consideration or not, and shall be deemed to include the sub-lease of a leasehold estate;
- “trustee” means the trustee or caretaker of any land.
- (2) The objects and purposes of this ordinance are—
- (a) to promote the greatest possible availability of land for residential, agricultural, economic, cultural and conservation purposes;
- (b) to ensure that all habitable and arable land is used to the best advantage and to discourage the undue aggregation of land by imposing an annual tax on land holdings of absentee owners or those in excess of the reasonable needs of the owner and his or her family;
- (c) to secure a fair allocation of land having due regard to the interests of permanent residents of the Islands and the wish of any former residents or children or grandchildren of former residents to return and reside there permanently.

PART II—LAND COMMISSION

3.—(1) There is hereby established a Land Commission comprising the elected members of the Island Council and such other persons appointed from among the permanent residents of the Islands by order of the Governor so that each extended family shall be represented by at least one member.

Land Commission.

(2) It shall be the function and responsibility of the Land Commission to identify and establish the boundaries of all usable land on Pitcairn Island other than house land, public land and reserve land, that is to say, all garden land, orchard land and forestry land, and to cause the same to be divided into viable blocks according to the classification of the land.

(3) The Land Commission shall compile and maintain a register of the said land and shall establish marks delineating the boundaries thereof in durable and permanent form.

(4) In the exercise of its functions under subsections (2) and (3), the Land Commission may engage the services and advice of such professional experts as may assist the accurate and speedy accomplishment of its objectives.

[(5) The Chairperson of the Land Commission shall be appointed annually by a simple majority of votes of the Commission members. If only one candidate is nominated, he or she shall be deemed to be elected. If there are two or more candidates, an election by show of hands must follow. In the event of a tied result, the senior by age shall be deemed to be elected. No member of the Lands Court shall be eligible for election as the President of the Land Commission.]

(Repealed and replaced by Ordinance No. 5 of 2006)

(6) The Land Commission shall have power in the course of its duties to make recommendations to the Governor that any area of land should be dedicated to the Island Council or any other public authority in perpetuity as reserve land for use as a public utility.

[(7) (Repealed by Ordinance No. 5 of 2006)]

[(8) Upon completion of its functions under subsections (2) and (3), the Land Commission shall cause full details of its findings to be conveyed to the Registrar of the Court. The Registrar of the Court shall thereupon ensure that these are amalgamated with the previous register of house land in Adamstown made by the Ordnance Survey in 1985. The amalgamated registers shall thereupon have the force of law and shall be, subject to the grant of any leasehold interests under this ordinance, the only true and official record of the ownership and boundaries of private and public land on Pitcairn Island. The authority of the register so created by amalgamation shall not be called into question in any court in any proceedings whatever.]

(Repealed and replaced by Ordinance No. 5 of 2006)

PART III—ALLOCATION OF LAND

4.—(1) On a date to be appointed by the Governor by order, after the completion of the functions of the Land Commission under the provisions of section 3 of this ordinance (hereinafter referred to as “the suspension date”), all existing freehold title to any interest in private land in the Islands shall be deemed to be suspended and the Court shall thereafter have jurisdiction to allocate title to all land, other than public land and reserves, in accordance with applications made under the following provisions of this section.

(2) Subject to the provisions of this ordinance, all permanent residents and former permanent residents of the Islands and their children and grandchildren (having reached the age of 18 years), may apply to the Court for the allocation of land in any of the classifications of house land, garden land, orchard land and forestry land, provided that the applicant is resident

Application for
allocation of land.

at the time of application and fully intends to remain as a resident:

Provided that any person formerly resident in the Islands who prior to the commencement of this ordinance left the Islands to settle elsewhere indefinitely and who immediately prior to the suspension date is registered in the Register of Land Titles as the owner of the freehold interest in any land on Pitcairn, shall be deemed to be eligible to apply to the Court under this subsection and to be an existing owner for the purposes of subsection (4) of this section:

And provided that, upon the granting of a Land Allocation Title to any such non-resident applicant, he or she shall be deemed to be a landowner who has left the Islands to settle elsewhere indefinitely with effect from the date of the said grant, for the purposes of section 8 of this ordinance.

(3) In considering any application or any competing applications, the Court shall have regard to the following factors—

- the reasonable needs for the sustenance of the applicant and his or her family;
- the capability of the applicant to hold and manage the land concerned in a profitable manner;
- the economy and export trade of the Islands;
- the historical association of the applicant and the forebears of the applicant with the land concerned.

(4) The Court shall not have power to refuse an application for the grant of a Land Allocation Title made by an existing owner of a suspended interest in that land.

(5) The grant of any application for a Land Allocation Title which in the opinion of the Court is superfluous to the reasonable needs of the applicant shall be subject to payment of Annual Land Tax.

(6) In the case of an application for the grant of a Land Allocation Title by a former resident of the Islands, or child or grandchild of a former resident, with respect to a parcel of land not claimed by the existing owner of a suspended interest therein, there shall be a presumption in favour of granting the application, subject to the requirement that for a period of three years after the date of issue of the Land Allocation Title the applicant shall personally reside, or in the case of agricultural or commercial land, work on the said land.

(7) For the purposes of this section, a person registered immediately before the suspension date as trustee of any land on behalf of the estate of a deceased person, in respect of which land there is no claim or pending claim by any person purporting to have a beneficial interest therein, shall be deemed

to be the owner of such land.

(8) Upon the granting of an application, the suspended ownership of the applicant, if any, shall be thereby extinguished and a new title, to be known as a Land Allocation Title, shall be inscribed in the appropriate register in favour of the applicant forthwith.

Nature of title.

5.—(1) Every Land Allocation Title shall create a leasehold estate in the land affected, to be held, without consideration of rent, from the Island Council as lessor, for the following terms

- house land— for the lifetime of the applicant and the spouse and dependents of the applicant
- garden land— for terms of five years renewable as of right during the life of the applicant
- orchard land— for the life of the orchard
- forestry land— for the life of the forest
- commercial land— for a term of twenty years:

Provided that every Land Allocation Title shall be in the form of a grant of the leasehold estate in the land affected and shall so far as practicable be in the terms set out in the Schedule. The lease shall provide for such appurtenances, encumbrances and Notes as the Lands Court shall direct at the time of issue or subsequently. The lease document shall be prepared in duplicate, sealed with the seal of the Court and signed by the President and the Registrar. One copy shall be issued to the lessee owner and the other retained by the Registrar of the Court. Notes included by the Court at the time of issue or subsequently may state the substance of conditions and shall be binding upon the lessee and any third party until they are amended or terminated at the direction of the Court. Any such Note may make special provision for rights of access to and gathering produce from any tree or trees existing on the land prior to the grant of the leasehold interest to a succeeding owner.

(2) The amalgamated register of leasehold land titles shall, together with all other land titles, be recorded by the President and the Registrar of the Lands Court in three copies in electronic form. The first and principal copy shall be held in the Governor's Office in Wellington and the second and third in the offices of the Registrar of the Lands Court and the Island Commissioner respectively.

(3) Every lessee shall be entitled to a printed copy of his or her Land Allocation Title and other adjacent leasehold titles free of charge. Copies of the whole register may be obtained

on payment of such fee as the President of the Court may determine and the proceeds of such sale shall be paid to the Island revenue.]

(Repealed and replaced by Ordinance No. 5 of 2006)

6. The following covenants shall be implied in every leasehold estate in land arising from the grant of a Land Allocation Title—

Implied covenants in leasehold estates.

- (a) on the part of the grantee—
 - (i) not to part with the possession of, assign, transfer or otherwise alienate the land or any part thereof the subject of the leasehold estate without the consent in writing of the Council previously obtained and the approval of the Lands Court;
 - (ii) in the case of agricultural land, to farm, cultivate and manage the land in a good and husbandlike manner and to keep the same clean and free from weeds;
 - (iii) in the case of house land, to keep the land the subject of the lease and all buildings and improvements erected on it clean and in good repair, accidents from fire, storm and tempest and reasonable wear and tear excepted, and to comply with the provisions of any ordinance for the time being in force and all other lawful orders in respect of such land or buildings under the provisions of any such ordinance;
 - (iv) on the surrender or termination of the leasehold estate, to yield up the land and all buildings and improvements erected thereon in such state of cultivation, repair and management as shall be in compliance with the covenants in subparagraphs (ii) and (iii) hereof;
 - (v) to permit the Council by its duly authorised agents at all reasonable times during the continuance of the leasehold estate, upon giving to the grantee not less than two days' notice in writing, to enter upon the land and view the condition and state of maintenance thereof and in the case of agricultural land for all other reasonable purposes connected with the proper use and cultivation thereof;
 - (vi) if the Council shall serve upon the grantee notice in writing of any default by the grantee

- in the fulfilment or performance of any of the covenants therein, to remedy such default within the time stated in such notice, in any event being not less than one month after the date of service of such notice on the grantee;
- (b) on the part of the Council, upon the grantee performing and observing all of the covenants and conditions implied in the leasehold estate, to permit the grantee peaceably and quietly to hold and enjoy the land the subject of the leasehold estate without any disturbance or interruption by the Council or by any person claiming from, under, on behalf of or in trust for the Council.

Termination of leasehold estate and compensation for improvements.

7.—(1) Any leasehold estate in land arising from the grant of a Land Allocation Title may be terminated—

- (a) on the application of the grantee—
- (i) if the grantee has given not less than one month's notice in writing to the Council of the desire and intention of the grantee to yield up possession of the land and voluntarily to surrender the leasehold interest therein to the Council as reversioner;
 - (ii) if the Council commits any default not capable of being remedied in the fulfilment or performance of any covenant or condition on its part to be fulfilled or performed; or
- (b) on the application of the Council—
- (i) upon the reaching of a decision to such effect by the Court under the provisions of section 8(a)(iii) of this ordinance; or
 - (ii) if the grantee makes any default capable of being remedied in the fulfilment or performance of any of the covenants or conditions on the part of the grantee to be fulfilled or performed and such default continues for a period of six months or longer or, in the case of any default in respect of which notice has been given under the provisions of section 6(a)(vi) of this ordinance, if the default has not been remedied within the time specified in such notice;
 - (iii) if the grantee makes any default not capable of being remedied in the fulfilment or performance of any of the covenants or conditions on the part of the grantee to be

fulfilled or performed and the Council has given not less than three months' notice in writing to the grantee to apply to the Court for the termination of the leasehold interest of the grantee in the land.

PART IV—ABSENTEE LANDOWNERS

8. If any person holding an interest in land by virtue of a Land Allocation Title shall leave the Islands to settle elsewhere indefinitely, the said interest in land shall become subject to the following provisions—

Departure of owner from Islands after allocation.

- (a) house land— (i) the land shall be held in trust for the owner, provided that the dwelling is maintained in a habitable state and the land is kept clear;
 - (ii) Annual Land Tax shall be payable by the owner in accordance with the standard rate with effect from the date of departure from the Islands and shall be paid to the Registrar of the Court by 31 December in each year;
 - (iii) the Court shall review each trusteeship annually to decide whether the dwelling has been kept habitable and the land kept clear and upon the Court reaching a decision that the said condition has not been met, the estate of the owner shall revert to the Island Council pending further allocation by the Court.
- (b) garden land—the estate shall revert to the Island Council twelve months from the date of departure of the owner.
- (c) orchard land and forestry land—the estate shall be held on trust for the owner until a date 10 years after the departure of the owner, when by operation of law it shall become the property of the trustee at that time.

PART V—ANNUAL LAND TAX

9.—(1) There shall be for the purposes of this ordinance a tax to be known as the Annual Land Tax of which the standard rate shall be prescribed by the President of the Court with the approval of the Governor and which shall be reviewed and may be confirmed or varied in like manner thereafter at intervals of twelve months.

Annual Land Tax.

[Provided that for the first period of twelve months after the suspension date the following rates will apply

Land owned by resident grantee—30c per square metre
 Land owned by absentee grantee—50c per square metre]
(Amended by Ordinance No. 5 of 2006)

(2) If any Annual Land Tax has not been paid by 31 December of the year for which it is due, a notice in writing shall be thereupon sent to the owner at his or her last known address warning that in default of payment of the tax within 6 months from the date of such notice, the ownership of the land will be forfeited to the Island Council in accordance with the following provisions of this section.

(3) Upon the expiry of the period of 6 months prescribed in subsection (2), the outstanding tax not having been received, the estate of the owner in the land shall without further act or assurance revert to the Island Council and the Register of Land Titles shall be inscribed accordingly.

(4) In any case in which the estate of an owner in any land has been forfeited to the Island Council as provided in subsection (3), the owner shall be then entitled to remove any building or buildings or to harvest any garden crop or fruit, or to remove any bush or tree planted by the owner, from the said land within a further period of 6 months from the date of forfeiture, any other rule or provision of law notwithstanding, and to enter upon the land for that purpose and, failing such removal or harvest within that period, to receive a payment from the next succeeding owner as compensation for the value thereof as the same shall be assessed by the Court.

(5) Immediately upon the forfeiture of any land under the provisions of subsection (3), the Registrar of the Court shall send to the former owner at his or her last known address a notice in writing setting out clearly his or her rights of removal of any building or harvest of any crop or of receiving compensation therefor as provided by subsection (4).

(6) The quantum of compensation assessed by the Court may be reviewed by the Supreme Court of its own motion or on the application of the former owner or the next succeeding owner of the land in question.

PART VI—MISCELLANEOUS PROVISIONS

10. For the avoidance of doubt, no compensation shall be payable to any person for the extinguishment of a freehold estate in land held immediately before the suspension date and its replacement by a leasehold estate.

11.—(1) It shall be unlawful to enter into an agreement for, and the Court shall have no jurisdiction to approve, the transfer *inter vivos* of any interest in land to a person who is

No compensation payable for loss of freehold estate.

Prohibition of acquisition of land by non-residents.

not a permanent resident of the Islands.

(2) Nothing in subsection (1) shall be so construed as to prevent the transmission of an interest in land, whether by will or intestate succession, to any descendant of the owner or any other person entitled under the provisions of this ordinance to own land in the Islands, whether permanently resident in the Islands or not.

12. It shall be unlawful to enter into an agreement for the mortgage, charge or sublease of any leasehold estate in land.

Prohibition of mortgage, charge or sublease.

13.—(1) Every decision of the Court under the provisions of this ordinance shall be subject to review by the Supreme Court in its civil jurisdiction on the application of any person having an interest therein made in writing within three calendar months after the date of such decision, or of its own motion.

Review of decisions by Supreme Court.

(2) The Registrar of the Court shall send written particulars of every such decision to the Registrar of the Supreme Court as soon as practicable after the making thereof.

(3) The Supreme Court shall review the said decision in accordance with procedure prescribed by rules of Court.

(4) The Supreme Court shall have power to make such further enquiries or to hear such additional evidence or submissions as it may think fit and may confirm or quash such decision or remit the same to the Lands Court for reconsideration.

SCHEDULE

Pitcairn, Henderson, Ducie and Oeno Islands

Land Allocation Title

Pursuant to Section 4(8) of the Land Tenure Reform Ordinance 2001, **Allotment** , being square metres more or less, situated at, , is hereby leased to

This Land Allocation Title is for the purpose of land. The term of this Land Allocation Title is as set out in Section 5(1) of the Land Tenure Reform Ordinance 2001.

Appurtenances:

Encumbrances:

Notes:

Date of grant:

Signed: Registrar, Lands Court President, Lands Court

(See plan of land annexed hereto)]

(Schedule added by Ordinance No. 5 of 2006)

**PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS**

LAND TENURE REFORM ORDINANCE

NOTICE OF APPOINTMENT OF SUSPENSION DATE

In exercise of the power conferred by subsection (1) of section 4 of the Land Tenure Reform Ordinance 2000 (cap.14)

I hereby appoint the 1st day of December 2006 as “the suspension date” being the date on which all existing freehold title to any interest in private land in the Islands shall be deemed to be suspended for the purposes of that ordinance.

Dated the 31st day of October 2006

Governor

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

CHAPTER XV

LANDS COURT ORDINANCE

Arrangement of sections

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Section

1. Citation
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4. Registrar
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6. Sittings of the Court
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PART III—LANDS REGISTER

10. Lands Register
11. Registration
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PART IV—GRANT OF LAND ALLOCATION TITLES

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PART V—CARETAKERS

15. Appointment and registration of caretakers
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PART VI—OFFENCES AND PENALTIES

17. False statements, perjury etc.
18. Boundary marks
19. Contempt of Court

PART VII—GENERAL

20. Lands on Henderson, Ducie and Oeno Islands
 21. Regulations
 22. Rights of Crown preserved
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- Schedule

**An ordinance to establish the Lands Court and to
provide for its constitution and procedure**

Ordinances:
No. 8 of 2000
No. 4 of 2006

[1st August 2000]

PART I—PRELIMINARY

1. This ordinance may be cited as the Lands Court Ordinance. Citation.

2. In this ordinance, unless the context otherwise requires,— Interpretation.

“agricultural land” means any land used or capable of being used primarily as forestry land, garden land or orchard land;

“Council” means the Island Council constituted under the provisions of the Local Government Ordinance; cap. 11

“Court” means the Lands Court constituted under the provisions of this ordinance;

[“General Survey Adviser” means the person appointed by the Governor to fulfil the functions referred to in subsection 4 of section 3 of the Land Tenure Reform Ordinance and in proceedings of the Lands Court under Parts III and IV of this ordinance as more particularly described in section 14A of this ordinance.]

(Inserted by Ordinance No. 4 of 2006)

“Island Secretary” means the person for the time being appointed by the Governor to hold the public office of Island Secretary;

“land” includes any estate or interest in land or things growing thereon and all buildings and other improvements permanently affixed thereto;

“Lands and Estates Court” means the Lands and Estates Court established by the Lands and Administration of Estates Ordinance No. 2 of 1967 repealed upon the commencement of this ordinance;

“Lands Register” means the register of lands on Pitcairn Island required to be kept under the provisions of this ordinance;

“Mayor” means the person for the time being holding the office of Mayor of Pitcairn under the provisions of the Local Government Ordinance; cap. 11

“President” means the Mayor or other person presiding over the Lands Court under the provisions of subsection (3) of section 3 of this ordinance;

“representative” means the person appointed by any person to represent him or her in any proceedings

before the Court under the provisions of section 9 of this ordinance and includes any person appointed by the Court to represent any party under the provisions of subsection (5) of section 7 of this ordinance;
“residential land” means any land used or capable of being used primarily as house land.

PART II—LANDS COURT

Constitution of Court.

3.—(1) There is hereby established a court with jurisdiction over land in place of the former Lands and Estates Court, to be known as the Lands Court, which shall be a court of record.

(2) The Court shall have as occasion may require a seal of such nature and pattern as the Governor may direct and all writs and other process issued out of the Court shall be sealed therewith.

(3) The Lands Court shall consist of a President who shall be the Mayor *ex officio* and who shall preside over all sittings of the Court and four other members who shall be appointed by the Council and who shall hold office for a term of two years from the date of their appointment:

Provided that—

- (a) where the Mayor is a party to or is a witness or has any personal interest in any proceedings before the Court, he or she shall not sit as a member of the Court and the Chairman of the Internal Committee or, if he or she is also a party to or is a witness or has any personal interest in such proceedings, the nominated member of the Council appointed by the Governor shall preside over the Court for the purpose of hearing such proceedings and, while so presiding, he or she shall for the purpose of those proceedings have all the powers and exercise all of the duties and functions of the President; and
- (b) where any other member of the Court is a party to or is a witness or has any personal interest in any proceedings before the Court, he or she shall not sit as a member of the Court for the purpose of the hearing of those proceedings and the Council shall appoint such other person who is neither a party to nor a witness nor has any personal interest in such proceedings as it considers appropriate and such person so appointed shall sit as a member of the Court for the purpose of hearing those proceedings and while so sitting shall for the purpose of the hearing of those proceedings have all the powers and exercise all of the duties and functions of the

member of the Court in whose place he or she is so appointed.

4.—(1) The Island Secretary shall be the Registrar of the Lands Court and shall, subject to the general directions of the Governor, be under the immediate direction and control of the President. Registrar.

(2) The duties of the Registrar shall be—

- (a) to attend all sittings of the Court as the President shall direct;
- (b) to fill up or cause to be filled up all summonses, writs, orders and other documents and submit the same for signature by the President;
- (c) to issue all process in the Court in accordance with the provisions of this ordinance;
- (d) to make or cause to be made a record of all proceedings before the Court and of all judgments and orders of the Court;
- (e) to keep or cause to be kept and maintained the Lands Register and all other registers required to be kept by or under the provisions of this ordinance; and
- (f) to perform or cause to be performed such other duties connected with the Court and the registration of lands and otherwise as may be required by or under the provisions of this ordinance or may be assigned to him or her by the Governor or by the President.

5. The Court shall be charged with the following duties— Duties and functions of Lands Court.

- (a) to exercise a supervisory jurisdiction over all lands on Pitcairn Island;
- (b) to cause the boundaries of all lands on Pitcairn Island in respect of which the ownership has been determined according to law to be demarcated on the ground;
- (c) to cause a register to be kept and maintained in respect of all lands on Pitcairn Island the ownership of which has been determined under the provisions of this ordinance and of the Land Tenure Reform Ordinance; cap. 14
- (d) to hear and determine all applications for the grant of Land Allocation Titles under Part III of the Land Tenure Reform Ordinance; cap. 14
- (e) to hear and determine all disputes relating to the ownership of land on Pitcairn Island;
- (f) to determine all other questions relating to lands on Pitcairn Island as may be referred to it by the

cap. 14

Council or by any inhabitant of Pitcairn Island under any of the provisions of this ordinance or the Land Tenure Reform Ordinance.

Sittings of the Court.

6.—(1) The Court shall sit at such times and on such days as may from time to time be determined by resolution of the Council and publicly notified by notice affixed to the public notice board.

(2) All sittings of the Court shall be open to the public in so far as the seating arrangements of the courthouse permit:

Provided that the President may clear the Court if he or she considers that the Court should discuss any matter before it without the parties being present.

(3) The President may adjourn the Court from day to day or to any convenient day.

(4) A quorum of the Court shall be the President and three other members.

Powers and proceedings of the Court.

7.—(1) For the purpose of any proceedings before the Court, the President shall have the same power to summon and cause the attendance of and examine on oath all claimants or potential claimants to any land and any person whom he or she may think able to give relevant evidence as are vested in the Magistrate in respect of any case before the Magistrate's Court under the provisions of section 14 of the Justice Ordinance and the provisions of Part III of that ordinance shall apply *mutatis mutandis* to all applications and cases before the Court.

cap. 3

(2) The Registrar shall keep or cause to be kept a record of all proceedings before the Court and all evidence given in all such proceedings, the observations of the members of the Court, the summing up by the President and the judgment of the Court.

(3) The minutes of all proceedings before the Court shall be signed by the President and by the Registrar and the record of all such proceedings, including such minutes and all documents filed with the Court or admitted in evidence, shall be preserved in the records of the Court to be kept at the office of the Registrar.

(4) If, in any proceedings before the Court, the applicant fails to appear, either personally or by a representative appointed under the provisions of section 9 of this ordinance and does not excuse such failure to the satisfaction of the Court, the Court may strike out his or her application.

(5) If a party to any proceedings before the Court does not obey any summons issued under the provisions of subsection (1) of this section and does not excuse such failure to appear to the satisfaction of the Court then, after proof of service, the

Court may appoint a suitable person who may reasonably be expected to have knowledge of the matters in issue to represent such party and may thereupon proceed to hear and determine the proceedings.

(6) In all proceedings before the Court, the parties or their representatives or, in the case of a party who has failed to appear, the representative appointed by the Court under the provisions of the last preceding subsection, shall be present throughout the proceedings except when the Court is cleared under the proviso to subsection (2) of section 6 of this ordinance.

(7) The following procedure shall be observed by the Court in the hearing and determination of all proceedings before it—

- (a) a statement of the matter in issue shall be made to the Court by the applicant, or by the Registrar if the matter arises out of the Court's own motion;
- (b) if there is an applicant, the Court shall first hear his or her evidence together with that of any witness whom the applicant wishes to call and shall then proceed to hear the evidence of all other parties together with their witnesses and, if the matter arises on the Court's own motion, it may call such witnesses in such order as it thinks fit;
- (c) after each party to the proceedings before the Court has given evidence, the opposing party shall be entitled to ask any questions relating to the matter in issue and similarly each party may ask questions of any witness called by any other party after such witness has given evidence;
- (d) any member of the Court may ask any questions relating to the matter in issue of any party or witness at any time while they are giving evidence before the Court and the President may recall and question any party or any witness at any stage in the proceedings before judgment;
- (e) during the course of the proceedings, the President may discuss with the members of the Court the law applicable to the matter in issue;
- (f) after hearing all the evidence and discussing if necessary the law applicable to the matter in issue, the President shall summarise the facts and the law for the benefit of the other members of the Court and the Court shall then consider its judgment which shall be by a majority vote of all members present: Provided that in an equal division of opinion amongst the members, the President shall have a

- casting vote in addition to his or her original vote;
- (g) the judgment of the Court arrived at in accordance with paragraph (f) shall be pronounced in open court by the President and shall be entered by the Registrar in the minutes of the Court.

Review of proceedings by Supreme Court.

8. Every decision of the Court shall be subject to review by the Supreme Court in accordance with the provisions of section 13 of the Land Tenure Reform Ordinance.

Appointment of representative.

9. Any person who is absent from Pitcairn Island may, by letter addressed to the President, appoint any person on Pitcairn Island on his or her behalf to make application to the Court or to oppose any application before the Court and the provisions of this ordinance shall be interpreted as if reference to applicants and parties included any representative so authorised under this section.

PART III—LANDS REGISTER

Lands Register.

10.—(1) There shall continue to be a register to be known as the Lands Register which shall be kept in the office of the Registrar.

(2) The Court shall cause entries to be made in the Lands Register of—

- (a) the description by boundaries of all lands on Pitcairn Island in respect of which the ownership has been determined or which are vested in the Council under the provisions of this ordinance;
- (b) the ownership thereof;
- (c) all appurtenances and encumbrances created over such lands, all other dealings therein and all transmissions or devolutions thereof which have been approved by the Court under this ordinance.

(3) All entries in the Lands Register shall be signed by the Registrar and by the President.

Registration.

11. Registration of any person as the owner of any estate or interest in land on Pitcairn Island shall vest in such person indefeasible title to such estate or interest, except in the case of fraud, with such rights, privileges, powers and obligations in relation to such land not inconsistent with any of the provisions of this ordinance and subject at all times to the provisions of the Land Tenure Reform Ordinance.

Inspection of Lands Register.

12. Any person shall be entitled to inspect the Lands Register and to make copies of any of the entries contained therein and, on payment of a fee of twenty cents, to receive a certified copy of any of the entries therein duly certified under

the hand of the Registrar.

13. The Registrar, acting on the instructions of the Court, shall have power to rectify the Lands Register in the following cases—

Rectification of
Lands Register.

- (a) in formal matters and in cases of errors or omissions not materially affecting any interests in land registered therein; and
- (b) in any case at any time with the consent of all persons interested.

PART IV—GRANT OF LAND ALLOCATION TITLES

14.—(1) Any person seeking the grant of a Land Allocation Title under section 4 of the Land Tenure Reform Ordinance in respect of any land on Pitcairn Island may, on giving not less than 30 days' notice in writing to the Registrar of his intention to make such application, apply to the Court in accordance with the procedure prescribed in this section.

Application for grant
of Land Allocation
Title.

(2) On receipt of any notice given under the provisions of subsection (1), the Registrar shall cause a copy of such notice to be posted on the public notice board and to be kept so posted until such time as the application has been determined by the Court.

(3) Every notice given under the provisions of subsection (1) shall describe the boundaries of the land claimed and shall specify the name of the applicant and the entitlement claimed by him or her with respect to the land.

(4) Any other person seeking the grant of a Land Allocation Title to any land in respect of which notice is given under the provisions of subsection (1) may oppose the application by giving notice in writing to the Registrar and to the applicant at any time before the application has been determined by the Court. Every such notice shall specify the name of the person by or on whose behalf it is given and the entitlement claimed by such person with respect to the land.

(5) On the date appointed by the Court for the hearing of the application, or such extended time as the Court may in its discretion allow, the Court shall determine the application or the competing applications, as the case may be, in accordance with the procedure and principles set out in section 4 of the Land Tenure Reform Ordinance and upon granting any Land Allocation Title shall direct the Registrar to make the appropriate entry in the Lands Register.

[14A.—(1) The General Survey Adviser may at any time provide expert opinion evidence relating to any issue arising in proceedings under Part III of the Land Tenure Reform

Advisory function
of General Survey
Adviser

Ordinance for the grant of any Land Application Title. Such advice may be in the form of a memorandum or submission in writing or an oral statement of evidence. This advice or evidence may be tendered by the General Survey Adviser at the instance of the Court, any party having a direct interest in the proceedings or on the initiative of the General Survey Adviser.

(2) In considering its decision in the case, the Court shall take into account the substance of the advice or evidence of the General Survey Adviser but shall not be bound by it. If the Court chooses not to follow the advice or evidence of the General Survey Adviser, it shall state the reasons therefor in its decision.]

(Inserted by Ordinance No. 4 of 2006)

PART V—CARETAKERS

Appointment and registration of caretakers.

15.—(1) Any person who is registered under the provisions of this ordinance as the owner of any estate in land and who intends to leave Pitcairn Island for any indefinite period shall, before leaving the Island, make application to the Court for the appointment of some fit and proper person to be named by the applicant as the caretaker in charge of such land during his or her absence from the Island.

(2) If, upon the hearing of any application made under the provisions of subsection (1), the Court is satisfied that the proposed appointment is in conformity with the provisions of this ordinance and that the person nominated by the applicant has consented to act as caretaker of such land, it shall make an order directing that the person nominated be registered in the Lands Register as the caretaker of such land or, if not so satisfied, require the applicant to nominate some other person to act as caretaker of such land and, upon the applicant nominating a person to the satisfaction of the Court as aforesaid, the Court shall make an order directing that that person be registered in the Lands Register as the caretaker of such land.

Rights and obligations of caretakers.

16. Every caretaker registered under the provisions of this ordinance shall, while so registered, be subject to all of the liabilities and obligations in connection with the land in respect of which he or she is so registered as are imposed on the owner of such land and, subject to any conditions imposed or approved by the Court, shall have the right to the use and enjoyment of the land in respect of which he or she is so registered and to all crops, fruits and other produce standing or growing thereon to the same extent as the owner on whose

behalf he or she is so appointed.

PART VI—OFFENCES AND PENALTIES

17. Any person who—

- (a) wilfully makes any false statement or declaration in relation to any dealing in land; or
- (b) suppresses, conceals or aids and abets in the suppressing or concealing from the Court of any material document, fact or matter; or
- (c) wilfully makes any false declaration required to be made under any of the provisions of this ordinance; or
- (d) being lawfully sworn or affirmed as a witness in any cause or matter before the Court, wilfully makes any statement in evidence material to that cause or matter which he or she knows to be false or does not believe to be true, with the intention of deceiving or misleading the Court; or
- (e) fraudulently procures any documents of title to land or any instrument affecting any such title or the making of any alteration thereto or erasure therefrom; or
- (f) fraudulently alters, adds to, erases, defaces or destroys or permits to be altered, added to, erased, defaced or destroyed any entry in any record or register required to be kept under the provisions of this ordinance or any document contained in any such register,

False statements,
perjury etc.

is guilty of an offence and shall be liable to a fine not exceeding five hundred dollars or imprisonment for any period not exceeding one hundred days or to both such fine and imprisonment.

18. Any person who defaces, obliterates, moves, injures or otherwise impairs, destroys or renders useless any [survey] mark except with the authority of the Court shall be liable upon conviction to a fine not exceeding five hundred dollars or imprisonment for any period not exceeding one hundred days or to both such fine and imprisonment.

Survey marks.

(Amended by Ordinance No. 4 of 2006)

19.—(1) Any person who—

- (a) within or in the vicinity of any room in which the Court is sitting or in the presence or hearing of the Court when engaged extramurally in the determination of boundaries or the inspection of any land is insulting towards or shows disrespect

Contempt of Court.

- in speech or manner to the President, any member of the Court or the Registrar; or
- (b) wilfully refuses or neglects to appear before the Court when summoned to do so; or
 - (c) having appeared before the Court and being called upon to give evidence, wilfully refuses to take the oath or affirmation or, having taken the oath or affirmation, wilfully refuses without lawful excuse to answer any question put to him or her or to produce any document; or
 - (d) having attended the Court for the purposes of giving evidence in any cause before it, remains in the room or in the vicinity of the Court after having been asked to leave such room or vicinity; or
 - (e) causes any obstruction or disturbance in the course of the hearing of any cause before the Court; or
 - (f) attempts wrongfully to interfere with or influence any witness in any cause before the Court either before or after such witness has given evidence in connection with such cause; or
 - (g) commits any other act of intentional disrespect to any cause before the Court or to any officer of the Court,

is guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred dollars or imprisonment for any period not exceeding one hundred days or to both such fine and imprisonment.

(2) Any person who enters the room or place in which the Court is sitting or approaches the vicinity of the Court when engaged extramurally in the determination of boundaries or the inspection of any land with firearms on his or her person shall be guilty of an offence and on conviction shall be liable to a fine not exceeding sixty dollars or to imprisonment for any period not exceeding thirty days or to both such fine and imprisonment.

PART VII—GENERAL

20.—(1) Any attempt to assume ownership or control of or to possess, occupy, transfer, transmit or otherwise deal with land on the islands of Henderson, Ducie or Oeno shall be null and void without the prior approval of the Governor.

(2) On any request for approval made under the provisions of subsection (1), the Governor may by order authorise extension of the jurisdiction of the Court to include the islands of Henderson, Ducie and Oeno or any one of such islands.

21.—(1) The Council may make, amend or revoke regulations— Regulations.

- (a) regulating the practice and procedure of the Court in matters not specifically provided for in this ordinance;
- (b) prescribing the forms and registers to be used and for regulating all matters connected therewith;
- (c) regulating the receipt of moneys paid to the Court and the payment out of the Court of all moneys to the persons entitled thereto;
- (d) prescribing fees and costs which may be demanded and received in connection with any matter within the jurisdiction of the Court;
- (e) for the better carrying into effect of the provisions, objects and intentions of this ordinance.

(2) All regulations made under the provisions of this ordinance shall be signed by the Mayor and by the Island Secretary, publicly notified by affixing copies thereof to the public notice board and shall come into force on the day of such notification.

(3) Copies of all regulations made under the provisions of this ordinance shall be sent forthwith to the Governor who may by order to be publicly notified by affixing a copy of the same to the public notice board, alter, vary or revoke any such regulations.

22. Nothing in this ordinance contained shall be deemed to affect any right, title or interest of the Crown in, upon or over any land on Pitcairn, Henderson, Ducie or Oeno Islands nor is the Crown in any way subject to any of the provisions of this ordinance. Rights of Crown preserved.

23. The transitional provisions consequent upon the repeal of the Lands and Administration of Estates Ordinance with respect to any claim or proceeding before the former Lands and Estates Court and not completed or disposed of at the time of that repeal are set out in the schedule to this ordinance. Transitional provisions.

Section 23

SCHEDULE

Transitional Provisions

1. Where immediately prior to the repeal of the Lands and Administration of Estates Ordinance any application, enquiry, claim, dispute, proceeding or other legal process affecting or concerning any right or interest in land was partially completed or pending the same may, subject to the provisions of this schedule, be completed or undertaken in accordance with the repealed ordinance as if it had not been repealed.

2. Any such intention to institute the continuation or completion of any such application, enquiry, claim, dispute, proceeding or process under the repealed ordinance must be notified in writing to the Registrar of the Lands Court not later than six months after the commencement of this ordinance and thereafter no such right of continuation or completion shall lie.

3. Where the nature or circumstances of the application, enquiry, claim, dispute, proceeding or other legal process, sought to be instituted or continued under paragraphs 1 and 2 is inconsistent with or repugnant to the provisions of the Land Tenure Reform Ordinance, no such right of continuation or completion shall lie and any right or interest in land thereby affected shall be deemed to have abated or become extinguished by operation of law.

4. For the avoidance of doubt, the abatement or extinguishment of any actual or contingent right or interest in land pursuant to paragraph 3 shall not be the subject of any claim for compensation.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2014

CHAPTER XVI

**REGISTRATION OF BUSINESS NAMES
ORDINANCE**

Arrangement of sections

Section

1. Short title
2. Interpretation
3. Firms, persons and corporations to be registered
4. Manners and particulars of registration—First Schedule
5. Statement to be signed by persons etc. registering
6. Time for registration
7. Registration of changes in form, etc.—Second Schedule
8. Penalty for default in registration
9. Persons etc. in default bringing action shall be ordered by the Court to register
10. Proceedings against unregistered firms etc.
11. Penalty for false statement
12. Registrar to file statement and issue certificate of registration
13. Registrar to keep index
14. Deletion of names from register—Third Schedule
15. Inspection of statements registered
16. Fees
17. Rules
18. Offences of corporations
19. Misleading business names
20. Penalty for use of name refused
 - First Schedule
 - Second Schedule
 - Third Schedule

Ordinances:
No. 7 of 1999
No. 2 of 2014

An ordinance to provide for the registration of business names

[2 November 1999]

Short title.

1. This ordinance may be cited as the Registration of Business Names Ordinance.

Interpretation.

2. In this ordinance and in any rules made thereunder, unless the context otherwise requires—

“business name” means the name or style under which any business is carried on whether in partnership or otherwise;

“firm” means an unincorporate body of two or more individuals or of one or more individuals and one or more corporations or of two or more corporations who have entered into partnership with one another with a view to carrying on business for profit;

“individual” means a natural person and shall not include a corporation;

“initials” includes any recognised abbreviation of a personal name;

“the Registrar” means the person appointed by the Governor to be the Registrar of Business Names for the purposes of this ordinance.

Firms, persons and corporations to be registered.

3. Subject to the provisions of this ordinance—

(a) every firm carrying on business in the Islands under a business name which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations, without any addition other than the true personal names of individual partners or initials of such personal names;

(b) every individual carrying on business in the Islands under a business name which does not consist of his or her true surname, without any addition other than his or her true personal names or the initials thereof;

(c) every individual or firm carrying on business in the Islands who, or a member of which, has either before or after the commencement of this ordinance, changed his or her name (except in consequence of marriage);

(Amended by Ordinance No. 2 of 2014)

(d) every corporation carrying on business under a business name which does not consist of its corporate name without any addition;

shall be registered in the manner provided by this ordinance:

Provided that—

- (i) where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration shall not be necessary; and
- (ii) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common is not of itself to be deemed carrying on a business.

4.—(1) Every firm, person or corporation required under this ordinance to be registered shall furnish, by sending by post or delivering to the Registrar, a statement in writing in the form prescribed in the First Schedule, containing the following particulars—

Manner and particulars of registration.

First Schedule.

- (a) the business name;
- (b) the general nature of the business;
- (c) the principal place of business;
- (d) where the registration to be effected is that of a firm, the present personal names and surname, any former personal names or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, the usual residence and other business occupation (if any) of each of the individuals who are partners and the corporate name and registered or principal office of every corporation which is a partner;
- (e) where the registration to be effected is that of an individual, the present personal names and surname, any former personal names or surname, the nationality and, if that is not the nationality of origin, the nationality of origin, the usual residence and other business occupation (if any) of such individual;
- (f) where the registration to be effected is that of a corporation, its corporate name, the place and date of its incorporation and its registered office and place of business in the Islands;
- (g) if the business is commenced after the commencement of this ordinance, the date of the commencement of the business.

(2) Where a business is carried on under two or more business names, each of those business names must be stated.

5. The statement required for the purpose of registration must, in the case of an individual, be signed by him and in the case of a corporation by a director or secretary thereof and in the case of a firm either by all the individuals who are partners and by a director or the secretary of all corporations which are partners or by some individual who is a partner or a director

Statement to be signed by persons etc. registering.

or the secretary of some corporation which is a partner and in either of the last two cases must be verified by a statutory declaration made by the signatory:

Provided that no such statutory declaration stating that any person other than the declarant is a partner or omitting to state that any person other than as aforesaid is a partner shall be evidence for or against any such person in respect of his or her liability or non-liability as a partner and the Supreme Court may on application by any person alleged or claiming to be or not to be a partner, direct the rectification of the register and decide any question arising under this section.

Time for registration.

6.—(1) The particulars required to be furnished under this ordinance shall be furnished within one month after the firm, person or corporation commenced to carry on the business in respect of which registration is required.

(2) This section shall apply in any case where registration is required in consequence of a change of name as if for references to the date of commencing to carry on the business there were substituted references to the date of such change.

Registration of changes in firm, etc.

7. Whenever a change is made or occurs in any of the particulars registered in respect of any firm, corporation or person, such firm, corporation or person shall, within one month after such change or such longer period as the Governor may, on application being made in any particular case, whether before or after the expiration of such month, allow, furnish by sending by post or deliver to the Registrar a statement in writing in the form prescribed in the Second Schedule, specifying the nature and date of the change, signed and, when necessary, verified in like manner as the statement required on registration.

Second Schedule.

Penalty for default in registration.

8. If any firm, corporation or person by this ordinance required to furnish a statement of particulars shall, without reasonable excuse, make default in so doing in the manner and within the time specified by this ordinance, every partner in the firm, every director and the secretary of the corporation or the person so in default shall be liable on summary conviction to a fine not exceeding twenty-five dollars for every day during which the default continues.

Persons etc. in default bringing action shall be ordered by the Court to register.

9. Where any firm, corporation or person by this ordinance required to send or deliver any statement to the Registrar has therein made default and during such default commences any suit or action in any court in the business name or for a cause of action arising out of any dealing by such firm, corporation or person in the business name, such court shall order the

firm, corporation or person in default to send or deliver to the Registrar the proper statement as required by this ordinance and may stay all proceedings in the suit or action until the order be complied with or allow proceedings to be continued on an undertaken to comply with such order within a time to be limited by the Court.

10. If any firm, corporation or person required to be registered, as provided by this ordinance, shall fail to register accordingly, all proceedings in any court of competent jurisdiction may be taken and prosecuted against such firm, corporation or person in the name under which such firm, corporation or person is carrying on business and such name shall, for the purposes of such proceedings, be a sufficient designation of such firm, corporation or person in all writs, summonses and other legal documents and instruments:

Proceedings against unregistered firms etc.

Provided that nothing in this section shall be construed to exempt any firm, corporation or person from compliance with any of the provisions of this ordinance.

11. If any statement required to be furnished under this ordinance contains any information which is false in any material particular to the knowledge of any person signing it, that person shall on summary conviction be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars or to both such imprisonment and fine.

Penalty for false statement.

12.—(1) Subject to subsection (2), on receiving any statement or statutory declaration made in pursuance of this ordinance, the Registrar shall cause the same to be filed and shall send by post or deliver a certificate of the registration thereof to the firm, corporation or person registering and the certificate or a certified copy thereof shall be kept exhibited in a conspicuous position at the place of business of the firm, corporation or person and if not kept so exhibited every partner in the firm, every director and the secretary of the corporation or the person, as the case may be, shall be liable on summary conviction to a fine not exceeding one hundred dollars.

Registrar to file statement and issue certificate of registration.

(2) The Registrar may call upon the signatory or signatories of any statement or declaration made in pursuance of this ordinance to furnish any information or evidence supporting any particular thereof and may, if such particular is not sufficiently substantiated, refuse to register the statement.

13. The Registrar shall keep an index of all the firms, corporations and persons registered at his or her office under this ordinance.

Registrar to keep index.

Deletion of names
from register.

14.—(1) If any firm, corporation or person registered under this ordinance ceases to carry on business, it shall be the duty of the persons who were partners in the firm or the directors and secretary of the corporation at the time when it ceased to carry on business or of the individual or, if deceased, of his or her personal representative, as the case may be, within three months after the business has ceased to be carried on, to send by post or deliver to the Registrar notice in the form prescribed in the Third Schedule that the firm, corporation or person has ceased to carry on business and any person whose duty it is to give such notice failing within such period to do so shall on summary conviction be liable to a fine not exceeding forty dollars.

Third Schedule.

(2) On receiving a notice as provided by subsection (1), the Registrar shall delete the name of the firm, corporation or person from the register.

(3) Where the registrar has reasonable cause to believe that any firm, corporation or person registered under this ordinance is not carrying on business, he or she may send to such firm, corporation or person a notice that unless an answer is received to such notice within three months from the date thereof, the name of the firm, corporation or person may be deleted from the register.

(4) If the Registrar either receives an answer from the firm, corporation or person to the effect that the business in question is no longer carried on or does not within three months after sending the notice receive an answer he or she may delete the name of the firm, corporation or person from the register.

Inspection of
statements registered.

15.—(1) Any person may inspect and make a copy of or extracts from the statements filed by the Registrar.

(2) Any person may require a certificate of the registration of any firm, corporation or person or a copy of or extract from any registered statement to be certified by the Registrar.

(3) A certificate of registration or a copy of or extract from any statement registered under this ordinance purporting to be signed and certified by the Registrar shall be admissible in legal proceedings as *prima facie* and sufficient proof of the fact and date of registration and of the other particulars therein contained.

Fees.

16.—(1) The following fees shall be payable to the Registrar—

- (a) for the registration of a statement under the provisions of section 4 or section 7, the sum of five dollars;
- (b) for inspecting the register of statements filed by

the Registrar or the index thereto, the sum of two dollars;

- (c) for the issue of a certificate of registration, or a certified copy or extract from any registered statement, the sum of three dollars.

(2) The fees provided by subsection (1) may be amended from time to time by rules made by the Governor.

17. The Governor may make rules for the purposes of this ordinance prescribing—

Rules.

- (a) the duties to be performed by the Registrar for the performance of his functions under this ordinance;
- (b) generally the conduct and regulation of registration under this ordinance and any matters incidental thereto.

18. Where a corporation is guilty of an offence under this ordinance, every director, secretary and officer of the corporation, who is knowingly a party to the default, shall be guilty of a like offence and punishable accordingly and the burden of proving in any proceedings that such director, secretary or officer was not knowingly a party to the default shall rest with the person charged.

Offences of corporations.

19.—(1) The Registrar shall refuse registration of a business name which, in the opinion of the Registrar, is undesirable.

Misleading business names.

(2) Without prejudice to the generality of subsection (1), no business shall be permitted to be registered by a name which—

- (a) is identical with a business name registered under this ordinance or which in the opinion of the Registrar so nearly resembles any such name as to be likely to deceive or cause confusion;
- (b) contains the words “Royal”, “Pitcairn”, “Pitcairn Island”, “Pitcairn Islands”, or any other words which, in the opinion of the Registrar, falsely suggest or are calculated or likely falsely to suggest the patronage of Her Majesty or any member of the Royal Family or the authorisation, approval or official recognition of the business by the Crown, the Government of the United Kingdom or the Administration of the Islands.

(3) The registration of a business name under the provisions of this ordinance shall not be construed as authorising the use of that name if, apart from such registration, the use thereof could be prohibited.

20. If any firm, corporation or person, having under the provisions of this ordinance made application to the Registrar

Penalty for use of name refused.

for registration of a business name which application was refused by the Registrar on any ground provided by section 19, thereafter carries on business under the name refused by the Registrar as aforesaid every partner in the firm, every director and the secretary of the corporation, or the person so in default, as the case may be, shall be liable on summary conviction to a fine not exceeding twenty-five dollars for every day during which the offence continues.

Section 4

FIRST SCHEDULE

STATEMENT OF PARTICULARS

1. The business name or names for which registration is required.
2. The general nature of the business carried on under such name or names.
3. The place in the Islands where the business is carried on.
4. If registration is sought by a firm, the present personal names and surname, any former personal names or surname, the nationality and the nationality of origin if they are different, the usual place of residence and any other business occupation of each individual who is a partner and the corporate name and registered or principal office of every corporation which is a partner.
5. If registration is sought by an individual, the present personal names and surname, the nationality and the nationality of origin if they are different, the usual place of residence and any other business occupation of the individual.
6. If registration is sought by a corporation, the corporate name, the place and date of its incorporation, the situation of its registered office and its place of business in the Islands.
7. The date of commencement of the business.

Signed at this day of (year).

SECOND SCHEDULE

(Section 7)

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

CHAPTER XVII

WILLS ORDINANCE

Arrangement of sections

PART I—PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II—WILLS AND CODICILS

3. Person capable of making a will or codicil.
4. Will or codicil of infant invalid.
5. Mode of execution.
6. Execution of appointment by will or codicil.
7. Publication of will or codicil not necessary.
8. Will or codicil not to be invalidated by reason of incompetency of attesting witness.
9. Gifts to an attesting witness or to wife or husband of attesting witness to be void.
10. Creditor attesting a will or codicil charging estate with debts shall be admitted as a witness.
11. Executor not incompetent to be a witness.
12. Will or codicil to be revoked by marriage except in certain cases.
13. No will or codicil to be revoked by presumption from altered circumstances.
14. Revocation of will or codicil.
15. Effect of obliteration, interlineation or alteration in will or codicil.
16. Revival of revoked will or codicil.
17. Subsequent transfer or assignment or other acts not to prevent operation of will or codicil.
18. Will or codicil shall be construed to speak from the death of the testator.
19. Residuary devises or bequests shall include property comprised in lapsed and void devises and bequests.
20. General devise or bequest of estate or property shall include property over which the testator has general power of appointment.
21. Devise or bequest without words of limitation.

PART III—PRIVILEGED WILLS

22. Privileged wills.
23. Mode of making and rules for executing privileged wills.

An Ordinance relating to wills.

Ordinance Nos:
2 of 1966,
3 of 1982.

[22nd February, 1967]

PART I—PRELIMINARY

1. This ordinance may be cited as the Wills Ordinance. Short title.
2. In this ordinance, unless the context otherwise requires— Interpretation.
 - “bequest” and its grammatical derivations and cognate expressions includes all dispositions by will or codicil of any property, of whatsoever nature or description, and has the same meaning as “devise”;
 - “codicil” means an instrument made in relation to a will, and explaining, altering or adding to its contents, and shall be deemed to form part of the will;
 - “devise” and its grammatical derivations and cognate expressions includes all dispositions by will or codicil of any property, of whatsoever nature or description, and has the same meaning as “bequest”;
 - “property” includes both real and personal property;
 - “will” means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death, and includes a testament and a codicil and an appointment by will or by writing in the nature of a will in exercise of a power.

PART II—WILLS AND CODICILS

3. Except as hereinafter provided in this ordinance, every person of sound mind may devise, bequeath or dispose of by will or codicil executed in the manner hereinafter required, all the property which he or she owns or to which he or she is entitled at the time of his death. Person capable of making a will or codicil.
4. No will or codicil made by any person under the age of eighteen years shall be valid. Will or codicil of infant invalid.
- 5.—(1) No will or codicil shall be valid unless it is in writing and executed in the manner hereinafter required. Mode of execution.
 - (2) (a) The testator shall sign or affix his or her mark to the will or codicil or it shall be signed by some other person in the presence and by the direction of the testator.
 - (b) The signature or mark of the testator, or the signature of the person signing for the testator, shall be so placed that it shall appear that it was intended

thereby to give effect to the whole of the writing as a will or codicil.

- (c) The will or codicil shall be attested by two or more witnesses present at the same time, each of whom has seen the testator sign or affix his or her mark to the will or codicil or has seen some other person sign the will or codicil, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his or her signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will or codicil in the presence of the testator, but no form of attestation shall be necessary.

Execution of appointment by will or codicil.

6.—(1) No appointment made by will or codicil in exercise of any power shall be valid, unless the same is executed in the manner hereinbefore required.

(2) Every will or codicil executed in the manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding that it shall have been expressly required that a will or codicil made in exercise of such power should be executed with some additional or other form of execution or solemnity.

Publication of will or codicil not necessary.

7. Every will or codicil executed in the manner hereinbefore required shall be valid without any other publication thereof.

Will or codicil not to be invalidated by reason of incompetency of attesting witness.

8. If any person who attests the execution of a will or codicil shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted as a witness to prove the execution thereof, such will or codicil shall not on that account be invalid.

Gifts to an attesting witness or to wife or husband of attesting witness to be void.

9. If any person attests the execution of any will or codicil to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any property, other than and except charges and directions for the payment of any debt or debts, shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment shall, so far only as concerns such person attesting the execution of such will or codicil or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, interest, gift or appointment mentioned in such will

or codicil.

10. In case by any will or codicil any property shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will or codicil, such creditor, notwithstanding such charge, shall be admitted as a witness to prove the execution of such will or codicil, or to prove the validity or invalidity thereof.

Creditor attesting a will or codicil charging estate with debts shall be admitted as a witness.

11. No person shall, on account of his or her being an executor of a will, be incompetent to be admitted as a witness to prove the execution of such will or as a witness to prove the validity or invalidity thereof.

Executor not incompetent to be a witness.

12. Every will or codicil made by a man or woman shall be revoked by his or her marriage, except a will or codicil made in exercise of a power of appointment, when the property thereby appointed would not, in default of such appointment, pass to his or her executor or administrator or the person entitled in case of intestacy:

Will or codicil to be revoked by marriage except in certain cases.

Provided that a will expressed to be made in contemplation of a marriage shall, notwithstanding anything in this section or any other rule or law to the contrary, not be revoked by the solemnization of the marriage contemplated.

13. No will or codicil shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

No will or codicil to be revoked by presumption from altered circumstances.

14. No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in the manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will or codicil is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in the presence and by the direction of the testator, with the intention of revoking the same.

Revocation of will or codicil.

15. No obliteration, interlineation or other alteration made in any will or codicil after the execution thereof shall be valid or have any effect so far as the words or effect of the will or codicil before such obliteration, interlineation or other alteration shall not be apparent, unless such obliteration, interlineation or other alteration shall be executed in like manner as hereinbefore is required for the execution of the will or codicil; but the will or codicil, with such obliteration, interlineation or other alteration as part thereof, shall be deemed to be duly executed if the signature of the testator

Effect of obliteration, interlineation or alteration in will or codicil.

and the subscription of the witnesses be made in the margin or some other part of the will or codicil opposite or near to such obliteration, interlineation or other alteration or at the foot or end of or opposite or near to such obliteration, interlineation or other alteration, or at the foot or end of or opposite to a memorandum referring to such obliteration, interlineation or other alteration and written at the end or some other part of the will or codicil.

Revival of revoked will or codicil.

16.—(1) No will or codicil, or any part thereof, which has been revoked in any manner shall be revived otherwise than by the re-execution thereof, or by a codicil executed in the manner hereinbefore required, and showing an intention to revive the same.

(2) When any will or codicil, which has been partly revoked, and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown by the will or codicil.

Subsequent transfer or assignment or other acts not to prevent operation of will or codicil.

17. No transfer or assignment or other act made or done subsequently to the execution of a will or codicil of or relating to any property therein comprised, except an act by which such will or codicil shall be revoked as aforesaid, shall prevent the operation of the will or codicil with respect to such right, share or interest in such property as the testator shall have power to dispose of by will or codicil at the time of his or her death.

Will or codicil shall be construed to speak from the death of the testator.

18. Every will or codicil shall be construed, with reference to the property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator unless a contrary intention shall appear by the will or codicil.

Residuary devise or bequests shall include property comprised in lapsed and void devises and bequests.

19. Unless a contrary intention appears by the will or codicil, such property as is comprised or intended to be comprised in any devise or bequest in such will or codicil contained, which fails or is void by reason of the death of the devisee or legatee in the lifetime of the testator or by reason of such devise or bequest being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise or bequest, if any, contained in such will or codicil.

General devise or bequest of estate or property shall include property over which the testator has general power of appointment.

20. A general devise or bequest of the estate or property of the testator described in a general manner, shall be construed to include any property to which such description shall extend, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will or codicil.

21. Where property is devised or bequeathed to any person, he or she is entitled to the whole interest of the testator therein, unless it appears from the will or codicil that only a restricted interest was intended for him or her.

Devise or bequest without words of limitation.

PART III—PRIVILEGED WILLS

22. Any soldier being employed in an expedition or engaged in actual warfare, or an airman so employed or engaged or any mariner being at sea, may, if he or she has attained the age of eighteen years, dispose of his or her property by a will made in the manner provided in section 23. Such wills are called privileged wills.

Privileged wills.

23.—(1) Privileged wills may be in writing, or may be made by word of mouth.

Mode of making and rules for executing privileged wills.

(2) The execution of privileged wills shall be governed by the following rules—

- (a) The will may be written wholly by the testator with his or her own hand. In such case it need not be signed or attested.
- (b) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.
- (c) If the instrument purporting to be a will is written wholly or in part by another person and is not signed by the testator, it shall be deemed to be his or her will if it is shown that it was written by the testator's directions or that he or she recognized it as such will.
- (d) If it appears on the face of the instrument that execution of it in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that the non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.
- (e) If the soldier, airman or mariner has written instructions for the preparation of a will, but has died before it could be prepared and executed, such instructions shall be considered to constitute that will.
- (f) If the soldier, airman or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of a will, and they have been reduced into writing in his or her lifetime, but he or she has

died before the instrument could be prepared and executed, such instructions shall be considered to constitute such will although they may not have been reduced into writing in the presence of the testator nor read over to the testator.

- (g) The soldier, airman or mariner may make a will by word of mouth by declaring his or her intention before two witnesses present at the same time.
- (h) A will made by word of mouth shall be null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged will.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2014

CHAPTER XVIII

ADOPTION OF INFANTS ORDINANCE

Arrangement of sections

Section

1. Short title.
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 13. Adopted Children Register.
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 18. Affiliation orders, etc.
- First Schedule
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Ordinance Nos:
2 of 1954
4 of 1968
2 of 2014.

An ordinance to make provision for the adoption of infants and for matters connected therewith.

[9th September, 1954]

Short title.

1. This ordinance may be cited as the Adoption of Infants Ordinance.

Interpretation.

2. In this ordinance unless the context otherwise requires—

“court” means the court having jurisdiction to make adoption orders under this ordinance;

“father” in relation to an illegitimate child means the natural father;

“relative” in relation to an infant means a grandparent, brother, sister, uncle or aunt, whether of the full blood, of the half blood or by affinity, and includes—

(a) where an adoption order has been made in respect of the infant or any other person, any person who would be a relative of the infant within the meaning of this definition if the adopted person were the child of the adopter born in lawful wedlock;

(b) where the infant is illegitimate, the father of the infant and any other person who would be a relative of the infant within the meaning of this definition if the infant were the legitimate child of its mother and father.

Power to make adoption orders.

3.—(1) Upon an application in the prescribed manner by any person desirous of being authorized to adopt an infant who has never been married the court may, subject to the provisions of this ordinance, make an order (in this ordinance referred to as “an adoption order”) authorizing the applicant to adopt that infant.

(2) A person so authorized to adopt the infant and an infant authorized to be adopted are in this ordinance referred to as an “adopter” and an “adopted child” respectively, and “infant” means a person under the age of eighteen.

(3) Where an application for an adoption order is made by two spouses jointly, the court may make the order authorizing the two spouses jointly to adopt, but save as aforesaid no adoption order shall be made authorizing more than one person to adopt an infant.

(4) An adoption order may be made authorizing the adoption of an infant by the mother or father of the infant either alone or in accordance with the provisions of subsection (3) jointly with her or his spouse.

Restrictions on making adoption orders.

4.—(1) An adoption order shall not be made unless the

applicant or, in the case of a joint application, one of the applicants—

- (a) has attained the age of twenty-five and is at least twenty-one years older than the infant in respect of whom the application is made; or
- (b) has attained the age of twenty-one and is a relative of the infant; or
- (c) is the mother or father of the infant.

(2) An adoption order shall not be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

(3) An adoption order shall not be made upon the application of one of two spouses without the consent of the other of them:

Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving such consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(4) An adoption order shall not be made in favour of any applicant who is not resident in the Islands or in respect of any infant who is not so resident.

5.—(1) An adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the infant, or who is liable by virtue of any order or agreement to contribute to the maintenance of the infant:

Consent to adoption.

Provided that the court may dispense with any consent required by this subsection if it is satisfied—

- (a) in the case of parent or guardian of the infant, that he or she has abandoned, neglected or persistently ill-treated the infant, or has made no contribution to its maintenance for a period in excess of five years;
- (b) in the case of a person liable as aforesaid to contribute to the maintenance of the infant that he or she has persistently neglected or refused so to contribute;
- (c) in any case, that the person whose consent is required cannot be found, or is incapable of giving his or her consent or that such consent is unreasonably withheld.

(2) The consent of any person to the making of an adoption order in pursuance of an application may be given (either unconditionally or subject to conditions with respect to the religious persuasion in which the infant is to be brought up)

without knowing the identity of the applicant for the order; and where consent so given by any person is subsequently withdrawn on the ground only that he or she does not know the identity of the applicant, such consent shall be deemed for the purposes of this section to be unreasonably withheld.

Adoption of Infants
Rules 1976.

(3) Where any person whose consent to the making of an adoption order is required by this section does not by reason of absence from the Islands attend in the proceedings for the purpose of giving it, a document signifying such consent to the making of the order shall, if the person in whose favour the order is to be made is named or otherwise described in the document, be admissible as evidence of that consent, whether the document is executed before or after the commencement of the proceedings; and where such document is attested by a person of any such class as may be prescribed by rules made under this ordinance the document shall be admissible as aforesaid without further proof of the signature of the person by whom it is executed:

Provided that a document signifying the consent of the mother of an infant shall not be admissible as aforesaid unless—

- (a) the infant is at least six weeks old on the date of the execution of the document; and
- (b) the document is attested on that date by a person of a class prescribed as aforesaid.

(4) While an application for an adoption order in respect of an infant is pending in any court, any parent or guardian of the infant who has signified his or her consent to the making of an adoption order in pursuance of the application shall not be entitled, except with the leave of the court, to remove the infant from the care and possession of the applicant; and in considering whether to grant or refuse such leave the court shall have regard to the welfare of the infant.

(5) For the purposes of subsection (3) of this section, a document purporting to be attested as mentioned in that subsection shall be deemed to be so attested, and to be executed and attested on the date and at the place specified therein, unless the contrary is proved.

Matters with respect
to which court to be
satisfied.

6. The court before making an adoption order shall be satisfied—

- (a) that every person whose consent is necessary under this ordinance and whose consent is not dispensed with has consented to and understands the nature and effect of the adoption order for which application is made, and in particular, in the case of any parent, understands that the effect of the adoption order will

be permanently to deprive him or her of his or her parental rights; and

- (b) that the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and
- (c) that the applicant has not received or agreed to receive, and that no person has made or given, agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction.

7. The court in an adoption order may impose such terms and conditions as the court may think fit and in particular may require the adopter by bond or otherwise to make for the adopted child such provision (if any) as in the opinion of the court is just and expedient.

Terms and conditions of order.

8.—(1) Upon any application for an adoption order, the court may postpone the determination of the application and may make an interim order (which shall not be an adoption order for the purposes of this ordinance) giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the court may think fit.

Power to make interim orders.

(2) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the court to dispense with any such consent.

9.—(1) An adoption order shall not be made in the case of any infant unless the infant has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order.

Probationary period.

(2) An interim order under section 8 shall not be made in any case where the making of an adoption order would be unlawful by virtue of subsection (1) of this section.

10. An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and, upon any application for such further adoption order, the adopter or adopters under the adoption order last previously made shall, if living, be deemed to be the parent or parents of the infant for all the purposes of this ordinance.

Power to make subsequent order in respect of infant already subject to an order.

11.—(1) The court having jurisdiction to make adoption

Jurisdiction and procedure.

orders under this ordinance shall be the Supreme Court or, at the option of the applicant, but subject to any rules under this section, the Magistrate's Court constituted under the provisions of the Justice Ordinance.

cap. 3

(2) An appeal to the Supreme Court from any order or refusal to make an order by the Magistrate's Court under this ordinance shall lie within such time and in such manner as may be prescribed by rules made under this section.

(3) The Governor may make rules in regard to any matter to be prescribed under this ordinance and directing the manner in which applications to the court are to be made and dealing generally with all matters of procedure and incidental matters arising out of this ordinance and for carrying this ordinance into effect.

Restriction on payments.

12. It shall not be lawful for any adopter or for any parent or guardian except with the sanction of the court to receive any payment or other reward in consideration of the adoption of any infant under this ordinance or for any person to make or give or agree to make or give to any adopter or to any parent or guardian any such payment or reward.

Adopted Children Register.

13.—(1) The Registrar of Births and Deaths (in this ordinance referred to as the "Registrar") shall establish and maintain a register to be called the Adopted Children Register, in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries.

(2) The court shall cause every adoption order to be communicated in the prescribed manner to the Registrar, and upon receipt of such communication the Registrar shall cause compliance to be made with the directions contained in such order in regard both to marking any entry in the said register of births with the word "Adopted" and in regard to making the appropriate entry in the Adopted Children Register.

(3) A certified copy of an entry in the Adopted Children Register if purporting to be given under the hand of the Registrar shall, without any further or other proof of such entry—

- (a) where the entry does not contain any record of the date of the birth or the country of the birth of the adopted child, be received as evidence of the adoption to which the same relates; and
- (b) where the entry contains a record of the date of the birth or the country of the birth of the adopted child, be received not only as evidence of the adoption to which the same relates but also as evidence of the date of the birth of the adopted child to which the

same relates in all respects as though the same were a certified copy of an entry in the said register of births.

(4) The Registrar shall cause an index of the Adopted Children Register to be made and kept in the office of the Registrar and every person shall be entitled to search such index and to have a certified copy of any entry in the Adopted Children Register upon payment of the fee prescribed in the First Schedule to this ordinance.

First Schedule

(5) The Registrar shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make such entries therein as may be necessary to record and make traceable the connection between any entry in the said register of births which has been marked “Adopted” pursuant to this ordinance, and any corresponding entry in the Adopted Children Register, but such last mentioned registers and books shall not be nor shall any index thereof be open to public inspection or search, nor, except under an order of the court, shall the Registrar furnish any person with any information contained in or with any copy or extract from any such registers or books.

14.—(1) Every adoption order shall contain a direction to the Registrar to make in the Adopted Children Register an entry in the form set out in the Second Schedule to this ordinance, and (subject to the provisions of the next following subsection) shall specify the particulars to be entered under the headings in columns 2 to 6 of that Schedule.

Registration of
adoption orders.

Second Schedule.

(2) For the purposes of compliance with the requirements of the foregoing subsection—

- (a) where the precise date of the infant’s birth is not proved to the satisfaction of the court, the court shall determine the probable date of his or her birth and the date so determined shall be specified in the order as the date of his or her birth;
- (b) where the name or surname which the infant is to bear after the adoption differs from his or her original name or surname, the new name or surname shall be specified in the order instead of the original;

and where the country of birth of the infant is not proved to the satisfaction of the court, the particulars of that country may, notwithstanding anything in that subsection, be omitted from the order and from the entry in the Adopted Children Register.

(3) Where upon any application for an adoption order in respect of an infant (not being an infant who has previously been the subject of an adoption order) there is proved to the satisfaction of the court the identity of the infant with a child

to which an entry in the Register of Births relates, any adoption order made in pursuance of the application shall contain a direction to the Registrar to cause the entry in the Register of Birth to be marked with the word “adopted”.

(4) Where an adoption order is made in respect of an infant who has previously been the subject of an adoption order, the order shall contain a direction to the Registrar to cause the previous entry in the Adopted Children Register to be marked with the word “re-adopted”.

(5) Where an adoption order is quashed, or an appeal against an adoption order allowed, the court which made the order shall give directions to the Registrar to cancel any marking of an entry in the Registers of Births and any entry in the Adopted Children Register which was effected in pursuance of the order.

(6) A copy of an entry in the Register of Births or the Adopted Children Register the marking of which is cancelled under this section shall be deemed to be an accurate copy if and only if both the marking and the cancellation are omitted therefrom.

(7) The court by which an adoption order has been made may, on the application of the adopter or of the adopted person, amend the order by the correction of any error in the particulars contained therein; and where an adoption order is so amended the prescribed officer of the court shall cause the amendment to be communicated in the prescribed manner to the Registrar and any necessary correction of or addition to the Adopted Children Register shall be made accordingly.

(8) The power of the court under the last foregoing subsection shall include power to amend the order—

- (a) by the insertion of the country of the adopted person’s birth;
- (b) (where the order does not specify a precise date as the date of the adopted person’s birth) by the insertion of the date which appears to the court to be the date or probable date of his or her birth;

and the provisions of that subsection shall have effect accordingly.

Rights and duties of
parents and capacity
to marry.

15.—(1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercised by and enforceable against the adopter as though the adopted child was a child born to the adopter

in lawful wedlock, and in respect of the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock.

(2) In any case where two spouses are the adopters, such spouses shall, in respect of the matters aforesaid and for the purpose of the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children, stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively.

(3) For the purpose of the law relating to marriage, an adopter and the person whose adoption has been authorised under an adoption order shall be deemed to be within the prohibited degrees of consanguinity; and the provisions of this subsection shall continue to have effect notwithstanding that some person other than the adopter is authorized by a subsequent order to adopt the same infant:

Provided that nothing in this subsection shall invalidate any marriage which has been solemnized before the commencement of this ordinance.

16.—(1) Where, at any time after the making of an adoption order, the adopter or the adopted person or any other person dies intestate in respect of any real or personal property (other than property subject to an entailed interest under a disposition made before the date of the adoption order) that property shall devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person.

(2) In any disposition of real or personal property made, whether by instrument *inter vivos* or by will (including codicil), after the date of an adoption order—

- (a) any reference (whether express or implied) to the child or children of the adopter shall be construed as, or as including, a reference to the adopted person;
- (b) any reference (whether express or implied) to the child or children of the adopted person's natural parents or either of them shall be construed as not being, or as not including, a reference to the adopted person; and
- (c) any reference (whether express or implied) to a person related to the adopted person in any degree shall be construed as a reference to the person who would be related to him or her in that degree if he

Treatment of adopted persons as children of adopters for purposes of intestacy, wills and settlements.

or she were the child of the adopter born in lawful wedlock and were not the child of any other person, unless the contrary intention appears.

Provisions
supplementary to
section 16.

17.—(1) For the purposes of the construction of any such disposition as is mentioned in subsection (2) of section 16, an adopted person shall, unless the contrary intention appears, be deemed to be related to any other person, being the child or adopted child of the adopter or (in the case of a joint adoption) of either of the adopters, as brother or sister.

(2) Notwithstanding any rule of law, a disposition made by will or codicil executed before the date of an adoption order shall not be treated for the purposes of the last preceding section as made after that date by reason only that the will or codicil is confirmed by a codicil executed after that date.

(3) Notwithstanding anything in section 16, trustees, or personal representatives may convey or distribute any real or personal property to or among the persons entitled thereto, without having ascertained that no adoption order has been made by virtue of which any person is or may be entitled to any interest therein, and shall not be liable to any such person of whose claim they have not had notice at the time of the conveyance or distribution; but nothing in this subsection shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

(4) Where an adoption order is made in respect of a person who has been previously adopted, the previous adoption shall be disregarded for the purposes of section 16 in relation to the devolution of any property on the death of a person dying intestate after the date of the subsequent adoption order and in relation to any disposition of property made after that date.

Affiliation orders, etc.

18. Where an adoption order is made in respect of an infant, any affiliation order in force with respect to the infant, and any agreement whereby [a parent] of the infant has undertaken to make payments specifically for the benefit of the infant, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the affiliation order or the agreement at the date of the adoption order:

Provided that where the infant is adopted by his or her [other parent], the order or agreement shall not cease to have effect by virtue of this section upon the making of the adoption order, but [may be cancelled or varied by Order of the Court if the Court is satisfied that arrangements have been made to provide for the interests of the infant].

(Amended by Ordinance No. 2 of 2014)

FIRST SCHEDULE

(Section 13(4))

Fee for search and certified copy of entry in Register
\$5.00

SECOND SCHEDULE

(Section 14(1))

FORM OF ENTRY TO BE MADE IN REGISTER

1	2	3	4	5	6	7	8
No. of entry.	Date and country of birth of child.	Name and surname of child.	Sex of child.	Name and surname, address and occupation of adopter or adopters.	Date of adoption order and description of court by which made.	Date of entry.	Signature of Registrar attesting the entry.

CHAPTER XVIII

ADOPTION OF INFANTS

Section 11

ADOPTION OF INFANTS RULES 1976
Made by the Governor

Rules 8th November
1976.

Short title.

1. These Rules may be cited as the Adoption of Infants Rules.

Interpretation.

2. In these Rules—
“ordinance” means the Adoption of Infants Ordinance;
“applicant” means the person or persons making an application under the ordinance.

Application.

3.—(1) An application for an Adoption Order shall be in Form No.1 in the Schedule to these Rules and shall be made to the Magistrate’s Court.

(2) The application shall be accompanied by—
(a) the original documents referred to therein;
(b) a copy of the application;
(c) a copy of every such original document.

(3) The application shall be supported by an affidavit made by the applicant in manner appearing in the said Form No.1.

(4) Any document signifying the consent of any person to the making of an Adoption Order for the purposes of section 5 of the ordinance shall be in Form No.2 in the Schedule hereto and if executed before the commencement of the proceedings shall be attached to the application.

(5) A document executed outside Pitcairn Island signifying consent to the making of an Adoption Order shall be sufficiently attested for the purposes of subsection (3) of section 5 of the ordinance if it is attested by any of the following persons:—

- (a) any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or other legal purpose;
- (b) a British consular officer;
- (c) a notary public; or
- (d) if the person executing the document is serving in any of the regular armed forces of the Crown, an officer holding a commission in any of these forces.

Where previous
application refused.

4. If it appears to the Court that the applicant has made a previous application under the ordinance in respect of the same infant and that such application has been refused, the Court shall not make an Adoption Order or an interim order

unless satisfied that there has been a substantial change in the circumstances.

5.—(1) Subject to the provisions of Rule 4 of these Rules, the Court shall as soon as practicable after an application is made appoint a guardian at law of the infant and shall furnish him with a copy of the application and of every document referred to therein.

Guardian at law to be appointed.

(2) The Court may revoke at any time the appointment of a guardian at law and may appoint another in his place.

(3) The following persons or bodies shall be made respondents, namely, the infant in respect of whom the application is made, the guardian at law of the infant, every person or body who is a parent or guardian of the infant, or has the actual custody of the infant or is liable to contribute to the support of the infant, and the spouse, if any, of the applicant, except in the case of a joint application by two spouses.

(4) As soon as the guardian at law has been appointed the Court shall fix a time for the hearing of the application and shall issue a notice in Form No.3 in the Schedule to these Rules addressed to the respondents and shall direct the applicant to cause such notice to be served on each of them:

Time for hearing.

Provided that where the infant is in the actual custody of any person or body such notice need not be served on the infant but may require such person or body to produce the infant to the court.

6. Any notice under these Rules shall be served upon any respondent to whom it is addressed either by delivering a copy to him personally or by leaving a copy with some person for him at his last or usual place of abode whether such place of abode is in Pitcairn Island or elsewhere:

Service.

Provided that where the respondent is a body, the copy shall be sent by registered post to the registered office of that body or if there is no registered office to the place where the body transacts or carries on its business.

7. Where the consent of a local authority or other body of persons to the making of an Adoption Order is necessary under the ordinance such consent may be given on its behalf by any officer or agent of that body duly authorised in writing in that behalf by such body.

Consent of local authority, etc.

8.—(1) It shall be the duty of the guardian at law to investigate as fully as possible all the circumstances of the infant and the applicant and all other matters relevant to the proposed adoption with a view to safeguarding the interests of the infant before the Court and in particular it shall be his or her duty to include in such investigation the following questions—

Duty of guardian at law.

- (a) whether the application is true and complete particularly as regards the date of birth and the identity of the infant;
- (b) whether any payment or other reward in consideration of the adoption has been received or agreed upon and whether it is consistent with the welfare of the infant;
- (c) whether the means and status of the applicant are such as to enable the applicant to maintain and bring up the infant suitably and what right to or interest in property the infant has;
- (d) what insurance, if any, has been effected on the life of the infant;
- (e) whether it is desirable for the welfare of the infant that the Court should be asked to make an interim order or, in making an Adoption Order, to impose any particular terms or conditions or to require the adopter to make any particular provisions for the infant.

(2) The guardian at law shall regard all information obtained by him or her in the course of the investigation as confidential and shall not divulge any part of it to any other person except so far as may be necessary for the proper execution of his or her duty.

(3) On completing the investigations the guardian at law shall make a confidential report in writing to the court.

(4) With a view to obtaining the directions of the Court on any particular matter the guardian at law may at any time make such interim report to the Court as appears to him or her to be necessary.

Hearing in private.

9. Every application under the Ordinance shall be made, heard and determined in private.

Personal attendance.

10.—(1) The Court shall not make an Adoption Order or an interim order except upon or after the personal attendance before the Court of the applicant:

Provided that where the application is made by two spouses jointly the Court may dispense with the personal attendance of one of the applicants.

(2) If the applicant has been informed that the personal attendance of the infant at the hearing is required, the Court shall not make an Adoption Order or an interim order unless—

- (a) the infant has so attended or the Court decides that there are special circumstances making such attendance unnecessary; and
- (b) the Court is satisfied that the infant has been

informed of the nature of the order.

11. The Court may direct that any one or more of the respondents shall attend and be heard and examined separately and apart from the applicant or any other respondent if the Court is satisfied that this course is desirable and will not prejudice the determination of any question involved.

Powers of Court as to separate attendance of parties.

12. On any adjournment of the hearing the Court may issue to any respondent not in attendance a notice of the time and place to which the hearing is adjourned and may direct the applicant to cause it to be served.

Notice to respondent not in attendance.

13. If owing to special circumstances an application appears to the Court to be more fit to be dealt with by the Supreme Court the Court may on that ground expressly refuse to make an order.

Refusal.

14.—(1) An Adoption Order or an interim order shall be drawn up in Form No.4 or No.5 in the Schedule to these Rules as the case may require.

Form of orders.

(2) No copy or duplicate of such order shall be given to or served upon any person other than the applicant and the Registrar except by special direction of the Supreme Court or of the Magistrate's Court.

(3) An interim order may include such terms as regards the exercise of supervision by the guardian at law or otherwise as the Court may think fit.

15.—(1) Where the determination of an application has been postponed and an interim order has been made, the applicant shall at least two months before the expiration of the order apply to the Court to proceed with the determination of the application and it shall thereupon be lawful for the Court to fix a time for the further hearing of the application and to issue a notice in Form No.6 in the Schedule to these Rules addressed to the respondents and to direct the applicant to cause such notice to be served on each of them:

Procedure where application postponed.

Provided that where the infant is in the actual custody of the applicant the notice need not be served on the infant.

(2) Where the applicant so applies, an Adoption Order shall not be made unless the applicant, the infant and the guardian at law have attended the further hearing.

16. It shall be the duty of the Registrar of the Court to cause a certified copy or a duplicate of such order to be forwarded within seven days to the Registrar of Births and Deaths.

Copy to be sent to Registrar of Births and Deaths.

Application of Justice
Ordinance.
cap. 3

17. Subject to these Rules, the Justice Ordinance and the rules made thereunder shall apply to proceedings under the ordinance so far as they are practicable.

Forms.
cap. 3

18. The forms in the Schedule hereto shall be used on applications under the ordinance and in any case where no form is included in the Schedule the forms in use in the Magistrate's Court may be adapted with such variations as may be necessary.

SCHEDULE**Form No.1****ADOPTION OF INFANTS ORDINANCE**

(Chapter 18)

APPLICATION FOR ADOPTION ORDER

(Rule 3)

(Every paragraph must be completed or deleted as the case may be.)

To the Magistrate's Court at Adamstown, Pitcairn Island.

I / We the undersigned _____ and _____ being
 desirous of adopting _____ an infant under the provisions of the
 Adoption of Infants Ordinance hereby state

PART 1—PARTICULARS OF APPLICANT(S)

1. Name of (first) applicant in full
 Address
 Occupation
 Date of birth
 Relationship (if any) to infant
 Name of (second) applicant in full
 Address
 Occupation
 Date of birth
 Relationship (if any) to infant
2. I am / We are resident in Pitcairn Island.
3. I am a widow / widower / unmarried / I am married to
 of _____ / We are married to each other and our marriage
 certificate (or other evidence of marriage) is attached.
- * 4. The consent of my husband / wife to the making of an Adoption
 Order authorising me to adopt the infant is attached;
or
 I request the Court to dispense with the consent of my husband /
 wife on the ground that he / she cannot be found / is incapable of
 giving his / her consent / we have separated and are living apart and
 the separation is likely to be permanent.

*Delete if a joint application or if applicant not married.

PART 2—PARTICULARS OF INFANT AND CONSENTS

5. Name in full.
6. The infant is of _____ sex and is not and has not been married.
- **7. The infant is the person to whom the attached birth or adoption certificate relates / the infant was born _____ on or about _____
8. The infant is the child / adopted child of:
Name of mother _____
Address _____ (or deceased) and name of father _____
Address _____ (or deceased) _____
9. The guardian (if any) of the infant is:
Name _____
Address _____
10. I / We attach a document / documents signifying the consent of the infant's mother / father / guardian to the making of an Adoption Order authorising me / us to adopt the infant.
11. I / We request the Court to dispense with the consent of the infant's mother / father / guardian on the ground that _____
12. The following person is liable by virtue of an order of a court or an agreement to contribute to the maintenance of the infant:
Name _____
Address _____
Particulars of Court Order or agreement:
Name of Court _____ Date of Order _____
or Date of agreement _____
13. If an Adoption Order is made in pursuance of this application the infant is to be known by the following names:
Surname _____
Other names _____

**If no certificate enter date and place of birth so far as is known.

PART 3—GENERAL

14. The infant was received into my / our care and possession on the
 day of _____, 20____, and has been
 continuously in my / our care and possession since that date.

15. I have not made / Neither of us has made a previous application for
 an Adoption Order in respect of the infant.

(or

_____ made an application to the _____ Court on
 the _____ day of _____, 20____, which was
 dealt with as follows:

).

16. I / We have not received or given any reward or payment for, or in
 consideration of, the adoption of the infant or for giving any consent
 to the making of the Adoption Order except as follows:

17. As far as I / we know, no person or body has taken part in the
 arrangements for placing the infant in my / our care and possession
 except:

I / We hereby apply for an Adoption Order in respect of the infant.

Dated this _____ day of _____, 20____.

Signature(s)

AFFIDAVIT VERIFYING STATEMENTS IN APPLICATION

(Rule 3(2))

I / We _____ of Pitcairn Island and

jointly and severally make oath and say that the statements contained in
 the above application and signed by me / us are true to the best of my /
 our knowledge information and belief.

Sworn by the said

at Adamstown, Pitcairn Island on the _____ day of _____, 20____.

before me:

Island Magistrate / Magistrate

CONSENT TO ADOPTION ORDER

Form No.2

In the matter of an application to the Magistrate’s Court by
of hereinafter called the applicant
for an order authorising the applicant under the provisions of the
Adoption of Infants Ordinance to adopt an infant of
the sex years of age resident at
hereinafter called the infant.

Delete all but one of
these descriptions.

I, the undersigned, of being—

- (a) the father of the infant;
- (b) the mother of the infant;
- (c) a guardian of the infant;
- (d) a person (acting on behalf of a body) having the actual custody of the infant;
- (e) a person (acting on behalf of a body) being liable to contribute to the support of the infant;
- (f) the spouse of the applicant,

*Delete except in the
case of a parent.

hereby state that I understand the nature and effect of the Adoption Order for which application is made *(and that in particular I understand that the effect of the order will be permanently to deprive me of my parental rights) and I hereby consent to the making of an Adoption Order in favour of the applicant.

In witness whereof I have signed this consent on the

day of , 20 .

(Signature)

Signed in the presence of:

(Signature)

(Address)

(Description)

NOTE: Where the application is made by two spouses jointly the form should be modified.

ADOPTION OF INFANTS ORDINANCE

Form No.3

(Chapter 18)

NOTICE OF APPLICATION FOR AN ADOPTION ORDER

In the Magistrate’s Court at Adamstown, Pitcairn Island

BETWEEN:

Applicant(s)

and

Respondent(s)

To of
and of

Take notice—

(1) That an application has been made by of for an order under the Adoption of Infants Ordinance, authorising the applicant to adopt an infant of the sex aged years resident at

(2) That of has been appointed guardian at law of the said infant.

(3) That the said application will be heard before the Magistrate’s Court sitting at Adamstown, Pitcairn Island, on the day of , 20 , at the hour of in the noon and that you are severally required to attend before the Court (and in the case of to produce the said infant before the Court) but the Court may dispose of the case in the absence of any of you.

Dated the day of , 20 .

Island Magistrate / Magistrate (L.S.)

NOTE: Where the application is made by two spouses jointly the form should be modified.

ADOPTION OF INFANTS ORDINANCE

Form No.4

(Chapter 18)

ADOPTION ORDER

In the Magistrate’s Court at Adamstown, Pitcairn Island

BETWEEN:

Applicant(s)

and

Respondent(s)

WHEREAS an application has been made by

of (hereinafter called the applicant) for an Adoption Order in respect of an infant of the sex, the child aged years, resident at .

AND WHEREAS the name or names and surname by which the infant is to be known are

AND WHEREAS the Court is satisfied that the applicant is qualified in accordance with the provisions of the Adoption of Infants Ordinance to adopt the infant and that all conditions precedent to the making of an Adoption Order by the Court have been fulfilled:

IT IS ORDERED that the applicant be authorised to adopt the infant.

(AND as regards costs IT IS ORDERED that .)

(AND the precise date of the infant’s birth not having been proved to the satisfaction of the Court IT IS DETERMINED that the probable date of the infant’s birth was the day of ,20 ,and such date is hereby specified as the date of the infant’s birth.)

AND IT IS DIRECTED that the Registrar of Births and Deaths shall make in the Adopted Children Register an entry in the form set out in the Schedule to this Order.

(The country of birth of the infant not having been proved to the satisfaction of the Court, the particulars of the country of birth shall be omitted from such entry.)

AND it having been proved to the satisfaction of the Court that the infant is identical with (to whom the entry numbered made on day of ,20 , in the Adopted Children Register relates) IT IS DIRECTED that the said entry in the (Register of Births be marked with the word “Adopted”) (the Adopted Children Register be marked with the word “Re-adopted”) by the Registrar of Births and Deaths.

(The following payment or reward is sanctioned .)

DATED the _____ day of _____, 20____ .
(Signature)

Island Magistrate / Magistrate (L.S.)

SCHEDULE

Form No.5

Date and country of birth of child	Name and surname of child	Sex of child	Name and surname, address and occupation of adopter or adopters	Date of Adoption Order and description of court by which made

ADOPTION OF INFANTS ORDINANCE

Form No.6

(Chapter 18)

INTERIM ORDER

In the Magistrate’s Court at Adamstown, Pitcairn Island

BETWEEN:

Applicant(s)

and

Respondent(s)

The _____ day of _____, 20____ .

WHEREAS an application has been made by

of _____ (hereinafter called the applicant) for an Adoption Order in respect of _____ an infant of the _____ sex, (hereinafter called the infant):

AND WHEREAS the Court is satisfied that the applicant is qualified in accordance with the provisions of the Adoption of Infants Ordinance to adopt the infant and that all conditions precedent to the making of an interim order by the Court have been fulfilled:

IT IS ORDERED that the determination of this application be postponed and that the applicant do have the custody of the infant until the _____ day of _____, 20____, by way of a probationary period

(on the following terms, namely— _____)

(AND as regards costs IT IS ORDERED THAT _____)

(AND that the application shall be further heard on _____)

(Signature)

Island Magistrate / Magistrate (L.S.)

ADOPTION OF INFANTS ORDINANCE

Form No.7

(Chapter 18)

NOTICE OF FURTHER HEARING OF AN APPLICATION FOR AN ADOPTION ORDER

In the Magistrate’s Court at Adamstown, Pitcairn Island

BETWEEN:

Applicant(s)

and

Respondent(s)

To of
and of

TAKE NOTICE—

(1) That an application has been made by then of for an order under the Adoption of Infants Ordinance, authorising the applicant to adopt an infant of the sex then aged years.

(2) That of has been appointed guardian at law of the said infant.

(3) That the determination of the said application was postponed and an interim order was made by the Magistrate’s Court sitting at Adamstown, Pitcairn Island, on the day of , 20 .

(4) That the said application will be further heard before the Magistrate’s Court sitting at Adamstown, Pitcairn Island, on the day of , 20 , and that it is open to you to attend before the Court but the Court may dispose of the case in the absence of any of you.

Island Magistrate / Magistrate (L.S.)

NOTE: Where the application was made by two spouses jointly the form should be modified.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2014

CHAPTER XIX

**BIRTHS AND DEATHS REGISTRATION
ORDINANCE**

Arrangement of sections

Section

1. Short title.
2. Interpretation.
3. Registrar of Births and Deaths.
4. Register to be kept.
5. Duty of Registrar.
6. Particulars.
7. Registrar may demand particulars.
8. Notice of birth.
9. Limit of time for registration.
10. Registration of name.
11. Requisition of Registrar for information.
12. Finding of newborn child exposed.
13. Registration of parents' details.
- 13A. Appeals relating to registration of parents' details.
14. Notice of death.
15. Searches and copies.
16. Certified copies of entries in register.
17. Correction of errors in register.
18. Offences.
19. Time for prosecution of offences.
20. Fees to be paid to revenue.
21. Returns.
22. Jurisdiction of Supreme Court.

Ordinances Nos:
3 of 1952.
2 of 1985.
2 of 2014.

An ordinance to make provision for the registration of births and deaths.

[16th October, 1952]

Short title.

1. This ordinance may be cited as the Births and Deaths Registration Ordinance.

Interpretation.

2. In this ordinance unless the context otherwise requires—

“Registrar” means the person appointed to be the Registrar of Births and Deaths under this ordinance and includes the Deputy Registrar when acting in the place of the Registrar.

Registrar of Births and Deaths.

3.—(1) The Governor shall appoint some person or the holder of some office to be the Registrar of Births and Deaths for the Islands.

(2) In the case of the inability of the Registrar to carry out his functions by reason of illness or other cause, the Governor may appoint a Deputy Registrar to act in his place.

Register to be kept.

4. The Registrar shall keep a register of all births and deaths in the Islands.

Duty of Registrar.

5.—(1) The Registrar shall register every birth and death required by this ordinance to be registered together with such particulars as are in each case required to be registered.

(2) Save as otherwise provided in this ordinance, registration shall be free of charge.

Particulars.

6. The particulars required to be registered concerning a birth or death shall be the particulars specified in Forms 1 and 2 respectively in the First Schedule hereto.

First Schedule

Registrar may demand particulars.

7. It shall be lawful for the Registrar to demand of any person applying to register any birth or death any of the particulars required to be registered by this ordinance.

Notice of birth.

8. In each case of the birth of a child in the Islands it shall be the duty of the parents to inform the Registrar within two months next after such birth of all the particulars concerning the same according to the form of registration hereinbefore referred to.

Limit time for registration.

9. After the expiration of two months from the date of the birth of any child the Registrar shall not register such birth unless the persons required by section 8 to give information concerning the same make a statutory declaration to the best of the declarants’ knowledge and belief of the particulars required to be registered. After the expiration of twelve months from

the date of birth of any child, such birth shall not be registered without the consent of the Governor and upon payment of the fee specified in that behalf in the Second Schedule hereto.

Second Schedule

10. If any child whose birth has been registered at any time afterwards has any name duly given to it, the parent shall within one month next thereafter deliver to the Registrar a certificate signed by the minister or other person who gave such name, which certificate such minister or other person is hereby required to deliver whenever demanded on payment to him of the fee of ten cents, that the child was baptized by such name or had such name duly given to it, and the Registrar upon receipt of such certificate shall, without any erasure of the original entry of birth, forthwith register such name therein and shall thereupon certify upon the said certificate the additional entry so made and shall return the same to such parent.

Registration of name.

11. Where a birth has, from the default of the persons required to give information concerning it, not been duly registered, the Registrar may at any time after the end of two months from such birth by notice in writing require any of such persons to give information to the best of such person's knowledge and belief of the particulars required to be registered concerning such birth, and such person, unless the birth is registered before the expiration of the time specified in such requisition, shall comply therewith.

Requisition of Registrar for information.

12. When any living newborn child is found exposed it shall be the duty of any person finding such child and of any person in whose charge such child may be placed to give, to the best of his or her knowledge and belief, to the Registrar as soon as practicable after the finding of such child such information of the particulars required to be registered concerning the birth of such child as the informant possesses, and the Registrar shall register the same accordingly.

Finding of newborn child exposed.

[13. The Registrar must register, as part of the birth information of a child, information about the identity of a parent if —

Registration of parents' details.

- (a) the information has been notified on a form signed by both parents; or
- (b) the information relates to the child's father and a Court has made a finding of paternity declaring the man to be the child's father; or
- (c) the parent requests, in writing, his or her details to be included and the other parent does not dispute the accuracy of the information; or

- (d) the Registrar is satisfied that the person is a parent of the child.]

(Repealed and replaced by Ordinance No. 2 of 2014)

Appeals relating to registration of parents' details.

[13A.—(1) This section applies to a person affected by a decision of Registrar under section 13 to —

- (a) register as part of a child's birth information any information indicating or purporting to indicate that a person is the child's parent; or
 (b) decline to register as part of a child's birth information any information indicating or purporting to indicate that a person is the child's parent.

(2) The person affected may appeal against the decision to the Supreme Court.]

(Inserted by Ordinance No. 2 of 2014)

Notice of death.

14. In each case of the death of any person it shall be the duty of the occupier of the house or place and each person present at the death to furnish to the Registrar, within one week next thereafter, information to the best of his or her knowledge and belief of all the particulars concerning the same according to the forms of registration hereinbefore referred to.

Searches and copies.

15. Every person, on payment of the fee specified in that behalf in the Second Schedule hereto and on stating in writing the particular entry which he wishes to find, may between such reasonable hours as may be fixed by the Governor search the register and, on payment of the fee specified in that behalf in the Second Schedule hereto, shall be entitled to a copy of any entry in the register certified by the Registrar.

Certified copies of entries in register.

16. A copy of an entry of a birth or death in the register purporting to be certified by the Registrar and to be signed by him shall be received as *prima facie* evidence in all courts of law of the fact of such birth or death.

Correction of errors in register.

17.—(1) No alteration in any register shall be made except as hereinafter authorized.

(2) Any clerical error which may from time to time be discovered in the register may be corrected by the Registrar.

(3) An error of fact or substance in the register may be corrected by the Registrar by making and signing a new entry adding the date of the correction and every certified copy of such entry shall show the original entry and the correction.

(4) The Registrar shall not make a correction as provided in subsection (3) save upon payment of the prescribed fee and upon being satisfied by the person requiring such error to be corrected of the nature of the error and the true facts of the case.

18. Any person who refuses or neglects to give any information required by this ordinance or wilfully makes or causes to be made for the purpose of being inserted in the register any false statement touching any of the particulars required to be registered under this ordinance shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred dollars.

Offences.

19. Any prosecution for an offence under this ordinance may be instituted within three years after the commission of such offence.

Time for prosecution of offences.

20. All fees received by the Registrar under the provisions of this ordinance shall be paid and applied as the Governor from time to time directs.

Fees to be paid to revenue.

22. The Registrar shall make such returns to the Governor as the Governor may from time to time require.

Returns.

23. The jurisdiction of the Supreme Court shall be exercised in accordance with the provisions of this ordinance.

Jurisdiction of Supreme Court.

FIRST SCHEDULE

(Section 6)

FORM No.1

REGISTER OF BIRTHS

20 .

} Registered by
Date

Birth

No.	Child			Parents		Informants	Registration
	When and where born	Name	Sex	Father	Mother		
				(1) [Full name, full name at birth (if different), and usual occupation, profession, or job;] (2) Age; and (3) Birthplace	(1) [Full name, full name at birth (if different), and usual occupation, profession, or job;] (2) Age; and (3) Birthplace		
				(1) When and where married; (2) Previous issue living and deceased		Signature, description (profession, etc.) and residence of informants	When registered and where Name, if added after registration of birth

(Amended by Ordinance No. 2 of 2014)

FORM No.2

REGISTER OF DEATH

20 .

Death

} Registered by
Date

No.	Description				Signature, description and residence of informant and witness	Burial		Where born and how long in the Islands	If deceased was married	
	Date of Death and where it occurred	Name and surname, rank and profession	Sex and Age	(1) Cause of death; (2) Duration of last illness; (3) Medical attendant by whom certified; (4) When he last saw deceased		When buried, and where	Name and religion of Minister, or names of witnesses of burial		(1) Where; (2) At what age; (3) To whom	Issue in order of birth; their names and ages

(Amended by Ordinance No. 2 of 2014)

SECOND SCHEDULE

(Sections 9 and 16)

Every search in any index.....	\$5.00
Every certified copy of any entry (including necessary search).....	\$5.00
Every late registry of birth.....	\$5.00

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2015

CHAPTER XX

MARRIAGE ORDINANCE

Arrangement of sections

PART I—PRELIMINARY

Section

1. Short title and interpretation.

PART II—GENERAL

2. Appointment of Registrar.
3. Office of Registrar.
4. Notice of marriage.
5. Signature of notice by person unable to write or to understand English language.
6. Registrar to supply forms of notice free of charge.
7. Notice to be entered in “Marriage Notice Book” and published.
8. Registrar to issue certificate on proof of conditions by affidavit.
9. Marriage to take place within three months after date of notice.
10. Governor’s power to grant licence to marry.
11. Caveat may be entered against issue of certificate.
12. When caveat entered question to be referred to Court.
13. Removal of caveat.
14. Compensation and costs.

**PART III—CONSENT TO MARRIAGE IN CERTAIN CASES
NECESSARY**

15. Consent to marriage of minors.
16. Signature of consent by person unable to write or to understand English language.
17. Consent where no parent or guardian capable of consenting.

PART IV—CELEBRATION OF MARRIAGE

18. Marriage in place of worship by registered minister within specified hours and before witnesses.
19. Minister not to celebrate marriage if impediment nor without licence, etc.
20. Registrar, etc., to be provided with books of certificates.
21. Entries to be made in marriage certificate.
22. Signature of certificate in duplicate.
23. Marriage in Registrar’s office. Form to be observed.

24. Marriage certificate to be signed.

PART V—REGISTRY AND EVIDENCE OF MARRIAGES

25. Marriage certificate to be registered.
26. Corrections of clerical errors in marriage certificates.
27. Evidence of marriage.
28. Registration of ministers.
29. Circumstances invalidating marriage.
30. Marriages under this ordinance valid.
31. Fees.
32. Fees may be remitted on ground of poverty.

PART VI—OFFENCES AND PENALTIES

33. Bigamy.
34. Marriage with a person previously married.
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36. False pretence of impediment to marriage.
37. Unlawfully performing marriage ceremony.
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39. Personation in marriage.
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41. Forms in First Schedule may be used.
42. Returns.
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44. Application for separation order.
45. Power of Magistrate's Court to make separation order.
46. Grounds for separation order.
47. Effect of separation order.
48. Discharge of separation order on resumption of cohabitation
49. Discharge of separation order by Court.
50. Occupation order.

PART VIII—DISSOLUTION OF MARRIAGE

51. Application for dissolution of marriage.
52. Application for dissolution to be determined by the Magistrate's Court.
53. Grounds for dissolution.
54. Orders for dissolution of marriage.
55. Appeal.

PART IX—WELFARE OF SPOUSE AND CHILDREN

56. Maintenance and custody orders.
57. Arrangements for welfare of children on dissolution of marriage.
First Schedule.
Second Schedule.

An ordinance to make provision for the solemnization and registration of marriages and for matters relating thereto.

[16th October, 1952]

Ordinances Nos:
4 of 1952,
2 of 1957,
2 of 1968,
2 of 1985,
2 of 2012,
2 of 2014,
1 of 2015.

PART I—PRELIMINARY

1.—(1) This ordinance may be cited as the Marriage Ordinance.

(2) In this ordinance, unless the context otherwise requires—
[“child of the marriage” means a child of [both spouses together], and includes, in relation to any proceedings under this Ordinance, a child (whether or not a child of [either spouse]) who was a member of the family of the husband and wife at the time when [they] ceased to live together or at the time immediately preceding the institution of proceedings, whichever first occurred;]

Short title and interpretation.

(Inserted by Ordinance No. 2 of 2012)

(Amended by Ordinance No. 1 of 2015)

“Registrar” means the Registrar of Marriages, and includes a Deputy Registrar when acting as Registrar;

“registered minister” means a minister registered under the provisions of this ordinance;

[“spouse”, in relation to a person whose marriage] has been dissolved under Part VIII of this Ordinance, includes a person who was a spouse before that marriage was dissolved.]

(Inserted by Ordinance No. 2 of 2012)

(Amended by Ordinance No. 1 of 2015)

PART II—GENERAL

2. The Governor shall, from time to time, appoint a fit and proper person to be the Registrar of Marriages, and may also from time to time appoint a Deputy Registrar of Marriages to act in the absence or during the illness or incapacity of the Registrar.

Appointment of Registrar.

3. The Registrar shall have an office at such place as the Governor shall from time to time direct.

Office of Registrar.

4. Whenever, after the commencement of this ordinance, any persons desire to marry, one of the parties to the intended marriage shall sign and give to the Registrar a notice in the Form (A) in the First Schedule hereto.

Notice of marriage.

5. If the person giving such notice is unable to write or is insufficiently acquainted with the English language, or both, then it shall be sufficient if he or she place a mark or cross thereto in the presence of some literate person who shall attest the same,

First Schedule.

Signature of notice by person unable to write or to understand English language.

First Schedule.

which attestation shall be in the Form (B) in the First Schedule.

Registrar to supply forms of notice free of charge.

6. The Registrar shall supply forms of notice gratuitously to any persons *bona fide* applying for the same.

Notice to be entered in "Marriage Notice Book" and published.

7. Upon receipt of such notice the Registrar shall cause the same to be entered in a book to be called the "Marriage Notice Book" which may be inspected at any reasonable time without fee. He or she shall also publish such notice by causing a copy of the same to be affixed on the outer door of the office, and to be kept exposed there until the grant of a certificate as hereinafter mentioned, or until three months shall have elapsed.

Registrar to issue certificate on proof of conditions by affidavit.

8. The Registrar, at any time after the expiration of twenty-one days and before the expiration of three months from the date of the notice, upon payment of the prescribed fee, shall thereupon issue a certificate in the Form (C) in the First Schedule hereto:

First Schedule.

Provided always that the Registrar shall not issue such certificate until satisfied by affidavit—

- (a) that one of the parties has been resident within the Islands at least fifteen days preceding the granting of the certificate;
- (b) that each of the parties to the intended marriage (not being a widower or widow) is eighteen years old, or that, if he or she is under that age, the consent hereinafter made requisite has been obtained in writing and is annexed to such affidavit;
- (c) that there is no impediment of kindred or affinity, or any other lawful hindrance to the marriage.

The Registrar taking such affidavit shall explain to the persons making the same what are the prohibited degrees of kindred and affinity and the penalties which may be incurred under other provisions of this ordinance.

Marriage to take place within three months after date of notice.

9. If the marriage shall not take place within three months after the date of the notice, the notice and all proceedings consequent thereupon shall be void; and fresh notice must be given before the parties can lawfully marry.

Governor's power to grant licence to marry.

10. The Governor, upon proof being made to him by affidavit that there is no lawful impediment to the proposed marriage, and that the necessary consent (if any) to such marriage has been obtained, may, if he shall think fit, dispense with the giving of notice, and with the issue of the certificate of the Registrar, and may grant his licence, which shall be according to Form (D) in the First Schedule hereto, authorizing the celebration of a marriage between the parties named in such licence by the Registrar, or by a registered minister.

First Schedule.

11. Any person whose consent to a marriage is hereby required, or who may know of any just cause why the marriage should not take place, may enter a caveat against the issue of the Registrar's certificate, by writing at any time before the issue thereof the word "Forbidden" opposite to the entry of the notice in the Marriage Notice Book, and appending thereto his name and place of abode, and the grounds upon or by reason of which he claims to forbid the issue of the certificate, and the Registrar shall not issue his certificate until such caveat shall be removed as hereinafter is provided.

Caveat may be entered against issue of certificate.

12. Whenever a caveat is entered against the issue of a certificate, the Registrar shall refer the matter to the [Magistrate's] Court, and that Court shall thereupon summon the parties to the intended marriage, and the person by whom the caveat is entered, and shall require the person by whom the caveat is entered to show cause why the Registrar should not issue his certificate, and shall hear and determine the case in a summary way, and the decision of the court shall be final.

When caveat entered question to be referred to Court.

(Amended by Ordinance No. 2 of 2012)

13. If the Court decides that the certificate ought to be issued, a judge thereof shall remove the caveat cancelling the word "Forbidden" in the Marriage Notice Book in ink, and writing in such Marriage Book, immediately below such entry and cancellation the words "cancelled by order of the [Magistrate's] Court" and signing his name thereto. The Registrar shall then issue his certificate and the marriage may proceed as if the caveat had not been entered, but the time which has elapsed between the entering and the removal of the caveat shall not be included in the period of three months specified in section 8 hereof.

Removal of caveat.

(Amended by Ordinance No. 2 of 2012)

14. The court may award compensation and costs to the party injured, if it appears that a caveat was entered on insufficient grounds.

Compensation and costs.

PART III—CONSENT TO MARRIAGE IN CERTAIN CASES NECESSARY

15. If either party to an intended marriage, not being a widower or widow, is under eighteen years of age, the written consent of either parent or of the guardian of such party, must be produced annexed to such affidavit as aforesaid before a licence can be granted or a certificate issued.

Consent to marriage of minors.

16.—(1) If the person required to sign such consent is

Signature of consent by person unable to write or to understand English language.

unable to write, or is insufficiently acquainted with the English language, or both, then he or she shall sign such consent by placing a mark or cross thereto in the presence of the Registrar.

(2) Such signature shall be attested by such person in the Form (B) in the First Schedule hereto.

First Schedule.

Consent where no parent or guardian capable of consenting.

17. If there be no parent or guardian of such party residing in the Islands and capable of consenting to the marriage, then any of the following persons may consent to such a marriage in writing, upon being satisfied after due inquiry that the marriage is a proper one; that is to say, the Governor or the Supreme Court, and such consent shall be as effectual as if the father or mother had consented.

PART IV—CELEBRATION OF MARRIAGE

Marriage in place of worship by registered minister within specified hours and before witnesses.

18. Marriages may be celebrated by a registered minister and according to the rites and usages of marriages observed in the religious denomination to which such minister belongs:

Provided that the marriage be celebrated with open doors between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon, and in the presence of two or more witnesses besides the officiating minister.

Minister not to celebrate marriage if impediment nor without licence, etc.

19. A minister shall not celebrate any marriage if he knows of any just impediment to such marriage, nor until the parties deliver to him the Registrar's certificate or the Governor's licence.

Registrar, etc., to be provided with books of certificates.

20. The Governor shall cause to be printed and delivered to the Registrar, and to registered ministers, books of marriage certificates in duplicate and with counterfoils in Form (E) in the First Schedule hereto. Such books shall be kept by the Registrar and the registered ministers under lock and key, and be in the custody of the Registrar and such ministers respectively.

First Schedule.

Entries to be made in marriage certificate.

21. Immediately after the celebration of any marriage by a minister, the officiating minister shall fill up in duplicate a marriage certificate with the particulars by the said Form (E), and state also and enter in the counterfoil the number of the certificate, the date of the marriage, names of the parties, and the names of the witnesses.

Signature of certificate in duplicate.

22. The certificate shall then be signed in duplicate by the officiating minister by the parties and by two or more witnesses to the marriage. The minister having also signed his name to the counterfoil, he shall sever the duplicate certificate therefrom, and he shall deliver one certificate to the parties, and shall within seven days thereafter transmit

the other to the Registrar of Marriages, who shall file the same in his office.

23. After the issue of a certificate under section 8 or 13 hereof, or of a licence under section 10, the parties may, if they think fit, contract a marriage before the Registrar, in the presence of two witnesses in his office, with open doors, between the hours of 10 o'clock in the forenoon and 4 o'clock in the afternoon, and in the following manner—

Marriage in Registrar's office.

The Registrar, after production [] of the certificate or licence, shall, either directly or through an interpreter, address the parties [in the following word or words to a similar effect]—

Form to be observed.

“Do I understand that you *A.B.*, and you *C.D.*, come here for the purpose of becoming man and wife?”

If the parties answer in the affirmative, he [or she] shall proceed thus—

“Know ye that by the public taking of each other as man and wife in my presence, and in the presence of the persons now here, and by the subsequent attestation thereof by signing your names to that effect, you become legally married to each other, although no other rite of a civil or religious nature shall take place, and that this marriage cannot be dissolved during your lifetime, except by a valid judgment of divorce; and if either of you before the death of the other shall contract another marriage while this remains undissolved, you will be thereby guilty of bigamy, and liable to punishment for that offence.”

Each of the parties shall then say to the other, “I call upon all persons here present to witness that I, *A.B.*, do take thee, *C.D.*, to be my lawful wife (or husband).”

(Amended by Ordinance No. 1 of 2015)

24. The Registrar shall then fill up, and together with the parties and witnesses shall sign the certificate of the marriage in duplicate, and the Registrar shall then fill up and sign the counterfoil as hereinbefore prescribed in the case of a marriage by a registered minister, and shall deliver one certificate to the parties and shall file the other in his office.

Marriage certificate to be signed.

PART V—REGISTRY AND EVIDENCE OF MARRIAGES

25.—(1) The Registrar shall forthwith register in a book to be kept in his office for such purpose, and to be called “The Marriage Register Book”, every certificate of marriage which

Marriage certificate to be registered.

First Schedule.

shall be filed in his office, according to the Form (F) in the First Schedule hereto; and every such entry shall be made in the order of date from the beginning to the end of the book, and every entry so made shall be dated on the day on which it is so entered, and shall be signed by the Registrar, and such book shall be indexed in such manner as is best suited for easy reference thereto.

(2) The Registrar shall at all reasonable times allow searches to be made in the Marriage Register Book, and shall give certified copies therefrom upon payment of the prescribed fee.

Corrections of clerical errors in marriage certificates.

26. The Registrar may correct any clerical error in any certificate of marriage filed in his office, upon production of the certificate delivered to the parties, and shall authenticate every such correction by his or her signature and the date of such correction.

Evidence of marriage.

27. Every certificate of marriage which shall have been filed in the office of the Registrar or a copy thereof, purporting to be signed and certified as a true copy by the Registrar for the time being and every entry in a Marriage Register Book or copy thereof certified as aforesaid, shall be admissible as evidence of the marriage to which it relates, in any court of justice or before any person having by law or consent of parties authority to hear, receive, and examine evidence.

Registration of ministers.

28.—(1) The Governor, upon receiving a requisition from any minister of religion ordinarily officiating as such specifying the religious denomination of such minister and his designation and normal place of residence together with the place where he or she officiates and desiring that he or she may be registered as a minister for celebrating marriages under this ordinance, may, if he shall think fit, register or cause to be registered the name of such minister in a register book to be kept for that purpose. No fee shall be paid for any such registration.

(2) The Governor may at any time, if he shall think fit to do so, remove the name of any minister from the register and a minister whose name is removed shall not, after notification thereof in such manner as the Governor shall think fit, have authority to celebrate marriages under the provisions of this ordinance.

Circumstances invalidating marriage.

29.—(1) No marriage in the Islands shall be valid, which, if celebrated in England, would be null and void on the ground of kindred or affinity.

(2) No marriage purported to be celebrated in the Islands under this ordinance shall be valid if at the date of the marriage

either of the parties thereto was [under the age of 17 years.]

(Amended by Ordinance No. 2 of 2014)

(3) A marriage shall be null and void if both parties knowingly and wilfully acquiesce in its celebration—

- (a) in the case of a marriage before the Registrar in any place other than the office of the Registrar; or
- (b) under a false name or names; or
- (c) without the Registrar's certificate of notice or Governor's licence duly issued; or
- (d) by a person not being a registered minister or the Registrar of Marriages.

(4) No marriage shall, after celebration, be deemed invalid by reason that any provision of this ordinance other than the foregoing has not been complied with.

30. All marriages celebrated under this ordinance shall be good and valid in law to all intents and purposes.

Marriages under this Ordinance valid.

31. The fees specified in the Second Schedule hereto shall be paid to the Registrar for the several matters to which they are applicable and shall be paid and applied as the Governor may from time to time direct.

Fees.
Second Schedule.

32. The Governor may, when he is satisfied of the poverty of the parties, reduce the amount of the said fees, or remit them altogether; and, if they have been paid into revenue, order their refund.

Fees may be remitted on ground of poverty.

PART VI—OFFENCES AND PENALTIES

33. Whoever is guilty of bigamy shall be liable to imprisonment for a period not exceeding five years.

Bigamy.

34. Whoever, being unmarried, goes through the ceremony of marriage with a person whom he or she knows to be married to another person, shall be liable to imprisonment for a period not exceeding five years.

Marriage with a person previously married.

35. Whoever in any declaration, certificate, licence, document, or statement by law to be made or issued for the purposes of a marriage, declares, enters, certifies, or states any material matter which is false, shall, if he or she does so without having taken reasonable means to ascertain the truth or falsity of such matter, be liable to imprisonment for a period not exceeding one year, or shall, if he or she does so knowing that such matter is false, be guilty of an offence and liable to imprisonment for a period not exceeding five years.

Making false declaration, etc., for marriage.

36. Whoever endeavours to prevent a marriage by pretence that his or her consent thereto is required by law, or

False pretence of impediment to marriage.

that any person whose consent is so required does not consent, or that there is any legal impediment to the performing of such marriage, shall, if he or she does so knowing that such pretence is false or without having reason to believe that it is true, be guilty of an offence and liable to imprisonment for a period not exceeding two years.

Unlawfully performing marriage ceremony.

37. Whoever performs or witnesses as a registered minister or Registrar the ceremony of marriage, knowing that he or she is not duly qualified so to do, or that any of the matters required by law for the validity of such marriage has not happened or been performed, so that the marriage is void or unlawful on any ground, shall be guilty of an offence and liable to imprisonment for a period not exceeding five years.

Wilful neglect of duty to fill up or transmit certificate of marriage.

38. Whoever, being under a duty to fill up the certificate of a marriage celebrated by him or her, or the counterfoil thereof, or to transmit the same to the Registrar, wilfully fails to perform such duty, shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

Personation in marriage.

39. Whoever personates any other person in marriage, or marries under a false name or description, with intent to deceive the other party to the marriage, shall be guilty of an offence and liable to imprisonment for a period not exceeding five years.

Fictitious marriage.

40. Whoever goes through the ceremony of marriage, or any ceremony which he or she represents to be a ceremony of marriage, knowing that the marriage is void on any ground, and that the other person believes it to be valid, shall be guilty of an offence and liable to imprisonment for a period not exceeding five years.

[PART VIA—MISCELLANEOUS]

Forms in First Schedule may be used.

41. The forms contained in the First Schedule hereto may be used in the cases to which they are applicable, with such alterations as may be necessary.

Returns.

42. The Registrar shall make such returns to the Governor as the Governor may from time to time direct.

Jurisdiction of Magistrate's Court.

43. The jurisdiction of the [Magistrate's] Court shall be exercised in accordance with the provisions of this ordinance.
(Amended by Ordinance No. 2 of 2012)

[PART VII—SEPARATION

44. Either party to a marriage may apply for a separation order.

Application for separation order

45.—(1) Every application for a separation order shall be heard and determined in the Magistrate's Court.

Power of Magistrate's Court to make separation order

(2) The Magistrate's Court may make a separation order if the grounds in section 46 are established.

(3) In an application for a separation order, the Magistrate's Court may make an occupation order under section 50.

46. In proceedings for a separation order, the Magistrate's Court shall make the order if it is satisfied that there is a state of disharmony between the parties to the marriage of such a nature that it is unreasonable to require the parties to continue, or, as the case may be, to resume, cohabitation with each other.

Grounds for separation order

47. So long as a separation order remains in force, neither party to the marriage shall be under an obligation to cohabit with the other party, but, except as provided by this Ordinance or any other enactment, the order shall not otherwise affect the marriage or the status, rights, and obligations of the parties to the marriage.

Effect of separation order

48.—(1) A separation order shall cease to have any force or effect if—

Discharge of separation order on resumption of cohabitation

- (a) The [married couple], with the free consent of both parties, have resumed cohabitation as [a married couple], and such cohabitation has been for a period of more than 28 days; or
- (b) The order is discharged by the court under section 49 of this Ordinance.

(Amended by Ordinance No. 1 of 2015)

49.—(1) Subject to subsection (2) of this section, a Magistrate's Court may, on the application of either party, discharge any separation order if the Court is satisfied that the circumstances have so changed since the making of the order that it is reasonable that the order should be discharged.

Discharge of separation order by Court

(2) The Court shall not discharge the order if an application for dissolution of marriage has been filed by either party, and is pending.

50.—(1) On granting a separation order, the Magistrate's Court may make an order granting to either spouse, for such period or periods and on such terms and subject to such conditions as the Court thinks fit, the right personally to occupy

Occupation order

the family home.

(2) Where an order is made under subsection (1) of this section, the person in whose favour it is made shall be entitled, to the exclusion of the other spouse, personally to occupy the family home to which the order relates.

(3) The Court—

- (a) in determining whether to make an order under subsection (1) of this section; and
- (b) in determining, in relation to that order, the period or periods, the terms (if any), and the conditions (if any) of the order;

shall have particular regard to the need to provide a home for any children of the marriage, and may also have regard to all other relevant circumstances.

(4) For the purposes of this section—

“family home” means the dwelling-house that either or both of the spouses use habitually or from time to time as the only or principal family residence, together with any land, buildings, or improvements appurtenant to that dwelling-house and used wholly or principally for the purposes of the household.

(5) An occupation order made under this section has effect notwithstanding any provision of the Land Tenure Reform Ordinance.

PART VIII—DISSOLUTION OF MARRIAGE

Application for
dissolution of
marriage

51. An application for an order dissolving a marriage may be made by either party to the marriage where, at the time of the filing of the application, at least one party to the marriage is domiciled in the Islands.

Application for
dissolution to be
determined by the
Magistrate’s Court

52. Every application for an order dissolving a marriage shall be heard and determined by the Magistrate’s Court.

Grounds for
dissolution

53.—(1) An application for an order dissolving a marriage may be made only on the ground that the marriage has broken down irretrievably.

(2) The ground for the order is established in law if, and only if, the applicant satisfies the court of one or more of the following facts, that is to say -

- (a) that the respondent has committed adultery and the applicant finds it intolerable to live with the respondent;
- (b) that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent;
- (c) that the parties of the marriage have lived apart for a continuous period of at least two years immediately

preceding the filing of an application under section 51.

(3) For the purposes of paragraph (2)(a) above, one party to a marriage shall not be entitled to rely on adultery committed by the other if, after it became known to him or her that the other had committed that adultery, the parties have lived with each other for a period exceeding six months.

(4) It shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the applicant and into any facts alleged by the respondent.

(5) A separation order or a separation agreement (whether made by deed or other writing or orally) in full force for the period of two years immediately preceding the filing of an application under section 51 may be adduced as evidence of living apart for the required period.

(6) Where the ground for the making of the order is established under subsection (2) of this section, the Court shall, subject to section 57 of this Ordinance, make an order dissolving the marriage.

54.—(1) An order dissolving a marriage shall, subject to subsections (2), (3) and (4) of this section, take effect as a final order at the expiration of one month from the date on which it is made.

Orders for dissolution of marriage

(2) Where either party to the marriage is not resident on the Island, the Magistrate shall determine the time period to be allowed before an order dissolving a marriage takes effect as a final order.

(3) Where an order dissolving a marriage is made in defended proceedings and either of the parties to the marriage dies, the order shall not take effect as a final order.

(4) Where an order dissolving a marriage is appealed pursuant to section 55 of this Ordinance, the order shall not take effect as a final order while the appeal or hearing is pending.

55. Either party may, within one month of an order for dissolution having been made under section 53(6) of this ordinance, lodge an appeal to the Supreme Court.

Appeal

PART IX—WELFARE OF SPOUSE AND CHILDREN

56. The Magistrate has the power to make such orders as are required by the circumstances for the maintenance of any spouse and the maintenance, care and custody of any children of the marriage.

Maintenance and custody orders

57.—(1) No Registrar or Magistrate shall make an order dissolving a marriage unless he or she is satisfied

Arrangements for welfare of children on dissolution of marriage

that arrangements have been made for the day-to-day care, maintenance, and other aspects of the welfare of every child of the marriage and those arrangements are satisfactory or are the best that can be devised in the circumstances.

(2) No order dissolving a marriage shall be invalid solely on the ground that-

- (a) any provision of subsection (1) of this section has not been complied with; or
- (b) any information that is relevant for the purposes of those subsections has not been supplied to the Court; or
- (c) any information that has been supplied is incomplete, incorrect, or misleading.]

(Parts VII—IX inserted by Ordinance No. 2 of 2012)

Form (A).

FIRST SCHEDULE

NOTICE OF MARRIAGE

To the Registrar,

I hereby given you notice that a marriage is intended to be had within three months from the date hereof between me, the undersigned, and the other party herein named.

Name	Condition	Occupation Rank or Profession	Age	Dwelling or place of abode	Consent (if any) and by whom given
<i>A.B.</i>					
<i>CD.</i>					

Witness my hand, this _____ day of _____ 20 .

Signature.

Form (B).

FORM OF ATTESTATION

Signed by the said _____, at _____ on the _____ day of _____, this notice having been first read over to him (her) (*or*, read over and truly interpreted to him (her) in the language) by _____. He (she) seemed to understand the same and made his (her) mark thereto in my presence.

(Signed).

Form (C).

REGISTRAR'S CERTIFICATE

I, _____, Registrar, do hereby certify that on the _____ day of _____, notice was duly entered in the Marriage Notice Book of the marriage intended between the parties herein named and described, such notice being delivered under the hand of _____, one of the parties, that is to say:—

Name	Condition	Occupation Rank or Profession	Age	Consent	Dwelling	Length of Residence
<i>A.B.</i>						
<i>C.D.</i>						

Date of notice entered:

Date of Certificate given:

No caveat has been entered against the issue of the certificate; or

A caveat was entered against the issue of this certificate on the _____ day of _____, but it has been cancelled.

Witness my hand, this _____ day of _____ 20_____.

Registrar

NOTE.—This certificate will be void unless the marriage is solemnized on or before the _____ day of _____ 20_____.

Form (D).

SPECIAL LICENCE

Whereas *A.B.* and *C.D.* desire to intermarry, and sufficient cause has been shown to me why the preliminaries required by the Marriage Ordinance, should be dispensed with;

Now, therefore, in pursuance of the said Ordinance, I do dispense with the giving of notice and the issue of the certificate thereby prescribed, and do hereby authorize the Registrar, or registered minister to celebrate marriage between the said *A.B.* and *C.D.* within _____ days from the date hereof.

Such marriage may be celebrated by the Registrar between the hours of 10 o'clock in the forenoon and 4 o'clock in the afternoon, or by such registered minister between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon.

Given under my hand this _____ day of _____ 20_____.

Governor.

Form (E).

CERTIFICATE OF MARRIAGE

Certificate
number
Date

Details of parties to the marriage

Partner 1 Partner 2

First name(s)
Surname
Gender
Age
Residence
at time of
Marriage

Father
First name
Surname

Mother
First name
Maiden
name

Details of witness

Witness 1 Witness 2

First name (s)
Surname

CERTIFICATE OF MARRIAGE

Certificate
number
Date

Details of parties to the marriage

Partner 1 Partner 2

First name(s)
Surname
Gender
Age
Residence
at time of
Marriage

Father
First name
Surname

Mother
First name
Maiden
name

Details of witness

Witness 1 Witness 2

First name (s)
Surname

Married at
by (*or before*) me _____ [name] Married at
by (*or before*) me _____ [name]

[signature] _____
[signature]
(*Minister or Registrar, as the case may be.*) (*Minister or Registrar, as the case may be.*)

This marriage was celebrated between us This marriage was celebrated between us

[signatures] _____
[signatures]
(Partner 1) (Partner 2) (Partner 1) (Partner 2)

in the presence of us in the presence of us

[signatures] _____
[signatures]
(Witness 1) (Witness 2) (Witness 1) (Witness 2)

(Repealed and Replaced by Ordinance No. 1 of 2015)

Form (F).

When Married	Names and Surnames	Whether full age or Minor	Condition	Occupation	Residence	[Full names of Parents]

Entered this day of , at 20 .

Registrar.

(Amended by Ordinance No. 2 of 2014)

SECOND SCHEDULE

	\$ c
Filing every notice and entering same	5.00
On issue of each certificate or certified copy thereof.....	3.00
Certifying any extract	3.00
On every marriage in Registrar’s office	10.00
Special licence	50.00

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

CHAPTER XXI

POST OFFICE ORDINANCE

Arrangement of sections

Section

1. Short title.
2. Interpretation.
3. Establishment of Post Office.
4. Appointment of officers.
5. Regulations.
6. Fees.
7. No letters to be conveyed except by post.
8. Exemption from liability for loss, misdelivery, delay or damage.
9. Postage stamps.
10. Prohibition of sending by post explosives, noxious or deleterious substance, indecent printing, etc.
11. Postmaster may detain prohibited packets.
12. Registration of postal packets.
13. Compulsory registration of certain postal packets.
14. Postal orders and postal order regulations.
15. Exemption from liability in respect of postal orders.
16. Fraudulently issuing postal orders.
17. Penalty for refusing to receive mail bag on board.
18. Payment for conveyance of mail bags by non-contract vessels.
19. No payment for conveyance of mail bags already paid for at port of departure.
20. All mail bags and postal packets arriving by vessel to be delivered to Post Office by master.
21. Stealing mail bag or postal packet.
22. Unlawfully taking away or opening mail bag sent by vessel or vehicle employed by Post Office.
23. Prohibition of fictitious stamps.
24. Article containing or bearing a fictitious stamp may be withheld.
25. Limitation of action against officers.
26. Disposal of money fines and fees.
27. Saving of existing Post Office.

Ordinances Nos:
3 of 1954.
2 of 1985.
4 of 2000.

An ordinance to provide for the establishment and regulation of a post office in Pitcairn Island.

[9th September, 1954]

Short title.

1. This ordinance may be cited as the Post Office Ordinance.

Interpretation.

2.—(1) In this ordinance unless the context otherwise requires—

“letter” includes a postcard or reply postcard or letter-card;

“mail” includes every conveyance by which postal packets are carried whether it be an aircraft, vessel, car, coach, cart, horse or any other conveyance and also a person employed in conveying postal packets and also any vessel employed by or under the post office for the transmission of postal packets by contract or otherwise in respect of postal packets transmitted by the vessel;

“mail bag” includes a bag, box, parcel or any other envelope or covering in which postal packets in course of transmission by post are conveyed whether it does or does not contain any such packet;

“Mayor” means the person from time to time holding the office of Mayor of Pitcairn under the provisions of the Local Government Ordinance;

cap. 11

“officer of the Post Office” includes the Postmaster and any person employed in any business of the Post Office whether appointed by the Governor or employed by the Postmaster;

“postal packet” means a letter, postcard, reply postcard, newspaper, printed packet, pattern or sample packet, or parcel, and every packet or article transmissible by post and includes a telegram when conveyed by post;

“prescribe” means prescribe by regulations.

(2) For the purposes of this ordinance—

(a) a postal packet shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed; and

(b) the delivery of a postal packet at the house of the person to whom the packet is addressed or to him or her or to his or her servant or agent or other person considered to be authorized to receive the packet shall be a delivery to the person to whom it is addressed.

3. The Governor shall establish a Post Office in Pitcairn Island.

Establishment of Post Office.

4. The Governor shall appoint a Postmaster and such other officers as may be necessary for the purposes of this ordinance.

Appointment of officers.

5. The Mayor, with the approval of the Governor, may make regulations for any purpose for which regulations may be made under this ordinance, and for prescribing anything which may be prescribed under this ordinance, and in particular, but without prejudice to the generality of the foregoing powers, for regulating or prescribing—

Regulations.

- (a) the receipt, despatch, carriage and delivery or disposal of postal packets;
- (b) the dimensions and weights of postal packets;
- (c) the general or particular conditions with which postal packets must comply;
- (d) the supply, sale and use of postage stamps;
- (e) the registration of postal packets;
- (f) the conduct of the Post Office; and
- (g) the arrangements for the collection of any duties of Customs or any duties or fees other than those prescribed by section 6 of this ordinance.

6. The Mayor with the approval of the Governor, may prescribe the fees, rates or charges to be levied and received for the conveyance of postal packets and for any other services rendered by the Post Office.

Fees.

7.—(1) No letters shall be conveyed into or out of Pitcairn Island from or to any place between which and the Island postal communications are established, or be delivered or be distributed in the Island, otherwise than by or through the post, except—

No letters to be conveyed except by post.

- (a) letters taken by a private friend on his way, journey or travel to be delivered by him to the person to whom they are directed without hire, reward or other profit or advantage for receiving, carrying or delivering them;
- (b) letters solely concerning the affairs of the sender or receiver thereof sent by a messenger on purpose;
- (c) letters solely concerning goods or property, sent either by sea, by land or by air, to be delivered with the goods or property which the letters concern without hire, reward or profit or advantage for receiving, carrying or delivering them:

Provided that such letters are open to inspection and have superscribed thereon the words

“Consignee’s Letter” or other words to the same effect;

- (d) letters carried by a servant of the sender or by a special messenger employed by him.

But nothing herein contained shall authorize any person to make a collection of those excepted letters for the purpose of sending them in the manner hereby authorized.

(2) Subject as aforesaid the following persons are expressly forbidden to carry a letter or to receive, collect or deliver a letter although they do not receive hire or reward for it, that is to say —

- (a) common known carriers, their servants or agents, except a letter concerning goods in their aircraft or vehicles or conveyances;
- (b) owners, masters or commanders of vessels to or from Pitcairn Island or their servants or agents, except in respect of letters of merchants, owners of ships or goods on board;
- (c) passengers or other persons on any aircraft or train, vehicle, vessel or other conveyance;
- (d) officers of the Post Office, except in respect of letters in course of transmission by post.

(3) Any person who sends or causes to be sent, or tenders or delivers in order to be sent, or conveys, or performs any service incidental to conveying any letter in contravention of the provisions of this section, or makes a collection of those excepted letters for the purpose of conveying or sending them either by post or otherwise, shall be guilty of an offence and liable upon conviction to a fine not exceeding fifty dollars and in default of payment to imprisonment not exceeding one month.

Exemption from liability for loss, misdelivery, delay or damage.

8.—(1) The Government shall not incur any liability by reason of the loss, misdelivery, delay of or damage to any postal packet in course of transmission by post.

(2) No officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage unless that person has caused the same intentionally or by his negligence.

Postage stamps.

9.—(1) The Mayor may, with the approval of the Governor, cause to be provided postage stamps of such kinds and denoting such values as he may consider necessary for the purposes of this ordinance.

(2) The Mayor may, with the approval of the Governor, declare by notice published by affixing copies thereof to the public notice board, that any postage stamps shall cease to be

valid for the purposes of this ordinance and thereupon such postage stamps shall cease to be valid.

10.—(1) No person shall send or attempt to send by post any postal packet which—

Prohibition of sending by post explosives, noxious or deleterious substance, indecent printing, etc.

- (a) encloses any explosive substance, any filth, any noxious or deleterious substance, any sharp instrument not properly protected, any living creature which is either noxious or likely to injure other postal packets in course of transmission by post or an officer of the Post Office, or any article or thing whatsoever which is likely to injure either other postal packets in course of transmission by post or any officer of the Post Office; or
- (b) encloses any indecent, obscene or seditious printing, painting, photograph, cinematograph film, lithograph, engraving, book or card or any other indecent, obscene or seditious article; or
- (c) has on the packet or on the cover thereof any words, marks or designs of an indecent, obscene, seditious, scurrilous, threatening, libellous or grossly offensive character;
- (d) bears any fictitious postage stamp or purports to be prepaid with any postage stamp which has been previously used to prepay any other postal packet or which has been previously used in payment of stamp duty;
- (e) contains any public lottery ticket or any advertisement of prizes or any other announcement relating to public lottery sweepstakes;
- (f) deals with a fraudulent or immoral business or undertaking or one which purports to foretell future events;
- (g) contains any article or thing prohibited by the laws of the Islands or the country to which the postal packet is addressed; or
- (h) contains opium, morphine, cocaine or any other narcotic except in accordance with regulations made under section 5 hereof.

(2) If any person acts in contravention of this section he shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand dollars or to imprisonment not exceeding one year or to both such fine and imprisonment.

(3) The detention in the Post Office of any postal packet on the ground of its being in contravention of this section shall not exempt the sender from any proceedings which might have

been taken if the packet had been delivered in due course of post.

Postmaster may detain prohibited packets.

11. Where the Postmaster has reason to suspect that any postal packet contains anything in contravention of the provisions of section 10 hereof he or she may cause such postal packet to be detained and opened, and if it is found to contain such matter the Postmaster shall cause it to be destroyed or dealt with in such other manner as, subject to any regulations made hereunder, the Mayor shall direct:

Provided that no such postal packet being a closed letter shall be so opened without the consent in writing of the Mayor.

Registration of postal packets.

12. The sender of any postal packet, excepting a parcel, may upon payment of the prescribed fee in addition to the ordinary postage have that packet registered and obtain a receipt for the same from the Postmaster, but no such registration or receipt shall confer on any person any right to compensation or otherwise or impose on any officer of the Post Office any liability for the loss of any such packet or of the contents thereof:

Provided that the Postmaster may in his or her discretion and subject to requirements and limitations prescribed by regulation pay compensation for the loss of any registered postal packet or of the contents thereof.

Compulsory registration of certain postal packets.

13. Every postal packet containing coin, bank notes, currency notes, negotiable instruments payable to bearer, platinum, gold or silver manufactured or not, precious stones, jewels and other valuable articles shall, if posted unregistered, be liable to compulsory registration and to a consequent charge on delivery equal to double the amount of any deficiency in prepayment as a registered packet which may be shown thereon, but upon no postal packet compulsorily registered as aforesaid shall compensation be paid in case of loss.

Postal orders and postal order regulations.

14.—(1) The Mayor may, with the approval of the Governor, provide for the remitting of sums of money through the Post Office by means of postal orders and may make regulations as to such orders.

(2) In particular and without prejudice to the generality of the foregoing power such regulations may prescribe—

- (a) the limit of amount for which a postal order may be issued;
- (b) the period during which a postal order shall remain current; and
- (c) the rates of commission or the fees to be charged on postal orders.

(3) Postal orders shall be issued and paid at such times and in such manner as the Postmaster may direct.

15. The Government shall not incur liability for any loss caused by—

Exemption from liability in respect of postal orders.

- (a) anything done under any regulation made under the last preceding section;
- (b) the wrong payment of a postal order;
- (c) delay in payment of a postal order; or
- (d) any other irregularity in connexion with a postal order;

and no officer of the Post Office shall incur any such liability unless he or she has knowingly caused the same fraudulently or maliciously or by any wilful act or default.

16.—(1) If any officer of the Post Office grants or issues any postal order with a fraudulent intent he or she shall be guilty of an offence and be liable to imprisonment for any term not exceeding seven years.

Fraudulently issuing postal orders.

(2) If any officer of the Post Office re-issues a postal order previously paid he or she shall be deemed to have issued the order with a fraudulent intent under this section.

17. If any master or person in charge of any vessel about to depart from Pitcairn Island to any port or place beyond the Island shall (after being thereto required by the Postmaster) refuse or neglect to receive on board such vessel any mail bag or to give a receipt for the same being thereto required by the person tendering or delivering such mail bag, or shall refuse or neglect carefully to deposit such mailbag in some secure and dry place on board of such vessel, or to convey the same upon her then intended voyage, such master or person shall be guilty of an offence and shall be liable to a fine not exceeding one thousand dollars and in default of payment to imprisonment for a term not exceeding six months.

Penalty for refusing to receive mail bag on board.

18.—(1) Every master or person in charge of any vessel about to depart from Pitcairn Island for any other place beyond the Island, who receives on board thereof any mail bag for the purpose of conveying the same according to the direction thereof, shall be entitled to demand and receive for the carriage thereof payment at rates to be from time to time prescribed by the Governor.

Payment for conveyance of mail bags by non-contract vessels.

(2) Nothing herein contained shall entitle the master or person in charge of any vessel under contract for the carriage of mail bags to receive payment for the same as aforesaid.

19. No payment shall be made to the master or person in charge of any vessel arriving from any port or place beyond

No payment for conveyance of mail bags already paid for at port of departure.

Pitcairn Island for the conveyance of any mail bag on which payments have already been made at the port of departure.

All mail bags and postal packets arriving by vessel to be delivered to Post Office by master.

20. All mail bags and every loose postal packet which at the time of the arrival of any vessel at Pitcairn Island from any port or place beyond the same shall be on board thereof directed to any person in the Islands shall be delivered to the Postmaster or to any person duly authorized in that behalf. Any person who shall knowingly or negligently detain or keep in his or her possession or shall neglect or refuse to deliver any mail bag or any postal packet shall be guilty of an offence, and shall be liable to a fine not exceeding one thousand dollars and in default of payment to imprisonment for a term not exceeding six months:

Provided that nothing in this section shall apply to letters concerning goods on board such vessel and to be delivered with such goods or containing any commission, writ or affidavit or suit by way of introduction only or concerning the bearer's private affairs.

Stealing mail bag or postal packet.

21. Any person who—

- (a) steals a mail bag; or
- (b) steals any postal packet in course of transmission by post; or
- (c) steals any chattel or money or valuable security out of a postal packet in course of transmission by post; or

(d) stops a mail with intent to rob or search the mail, shall be guilty of an offence and shall be liable to imprisonment for any term not exceeding three years.

Unlawfully taking away or opening mail bag sent by vessel or vehicle employed by Post Office.

22. Any person who unlawfully takes away or opens a mail bag sent by any vessel or vehicle employed by or under the Post Office for the transmission of postal packets under contract, or unlawfully takes a postal packet in course of transmission by post out of a mail bag so sent, shall be guilty of an offence and shall be liable to imprisonment for any term not exceeding three years.

Prohibition of fictitious stamps.

23.—(1) A person shall not knowingly use for the purpose of the Post Office any fictitious stamp.

(2) Subject to such conditions as may be prescribed it shall be lawful for a person to make or have in his possession a fictitious stamp or make or have in his possession a die, plate, instrument or materials for making such a stamp but not otherwise.

(3) Any person who acts in contravention of this section shall be guilty of an offence and liable to a fine not exceeding

two hundred dollars.

(4) Any stamp, die, plate, instruments or materials found in possession of any person in contravention of this section may be seized and shall on conviction of such person be forfeited.

(5) For the purposes of this section “fictitious stamp” shall mean any facsimile imitation or representation whether on paper or otherwise of any stamp for the time being authorized or required to be used for the purpose of the Post Office or of any stamp for denoting a current rate of postage of any country outside Pitcairn Island.

24.—(1) Whenever it is notified by the Postal Administration of any country to the Postmaster that any postal packet contains or bears any fictitious postage stamp, that is to say any facsimile or imitation or representation of any stamp for denoting any rate of duty or postage, or purports to be prepaid with any postage stamp which has been previously used to prepay any other postal packet, or whenever any postal packet containing or bearing any such fictitious postage stamp is found in the Post Office of Pitcairn Island, it shall be the duty of the Postmaster to withhold the delivery of such postal packet from the person to whom the same may be addressed, unless such addressee or his or her representative consents to make known the name and address of the sender and to place at the disposal of the Post Office, after having taken cognizance of the contents, the entire packet, if it is inseparable from the offence itself, or else the part of the packet, wrapper or other portion of such postal packet which contains the address, if any, and the stamp so stated to be fictitious or used, and provided also that such addressee or representative shall sign or fill up any document that may be required by the Postmaster embodying the above information.

Postal packet containing or bearing a fictitious stamp.

(2) In the event of the refusal of the addressee or his or her representative to comply with the above requirements such postal packet may either be sent back to the country of origin or may be dealt with or disposed of in such manner as may be authorized by the Mayor.

25. If any action or suit shall be commenced against any officer of the Post Office for damages on account of anything done or omitted to be done in pursuance of this ordinance the same shall be commenced within twelve months after the act committed or omitted, and no such action shall be commenced until one month after notice thereof and of the cause thereof shall have been delivered to the defendant or left at his usual place of abode by the party intending to commence such action, and upon the back of such notice shall be endorsed

Limitation of action against officers.

the name and place of abode or business of the plaintiff and his or her attorney or agent. The defendant in such action may plead the general issue and give the special matter in evidence, and if it shall appear that the action was commenced after the time before limited for bringing the same the court shall give judgment for the defendant.

Disposal of money
fines and fees.

26. All moneys levied and received and all penalties recovered under the provisions of this ordinance shall be paid to the general revenue of the Islands.

Saving of existing
Post Office.

27. The Post Office in Pitcairn Island at the commencement of this ordinance shall be deemed to have been established by the Governor under this Ordinance.

CHAPTER XXI

POST OFFICE

Sections 5 and 6

POST OFFICE REGULATIONS

Made by the Island Magistrate (or, as from 19 May 2000, the Mayor) and approved by the Governor

Regulations:
14 July 1954,
1 June 1960,
13 April 1964,
15 April 1967,
3 October, 1968,
22 November, 1971,
2 April, 1977,
1 May 1987,
19 April 1994,
18 May 2000,
31 December 2010.

Arrangement of Parts

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2. Hours of attendance.
3. Fees.
4. Dimensions and weights.
5. Suitable packing.
6. Irregular enclosures.
7. Open for inspection.
8. Contravention of Regulations.
9. Inquiries.
10. Overseas mail subject to Conventions.
11. Enclosures in letters.

PART II—COMMERCIAL PAPERS

12. Commercial papers.
13. Regulations for printed papers to apply.

PART III—PRINTED PAPERS

14. Printed papers.
15. How to be made up.

PART IV—PACKAGES GROUPED TOGETHER

16. Commercial and printed papers in same packet.

PART V—PACKING

17. Small packets.
18. Fragile articles, etc.
19. Sealed packages.
20. Packing not obligatory.

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21. Small packets.

PART VII—UNPAID AND INSUFFICIENTLY PREPAID
CORRESPONDENCE

22. Double deficiency chargeable.

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24. Hours for registration.
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27. Number and receipt.
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29. Compulsory registration in certain cases.
30. Receipt for delivery.
31. Undeliverable packets.

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50. Certificate of posting.
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54. Return of unclaimed parcel.
55. Delivery of parcel.
56. Two or more parcels not to be sent as one.
57. Packing of parcels.
58. Delay of despatch for safety reasons.
59. Requests for treatment of undelivered parcels.
60. Return of parcel in absence of request.
61. Delivery may be deferred to avoid delay in delivery of letters.
62. Disposal of undeliverable parcels.
63. Compensation for loss of parcel.
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PART XIV—REDIRECTION

66. Form and signature of notices, etc.
67. Change of address.
68. Charges for redirection.
69. Redirection of unpaid, etc., packets.

PART XV—FRANKING OF POSTAL PACKETS

70. Official documents to be franked by authorised persons for free transmission.

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71. Undeliverable packets.
72. How undelivered packets to be dealt with.
73. Disposal of undelivered packets.

PART XVII—THE POSTMASTER AND THE PUBLIC

74. Information.
75. Return of postal packets.
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SCHEDULE.

POST OFFICE REGULATIONS

PART I—GENERAL

- Short title. **1.** These regulations may be cited for all purposes as the Post Office Regulations.
- Hours of attendance. **2.** The hours during which the Post Office shall be open for the conduct of various classes of public business shall be as determined and notified by the Postmaster.
- Fees. **[3.** The rates of postage payable for the transmission of postal packets through the post and the supplementary fees in connection therewith shall be as set by the Island Council and approved by the Governor.]
(Amended by Regulations approved by the Governor on 31 December 2010.)
- Dimensions and weights. Appendix D. **4.** The dimensions and weights of packets transmitted through the post shall be as set forth in Appendix D in the Schedule to these regulations.
- Suitable packing. **5.** The contents of every postal packet shall be packed and secured by the sender in such a manner as may afford adequate protection to the contents thereof and to other postal packets. Any packet which in the opinion of the Postmaster does not comply with this regulation may be refused acceptance or may be intercepted and detained in the course of transmission.
- Irregular enclosures. **6.** No postal packet directed to one address may contain any other packet addressed to a different address. Any postal packet found to contain any enclosure contrary to this regulation shall be surcharged on delivery with an amount equal to double the postage which would have been payable upon such enclosure if it had been transmitted separately.
- Open for inspection. **7.—(1)** Postal packets for transmission at the rate of postage prescribed for commercial papers, printed papers, samples or newspapers shall be made up in such manner as to be capable of a ready inspection of the contents.
(2) Officers of the post office may examine the contents of any packet of commercial or printed papers or samples for the purpose of ascertaining whether they are in accordance with these regulations but such officers must securely refasten any packet so opened.
- Contravention of Regulations. **8.** Any postal packet purporting to be a commercial paper, a printed paper, a sample or a newspaper within the meaning of these regulations which may be found to contravene any of the provisions thereof shall, without prejudice to any penalty

which may be imposed upon the sender under the Post Office Ordinance, cap. 21, be liable to be treated as a letter and surcharged upon delivery with an amount equal to double the deficient postage at the letter rate.

cap. 21

9. For every inquiry instituted by the Postmaster at the request of either the sender or the addressee in regard to any registered postal packet or parcel said to have been posted, the Postmaster may require the applicant to make a declaration in support of the information furnished by the applicant in such form as may be decided by the Postmaster and except where an acknowledgment of delivery has been paid for, may further require the applicant to pay the fee prescribed [for the time being by the Island Council and approved by the Governor under regulation 3.]

Inquiries.

(Amended by Regulations approved by the Governor on 31 December 2010.)

10. Postal packets addressed to or received from any country outside Pitcairn Island shall be subject to the provisions of any Convention or agreement in regard to transmission of such packets through the post in force for the time being between the Island and the postal authority of such country and to the provisions of any contract for the conveyance of mails by sea in force for the time being between the Island and any company or person or body of persons.

Overseas mail subject to Conventions.

11. Letters shall not contain any letter, note or document which has the character of current and personal correspondence addressed to persons other than the addressee or persons living with the addressee.

Enclosures in letters.

PART II—COMMERCIAL PAPERS

12. The following shall be considered as commercial papers, provided that they have not the character of current and personal correspondence: All correspondence which is out-of-date and has already fulfilled its original purpose, and copies thereof, papers of legal procedure, documents of all kinds drawn up by public functionaries, way-bills or bills of lading, invoices, documents of insurance companies, copies of or extracts from deeds under private seal written on stamped or unstamped paper, musical scores or sheets of music in manuscript, the manuscripts of works or of newspapers forwarded separately, pupils' exercises in original or with corrections but without any note which does not relate directly to the execution of the work.

Commercial papers.

13. Commercial papers shall be subject so far as regards form and make-up to the regulations laid down for printed papers:

Regulations for printed papers to apply.

Provided that envelopes only partly open at the ends or in any way closed against inspection shall not be admitted as commercial papers.

PART III—PRINTED PAPERS

Printed papers.

14. The following shall be considered as printed papers and shall be allowed to pass as such: newspapers and periodicals, books sewn or bound, pamphlets, sheets of music excluding perforated sheets intended to be used with automatic musical instruments, visiting cards, address cards, proofs of printing, engravings, photographs and albums containing photographs, pictures, drawings, plans, maps, paper patterns, catalogues, prospectuses, advertisements and notices of various kinds, printed, engraved, lithographed or mimeographed, and in general all impressions or copies obtained upon paper or similar materials, parchment or cardboard by means of printing, engraving, lithography, mimeography or any other mechanical process easy to recognize, except the copying press handstamps with or without movable type and the typewriter.

How to be made up.

15.—(1) Printed papers must be made up in such a way that they can be easily examined. They shall be either placed in wrappers or upon rollers or between boards or in cases open at both ends or open both sides or in unclosed envelopes or they shall be secured with a string easy to untie.

(2) Printed papers of the form and substance of a card may be sent unenclosed without band, envelope or fastening. The same method of despatch shall be allowed for printed papers folded in such a way that they cannot become unfolded during transmission and so that there shall be no risk of their entrapping other articles.

PART IV—PACKETS GROUPED TOGETHER

Commercial and printed papers in same packet.

16. It shall be permissible to enclose in one and the same packet commercial papers, printed papers (but not printed papers intended for the blind), and samples of merchandise, subject to the following conditions:—

- (a) that each packet taken singly does not exceed the limits which are applicable to it as regards weight and size;
- (b) that the total weight does not exceed 1 kg per packet; and
- (c) that the minimum charge is 10 cents if a packet contains printed papers.

PART V—PACKING

17. Small packets shall be packed in such a manner as to be easy of examination and they shall be sent in bags, boxes, or removable covers.

Small packets.

18. Articles of glass or other fragile materials, packets containing liquids, oils, fatty substances, dry powders whether dyes or not, as well as packets of live bees, leeches, and of silkworm eggs, shall be treated as small packets, provided that they are packed in the following manner—

Fragile articles, etc.

- (a) articles of glass or other fragile materials shall be securely packed in boxes of metal, wood or strong corrugated cardboard so as to prevent all danger to postal officers and to correspondence;
- (b) liquids, oils and substances which easily liquefy shall be enclosed in receptacles hermetically sealed. Each receptacle shall be placed in a special box of metal, strong wood, or strong corrugated cardboard containing sawdust, cotton or spongy material in sufficient quantity to absorb the liquid in the event of the breakage of the receptacle. The lid of the box shall be fixed in such a manner that it cannot easily become detached;
- (c) fatty substances which do not easily liquefy such as ointments, soft soap, resin, etc., as well as silkworm eggs, the transmission of which presents fewer difficulties shall be enclosed in an inner cover, box, bag of linen or parchment, etc., which shall itself be placed in a second box of wood, metal or stout thick leather;
- (d) dry colouring powders, such as aniline blue, shall not be admitted unless enclosed in stout tin boxes placed inside wooden boxes with sawdust between the two covers. Dry non-colouring powders shall be placed in boxes of metal, wood, or cardboard; these boxes shall themselves be enclosed in a bag of linen or parchment;
- (e) live bees and leeches shall be enclosed in boxes so constructed as to avoid all danger.

19. Articles which would be spoilt if packed according to the general rules shall be admitted in a cover hermetically sealed. In that case the sender or the addressee may be required to assist in the check of the contents either by opening certain packets indicated by the Postmaster or in some other satisfactory manner.

Sealed packages.

Packing not
obligatory.

20. Packing shall not be obligatory for articles consisting of one piece such as pieces of metal or wood which it is not the custom of the trade to pack.

PART VI—SMALL PACKETS

Small packets.

21.—(1) The name and address of the sender shall be indicated on small packets at the bottom left hand corner of the address side.

(2) Small packets may contain all articles admissible for transmission by letter post including dutiable articles but shall not contain letters, notes or documents having the character of actual and personal correspondence (other than an open invoice reduced to its simplest form, the address of the article and the sender's address); coin; banknotes; currency notes; negotiable instruments payable to bearer; platinum, gold or silver, manufactured or not; precious stones; jewels and other valuable articles, postage stamps whether obliterated or not.

(3) Small packets addressed to places beyond the Island shall bear a special green Customs label obtainable at all post offices.

(4) Small packets may be addressed to any place within the Island, Great Britain, the United States of America and such other countries as accept them.

PART VII—UNPAID AND INSUFFICIENTLY PREPAID CORRESPONDENCE

Double deficiency
chargeable.

22.—(1) Correspondence posted for delivery within Pitcairn Island which is wholly unpaid or insufficiently prepaid shall be charged with double the deficiency on delivery.

(2) Wholly unpaid and insufficiently prepaid letters and postcards and other articles which are partly prepaid posted within Pitcairn Island addressed to any other part of the British Commonwealth shall be forwarded for delivery; articles other than letters and postcards which are wholly unpaid shall not be forwarded but shall be dealt with through the Post Office.

(3) Wholly unpaid and insufficiently prepaid letters and postcards, and other articles which are partly prepaid posted within Pitcairn Island addressed to any other country shall be charged with double the deficiency with a minimum charge of one cent and shall be forwarded for delivery. Articles other than letters and postcards which are wholly unpaid shall not be forwarded but shall be dealt with through the Post Office.

(4) Reply paid postcards of which the two halves are not fully prepaid shall not be forwarded to their destination.

PART VIII—REGISTRATION

23. The address of every postal packet for registration shall be written in ink or copying ink pencil and in Roman characters. Address to be in ink.

24. Postal packets for registration shall be handed to an officer appointed for that purpose during such hours as may be notified and shall not be posted in any posting-box. Hours for registration.

25. Postal packets for registration shall be fully prepaid at the time of handing in for transmission to the place of destination. To be prepaid.

26. No packet shall be accepted for registration unless the cover is in sound condition. Under no circumstances shall packets be accepted for registration if selvaged stamp paper or other gummed paper is attached to the covers thereof or if the packets have the appearance of having been opened and resealed. Cover to be in sound condition.

27. Every postal packet duly handed in for registration shall be given a distinctive number. A receipt bearing such number, the address of the relative packet and an impression of the date stamp of the office at which the packet is handed in for registration shall be given to the sender by the receiving officer and such receipt shall be prima facie evidence of the registration of such packet. Number and receipt.

28. The sender of any registered postal packet may upon application either at the time of registration thereof or at any time within one year thereafter and upon payment of the fee set [for the time being by the Island Council and approved by the Governor under regulation 3] in addition to the fee for registration require to be furnished with an acknowledgment of the receipt of such packet. Acknowledgment of receipt.

(Amended by Regulations approved by the Governor on 31 December 2010.)

29.—(1) Any postal packet which may be posted otherwise than as laid down in regulation 24 and which may bear any inscription or mark which may reasonably be assumed to indicate that it was the intention of the sender that such packet should be registered may upon detection be registered and subjected to the fee prescribed [for the time being by the Island Council and approved by the Governor under regulation 3] for compulsory registration in addition to the ordinary postage due upon such letter or packet, and any unregistered postal packet which there is reasonable cause to believe contains money or other valuable enclosure (including postage stamps exceeding Compulsory registration in certain cases.

10 cents in value) shall be similarly treated.

(Amended by Regulations approved by the Governor on 31 December 2010.)

(2) Any postal packet which has been compulsorily registered under this regulation on the ground of its being supposed to contain a valuable enclosure and which may be opened in the presence of the officer delivering the same and found not to contain any such enclosure shall be delivered free of charge in respect of registration.

Receipt for delivery.

30. Any person to whom any registered postal packet is delivered shall give to the officer delivering it a receipt for the same on a form to be provided by the Postmaster, which receipt shall be a good discharge for the delivery of such registered packet.

Undeliverable packets.

31. Every registered postal packet which may from any cause be undeliverable to the person to whom it is addressed shall be returned to the sender, if known, by registered post without further charge for postage or registration. And any unregistered postal packet which may likewise be undeliverable and the contents of which may be found to be of intrinsic value may be returned by the Postmaster to the sender, if known, through the registered post and such sender shall be liable in respect of such packet for the fee prescribed [for the time being by the Island Council and approved by the Governor under regulation 3] for compulsory registration.

(Amended by Regulations approved by the Governor on 31 December 2010.)

PART IX—COMPENSATION FOR LOSS OF REGISTERED PACKET

Compensation may be paid.

32. The Postmaster may in his discretion and as an act of grace, subject to the conditions hereinafter mentioned, pay compensation not exceeding four dollars for the loss, while in the custody of the Post Office, of any postal packet, or the whole or any portion of the contents thereof, which has been admitted for transmission by registered post within Pitcairn Island.

Circumstances in which compensation not payable.

- 33.** No compensation for loss shall be paid in respect of—
- (a) any postal packet containing anything which may not be lawfully sent by post; or
 - (b) money, whether coin or paper unless sent by registered letter post and then only if—
 - (i) any coins enclosed in the letter have been packed in such a way as to move about as little as possible;

- (ii) the number, amount and date of issue of any currency note and also the bank of issue in the case of a bank note enclosed, be supplied to the Postmaster when required;
- (iii) the amount, number and date of issue of any money order or postal order enclosed be supplied to the Postmaster when required; and
- (iv) particulars sufficient to identify the document be supplied to the Postmaster in the case of any bill of exchange, bond, coupon or other order or authority for the payment of money or security for money, enclosed in the letter.

34. In no case shall compensation be paid where it appears that the loss has arisen from any neglect or omission on the part of the sender.

No compensation where loss due to act of sender.

35.—(1) Compensation shall in no case exceed the value of the postal packet or any portion of the contents thereof which may be lost. No compensation shall be given for injury or damage consequent upon the loss of any registered packet.

Amount of compensation.

(2) The Postmaster may in any case reinstate or make good in kind the contents of any lost packet instead of giving pecuniary compensation for loss.

(3) Where compensation has been given in respect of any postal packet and such packet subsequently comes into the hands of the Postmaster, he may retain or dispose of the same as he may deem fit.

36. The receipt given to the sender at the time of registration of any postal packet in connection with the loss of which application is made for compensation, shall be produced by the applicant whenever required by the Postmaster.

Receipt to be produced.

37. Every application for compensation in respect of a postal packet the contents of which are alleged to have been lost during transmission through the post shall be accompanied by the envelope or cover of such article in as nearly as possible the condition in which it was delivered by the Post Office.

Application for compensation.

38. Under no circumstances shall an application for compensation be entertained if made after the expiration of one year from the date of posting the relative postal packet.

Time limit on claims.

39. In cases where registered packets are lost abroad the final decision upon the question of payment of compensation rests with the Postal Administration of the country in which the loss takes place.

Packets lost abroad.

PART X—DELIVERY OF POSTAL PACKETS

40. When no direction in writing to the contrary has been received correspondence for a husband may be delivered to his wife and correspondence for a wife may be delivered to her husband and correspondence addressed to members of the same family living in the same house may be delivered to any responsible member of the family living in the house (except young children) or to any messenger authorized to receive it.

Delivery to member of family etc.

41. Except as set forth in regulation 40 no postal packet shall be delivered to any person other than—

To whom delivery to be made.

- (a) the addressee in person;
- (b) a person authorized by written order from the

addressee to receive delivery of postal packets on his behalf; such order shall bear the date on which it is made and the addressee's address and shall be witnessed by some person other than the person in whose favour it is made and shall be delivered to the Postmaster;

- (c) a person to whose care the postal packet is addressed.

PART XI—PROHIBITED POSTAL PACKETS

Prohibited postal packets.

42. There shall not be posted or conveyed by post any postal packet—

- (a) having marked thereon or on the cover thereof any words, letters or marks (used without due authority) which signify or imply or may reasonably lead the recipient thereof to believe that the postal packet is sent on Her Majesty's Service;
- (b) having thereon or on the cover thereof any words, marks or designs of a character likely in the opinion of the Postmaster to embarrass the officers of the post office in dealing with the packet in the post; or
- (c) of such a form or so made up for transmission by post as to be likely in the opinion of the Postmaster to embarrass the officers of the post office in dealing with the packet in the post.

Transmission of coin, etc.

43. There shall not be conveyed by unregistered post, coin, banknotes, currency notes, negotiable instruments payable to bearer, platinum, gold or silver manufactured or not, precious stones, jewels or other valuable articles. The transmission of postage stamps whether obliterated or not in open packets is prohibited.

Prohibited packets, how dealt with.

44. Prohibited packets if tendered for transmission shall be refused or, if detected in transit, detained and dealt with in such a manner as the Postmaster may direct.

PART XII—TRANSPARENT AND PANEL ENVELOPES

Transparent envelopes, etc.

45. Packets enclosed in envelopes entirely transparent or in envelopes with an open panel or with a panel which reflects artificial light are prohibited and shall be dealt with under the last preceding regulation.

Envelopes with transparent panels.

46. The following conditions apply to packets in envelopes with a transparent panel—

- (a) the transparent panel shall be parallel to the length of the envelope so that the addressee appears in the same direction and the application of the date stamp

- is not interfered with;
- (b) the panel shall be sufficiently transparent for the address to be perfectly legible even in artificial light and shall take writing;
 - (c) only the name and address of the addressee shall show through the panel and the contents of the envelope shall be folded so that the address cannot be obscured wholly or partly through slipping; and
 - (d) the address shall be legibly indicated in ink or typewriting. Articles addressed in copying-ink pencil or lead pencil shall not be admitted.

PART XIII—PARCEL POST

47. In this Part the expression “parcel” means a postal packet which is posted as a parcel in accordance with the provisions of these regulations or any regulations amending the same.

Interpretation.

48. Every parcel shall bear on the outside of the cover thereof the name and address of the sender and unless inscribed with the words “Parcel Post” and secured in such a manner as to allow the contents to be readily withdrawn and examined shall have attached to the cover a form similar to that set forth in Appendix F in the Schedule to these regulations.

Name, address and declaration of contents.

Appendix F.

49. Every parcel for transmission shall be handed in over the Post Office counter during such hours as may be notified by the Postmaster. Any parcel for delivery within Pitcairn Island which is posted in a posting box shall be subject on delivery to a fee as set out in Appendix E in the Schedule to these regulations in addition to any other charges which may be due thereon.

Parcels to be handed in at Post Office.

Appendix E

50. The sender of any parcel may upon application at the time of handing in such parcel obtain a certificate of the posting thereof. Such certificate shall not however imply any liability on the part of the Postmaster for any loss, injury or delay which may subsequently take place in respect of such parcel.

Certificate of posting.

51. Any parcel found to contain or to bear on the cover thereof any article or communication chargeable at the letter rate of postage shall without prejudice to any penalty which may be imposed under the Post Office Ordinance be surcharged on delivery with an amount equal to double the postage payable upon such article or communication if it had been transmitted separately.

Parcels liable to letter rate.

cap. 21

52. Every parcel redirected at the request of either the

Charges on redirected parcels.

sender or the addressee thereof from one post office to another shall be subject upon delivery in addition to any other charges which may be leviable thereon to a charge equal to the postage which would have been payable upon such parcel if it were being transmitted for the first time from the one office to the other.

Stoppage and
stoppage fee.

53.—(1) In case of any parcel returned to the sender at his request before the same has been despatched from the office at which it was handed in, the sender shall have no claim in respect of the postage stamps affixed to such parcel if such stamps have already been cancelled.

(2) Any parcel stopped in transit for return to the sender or delivery to the addressee at any post office other than the office at which stoppage is effected and any undeliverable parcel returned to the sender direct from the office to which the same has been forwarded for delivery shall be regarded as redirected from such office to another office and shall be subject to the usual charges in respect of such redirection.

Return of unclaimed
parcel.

54. The Postmaster may return to the sender at the expense of the latter any parcel which has not been claimed within a period of fifteen days from the date on which it was originally received at the office of destination except in the case of parcels originating in New Zealand in which case the period of retention shall be thirty days.

Delivery of parcel.

55. The delivery of parcels otherwise than from post offices shall not be obligatory, but where such delivery is not undertaken, the Postmaster shall cause the addressee of every parcel to be advised by post of the receipt thereof at the local post office and of its detention there.

Two or more parcels
not to be sent as one.

56. No parcel shall consist of or contain two or more packets addressed to different persons at different addresses. If such parcel be discovered, each of its contents shall be treated as a separate parcel and be charged for accordingly.

Packing of parcels.

57. Parcels shall be so securely and substantially packed as to preserve their contents from loss or damage in the post and also to avoid injuring other parcels in the mail or any officer of the post office.

Delay of despatch for
safety reasons.

58. In any case where an officer of the post office may find it necessary or expedient for the safety or protection of parcels that any parcel should be forwarded or delivered by some later despatch or delivery than that for which the same was posted or despatched or intended to be posted or despatched he may delay the despatch or delivery of such parcel or make other

and special arrangements as to the despatch or delivery thereof as may be deemed by such officer necessary or expedient in the circumstances of the case.

59. The sender of a parcel may request at the time of posting that if the parcel cannot be delivered as addressed it may be either—

Requests for treatment of undelivered parcels.

- (a) treated as abandoned; or
- (b) tendered for delivery at a second address in the country of destination;

and no other alternative shall be admissible. If the sender avails himself of this facility his request shall be written on the parcel and shall be in one of the following forms:

“If not delivered as addressed, abandon”;

“If not delivered as addressed, deliver to _____”.

60. In the absence of a definite request for abandonment, a parcel which is undeliverable at the original address, or at the alternative address if one is furnished, shall be returned to the sender without previous notification and at his expense.

Return of parcel in absence of request.

61. Where the despatch or delivery from the Post Office in Pitcairn Island of letters would be delayed by the despatch or delivery therefrom at the same time of parcels such parcels or any of them may be detained in the office until the despatch or delivery next following that by which they would ordinarily be despatched or delivered.

Delivery may be deferred to avoid delay in delivery of letters.

62. The contents of unclaimed or undelivered parcels which have been returned to Pitcairn Island and cannot be delivered to the sender shall be sold or destroyed as directed by the Postmaster.

Disposal of undeliverable parcels.

63. Parcels shall be received and forwarded at the risk of the owners but, as an act of grace, compensation up to the maximum of two dollars may be allowed for total loss of or damage to a parcel securely packed and forwarded in accordance with these regulations:

Compensation for loss of parcel.

Provided that no compensation shall be paid for damage to any article inadequately or insecurely packed.

64. In no circumstances will compensation be paid in respect of a parcel which has been lost or has sustained damage or loss of contents through any cause beyond control. Each claim for compensation must be supported by the production of the relative certificate of posting.

When compensation not payable.

65. No parcel shall be delivered by the Postmaster except to the addressee thereof or his authorized agent. Every addressee of a parcel wishing it to be delivered to another

Delivery to person other than addressee.

person on his behalf must sign and deliver to the Postmaster an authority in such form as he may direct.

PART XIV—REDIRECTION

Form and signature of notices, etc.

66.—(1) All notices of removal and applications for the redirection of postal packets shall be signed by the persons to whom such packets are addressed.

(2) The printed form of notice which may be obtained on application at any Post Office shall be used wherever practicable.

(3) Redirection orders by telegraph shall be accepted provided that signatures are in full and can be verified.

Change of address.

67.—(1) Changes of address shall be recorded for a period not exceeding six months and if not renewed before the expiration of that time, shall be deemed to have lapsed.

(2) Applications for the redirection of postal packets should be made to the Postmaster of the office to which such packets are addressed.

Charges for redirection.

68. No charge shall be made for redirection of postal packets except in the case of parcels, but a postal packet which is properly prepaid for first transmission and on which the supplementary postage appropriate to the further transmission has not been paid before redirection shall be charged with a rate equal to the difference (if any) between the amount of postage already paid and that which would have been charged if the postal packet had been despatched in the first instance to the new destination.

Redirection of unpaid, etc., packets.

69. A postal packet unpaid or insufficiently prepaid for transmission to the place of first address, if redirected to another address shall, in addition to any charges already due thereon, be subject to a charge under the last preceding regulation.

PART XV—FRANKING OF POSTAL PACKETS

Official documents to be franked by authorised persons for free transmission.

70.—(1) Postal packets on the public service shall be franked for transmission by post either by means of a franking stamp approved by the Mayor and bearing the designation of the department or office from which it is posted and the words “Official Paid”; or shall bear the signature of the sender followed by his official designation at the bottom lefthand corner of the envelope or cover.

(2) Every officer authorized to use a franking stamp shall be responsible for its proper use and custody according to these rules.

(3) Officers authorized to frank postal packets on the public service shall also be entitled to receive, without prepayment of postage, letters and other documents addressed to them in their official capacity and superscribed “On Her Majesty’s Service” provided such articles are on the public service and not on the private business or in the personal interest of the sender.

(4) Any public officer who may receive any postal packet which is franked as being “On Her Majesty’s Service” but is not entitled to pass through the post without prepayment, shall forward the cover thereof, a certified copy of the contents and a statement of its weight, with a report of the facts of the case, to the Mayor, by whom the postage due thereon shall be collected from the sender or other action taken, as the Mayor may deem fit.

PART XVI—UNDELIVERED POSTAL PACKETS

71. The following *inter alia* may be regarded and treated as undeliverable. Undeliverable
packets.

- (a) postal packets with an incomplete, incorrect or obscure address;
- (b) postal packets addressed to initials or fictitious names except when directed to the care of a person or a private post office box duly rented;
- (c) unpaid or insufficiently paid postal packets addressed to a place to which the prepayment of postage is compulsory;
- (d) postal packets supposed to contain enclosures the registration of which is compulsory or the transmission of which to the place of address is prohibited;
- (e) postal packets addressed to a deceased person which cannot be delivered to a lawful representative;
- (f) postal packets the address of which applies equally to two or more persons or firms leaving it doubtful for whom they are intended;
- (g) postal packets posted in contravention of the Post Office Ordinance, or these regulations; cap. 21
- (h) postal packets addressed to a person who cannot be found at the address given and whose whereabouts is unknown;
- (i) postal packets addressed to a poste restante of “to be called for” remaining undelivered after the expiration of two months from the date of their receipt at the post office to which they are addressed;
- (j) postal packets directed to a ship which it is known

will not be at the port to which such articles are addressed within a period of six months from the date of their receipt at the post office at such port.

How undelivered packets to be dealt with.

72.—(1) Subject to the provisions of the next succeeding paragraph, every postal packet which remains undelivered at the post office shall be kept at such office for delivery for a period of one month; and if still undelivered at the expiration of such period shall be dealt with as provided by the next succeeding regulation:

Provided that postal packets originally posted outside Pitcairn Island shall be kept for a period of six months before being dealt with.

(2) Any undelivered postal packet (other than a parcel or a newspaper) bearing on the outside of the cover the name and address of the writer or sender thereof may, after retention for the usual period at the office to which the same has been forwarded for delivery, be returned unopened from such office to such writer or sender; and any postal packet (other than a parcel or a newspaper) bearing on the address side of the cover thereof a request that it be returned to the sender if undelivered after the expiration of a specified period shorter than the time prescribed for the retention of undelivered postal packets generally, shall be returned in like manner immediately after the expiration of the period specified in such request.

Disposal of undelivered packets.

73.—(1) All postal packets other than parcels or newspapers remaining undelivered shall be disposed of in the following manner—

- (a) a postal packet from a place beyond Pitcairn Island shall be returned unopened to the country of origin;
- (b) a postal packet originally posted within the Island shall if possible, be returned to the writer or sender thereof. When necessary, any such postal packet may be opened by the Postmaster;
- (c) a postal packet which cannot be delivered either to the addressee or to the writer or sender thereof may, unless it contains coin or valuable or saleable articles, be destroyed by the Postmaster;
- (d) a postal packet found to contain coin or any valuable or saleable article shall be safely kept and a memorandum of such contents shall be made and preserved for six months, at the end of which time the coin shall be paid to the general revenue and the valuable or saleable article may be destroyed or sold as the Mayor may direct; and if sold, the proceeds thereof shall be paid into general revenue.

(2) Before an undelivered postal packet on which postal charges have become due is returned to the sender, such postal charges shall be paid by the sender.

(3) Printed papers of no value shall not be returned to the country of origin or to the senders unless their return has been asked for by means of a note on the cover.

PART XVII—THE POSTMASTER AND THE PUBLIC

74. No information shall be given respecting postal packets passing through a post office except to the persons to whom they are addressed; and in no other way shall information of a private character be made public.

Information.

75. Except as provided in these regulations, the Postmaster shall not return any postal packet to the writer or sender or to any one else or delay forwarding it to its destination according to the address.

Return of postal packets.

76.—(1) The Postmaster is not bound to weigh postal packets for the public but he may do so if his duty is not thereby impeded.

Weighing of postal packets.

(2) This regulation does not apply to parcels which shall be tested both as to weight and size before being accepted.

77. The Postmaster is not bound to give change and when money is paid at the post office, whether as change or otherwise, no question as to its right amount, goodness or weight shall be entertained after it has been removed from the counter.

Giving of change.

SCHEDULE

**(APPENDIX A, APPENDIX B, APPENDIX C and APPENDIX E
all repealed by Regulations approved by the Governor on
31 December 2010.)**

**APPENDIX D
DIMENSIONS AND WEIGHTS OF POSTAL ITEMS**

Letters**Size weights and dimensions for international letters.**

Size	Maximum Dimensions	Maximum Weight	Maximum Thickness
Postcards	120mm x 235mm	10g	–
Medium	120mm x 235mm	200g	10mm
Large	230mm x 325mm	200g	10mm
Extra Large	260mm x 385mm	200g	10mm

Small Parcels, Rolls and Tubes

Item	Maximum Dimensions		Maximum Weight
Small Parcel	Length + width + depth Up to 900mm	Length of any side Up to 600mm	1 kg
Rolls & Tubes	Length + twice diameter Up to 1040mm	Length Up to 900mm	1 kg

Parcels

Item	Maximum Dimensions		Maximum Weight
Parcels	Length + girth Up to 2 metres	Length of any side 1.05 metres	10kg

Literature for the Blind

Post free by Economy International only. Maximum weight 7kg.

APPENDIX F
PARCEL POST LABELS (Regulation 48)
PITCAIRN ISLAND PARCEL POST

Parcel Post (Regulation 48)

POSTAL ADMINISTRATION PITCAIRN ISLAND CUSTOMS DECLARATION			IMPORTANT The customs abroad need to know exactly what is in your package. If this declaration does not provide sufficient information there may be delay and inconvenience to the addressee. Make sure that the contents are described separately, accurately, and in detail. Give all relevant information and do not use general descriptions such as "foodstuff", "clothing", "gift". False, misleading or incomplete declaration may lead to seizure of the package or the imposition of penalties.		
Total gross weight of parcel _____	Country of Origin	Country of Destination	INSERT 'X' if contents are: A gift ! A sample of merchandise !		
Statement of Contents (see above)		Tariff Number	Value	Net Weight	
Qty	Detailed Description		\$		
			:		
			:		
			:		
			:		
			:		
Instructions for disposal in the event of non-delivery must be indicated by placing a tick in the appropriate box below. The sender must repay all charges due on a returned parcel which in the case of return by air may be considerable. Parcels for which the sender has not given instructions are returned without advice. If the parcel cannot be delivered as addressed, I request that it be: ! (a) returned to me forthwith by *surface/air ! (b) returned to me by *surface/air at the end of a period of days ! (c) delivered or redirected by *surface/air to: ! (d) treated as abandoned					
The undersigned certifies that the particulars given in this Declaration are correct. Signature) and) Address) of Sender)				Senders reference, if any	
*Delete whichever is applicable					

Small Packet Label (Regulation 48)**Custom Declaration****Douane CN22**

Detailed description of contents (<i>Désignation détaillée du contenu</i>)			Value (<i>Valeur</i>)
! Merchandise/Sample <i>Enchantillon commercial</i>	! Gift <i>Cadeau</i>	! Documents <i>Documents</i>	
Total weight (<i>Poids brut</i>)		Total value NZ\$ (<i>Valeur totale</i>)	

I certify that this article DOES NOT contain any DANGEROUS or PROHIBITED GOODS.
This article may be opened officially (*Peut être ouvert d'office*)

Signature of Sender
Signature de l'expéditeur

X

Small packet/Printed Papers

OS 8A (12/99)

CHAPTER XXI

POST OFFICE

Section 13

POSTAL ORDER REGULATIONS

Arrangement of Regulations

Regulations:
14th July 1954,
9th November 1958,
4th November 1968,
26th March 1971.

Regulation

1. Short title.
2. Payment restricted to British postal orders.
3. Where postal orders are payable.
4. Poundage.
5. Stamps attached to postal orders in extension of face value.
6. Issue of orders.
7. Validity of orders.
8. Signature of payee to be obtained.
9. Mutilated or defaced orders.
10. Payment of orders in intestate estates.
11. Non-liability of the postmaster.

SCHEDULE

POST OFFICE

(Section 13)

POSTAL ORDER REGULATIONS

1. These Regulations may be cited as the Postal Order Regulations.

Short title.

2. The payment of postal orders under these Regulations shall be restricted to British postal orders issued in the United Kingdom or such other countries as the Governor may from time to time by notice declare.

Payment restricted to British postal orders.

3. Postal orders may be issued for payment within such countries of the British Commonwealth and other countries as the Governor may from time to time by notice declare.

Where postal orders are payable.

4. The rates of poundage which shall be charged for the issue of postal orders shall be as set out in the Schedule hereto.

Poundage.

5.—(1) Postage stamps, not exceeding two in number and nine cents (or its nearest equivalent in the currency of the country of issue) in value may be affixed to the face of any postal order to supplement its value, and such order shall be cashed on presentation for the full value of the order and the stamps combined:

Stamps attached to postal orders in extension of face value.

Provided that the stamps are affixed in the spaces set apart for the purpose only; that they represent 1 cent or its nearest equivalent in the currency of the country of issue or a multiple thereof, and are stamps of the Islands, the United Kingdom or of the country in which the order shall have been issued; and that such country has agreed to the encashment of stamps when affixed to postal orders.

(2) Postage stamps perforated with initials or marks, and embossed or impressed stamps cut out of envelopes, postcard wrappers, letter-cards, or other articles shall not be available for attachment to postal orders.

6. Before any postal order shall be issued, the remitter shall pay to the Postmaster the amount of the order and the poundage due thereon, and shall furnish all such information as may be required by the Postmaster. The Postmaster shall then sign the order and stamp it with the date-stamp of his office, indicating the date upon which the order is issued.

Issue of orders.

7. No postal order shall be paid after the expiration of six months from the last day of the month in which it shall have been issued, except under the express authority of the

Validity of orders.

Governor and upon payment of a further commission equal to the original poundage charged.

Signature of payee to be obtained.

8.—(1) Before any postal order shall be paid, the payee shall fill in the name of the office at which the order is to be paid (if this has not already been done) and sign his or her name in ink in the space provided for the purpose on the order, and shall furnish such means of identification or proof of his or her authority to receive payment of the order as may be required by the Postmaster.

(2) If the payee cannot write, his or her mark shall be attested by a witness in the presence of the paying officer.

(3) The signature of the payee shall correspond in every particular with the name of the payee as stated in the postal order.

Mutilated or defaced orders.

9. Any postal order presented for payment in a mutilated or defaced condition, or bearing signs of any erasure or alteration having been made therein, may be refused payment.

Payment of orders in intestate estates.

10. Should the payee of any postal order die intestate before payment of such order is effected, and letters of administration be not produced to the Postmaster, the Mayor may at his discretion authorize the payment of the amount of such order either to the next of kin of the deceased payee or to such other person as may to him appear to be entitled thereto, and every such payment shall be a valid and effectual discharge against any demand or claim made upon the Postmaster by any other person as being the lawful representative of such payee, and any such person as aforesaid shall have his remedy by recourse against the person who shall have received such payment and not otherwise.

Non-liability of the postmaster.

11. After once paying a postal order, by whomsoever presented, the Government shall not be liable to pay compensation for loss or injury arising out of delay in payment of a postal order, or out of any other irregularities in connection with a postal order.

SCHEDULE

POSTAL ORDER TARIFF

<i>Denominations in Sterling</i>	<i>Poundage in New Zealand cents</i>
5 p to 95 p inclusive.....	8 cents
£1	10 cents
£2 to £5 inclusive.....	18 cents

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2014

CHAPTER XXII

SOCIAL WELFARE BENEFITS ORDINANCE

Arrangement of sections

PART I—PRELIMINARY PROVISIONS

1. Short title.
2. Interpretation.

PART II—PENSIONS

3. Pensions to be charged on revenue of the Islands.
4. Circumstances in which pension may be granted.

PART III—WIDOW'S BENEFITS

5. Grant of widow's benefits.

PART IV—CHILD BENEFITS

6. Grant of child benefit.

PART V—SUPPLEMENTARY PROVISIONS

7. Benefits to be charge on revenue.
8. Rates of benefits.
9. Benefit may be affected by election or appointment to official office.
10. Absence from Islands.
11. Saving existing pensions.
12. Other pensions etc. not affected.
13. Regulations.

Ordinance Nos:
1 of 1970,
3 of 1983,
1 of 1997,
3 of 2009,
2 of 2013.

An ordinance to provide for the grant of social welfare benefits to certain persons and for matters incidental thereto.

[2nd September, 1970]

PART I—PRELIMINARY PROVISIONS

Short title.

1. This ordinance may be cited as the Social Welfare Benefits Ordinance.

Interpretation.

2. In this ordinance unless the context otherwise requires—

“benefit” means a pension or a widow’s benefit or a child benefit granted under the provisions of this ordinance;

“child benefit” means a child benefit granted under section 6;

cap. 11

“Council” means the Island Council constituted under the provisions of the Local Government Ordinance;

“Island Secretary” means the person from time to time appointed by the Governor to hold the public office of Island Secretary;

cap. 11

“Mayor” means the person for the time being holding the office of Mayor under the provisions of the Local Government Ordinance;

cap. 11

“official office” means and includes any public office and any office to which any person is elected or appointed under the provisions of the Local Government Ordinance;

cap. 12

“permanent resident” means a person entitled under the provisions of the [Immigration Control Ordinance 2006] permanently to reside in the Islands;

(Amended by Ordinance No. 2 of 2013)

“pension” means a pension granted under section 3;

“widow’s benefit” means a widow’s benefit granted under section 5.

PART II—PENSIONS

Pensions to be charged on revenue of the Islands.

3.—(1) Subject to any directions of the Governor, pensions may be granted by the Council in accordance with the provisions of this ordinance to persons who are permanent residents.

(2) There shall be charged on and paid out of the revenues of the Islands all such sums of money as may from time to time be granted by way of pension under the provisions of this ordinance.

Circumstances in which pension may be granted.

4.—(1) No pension shall be granted to any person under the

provisions of this ordinance unless such person is ordinarily resident on Pitcairn Island and—

- (a) if such person has so resided on Pitcairn Island for a period or periods amounting in all to more than five years during the immediately preceding twenty years, has been continuously resident on Pitcairn Island during the immediately preceding twelve months; or
 - (b) if such person has so resided on Pitcairn Island for a period or periods amounting in all to less than five years during the immediately preceding twenty years, has been continuously resident on Pitcairn Island during the immediately preceding three years.
- (2) No pension shall be granted to any person under the provisions of this ordinance unless such person has attained the age of sixty-five years:

Provided that the requirements of this subsection may be waived at the direction of the Governor on medical evidence to his satisfaction that such person is incapable, by reason of some infirmity of mind or body, of providing himself or herself with the necessaries of life.

PART III—WIDOW’S BENEFITS

5.—(1) Subject to any directions of the Governor, widow’s benefits may be granted by the Council in accordance with the provisions of this ordinance to persons who are widows of inhabitants of the Islands and who are permanent residents.

Grant of widow’s benefits.

(2) Every widow shall be eligible for the grant of a widow’s benefit who is—

- (a) over the age of forty years; or
 - (b) under the age of forty years and has any dependent child residing with and supported by her,
- and in either such case who has lived in the Islands for a continuous period of not less than three years immediately prior to the death of her husband.

(3) Every widow’s benefit granted under the provisions of this ordinance shall be automatically cancelled on the re-marriage of the beneficiary or upon her qualifying for a pension granted under subsection (2) of section 4.

PART IV—CHILD BENEFITS

6.—(1) Subject to any directions of the Governor, child benefits may be granted by the Council in accordance with the provisions of this ordinance to the parents or guardians of every child under the age of 16 years residing with the said parents or guardians and normally resident in the Islands:

Grant of child benefit.

(2) Provided that the parents or guardians of any child of

the age of 16 years and under the age of 18 years attending a fulltime course of education [in Pitcairn or elsewhere] may be eligible for the grant of a child benefit.

**(Repealed and substituted by Ordinance No. 3 of 2009)
(Amended by Ordinance No. 2 of 2013)**

[(3) For the purposes of subsection (1), a child who attends a fulltime course of education outside of Pitcairn resides with a person if they are normally resident with that person when not attending the fulltime course of education.]

(Inserted by Ordinance No. 2 of 2013)

PART V—SUPPLEMENTARY PROVISIONS

Benefits to be charge
on revenue.

7. There shall be charged on and paid out of the revenues of the island all such sums of money as may from time to time be granted by way of any benefit under the provisions of this ordinance.

Rates of benefits.

8. Every benefit granted under the provisions of this ordinance shall be at such rate as the Governor may from time to time direct.

Benefit may be
affected by election
or appointment to
official office.

9. If any person to whom a widow's benefit or pension has been granted under the provisions of this ordinance is elected or appointed to any official office the payment of the said benefit may upon the direction of the Governor be suspended or reduced by such amount as is specified in the direction and for so long as the person continues to hold such office.

Absence from Islands.

[10.—(1) For the purposes of this section, “beneficiary” means any person to whom a pension or widow's benefit has been granted or any child in respect of whom a child benefit has been granted under the provisions of this Ordinance.

(2) This section does not apply to any child in respect of whom a child benefit has been granted if that child is attending a fulltime course of education.

(3) Except as provided by this section, if any beneficiary is temporarily absent from the Islands for a continuous period of seven months, the payment of such benefit shall at that time be suspended until the return of that person to reside in the Islands.

(4) Except as provided by this section, if any beneficiary is temporarily absent from the Islands for a continuous period of two years, such benefit shall automatically cease.

(5) Notwithstanding subsections (3) and (4), the Governor may in his or her discretion continue to pay any benefit under this Ordinance to any beneficiary who is absent from the

Islands and who, but for the operation of this section, would be receiving a benefit under this Ordinance.]

(Repealed and replaced by Ordinance No. 2 of 2013)

11. Pensions granted prior to the date of commencement of this ordinance shall be deemed to have been granted under the provisions of this ordinance.

Saving existing pensions.

12. Nothing in this ordinance contained shall affect any pension, gratuity or other allowance granted or paid to any person in respect of his or her service in any official office and any pension granted under the provisions of this ordinance shall be in addition to any other such pension, gratuity or allowance.

Other pensions etc. not affected.

13. The Governor may from time to time make regulations for the purpose of carrying out the provisions of this ordinance.

Regulations.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

CHAPTER XXIII

**TRADE UNIONS AND TRADE DISPUTES
ORDINANCE**

Arrangement of sections

Section

PART I—GENERAL

1. Short title.
2. Interpretation.
3. Trade unions not criminal.
4. Trade unions not unlawful for civil purposes.

PART II—REGISTRATION OF TRADE UNIONS

5. Trade union prohibited from carrying on business unless registered.
6. Registrar of trade unions.
7. Registration of trade unions.
8. Compulsory registration.
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12. Officers of trade union to account.
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14. Rules of registered trade unions.
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PART III—TRADE DISPUTES

17. Definitions.
18. Immunity of trade unions from actions of tort.
19. Conspiracy in relation to trade disputes.
20. Removal of liability for interfering with another person's business.
21. Intimidation or annoyance.
22. Peaceful picketing and prevention of intimidation.

SCHEDULE

Ordinances No:
1 of 1959.
2 of 1985.

An ordinance relating to trade unions and trade disputes.

[3rd June, 1959]

PART I—GENERAL

Short title.

1. This ordinance may be cited as the Trade Unions and Trade Disputes Ordinance.

Interpretation.

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

“trade union” means any combination whether temporary or permanent, the principal purposes of which are under its constitution the regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters whether such combination would or would not if this ordinance had not been enacted have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade:

Provided that nothing in this ordinance—

(a) shall affect—

(i) any agreement between partners as to their own business;

(ii) any agreement between an employer and those employed by him as to such employment;

(iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft; or

(b) shall preclude any trade union from providing benefits for its members;

“registered” means registered under this ordinance;

“Registrar” means the Registrar of Trade Unions.

Trade unions not criminal.

3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

Trade unions not unlawful for civil purposes.

4. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render voidable any agreement or trust.

PART II—REGISTRATION OF TRADE UNIONS

Trade union prohibited from carrying on business unless registered.

5.—(1) No trade union or any member thereof shall perform

any act in furtherance of the purposes for which it has been formed unless such trade union has first been registered.

(2) Any trade union or any officer or member thereof who contravenes the provisions of this section shall be guilty of an offence punishable with a fine not exceeding two hundred and fifty dollars.

6. The Governor may appoint such person as he may think fit to be the Registrar of Trade Unions.

Registrar of trade unions.

7. Any seven or more members of a trade union may, by subscribing their names to the rules of the union and otherwise complying with the provisions of this ordinance with respect to registration, register such trade union under this ordinance:

Registration of trade unions.

Provided that if any one of the purposes of such trade union be unlawful such registration shall be void.

8.—(1) Every trade union shall be registered in accordance with the provisions of this ordinance or be dissolved within three months of the date—

Compulsory registration.

(a) of its formation; or

(b) of any notification by the Registrar that he has refused under section 10 to register the trade union,

whichever is the later date.

(2) Every trade union which is not registered or dissolved within the period prescribed in subsection (1) and every officer thereof shall be guilty of an offence punishable with a fine not exceeding fifty dollars for every day it remains unregistered after the expiration of such period.

9. With respect to the registry under this ordinance of a trade union, and of the rules thereof, the following provisions shall apply—

Rules for registry.

(a) an application to register the trade union and its rules shall be sent to the Registrar with copies of the rules and a list of the titles and names of the officers of the trade union;

(b) the Registrar upon being satisfied that the trade union has complied with the rules respecting registry in force under this ordinance shall, subject to the provisions of section 10, register the trade union and rules;

(c) no trade union shall be registered under a name identical with that by which any other existing trade union has been registered or so nearly resembling such name as to be likely to deceive the members of the public;

(d) the Registrar upon registering a trade union shall

issue a certificate of registration.

Refusal of
registration.

10.—(1) If the Registrar is satisfied that—

- (a) the applicants have not been duly authorized to apply for registration; or
- (b) the purposes of the trade union are unlawful; or
- (c) the application is not in conformity with the provisions of this ordinance;

he may refuse registration.

(2) When the Registrar refuses to register a trade union he shall forthwith inform the applicants in writing of the grounds of his refusal.

(3) There shall be a right of appeal from a refusal of the Registrar to register a trade union to the Governor within 90 days from the date of notification of such refusal or such longer period as the Governor may for good cause allow and the decision of the Governor thereon shall be final.

Cancellation of
registration.

11.—(1) It shall be lawful for the Registrar to cancel the registration of any trade union—

- (a) at the request of the trade union, to be evidenced in such manner as the Registrar may direct;
- (b) on proof to the satisfaction of the Registrar that a certificate of registration has been obtained by fraud or mistake, or that such trade union has wilfully, and after notice from the Registrar, violated any of the provisions of this ordinance or has ceased to exist.

(2) Not less than two months' previous notice specifying briefly the grounds of the proposed cancellation, except where the trade union has ceased to exist in which case notice of cancellation may be given forthwith, shall be given by the Registrar to the trade union before such cancellation is effected.

(3) There shall be a right of appeal from the decision of the Registrar under this section to the Governor within 90 days from the date of notification of such decision or such longer period as the Governor may for good cause allow and the decision of the Governor thereon shall be final.

Officers of trade
union to account.

12.—(1) Every treasurer or other officer of a registered trade union shall at such times as by the rules thereof may be prescribed, or having been required so to do, render to the members thereof, at a meeting of the trade union, a just and true account of all moneys received and paid by him or her since he or she last rendered the like account, and of the balance then remaining, and of all bonds and securities of such trade union.

(2) Such account shall be audited by some fit and proper person or persons to be appointed by the trade union.

(3) Upon the account being audited the treasurer or other officer as the case may be shall, if thereupon required, hand over to the trade union the balance which on such audit appeared to be due from him or her, and shall also if required hand over to the trade union all securities and effects, books, papers and property of the trade union in his or her hands or custody.

(4) If the treasurer or other officer fails to hand over such things and documents as in subsection (3) required the Committee of Management of the trade union or any member for and on behalf of the trade union may sue him or her in any competent court for the balance appearing to have been due from him or her upon the account last rendered by him or her, and for all moneys since received by him or her on account of such trade union and for the securities and effects, books, papers and property in his or her hands or custody, leaving him or her to set off in such action the sums, if any, which may have been since paid on account of such trade union; and in any such action the plaintiff shall be entitled to recover full costs of suit to be taxed as between solicitor and client.

13.—(1) Every registered trade union shall transmit to the Registrar the account prepared and audited in accordance with section 12 within three months of its submission to the members of the trade union, or within such longer period as the Registrar may for good cause allow.

Audited accounts to be sent to Registrar.

(2) Every officer of a registered trade union which fails to comply with the provisions of subsection (1) shall be guilty of an offence punishable with a fine not exceeding two hundred and fifty dollars.

14. With respect to the rules of a registered trade union, the following provisions shall have effect—

Rules of registered trade unions.

- (a) the rules of every such trade union shall contain provisions in respect of the several matters mentioned in the Schedule;
- (b) a copy of the rules shall be delivered by the trade union to every person on demand on payment of a sum not exceeding fifty cents.

15.—(1) Every alteration of the rules of a registered trade union shall be registered with the Registrar and shall take effect from the date of registration unless some later date is specified in the rules.

Alteration of rules of registered trade unions.

(2) The rules of a registered trade union shall not be altered so that they cease to contain provisions in respect of the several

matters in the Schedule.

Rules by Governor.

16. The Governor may make rules respecting registration under this ordinance and in particular but without prejudice to the generality of the foregoing power with respect to—

- (a) the seal, if any, to be used by the Registrar for the purpose of registration under this ordinance;
- (b) the forms to be used for such registry;
- (c) the inspection of registers and documents kept by the Registrar and the making of copies of any entries therein;
- (d) the fees to be charged for registration and inspection and any other service or matter prescribed or permitted by this ordinance; and
- (e) generally for carrying this Part of this ordinance into effect.

PART II—TRADE DISPUTES

Definitions.

17. In this Part—

“trade dispute” means any dispute between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or with the terms of the employment, or with the conditions of labour of any person;

“workmen” means all persons employed in any trade or industry, whether or not in the employment of the employer with whom a trade dispute arises.

Immunity of trade unions from actions of tort.

18.—(1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any Court.

(2) Nothing in this section shall affect the liability of a trade union or any official thereof to be sued in any Court touching or concerning the property or rights of a trade union, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

Conspiracy in relation to trade disputes.

19.—(1) An agreement or combination of two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be triable as a conspiracy if such act committed by one person would not be punishable as a crime.

(2) An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or

furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

(3) Nothing in this section shall exempt from punishment any person guilty of a conspiracy for which a punishment is awarded by any law in force in the Islands.

(4) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, sedition or any offence against the State or the Sovereign.

(5) A crime for the purposes of this section means an offence for the commission of which the offender is liable to be imprisoned, either absolutely or at the discretion of the Court as an alternative for some other punishment.

(6) Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the law for the punishment of the said act when committed by one person.

20. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills.

Removal of liability for interfering with another person's business.

21. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority—

Intimidation or annoyance.

- (a) uses violence to or intimidates such other person or the spouse or children of such other person, or injures the property of that other person; or
- (b) persistently follows such other person about from place to place; or
- (c) hides any tools, clothes or other property owned or used by such other person, or deprives such other person of or hinders him or her in the use thereof; or
- (d) watches or besets the house or other place where such other person resides or works or carries on business or happens to be or the approach to such house or place; or
- (e) follows such other person with two or more other

persons in a disorderly manner in or through any street or road,
shall be guilty of an offence punishable with a fine not exceeding two hundred dollars or with imprisonment for a term not exceeding three months.

Peaceful picketing
and prevention of
intimidation.

22. Notwithstanding anything contained in this ordinance, it shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

SCHEDULE

(*Section 14*).

1. The name of the trade union.
2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby and the fines and forfeitures to be imposed on any member of the trade union.
3. The manner of making, altering, amending and rescinding rules.
4. A provision for the appointment and removal of a general committee of management, of a treasurer and other officers.
5. A provision for the keeping of full and accurate accounts by the treasurer.
6. A provision for the investment of the funds or their deposit in a bank and for an annual or periodical audit of accounts.
7. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union.
8. The manner of dissolving the trade union.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

CHAPTER XXIV

**DENTAL AND MEDICAL PRACTITIONERS
ORDINANCE**

Arrangement of sections

Section

1. Citation.
2. Restriction upon practice of dentistry, medicine, surgery.
3. Licence to practise in other approved country to confer authority to practise in Islands.
4. Other authority to practise in Islands.
5. Offences.

Ordinance No:
1 of 1984
4 of 2002

An ordinance to regulate the practice of dentistry, medicine and surgery in the Islands.

[26th January, 1984]

Citation.

1. This ordinance may be cited as the Dental and Medical Practitioners Ordinance.

Restriction upon
practice of dentistry,
medicine, surgery.

2. No person shall practise or perform dentistry (which expression shall include oral surgery), or medicine or surgery, unless authorised to do so by the provisions of this ordinance.

[Procedure for
licensing

3.—(1) Every person who applies to the administration for appointment to a residential post in the Islands which includes the practice of dentistry, or medicine or surgery, shall provide to the Commissioner all available information relative to his or her medical or dental qualifications and experience as an essential part of that application.

(2) Upon consideration of a report by the Commissioner on such application the Governor may in his discretion grant to the applicant a licence to practise dentistry, or medicine or surgery, in the Islands, for such period and subject to such conditions as he may think fit.

(3) Any person currently holding any such office referred to in subsection (1) at the time of the commencement of this section shall be deemed to have been granted a licence by the Governor under subsection (2) to practise dentistry, or medicine or surgery, in the Islands for the period of his or her appointment.]

(Replaced by Ordinance No. 4 of 2002)

[Unlicensed person
may provide treatment
in emergency

4. Any person who is authorised by law in any other country or place to practise dentistry, or medicine or surgery, may in any circumstances of emergency provide or attempt to provide such dental, medical or surgical treatment as may be necessary to protect the vital interests of another person and shall be deemed on such occasion to be licensed under this ordinance to do so.]

(Replaced by Ordinance No. 4 of 2002)

[Mayor may grant
temporary licences

4A. Any medical practitioner or dentist travelling on board a vessel which is visiting the Islands may be granted a temporary licence for the purposes of section 2 during the period of such visit, by the Mayor acting on the advice of the Medical Officer, to carry out such normal medical or dental advice or treatment as may be required by any person resident in the Islands.

Immunity from suit

4B.—(1) No person practising dentistry, medicine or

surgery, pursuant to the provisions of section 3, section 4 or section 4A of this ordinance may be sued in any court for damages, costs, compensation, or reparation of any kind resulting from any act or omission in the course of so practising unless the same has occurred by reason of gross negligence or wilful misconduct of such person.

(2) The immunity conferred by subsection (1) shall extend, notwithstanding any rule of law or enactment to the contrary, to the Crown, the Governor, the administration, the Island Council or any member thereof or to any other person, authority or employer by reason of vicarious liability for the acts or omissions of such person practising dentistry, medicine or surgery and subject only to the said exceptions.]

(Inserted by Ordinance No. 4 of 2002)

5. Every person who shall practise or perform dentistry, or medicine or surgery, within the Islands, without being authorised to do so under the provisions of this ordinance shall commit an offence punishable upon conviction by a fine not exceeding five hundred dollars or imprisonment for a term not exceeding six months or by both such fine and imprisonment.

Offences.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

CHAPTER XXV

AN ORDINANCE RELATING TO CURRENCY

Ordinance:
No. 1 of 1988.

[23rd June, 1988]

PART I—PRELIMINARY PROVISIONS

1. This ordinance may be cited as the Currency Ordinance. Citation.
2. In this ordinance, unless the context otherwise requires— Interpretation.
 - “Commissioner” means the Commissioner of Currency referred to in section 6 (1)
 - “Pitcairn coin” means any coin provided, issued or re-issued by the Commissioner.

PART II—LEGAL TENDER

- 3.—(1) New Zealand currency notes issued in pursuance of the law of New Zealand (hereinafter referred to as “currency notes”) shall to the extent to which they are legal tender within New Zealand be legal tender within the Islands. Legal tender.
 - (2) Pitcairn coins and coins which are legal tender in New Zealand shall, if the coins
 - (a) are of current weight; and
 - (b) have not been illegally dealt with; and
 - (c) have not been demonetised under section 8(2); nor
 - (d) called in under a notice issued under section 10,be legal tender to the extent prescribed in the Schedule.
 - (3) A coin shall be deemed not to be of current weight if it has become diminished in weight by wear or otherwise so as to be of less weight than the weight prescribed by the Commissioner as the minimum current weight of such coin or the weight required by the law of New Zealand, as the case may be.
 - (4) A coin shall be deemed to have been illegally dealt with if the coin has been impaired, diminished or lightened, otherwise than by fair wear and tear, or has been defaced by having any name, word, device, or number stamped or engraved thereon, whether the coin has been thereby diminished or lightened or has not.

PART III—PITCAIRN COIN

Denominations and value of Pitcairn coin.

4.—(1) Pitcairn coins shall be of such denomination in dollars and cents, and of such form and design, as shall be prescribed by the Commissioner with the approval of the Secretary of State.

(2) The Pitcairn dollar shall be at all times equal in value to the New Zealand dollar.

Costs of issue and application of moneys received.

5.—(1) All costs of and incidental to the issue of Pitcairn coin under this ordinance shall be charged upon the general revenue of the Islands.

(2) All moneys due and receivable by or on behalf of the Commissioner under this ordinance shall be paid into the general revenue of the Islands.

Commissioner of Currency.

6.—(1) There shall be a Commissioner of Currency for the purposes of this ordinance.

(2) The Governor shall be *ex officio* the Commissioner unless he shall by order appoint another suitable person to be the Commissioner in his place.

Functions of Commissioner.

7. The Commissioner may provide, issue, re-issue and redeem Pitcairn coin and shall

- (a) regulate and control the provision, issue, re-issue and redemption of such coin;
- (b) keep records of every issue, re-issue and redemption and the costs thereof;
- (c) redeem in accordance with section 9 coin demonetised under section 8(2);
- (d) not later than the 31st day of March in each year prepare a statement of all coin issued and redeemed during the preceding financial year together with an account of all expenditure incurred and revenue therefrom;
- (e) perform all such other duties as are or may be imposed on him by or under this ordinance.

Conditions of issue and cancellation.

8.—(1) Whenever the Commissioner desires to issue Pitcairn coin he shall not less than 30 days prior to the date of the intended issue or such lesser period as he may for special reason at any time by order specify publish by notice exhibited at the public office of the Commissioner the amount in value and the denominations of the coin he proposes to make available for issue and the date of the intended issue.

(2) The Commissioner may demonetise Pitcairn coin (that is to say, withdraw the status of legal tender from a particular issue of coin) by notice exhibited at the public office of the Commissioner not less than 90 days prior to the date of

demonetisation which shall be specified in the notice together with the denomination and date of issue of the coin to be demonetised.

9.—(1) In the event of presentation of Pitcairn coin for redemption it shall be redeemed with such other currency as is legal tender and the cost thereof shall be charged upon the general revenue of the Islands.

Cost of redemption of Pitcairn coin to be charged on general revenue.

(2) The Commissioner may from time to time by notice exhibited at the public office of the Commissioner prescribe the place or places at which Pitcairn coin may be presented for redemption.

PART IV—MISCELLANEOUS PROVISIONS

10.—(1) The Commissioner may by notice call in any Pitcairn coin before a date specified in the notice.

Coins may be called in.

(2) A notice under subsection (1) shall have effect from such date as may be specified in the notice.

11. The Governor may make regulations prescribing anything which may or shall be prescribed and for the better carrying out of the provisions of this ordinance.

Regulations.

SCHEDULE**LEGAL TENDER OF COINS (Section 3(2))**

The tender of payment of money is a legal tender if made

- (a) in the case of coins in the denomination of 5 cents, 10 cents, 20 cents or 50 cents—for payment of an amount not exceeding \$5.00 but for no greater amount; and
- (b) in the case of any coins of lesser value—for payment of an amount not exceeding 20 cents but for no greater amount;
- (c) in the case of \$1.00, \$50.00 and \$250.00 coins—for payment of any amount not exceeding the face value thereof.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2009

CHAPTER XXVI

**AN ORDINANCE TO ESTABLISH A CODE FOR
THE SALE AND USE OF LIQUOR WITHIN THE
ISLANDS**

Ordinance:
No. 5 of 2009.

[17 March 2009]

1. This ordinance may be cited as the Sale and Use of
Liquor Ordinance 2009.

Citation

2. This Ordinance shall come into force on the 28th day
after it is made.

Commencement

3. Liquor means any fermented, distilled or spirituous
liquor (including spirits, wine, ale, beer, porter, honeymead,
stout, cider, and perry) containing a percentage by volume of
pure alcohol greater than 2.5 percent.

Interpretation

4. The provisions of the Schedule to this Ordinance
shall be a Code which shall regulate and control the sale and
consumption of liquor within the Islands.

Schedule to be a Code

5. The Alcohol Ordinance, c 26 dated 26 June 1997, is
hereby revoked as from the date this Ordinance comes into
force.

Alcohol Ordinance, c
26, revoked

SCHEDULE**LIQUOR CODE****PART I – PRELIMINARY**

1. Only persons over the age of 18 years may purchase or consume liquor.

2.—(1) No person shall purchase or acquire liquor on or from any commercially licensed premise with the intention of supplying the liquor to any person who is under the age of 18 years or with the intention of encouraging the consumption of liquor by any person under the age of 18 years.

(2) No person shall supply liquor to any person who is under the age of 18 years or encourage the consumption of liquor by any person who is under the age of 18 years.

Penalty: A fine of \$100.

3. No person being a member of the working crew on supply ship days, including cargo handlers at ship and shore, shall consume liquor while working longboats are in the water.

Penalty: A fine of \$100.

4. No person being a member of the longboat crew, including cargo handlers at ship and shore, shall, after notice has been received of the impending arrival of any ship, consume liquor during the 12-hour period to the estimated arrival of the ship.

Penalty: A fine of \$100.

5. No person shall drive or be in command of or operate any vessel or machinery while under the influence of alcohol.

Penalty: A fine of \$250 and/or prohibition from driving any motor vehicle or commanding or operating any vessel or machinery for a period of up to 6 months in respect of the first offence, and a fine of \$250 and prohibition from driving any motor vehicle or commanding or operating any vessel or machinery for a period of up to 12 months in respect of any subsequent offence.

6. No person shall drive any motor vehicle while under the influence of alcohol.

Penalty: A fine of \$250 and/or prohibition from driving any motor vehicle or commanding or operating any vessel or machinery for a period of up to 6 months in respect of the first offence, and a fine of \$250 and prohibition from driving any motor vehicle or commanding or operating any vessel or machinery for a period of up to 12 months in respect of any subsequent offence.

7.—(1) A person who drives any motor vehicle or who is in command of or operates any vessel or machinery while he or she is prohibited from doing so commits an offence and shall be liable to a fine of \$500 and/or a further period of prohibition of up to 12 months.

(2) It shall be a defence to this offence if a person drives a motor vehicle or commands or operates a vessel or machinery with the genuine and reasonable belief that there is an emergency requiring that he or she drive that vehicle or command or operate that vessel.

8. No firearm of any kind, spear gun or other weapon whatsoever shall be used by any person while under the influence of alcohol.

Penalty: A fine of \$250.

9.—(1) If any member of the Police believes that a person is under the influence of liquor, he or she may require that person to undertake a sobriety test.

(2) A person who is required to undertake a sobriety test must comply with a request by any member of Police to undertake tasks and perform acts that may indicate whether that person is under the influence of liquor, such tasks and acts including (without limitation) walking in a straight line, balancing on one leg, touching the nose with an index finger while the person's eyes are closed.

(3) A person who fails to complete or refuses to comply with a sobriety test when required to do so and who would, if found to be under the influence of liquor, commit any of the offences set out in sections 5 to 8 of this Code, commits an offence by reason of such failure or refusal.

Penalty: A fine of \$250 and/or prohibition from driving any motor vehicle or commanding or operating any vessel or machinery for a period of up to 6 months in respect of the first offence, and a fine of \$250 and prohibition from driving any motor vehicle or commanding or operating any vessel or machinery for a period of up to 12 months in respect of any subsequent offence.

(4) For the avoidance of doubt, the fact that a person is under the influence of alcohol may be proved in court by any relevant and admissible evidence including evidence as to that person's undertaking a sobriety test in accordance with this section, but a sobriety test shall not be necessary to prove that a person is under the influence of alcohol.

10.—(1) Subject to section 11, no liquor shall be consumed in the following public places on Pitcairn:

- The School
- The Square
- Public Roads
- The Eco Trail
- General Store
- The Museum
- The Medical Centre
- The Landing

Penalty: A fine of \$50.

(2) No liquor shall be consumed on Henderson, Ducie or Oeno.

Penalty: A fine of \$50.

11.—(1) Notwithstanding section 10, the Island Council may from time to time by public notice allow the consumption of liquor in one or more of the public places specified in section 10 for one or more periods or dates as specified in the notice so long as the period specified in any notice does not exceed one month.

(2) Notwithstanding section 10, the Island Council may by public notice specify further public places in which restrictions may apply either generally, or for one or more periods or dates as specified in the notice, prohibiting:

- (a) the consumption of liquor in that public place;
- (b) the bringing of liquor into that public place;
- (c) the possession of liquor in that public place.

(3) The Island Council may by public notice remove any restrictions prohibiting the consumption of liquor in a public place or any other

restrictions made under section 11(2), either generally or for 1 or more specified periods or dates.

(4) A restriction made under this section does not prohibit, in the case of liquor in an unopened bottle or other unopened container, the transport of that liquor from premises that adjoin a public place during any period when it is lawful to sell liquor on those premises for consumption off the premises, provided the liquor is promptly removed from the public place.

PART II – COMMERCIAL LIQUOR LICENCING

12. No person shall sell, supply or deliver liquor anywhere within the Islands, including the territorial waters, otherwise than in accordance with the terms of a Commercial Liquor Licence granted to that person.

Penalty: A fine of \$250.

13. Any permanent resident on Pitcairn Island over the age of 18 seeking the grant of a Commercial Liquor Licence may make an application on the Commercial Liquor Licence Application Form (attached as Schedule A), to be considered by the Island Council. If approved, a Commercial Liquor Licence shall be granted by or on behalf of the Island Council.

14.—(1) A Commercial Liquor Licence may be refused if, in the opinion of the Island Council, it would be contrary to the public interest to grant it.

(2) The Island Council shall give reasons for its decision, which shall be final. There will be no right of appeal against a refusal to grant a Commercial Liquor Licence, nor shall a court have jurisdiction to review refusal to grant a licence, but a new application may be made after a period of 6 months.

15. A Commercial Liquor Licence may be one or more of three types, and an applicant shall specify which one or more of these he or she is applying for:

- (a) an On Site/Off Site (Full) licence (in the form attached as Schedule B), which authorises the holder to sell liquor for consumption on the premises described in the licence and to sell or deliver liquor for consumption off those premises;
- (b) an On-Site (Limited) licence (in the form attached as Schedule C) which authorises the holder to sell liquor for consumption on the premises described in the licence provided the liquor is sold only to persons who are residing in those premises as accommodation guests;
- (c) an Off-Site (Limited) licence (in the form attached as Schedule D) which authorises the holder to sell liquor on occasions and at premises specified in the licence provided the liquor is consumed off those premises.

16. A Commercial Liquor Licence is valid for one year from the date of issue.

17.—(1) Every Commercial Liquor Licence holder shall ensure that a copy of the applicable licence is clearly displayed on the premises at all times so as to be easily read by persons entering through each principal entrance.

Penalty: \$100.

(2) Every Commercial Liquor Licence shall include the following terms and conditions:

- (a) That an age limit sign of “18 Years or older” in the form set out in Schedule E shall be displayed at every place where liquor

is sold or consumed pursuant to that licence.

- (b) That a “Drink Smart” safe-drinking sign in the form set out in Schedule E shall be displayed at any On-Site/Off-Site (Full) or On-Site (Limited) liquor outlet.

18.—(1) The Island Council may revoke a Commercial Liquor Licence at any time if the terms and conditions listed in the Licence are not followed by the Licence Holder.

(2) For the avoidance of doubt, this power to revoke may be exercised whether or not a licence holder is prosecuted for an offence under this ordinance.

19.—(1) A Commercial Licence Holder must comply with the terms and conditions listed in the applicable Commercial Liquor Licence and shall not sell or supply liquor outside any hours specified in the licence nor sell or supply liquor to:

- (a) persons under the age of 18;
- (b) intoxicated persons.

Penalty: A fine of up to \$250 and/or the revocation of the Commercial Liquor Licence.

20.—(1) Any member of the Police may at any reasonable time enter and inspect any licensed premises, or any part of any licensed premises, to ascertain whether the licensee is complying with the provisions of this Code and the terms and conditions of the applicable Commercial Liquor Licence.

(2) Any member of the Police may at any time enter and inspect any licensed premises when that member has reasonable ground to believe that any offence against this Ordinance is being committed on those premises.

SCHEDULE A OF LIQUOR CODE

PITCAIRN ISLANDS

COMMERCIAL LIQUOR LICENCE APPLICATION FORM

Date: _____

Applicant Name: _____

Applicant Address: _____

Name of premises or business to be licensed: *(if applicable)* _____

Address of Premises: _____

Licence Type	Fee NZ\$	Tick
On Site / Off Site (Full Licence) <i>Bar, pub, tavern, club, hotel, restaurant, cafés</i> <i>General stores, bottle stores, grocery stores</i> <i>Homestay guests</i> <i>To sell liquor for consumption on-site</i> <i>To sell, supply and deliver liquor for consumption off the premises</i>	\$100.00	
On Site (Limited) <i>Homestays</i> <i>To sell liquor for consumption on-site</i> <i>(Accommodation guests only)</i>	\$ 20.00	
Off Site (Limited) <i>Private Trading Tables</i> <i>Sell, supply and deliver liquor for consumption off the premises</i> <i>Cruise ship days, Visitors / Tourists on-island</i> <i>(Typical trading days)</i>	\$ 20.00	
Total:		

Applicants must be permanently residing on Pitcairn Island

Licence period: 12 months from date of issue

Applicants Signature: _____ Date: _____

<i>Office Use:</i>	
<i>Fee Receipt Number:</i>	
<i>Declined:</i>	
<i>Approved:</i>	
<i>Licence Valid from:</i>	
<i>Expiry Date:</i>	

SCHEDULE B OF LIQUOR CODE**PITCAIRN ISLANDS**

**COMMERCIAL ON-SITE/OFF-SITE (FULL) LIQUOR
LICENCE**

*Bar, pub, tavern, club, hotel, restaurant, café
General Stores, bottle stores, grocery stores*

(Premise, business or individuals name)

_____ is hereby permitted
to sell or supply liquor for consumption on-site
to sell, supply and deliver liquor for consumption off the premises

Terms and Conditions

- Signage - Age limit sign to be on public display
- Signage - Safe drinking practices on public display
- No intoxicated person to be served
- No disorderly conduct
- Bar prices to be displayed
- The terms and conditions of this licence to be displayed in public view

Host responsibilities when applicable

- Provide and promote alternatives to liquor, such as low-alcohol and non-alcoholic beverages
- Make available and promote an appropriate food selection
- Identify and appropriately deal with intoxication
- Educate and train staff in host responsibility practices
- Alternative transport is arranged for intoxicated patrons

Periodic Inspection

Community police will carry out periodic inspections to ensure compliance of licence

Failure to Comply

Failure to comply with the terms and conditions may result in a fine up to \$250.00 and/or this licence being revoked

Licence issued on: _____

Licence expires on: _____

Signed: _____ **Licence holder**

Signed: _____ **on-behalf of
Pitcairn Island Council**

SCHEDULE C OF LIQUOR CODE

PITCAIRN ISLANDS

COMMERCIAL ON-SITE (*LIMITED*) LIQUOR LICENCE

Homestays

(Premise, business or individuals name)

is hereby permitted to sell liquor for consumption by accommodation guests on-site

Terms and Conditions If Applicable

- Signage – Age limit sign to be on public display
- Signage – Safe drinking practises sign on public display
- Limited to accommodation guests
- No intoxicated person to be served
- No disorderly conduct
- Bar prices to be displayed
- The terms and conditions of this licence to be displayed in public view

Host Responsibilities If Applicable

- Provide and promote alternatives to liquor, like low-alcohol and non-alcoholic beverages
- Make available and promote an appropriate food selection
- Prevent underage drinking
- Identify and appropriately deal with intoxication
- Educate and train staff in host responsibility practices
- Alternative transport is arranged for intoxicated patrons

Failure to Comply

Failure to comply with the terms and conditions may result this licence being revoked

Licence issued on: _____

Licence expires on: _____

Signed: _____ **Licence holder**

Signed: _____ **on-behalf of
Pitcairn Island Council**

SCHEDULE D OF LIQUOR CODE

PITCAIRN ISLANDS

COMMERCIAL OFF-SITE (LIMITED) LIQUOR LICENCE

Trading Tables

(Premise, business or individuals name)

is hereby permitted to sell, supply and deliver liquor for consumption off the premises

Terms and Conditions

- Signage – Age limit sign to be on public display
- Limited to Expedition or Cruise ship passengers (typically trading days)
- Limited to locally produced liquor for consumption
- Prices to be displayed
- Onboard Vessel

Purchased liquor to be appropriately wrapped

- On-Island
 - Purchased liquor to be appropriately wrapped with customers name and / or necessary details clearly marked.
 - Purchased liquor to be delivered by seller to landing for collection by customer or delivery out to visiting vessel

Periodic Inspection

Community police will carry out periodic inspections to ensure compliance of licence

Failure to Comply

Failure to comply with the terms and conditions may result in this licence being revoked

Licence issued on: _____

Licence expires on: _____

Signed: _____ **Licence holder**

Signed: _____ **on-behalf of
Pitcairn Island Council**

SCHEDULE E OF LIQUOR CODE



DRINK SMART

YOUR ABUSE EFFECTS ALL

Government of Pitcairn Islands



YOU MUST BE

18

YEARS OR OLDER TO
PURCHASE OR CONSUME ALCOHOL

Government of Pitcairn Islands

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

CHAPTER XXVII

PITCAIRN SOUVENIR AGENCY ORDINANCE

Arrangement of sections

Section

1. Short title.
2. Interpretation.
3. Establishment of Pitcairn Souvenir Agency, election of members and conduct of meetings thereof.
4. Agency to be a body corporate.
5. Agency may employ officers and pay remuneration to officers and members.
6. Liability of members, officers and servants.
7. Accounts.
8. Audit.
9. Annual report.
10. Functions of the Agency.
11. Powers of the Agency.
12. Quarterly reports to Island Council.
13. Expenditure of moneys received and payment of bonuses to suppliers of souvenirs.
14. Regulations.

Ordinance
No. 2 of 1964.

An ordinance to make provision for the establishment of a Souvenir Agency on Pitcairn Island.

[8th November, 1964]

Short title.

1. This ordinance may be cited as the Pitcairn Souvenir Agency Ordinance.

Interpretation.

2. In this ordinance, except where the context otherwise requires—

“Agency” means the Pitcairn Souvenir Agency established by the provisions of this ordinance;

“Council” means the Island Council constituted under the provisions of the Local Government Ordinance;

“souvenir” means any article of whatsoever nature made, manufactured, prepared for sale or produced by any of the inhabitants of Pitcairn Island.

cap. 11

Establishment of
Pitcairn Souvenir
Agency, election of
members and conduct
of meetings thereof.

3.— (1) There is hereby established a public agency to be known as the Pitcairn Souvenir Agency.

(2) The Agency shall consist of the Mayor who shall be President of the Agency and five members who shall be elected at a public meeting of the inhabitants of Pitcairn Island to be held within thirty days of the date of commencement of this ordinance and thereafter annually at a public meeting of the inhabitants of Pitcairn Island to be held in the month of January in each year.

(3) In the event of the death, resignation or absence from the islands or any other incapacity, other than a temporary absence or incapacity, of any member of the Agency the Council shall forthwith appoint such suitable person as it sees fit to be a member of the Agency in place of the member who has died, resigned, is absent from the Islands or otherwise incapacitated and the person so appointed shall be deemed to have been elected as a member of the Agency under the provisions of this ordinance.

(4) The members of the Agency shall appoint their own chairman at the first meeting of the Agency held in each year after each public meeting held under the provisions of subsection (3).

(5) The Chairman of the Agency shall preside over all meetings of the Agency provided that in the event of his or her absence from any meeting the members present shall appoint a deputy chairman for that meeting.

(6) The Chairman or Deputy Chairman of the Agency shall have an original and a casting vote.

(7) The Chairman or Deputy Chairman of the Agency and three other members shall form a quorum for any meeting of

the Agency.

(8) All decisions of the Agency or of any public meeting held under the provisions of this ordinance shall be made by a simple majority vote.

(9) Meetings of the Agency shall be held at such times and at such places as the members may from time to time determine provided that there shall be not less than one meeting of the Agency in each quarter of each year.

4.—(1) The Agency shall be a body corporate under the name of the Pitcairn Souvenir Agency and by that name shall have perpetual succession and a common seal. The Agency may sue and be sued in respect of all matters arising in connection with the exercise of its powers or the carrying on of its functions under the provisions of this ordinance.

Agency to be a body corporate.

(2) Service of any document on the Chairman of the Agency shall be deemed to be service on the Agency.

5. The Agency may employ a secretary and such other officers and servants not being members of the Agency as it considers necessary and may pay to such officers and servants and to its members such remuneration as may from time to time be approved by the Island Council.

Agency may employ officers and pay remuneration to officers and members.

6. Neither the Chairman of the Agency nor any other member or any officer or servant of the Agency shall be personally liable for any act or default of the Agency done or omitted to be done in good faith and without negligence in the purported exercise of any of the powers or functions of the Agency.

Liability of members, officers and servants.

7. The Agency shall keep to the satisfaction of the Government Auditor such accounts as the Island Council may from time to time prescribe by Regulations made under the provisions of this ordinance.

Accounts.

8. The accounts of the Agency shall be audited annually by the Government Auditor.

Audit.

9. The Chairman of the Agency shall before the public meeting held under the provisions of section 3 of this ordinance prepare a report on the operations of the Agency during the preceding year which report shall be publicly notified by affixing a copy of the same to the public notice board not less than three days prior to such meeting and the Chairman of the Agency shall submit such report to the public meeting for its consideration.

Annual report.

10. The functions of the Agency shall be—

Functions of the Agency.

(a) to foster and develop the making, preparation and

- marketing of souvenirs;
- (b) to make the best possible arrangements for the export and sale of souvenirs and to conduct all necessary negotiations for that purpose;
- (c) to take such measures as it considers necessary to secure an abundant and sufficient supply of souvenirs of a high standard of workmanship and good quality for sale or export;
- (d) to buy sufficient souvenirs of a high standard of workmanship and of good quality from islanders as are necessary to fill all orders that may be received by the Agency;
- (e) to ensure that all orders accompanied by cash or postal order for the purchase of souvenirs are properly recorded and promptly filled or, if the Agency is unable to fill any such order, that the money or postal order is promptly returned; and
- (f) to ensure that current price lists, including all necessary postage and packing charges, are published from time to time.

Powers of the Agency.

11. For the purpose of carrying out any of its functions the Agency may—

- (a) own or take on lease any land or buildings;
- (b) enter into any contract;
- (c) buy, sell, grade, store, insure, advertise and transport souvenirs; and
- (d) borrow money on such terms as may be approved by the Governor.

Quarterly reports to Island Council.

12. In addition to the annual report required to be prepared and submitted under the provisions of section 9 of this ordinance the Chairman of the Agency shall submit to the Island Council a quarterly report on the operations of the Agency and the Island Council may after considering such report require the Chairman of the Agency to provide any further information that the Council considers necessary to satisfy itself that the affairs of the Agency are being properly conducted and may give such directions to the Agency as it considers necessary to ensure the proper conduct of the Agency which directions shall be complied with by the Agency.

Expenditure of moneys received and payment of bonuses to suppliers of souvenirs.

13.—(1) All moneys obtained by the Agency from the sale of souvenirs or carried forward as reserves for working capital from the previous year's operations shall be devoted as follows:—

- (a) first, in payment to the suppliers of all souvenirs purchased by the Agency;

- (b) secondly, in payment of all necessary postage and packing charges;
- (c) thirdly, in payment of all the Agency's administration costs including the salaries of any servants of the Agency but not any remuneration payable to any member of the Agency;
- (d) fourthly, in repayment of any interest payable on any loans raised by the Agency under the authority of section 11 of this ordinance and in payment as they fall due of any instalments of the principal of any such loan;
- (e) fifthly, in payment of any remuneration payable to the members of the Agency.

(2) After payment of all moneys required to be paid under the provisions of subsection (1) the Agency shall at the end of each year allocate such amount as it, with the approval of the Council, considers necessary to carry forward as reserves for working capital in the following year, pay one-third of any balance remaining to the Island Council for use in any community purpose approved by the Council, and distribute the remainder as bonuses amongst all islanders who have sold souvenirs to the Agency during the year. The amount of bonus to be paid to each such person shall be that proportion of the total amount to be distributed as the total value of all sales by that person to the Agency during the year bears to the total value of all purchases made by the Agency during the year.

14.—(1) The Island Council may (with the approval of the Governor) make Regulations for the purpose of carrying out the provisions of this ordinance and in particular for prescribing—

Regulations.

- (a) the standards of quality and workmanship of souvenirs purchased or sold by the Agency;
- (b) the allocation of marks for use by suppliers of souvenirs to the Agency, the use of such marks and offences in relation thereto;
- (c) the records and accounts to be kept by the Agency and the manner in which such records and accounts are to be kept; and
- (d) any other matter which may be necessary or desirable for the betterment or furtherance of the making, preparation or marketing of souvenirs, or for carrying out any other functions or powers conferred on the Agency by or under the provisions of this ordinance.

(2) All regulations made under the provisions of this ordinance shall be signed by the Mayor and by the Island

Secretary and publicly notified by affixing copies thereof to the public notice board and shall come into force on the day of such notification.

(3) Copies of all regulations made under the provisions of this ordinance shall be sent forthwith to the Governor who may by order to be publicly notified by affixing a copy of the same to the public notice board, alter, vary or revoke any such regulations.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

CHAPTER XXVIII

**AN ORDINANCE TO REGULATE THE INDUSTRY
OF BEEKEEPING**

Ordinance:
No. 1 of 1999

[10th May, 1999]

PART I—PRELIMINARY PROVISIONS

1. This ordinance may be cited as the Apiaries Ordinance. Citation.
2. In this ordinance unless the context otherwise requires:— Interpretation.
 - “apiary” means a place where bees or appliances are kept;
 - “appliance” means any hive, bee-comb, extractor or other appliance used for beekeeping;
 - “bee” means any living stages of the honey bee *apis mellifera*, including semen, and includes for the purposes of section 17 of this ordinance every other species of bee together with its eggs, larvae, pupae and semen;
 - “beekeeper” means any person who keeps bees or appliances and, in relation to any apiary, means the person by whom the bees and appliances in that apiary are owned;
 - “bee product” means any honey, honeydew, pollen, beeswax, venom, propolis or royal jelly and includes any other product collected by bees or derived from bees;
 - “Council” means the Island Council constituted under the provisions of the Local Government Ordinance; cap. 11
 - “disease” means any of the diseases or pests specified in the Schedule to this ordinance;
 - “hive” means any artificial structure for the purpose of housing honeybees;
 - “infected” means infected with disease;
 - “infected area” means any land or place declared by an Inspector under the provisions of section 15 (1) of this ordinance to be an infected area;
 - “Inspector” means an Inspector appointed under the provisions of section 22 of this ordinance;

“quarantine area” means any land or place declared by the Council pursuant to section 19 of this ordinance to be a quarantine ground.

Ordinance to bind the Crown.

3. This ordinance shall bind the Crown.

PART II—KEEPING OF BEES

Restrictions.

4.—(1) No person shall keep bees for a period of more than 28 days except in a registered apiary.

(2) No person shall move bees or appliances between Pitcairn Island, Henderson Island, Ducie Island and Oeno Island.

(3) No person shall sell, or offer for sale, any bee product produced in the Islands by bees not kept in a registered apiary.

Registration of apiaries.

5.—(1) The person responsible for quarantine in the Islands shall be *ex officio* the Registrar of Apiaries for the purpose of this ordinance.

(2) An application for the registration of an apiary shall be made to the Registrar on a form provided by the Registrar for the purpose.

(3) Every application shall be referred for the approval of the Council which may make such enquiries in any case as it may see fit and may refuse its approval on the grounds of the public interest after hearing the applicant and any objectors.

(4) The Registrar shall keep a register of apiaries approved by the Council.

(5) The Registrar may, where it is appropriate to do so, insert, amend, correct, cancel or delete any entry in the register kept in accordance with subsection (4).

Identification of apiaries.

6.—(1) The Registrar shall allocate and notify an identification code to the beekeeper on the registration of an apiary.

(2) A beekeeper shall mark the code allocated to him or her under subsection (1) clearly and conspicuously on the outside of at least one hive within each apiary owned by him or her.

Bees to be kept in frame hives.

7.—(1) A person shall not keep bees except in a movable frame hive.

(2) If an Inspector finds that the bee combs in a hive containing the frames cannot be separately and readily removed from the hive for examination without cutting, the Inspector may direct the beekeeper to transfer the bees to another frame hive within a time specified by the Inspector in the direction.

(3) Where bees are kept or have become established in a hive other than a frame hive, an Inspector may —

- (a) direct the beekeeper, within a time specified by the Inspector, to transfer the bees, honey and bee combs contained in that hive to a frame hive; or
- (b) destroy the hive and the bees, honey and bee combs contained in it.

8.—(1) Every beekeeper shall keep the normal access to hives owned by him or her clear from obstructions so that they may be inspected by an Inspector.

Access to hives.

(2) If a beekeeper fails to comply with subsection (1), an Inspector may direct the beekeeper to comply with that subsection within a specified time.

(3) If a beekeeper fails to comply with a direction given to him or her under subsection (2) within the time specified, an Inspector or a person authorised by the Inspector may, upon authorisation from the Council, enter on the land and carry out the work necessary to provide clear access to the hives.

9.—(1) If an inspector is satisfied on reasonable grounds that bees or hives have been abandoned or are being neglected, the Inspector may—

Abandoned or neglected bees and beehives.

- (a) in the case of a registered apiary, direct the beekeeper to take, within a specified time, such measures as in the opinion of the Inspector are necessary to dispose of those bees or hives; or
 - (b) in the case of an unregistered apiary, after informing the occupier of the premises on which the bees or hives are situated, upon authorisation from the Council enter the premises and destroy the bees and hives or remove them to a Government pound or quarantine area, as the case may require.
- (2) Where, in the case of a registered apiary, the beekeeper
- (a) cannot be found or reached within a reasonable time; or
 - (b) fails to comply with a direction given to him or her under subsection (1)(a) within the time specified in the direction,

an Inspector or a person authorised by the Inspector may, upon authorisation from the Council, enter the land upon which the bees and hives are situated and destroy the bees and hives or remove them to a Government pound or quarantine area, as the case may require.

10.—(1) If a bee colony becomes established other than in a hive, an Inspector may direct the owner or occupier of the land on which that colony has become established, upon authorisation from the Council,

Bees established other than in hives.

- (a) to destroy within a time specified by the Inspector

and to the satisfaction of the Inspector the bees, honey and bee combs connected with the colony; or

- (b) within a time specified by the Inspector to transfer the bees, honey and bee combs connected with the colony to a frame hive.

(2) If a person fails to comply with a direction given to him or her under subsection (1) within the specified time, the Inspector or person authorised by the Inspector may, upon authorisation from the Council, enter the land on which the bee colony is situated and destroy the bees, honey and bee combs connected with the colony.

PART III—DISEASE CONTROL

Beekeepers to notify presence of bee diseases.

11. Where a beekeeper finds or suspects any disease or pest specified as a notifiable disease listed in the Schedule to this ordinance, the beekeeper shall immediately advise an Inspector or the Council.

Diseased bees etc. to be destroyed or treated.

12.—(1) Where any bees, bee products or appliances on any land or premises are found by an Inspector to be infected with any disease specified in the Schedule to this ordinance, upon authorisation from the Council the Inspector may

- (a) direct the beekeeper within a specified time to destroy the bees, bee products or appliances or to take other control measures required by the Inspector; or
- (b) if the circumstances so demand, destroy or arrange for other officers to destroy on behalf of the Inspector any diseased bees, bee products or appliances.

(2) Where any bees, bee products or appliances on any land or premises are, in the opinion of an Inspector, likely to become infected with any disease, the Inspector may, upon authorisation from the Council

- (a) instruct the Inspector to destroy the bees, bee products or appliances or take other specified measures; or
- (b) if the circumstances so demand, destroy or cause to be destroyed any bees, bee products or appliances which are infected.

(3) Where an Inspector destroys or causes to be destroyed any bees, bee products or appliances without having given prior notice to the beekeeper or owner of the land or premises, the Inspector shall, as soon as practicable, give notice to the beekeeper or occupier of the action taken by him or her.

Dealing in diseased bees etc.

13.—(1) No person shall expose honey or appliances taken

from or used in conjunction with a hive infected with a disease in a manner which could allow access thereto by bees until those materials have been sterilised to the satisfaction of an Inspector.

(2) No person shall

- (a) sell, barter, lend or give to another person; or
- (b) remove from the place in which they are for the time being situated,

any bees or appliances infected with disease or any appliances or honey from an apiary in which a disease has been found except with the written consent of an Inspector and subject to any conditions and in such manner as specified therein.

14.—(1) No person shall use any drug, substance or mixture of substances for the prevention or treatment of a disease in bees other than a drug, substance or mixture of substances approved for that purpose by the Council.

Prohibition of use of drugs etc.

(2) The approval of the Council in respect of any drug, substance or mixture of substances under subsection (1) may be given

- (a) subject to conditions; and
- (b) in respect of the prevention of a disease specified in the notice.

(3) If an Inspector, after inspecting an apiary, reasonably believes that a drug, substance or mixture of substances other than a drug, substance or mixture of substances approved for the purpose under subsection (1), has been used for the prevention or treatment of a disease, the Inspector may, by written notice to the beekeeper, prohibit or restrict the sale, transfer or loan of bees or appliance or their removal from the apiary, until an investigation relating to the procurement, analysis and certification of samples has been carried out. Any such notice will be countersigned by a representative of the Council.

15.—(1) Where any bees, bee product or appliances in an apiary are found to be infected with any disease, an Inspector may declare the apiary and any nominated surrounding area to be an infected area for such period of time as the Inspector sees fit.

Infected areas etc.

(2) Every declaration made under this section with respect to apiaries or land shall be made in writing to the beekeeper and the landowner.

(3) The Inspector shall notify the Council of any infected area so declared immediately.

(4) Except with the permission of an Inspector, no person shall move bees, bee products or appliances through, into or

out of the infected area.

(5) Permission under subsection (4) may be given subject to conditions.

PART IV—IMPORTATION OF BEES, BEE PRODUCTS AND APPLIANCES

Importation.

16. The Council may appoint ports or airports for the importation of bees, bee products and appliances by notice published on the Public Notice Board.

Restriction on importation.

17.—(1) No person shall introduce into the Islands any bee, bee product or appliance or substance containing a bee product unless that person has a permit in writing from the Council and subject to such conditions, if any, as may be specified on the permit.

(2) The Council may, in its discretion, grant or refuse any permit applied for under this section.

Seizure of unauthorised imports.

18.—(1) Any bees, bee products or bee appliances brought or attempted to be brought into the Islands contrary to section 17 of this ordinance may, together with packaging material, be seized by an Inspector and reshipped, destroyed, disinfected, taken to a quarantine area or dealt with in such other manner as the Inspector sees fit.

(2) The Inspector shall forward a written report of every such contravention and the remedy adopted to the Council without delay.

Quarantine areas.

19.—(1) The Council may, by notice published on the Public Notice Board, define or approve any land in the Islands as a quarantine area for the detention of diseased or abandoned hives, imported bees, bee products or used bee appliances and may in like manner amend or terminate any such quarantine area.

(2) The Council may from time to time give directions as to the control of quarantine areas and the treatment or destruction of bees or appliances while in quarantine and may specify the time during which bees or appliances introduced or intended to be introduced into the Islands shall remain in quarantine.

Duty of Police Officer etc.

20. It shall be the duty of the Police Officer and all persons responsible for incoming mail and goods to assist in carrying out the provisions of sections 17 and 18 of this ordinance and to prevent the importation into the Islands of any bees, bee products and appliances contrary to this ordinance.

Dispatch of bees, etc. to the Islands.

21. Any person who receives any bees or appliances

from beyond the Islands without the consent of the Council having been given before their dispatch to the Islands shall immediately notify an Inspector and carry out to the satisfaction of the Inspector such directions as he or she may give as to the destruction, disposal or treatment of the bees, bee products or appliances.

PART V—MISCELLANEOUS PROVISIONS

22. There shall be appointed by the Council from time to time such Inspectors as may be necessary for the purposes of this ordinance.

Inspectors.

23. Every Inspector shall have power, on producing (if so required) due evidence of his or her appointment or authorisation, to enter at all reasonable times on any land, premises or conveyance or on board any vessel or aircraft for the purpose of carrying out the duties and functions imposed on him or her by this ordinance:

Powers of Inspectors.

Provided that an Inspector shall not enter into any dwelling house pursuant to this section.

24. Every person commits an offence who—

Obstruction of Inspector.

- (a) directly or indirectly obstructs, hinders, threatens or assaults any Inspector in the lawful performance of his or her duty under this ordinance; or
- (b) fails or neglects to obey any lawful and reasonable direction of an Inspector or intentionally withholds any relevant information lawfully requested by an Inspector.

25. No person shall be entitled to compensation for anything lawfully done under the provisions of this ordinance.

No entitlement to compensation.

26.—(1) Where an Inspector or a person authorised by an Inspector—

Recovery of costs.

- (a) destroys or removes bees or appliances under sections 7(3)(b), 9(1)(b), 9(2), 10(2) or 18(1);
- (b) clears access to a hive under section 8(3); or
- (c) carries out an investigation under section 14(3)

the cost incurred in that removal, clearing or investigation shall be a debt due from the beekeeper to the Council and may be sued for in a court of competent jurisdiction or recovered by sale of the impounded bees or appliances.

27. Every person who—

Offences.

- (a) keeps bees or sells or offers for sale bees or bee products or moves bees and appliances between the Islands contrary to section 4;

- (b) fails to mark a code in accordance with section 6(2);
- (c) keeps bees other than in a movable frame hive as required by section 7(1);
- (d) fails to comply with a direction given to him or her under sections 7(2), 7(3)(a), 8(2), 9(1)(a) or 10(1) within the time specified in the direction;
- (e) fails to keep access to the hives free from obstruction as required by section 8(1);
- (f) fails to notify serious bee diseases immediately in accordance with section 11;
- (g) exposes honey or appliances contrary to section 13(1);
- (h) sells, barter, lends, gives or removes bees, appliances or honey contrary to section 13(2);
- (i) uses a drug, substance or mixture of substances contrary to section 14(1);
- (j) fails to comply with a condition imposed under section 14(2);
- (k) fails to comply with a notice given to him or her under section 14(3);
- (l) moves bees or appliances contrary to section 15(4);
- (m) fails to comply with a condition imposed under section 15(5);
- (n) imports bees, bee products or appliances without a permit, contrary to section 17(1);
- (o) receives or is in possession of any bees, bee products or appliances knowing them to have been introduced into the Islands without a permit or in breach of any condition specified on the permit contrary to section 17(1);
- (p) obstructs or hinders a person authorised by an Inspector to carry out a function under this ordinance contrary to section 24;

is guilty of an offence and is liable on conviction to a fine not exceeding \$250.00.

Regulations.

28. The Governor may from time to time make regulations for the implementation of this ordinance and in particular but without prejudice to the generality of the foregoing power, for all or any of the following purposes

- (a) providing for the inspection, grading, packing, marking, stamping, branding, labelling, analysis and certification as being fit for the purposes prescribed of honey and bee products and, where appropriate, of bees or appliances;
- (b) regulating the export of honey, bee products, appliances and bees and for this purpose authorising

the Council

- (i) to prohibit the export of any honey or bee product or appliance or bee unless it complies with any standard required in relation to the country to which these products are being exported and is certified accordingly;
- (ii) to make available to exporters a copy of standards to which any honey or bee product or bee or appliance must comply before a certificate of its suitability for export may be issued;
- (c) exempting any honey or bee product or appliance or bee from the requirements of any regulation made under this section;
- (d) prescribing the fees to be paid in connection with official services rendered under this ordinance;
- (e) prescribing forms required under this ordinance or authorising the Council to provide such forms;
- (f) prescribing offences under any such regulations and prescribing fines for any breach thereof;
- (g) making additions or deletions to the list of notifiable diseases set out in the Schedule to this ordinance;
- (h) providing for such matters as are necessary for giving full effect to the provisions of this ordinance and for its due administration.

SCHEDULE**Notifiable pests and diseases of honey bees**

Varroa mite	(<i>Varroa Jacobseni</i>)
Asian mite	(<i>Tropilaelaps clareae</i>)
Tracheal mite	(<i>Acarapis woodii</i>)
Bee louse	(<i>Braula coeca</i>)
American foulbrood	(<i>Bacillus larvae</i>)
European foulbrood	(<i>Melissococcus pluton</i>)
Chalkbrood	(<i>Ascosphaera apis</i>)

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2017

CHAPTER XXIX

FISHERIES ZONE ORDINANCE

(Repealed by No. 3 of 2016)

(Cap 29 has been removed. The next page is p 459.)

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

CHAPTER XXX

**PREVENTION OF COLLISIONS AT SEA
ORDINANCE**

Arrangement of sections

Section

1. Citation.
 2. Application of International Convention.
 3. Penalties.
 4. Repeal.
- First Schedule
Second Schedule

An ordinance to apply the International Regulations for Preventing Collisions at Sea.

Ordinance No:
2 of 1983

[1st June, 1983]

1. This ordinance may be cited as the Prevention of Collisions at Sea Ordinance.

Citation.

2. The provisions of the International Regulations for Preventing Collisions at Sea, 1972 (as amended by a resolution of the Inter-Governmental Maritime Consultative Organization of 19th November, 1981) as set out in the First Schedule shall apply with respect to the Islands.

Application of
International
Convention.

3. If any ship shall fail to comply with the requirement of any of the provisions of the said Regulations set out in the Second Schedule the owner and the master thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand dollars.

Penalties.

4. From the commencement of this ordinance, the International Regulations for Preventing Collisions at Sea, 1960, shall cease to have effect in the Islands.

Repeal.

FIRST SCHEDULE

PART A—GENERAL

Application.

- 1.—(a) These Rules shall apply to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.
- (b) Nothing in these Rules shall interfere with the operation of special rules made by an appropriate authority for roadsteads, harbours, rivers, lakes or inland waterways connected with the high seas and navigable by seagoing vessels. Such special rules shall conform as closely as possible to these Rules.
- (c) Nothing in these Rules shall interfere with the operation of any special rules made by the Government of any State with respect to additional station or signal lights, shapes or whistle signals for ships of war and vessels proceeding under convoy, or with respect to additional station or signal lights or shapes for fishing vessels engaged in fishing as a fleet. These additional station or signal lights, shapes or whistle signals shall, so far as possible, be such that they cannot be mistaken for any light, shape or signal authorized elsewhere under these Rules.
- (d) Traffic separation schemes may be adopted by the Organization for the purpose of these rules.
- (e) Whenever the Government concerned shall have determined that a vessel of special construction or purpose cannot comply fully with the provisions of any of these Rules with respect to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, without interfering with the special function of the vessel, such vessel shall comply with such other provisions in regard to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, as her Government shall have determined to be the closest possible compliance with these Rules in respect of that vessel.

Responsibility.

- 2.—(a) Nothing in these Rules shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to comply with these Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.
- (b) In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger.

General definitions.

3. For the purpose of these Rules, except where the context otherwise requires:
 - (a) The word “vessel” includes every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.
 - (b) The term “power-driven vessel” means any vessel propelled by machinery.
 - (c) The term “sailing vessel” means any vessel under sail provided that propelling machinery, if fitted, is not being used.

- (d) The term “vessel engaged in fishing” means any vessel fishing with nets, lines, trawls or other fishing apparatus which restrict manoeuvrability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict manoeuvrability.
- (e) The word “seaplane” includes any aircraft designed to manoeuvre on the water.
- (f) The term “vessel not under command” means a vessel which through some exceptional circumstance is unable to manoeuvre as required by these Rules and is therefore unable to keep out of the way of another vessel.
- (g) The term “vessel restricted in her ability to manoeuvre” means a vessel which from the nature of her work is restricted in her ability to manoeuvre as required by these Rules and is therefore unable to keep out of the way of another vessel. The term “vessels restricted in their ability to manoeuvre” shall include but not be limited to—
 - (i) a vessel engaged in laying, servicing or picking up a navigation mark, submarine cable or pipeline;
 - (ii) a vessel engaged in dredging, surveying or underwater operations;
 - (iii) a vessel engaged in replenishment or transferring persons, provisions or cargo while underway;
 - (iv) a vessel engaged in the launching or recovery of aircraft;
 - (v) a vessel engaged in mine clearance operations;
 - (vi) a vessel engaged in a towing operation such as severely restricts the towing vessel and her tow in their ability to deviate from their course.
- (h) The term “vessel constrained by her draught” means a powerdriven vessel which because of her draught in relation to the available depth of water is severely restricted in her ability to deviate from the course she is following.
- (i) The word “underway” means that a vessel is not at anchor, or made fast to the shore, or aground.
- (j) The words “length” and “breadth” of a vessel mean her length overall and greatest breadth.
- (k) Vessels shall be deemed to be in sight of one another only when one can be observed visually from the other.
- (l) The term “restricted visibility” means any condition in which such visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms or any other similar causes.

PART B—STEERING AND SAILING RULES

Section 1—Conduct of vessels in any condition of visibility

- 4.** Rules in this section apply in any condition of visibility. Application.
- 5.** Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision. Lookout.
- 6.** Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and Safe speed.

conditions.

In determining a safe speed the following factors shall be among those taken into account—

- (a) By all vessels—
 - (i) the state of visibility;
 - (ii) the traffic density including concentrations of fishing vessels or any other vessels;
 - (iii) the manoeuvrability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions;
 - (iv) at night the presence of background light such as from shore lights or from back scatter of her own lights;
 - (v) the state of wind, sea and current, and the proximity of navigational hazards;
 - (vi) the draught in relation to the available depth of water.
- (b) Additionally, by vessels with operational radar—
 - (i) the characteristics, efficiency and limitations of the radar equipment;
 - (ii) any constraints imposed by the radar range scale in use;
 - (iii) the effect on radar detection of the sea state, weather and other sources of interference;
 - (iv) the possibility that small vessels, ice and other floating objects may not be detected by radar at an adequate range;
 - (v) the number, location and movement of vessels detected by radar;
 - (vi) the more exact assessment of the visibility that may be possible when radar is used to determine the range of vessels or other objects in the vicinity.

Risk of collision.

- 7.—(a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.
- (b) Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.
- (c) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.
- (d) In determining if risk of collision exists the following considerations shall be among those taken into account—
 - (i) such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change;
 - (ii) such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range.

Action to avoid collision.

- 8.—(a) Any action taken to avoid collision shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.
- (b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be

readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.

- (c) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.
 - (d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.
 - (e) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.
- 9.—**(a) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable. Narrow channels.
- (b) A vessel of less than 20 metres in length or a sailing vessel shall not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway.
 - (c) A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway.
 - (d) A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within such channel or fairway. The latter vessel may use the sound signal prescribed in Rule 34(d) if in doubt as to the intention of the crossing vessel.
 - (e)
 - (i) In a narrow channel or fairway when overtaking can take place only if the vessel to be overtaken has to take action to permit safe passing, the vessel intending to overtake shall indicate her intention by sounding the appropriate signal prescribed in Rule 34(c) (i). The vessel to be overtaken shall, if in agreement, sound the appropriate signal prescribed in Rule 34(c) (ii) and take steps to permit safe passing. If in doubt she may sound the signals prescribed in Rule 34(d).
 - (ii) This Rule does not relieve the overtaking vessel of her obligations under Rule 13.
 - (f) A vessel nearing a bend or an area of a narrow channel or fairway where other vessels may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound the appropriate signal prescribed in Rule 34(e).
 - (g) Any vessel shall, if the circumstances of the case admit, avoid anchoring in a narrow channel.
- 10.—**(a) This Rule applies to traffic separation schemes adopted by the Organization. Traffic separation schemes.
- (b) A vessel using a traffic separation scheme shall—
 - (i) proceed in the appropriate traffic lane in the general direction of traffic flow for that lane;
 - (ii) so far as practicable keep clear of a traffic separation line or separation zone;
 - (iii) normally join or leave a traffic lane at the termination of the lane, but when joining or leaving from either side

- shall do so at as small an angle to the general direction of traffic flow as practicable.
- (c) A vessel shall so far as practicable avoid crossing traffic lanes, but if obliged to do so shall cross as nearly as practicable at right angles to the general direction of traffic flow.
 - (d) Inshore traffic zones shall not normally be used by through traffic which can safely use the appropriate traffic lane within the adjacent traffic separation scheme. However, vessels of less than 20 metres in length and sailing vessels may under all circumstances use inshore traffic zones.
 - (e) A vessel other than a crossing vessel or a vessel joining or leaving a lane shall not normally enter a separation zone or cross a separation line except:
 - (i) in cases of emergency to avoid immediate danger;
 - (ii) to engage in fishing within a separation zone.
 - (f) A vessel navigating in areas near the terminations of traffic separation schemes shall do so with particular caution.
 - (g) A vessel shall so far as practicable avoid anchoring in a traffic separation scheme or in areas near its terminations.
 - (h) A vessel not using a traffic separation scheme shall avoid it by as wide a margin as is practicable.
 - (i) A vessel engaged in fishing shall not impede the passage of any vessel following a traffic lane.
 - (j) A vessel of less than 20 metres in length or a sailing vessel shall not impede the safe passage of a power-driven vessel following a traffic lane.
 - (k) A vessel restricted in her ability to manoeuvre when engaged in an operation for the maintenance of safety of navigation in a traffic separation scheme is exempted from complying with this Rule to the extent necessary to carry out the operation.
 - (l) A vessel restricted in her ability to manoeuvre when engaged in an operation for the laying, servicing or picking up of a submarine cable, within a traffic separation scheme, is exempted from complying with this Rule to the extent necessary to carry out the operation.

Section II—Conduct of vessels in sight of one another

Application.

11. Rules in this section apply to vessels in sight of one another.

Sailing vessels.

- 12.—**(a) When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows—
- (i) when each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;
 - (ii) when both have the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward;
 - (iii) if a vessel with the wind on the port side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the port or on the starboard side, she shall keep out of the way of the other.
- (b) For the purposes of this Rule the windward side shall be deemed to be the side opposite to that on which the mainsail

is carried or, in the case of a square-rigged vessel, the side opposite to that on which the largest fore-and-aft sail is carried.

13.—(a) Notwithstanding anything contained in the Rules of Part B, Sections I and II any vessel overtaking any other shall keep out of the way of the vessel being overtaken. Overtaking.

(b) A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam, that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the sternlight of that vessel but neither of her sidelights.

(c) When a vessel is in any doubt as to whether she is overtaking another, she shall assume that this is the case and act accordingly.

(d) Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these Rules or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

14.—(a) When two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter her course to starboard so that each shall pass on the port side of the other. Head-on situation.

(b) Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night she could see the masthead lights of the other in a line or nearly in a line and/or both sidelights and by day she observes the corresponding aspect of the other vessel.

(c) When a vessel is in any doubt as to whether such a situation exists she shall assume that it does exist and act accordingly.

15. When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel. Crossing situation.

16. Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear. Action by give-way vessel.

17.—(a) (i) Where one of two vessels is to keep out of the way the other shall keep her course and speed. Action by stand-on vessels.

(ii) The latter vessel may however take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.

(b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.

(c) A power-driven vessel which takes action in a crossing situation in accordance with sub-paragraph (a) (ii) of this rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.

- (d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.

18.—Except where Rules 9, 10 and 13 otherwise require—

- (a) A power-driven vessel underway shall keep out of the way of—
 - (i) a vessel not under command;
 - (ii) a vessel restricted in her ability to manoeuvre;
 - (iii) a vessel engaged in fishing;
 - (iv) a sailing vessel.
- (b) A sailing vessel underway shall keep out of the way of—
 - (i) a vessel not under command;
 - (ii) a vessel restricted in her ability to manoeuvre;
 - (iii) a vessel engaged in fishing.
- (c) A vessel engaged in fishing when underway shall, so far as possible, keep out of the way of—
 - (i) a vessel not under command;
 - (ii) a vessel restricted in her ability to manoeuvre.
- (d)
 - (i) Any vessel other than a vessel not under command or a vessel restricted in her ability to manoeuvre shall, if the circumstances of the case admit, avoid impeding the safe passage of a vessel constrained by her draught, exhibiting the signals in Rule 28.
 - (ii) A vessel constrained by her draught shall navigate with particular caution having full regard to her special condition.
- (e) A seaplane on the water shall, in general, keep well clear of all vessels and avoid impeding their navigation. In circumstances, however, where risk of collision exists, she shall comply with the Rules of this Part.

Section III—Conduct of vessels in restricted visibility

Conduct of vessels in restricted visibility.

- 19.—**(a) This Rule applies to vessels not in sight of one another when navigating in or near an area of restricted visibility.
- (b) Every vessel shall proceed at a safe speed adapted to the prevailing circumstances and conditions of restricted visibility. A power-driven vessel shall have her engines ready for immediate manoeuvre.
- (c) Every vessel shall have due regard to the prevailing circumstances and conditions of restricted visibility when complying with the Rules of Section I of this Part.
- (d) A vessel which detects by radar alone the presence of another vessel shall determine if a close-quarters situation is developing and/or risk of collision exists. If so, she shall take avoiding action in ample time, provided that when such action consists of an alteration of course, so far as possible the following shall be avoided—
 - (i) an alteration of course to port for a vessel forward of the beam, other than for a vessel being overtaken;
 - (ii) an alteration of course towards a vessel abeam or abaft the beam.
- (e) Except where it has been determined that a risk of collision does not exist, every vessel which hears apparently forward of her beam the fog signal of another vessel, or which cannot avoid a close-quarters situation with another vessel forward

of her beam, shall reduce her speed to the minimum at which she can be kept on her course. She shall if necessary take all her way off and in any event navigate with extreme caution until danger of collision is over.

PART C—LIGHTS AND SHAPES

- 20.**—(a) Rules in this Part shall be complied with in all weathers. Application.
- (b) The Rules concerning lights shall be complied with from sunset to sunrise, and during such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these Rules or do not impair their visibility or distinctive character, or interfere with the keeping of a proper look-out.
- (c) The lights prescribed by these Rules shall, if carried, also be exhibited from sunrise to sunset in restricted visibility and may be exhibited in all other circumstances when it is deemed necessary.
- (d) The rules concerning shapes shall be complied with by day.
- (e) The lights and shapes specified in these Rules shall comply with the provisions of Annex I to these Regulations.
- 21.**—(a) “Masthead light” means a white light placed over the fore and aft centreline of the vessel showing an unbroken light over an arc of the horizon of 225 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on either side of the vessel. Definitions.
- (b) “Sidelights” means a green light on the starboard side and a red light on the port side each showing an unbroken light over an arc of the horizon of 112.5 degrees and so fixed as to show the light from the right ahead to 22.5 degrees abaft the beam on its respective side. In a vessel of less than 20 metres in length the sidelights may be combined in one lantern carried on the fore and aft centreline of the vessel.
- (c) “Sternlight” means a white light placed as nearly as practicable at the stern showing an unbroken light over an arc of the horizon of 135 degrees and so fixed as to show the light 67.5 degrees from right aft on each side of the vessel.
- (d) “Towing light” means a yellow light having the same characteristics as the “sternlight” defined in paragraph (c) of this Rule.
- (e) “All-round light” means a light showing an unbroken light over an arc of the horizon of 360 degrees.
- (f) “Flashing light” means a light flashing at regular intervals at a frequency of 120 flashes or more per minute.
- 22.** The lights in these rules shall have an intensity as specified in section 8 of Annex 1 to these Regulations as to be visible at the following minimum ranges— Visibility of lights.
- (a) In vessels of 50 metres or more in length—
- a masthead light, 6 miles;
 - a sidelight, 3 miles;
 - a sternlight, 3 miles;
 - a towing light, 3 miles;
 - a white, red, green or yellow all-round light, 3 miles.
- (b) In vessels of 12 metres or more in length but less than 50

metres in length—
 a masthead light, 5 miles; except that where the length of the vessel is less than 20 metres, 3 miles;
 a sidelight, 2 miles;
 a sternlight, 2 miles;
 a towing light, 2 miles;
 a white, red, green or yellow all-round light, 2 miles.

- (c) In vessels of less than 12 metres in length—
 a masthead light, 2 miles;
 a sidelight, 1 mile;
 a sternlight, 2 miles;
 a towing light, 2 miles;
 a white, red, green or yellow all-round light, 2 miles.
- (d) In inconspicuous, partly submerged vessels or objects being towed—
 a white all-round light, 3 miles.

Power-driven vessels
 underway.

- 23.—**(a) A power-driven vessel underway shall exhibit—
- (i) a masthead light forward;
 - (ii) a second masthead light abaft of and higher than the forward one; except that a vessel of less than 50 metres in length shall not be obliged to exhibit such light but may do so;
 - (iii) sidelights;
 - (iv) a sternlight.
- (b) An air-cushion vessel when operating in the non-displacement mode shall, in addition to the lights prescribed in paragraph (a) of this Rule, exhibit an all-round flashing yellow light.
- (c)
 - (i) A power-driven vessel of less than 12 metres in length may in lieu of the lights prescribed in paragraph (a) of this Rule exhibit an all-round white light and sidelights.
 - (ii) A power-driven vessel of less than 7 metres in length whose maximum speed does not exceed 7 knots may in lieu of the lights prescribed in paragraph (a) of this Rule exhibit an all-round white light and shall, if practicable, also exhibit sidelights.
 - (iii) The masthead light or all-round white light on a power-driven vessel of less than 12 metres in length may be displaced from the fore and aft centreline of the vessel if centreline fitting is not practicable, provided that the sidelights are combined in one lantern which shall be carried on the fore and aft centreline of the vessel or located as nearly as practicable in the same fore and aft line as the masthead light or the all-round white light.

Towing and pushing.

- 24.—**(a) A power-driven vessel when towing shall exhibit—
- (i) instead of the light prescribed in Rule 23(a) (i) or (a) (ii), two masthead lights in a vertical line. When the length of the tow, measuring from the stern of the towing vessel to the after end of the two exceeds 200 metres, three such lights in a vertical line;
 - (ii) sidelights;
 - (iii) a sternlight;
 - (iv) a towing light in a vertical line above the sternlight;
 - (v) when the length of the tow exceeds 200 metres, a

- diamond shape where it can best be seen.
- (b) When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit they shall be regarded as a power-driven vessel and exhibit the lights prescribed in Rule 23.
 - (c) A power-driven vessel when pushing ahead or towing alongside, except in the case of a composite unit, shall exhibit—
 - (i) instead of the light prescribed in Rule 23(a) (i) or (a) (ii), two masthead lights in a vertical line;
 - (ii) sidelights;
 - (iii) a sternlight.
 - (d) A power-driven vessel to which paragraph (a) or (c) of this Rule apply shall also comply with Rule 23(a) (ii).
 - (e) A vessel or object being towed, other than those mentioned in paragraph (g) of this Rule, shall exhibit.
 - (i) sidelights;
 - (ii) a sternlight;
 - (iii) when the length of the tow exceeds 200 metres, a diamond shape where it can best be seen.
 - (f) Provided that any number of vessels being towed alongside or pushed in a group shall be lighted as one vessel—
 - (i) a vessel being pushed ahead, not being part of a composite unit, shall exhibit at the forward end, sidelights;
 - (ii) a vessel being towed alongside shall exhibit a sternlight and at the forward end, sidelights.
 - (g) An inconspicuous, partly submerged vessel or object, or combination of such vessels or objects being towed, shall exhibit—
 - (i) if it is less than 25 metres in breadth, one all-round white light at or near the forward end and one at or near the after end except that dracones need not exhibit a light at or near the forward end;
 - (ii) if it is 25 metres or more in breadth, two additional all-round white lights at or near the extremities of its breadth;
 - (iii) if it exceeds 100 metres in length, additional all-round white lights between the lights prescribed in subparagraphs (i) and (ii) so that the distance between the lights shall not exceed 100 metres;
 - (iv) a diamond shape at or near the aftermost extremity of the last vessel or object being towed and if the length of the tow exceeds 200 metres an additional diamond shape where it can best be seen and located as far forward as is practicable.
 - (h) Where from any sufficient cause it is impracticable for a vessel or object being towed to exhibit the lights or shapes prescribed in paragraph (e) or (g) of this Rule, all possible measures shall be taken to light the vessel or object towed or at least to indicate the presence of such vessel or object.
 - (i) Where from any sufficient cause it is impracticable for a vessel not normally engaged in towing operations to display the lights prescribed in paragraph (a) or (c) of this Rule, such vessel shall not be required to exhibit those lights when engaged in towing

another vessel in distress or otherwise in need of assistance. All possible measures shall be taken to indicate the nature of the relationship between the towing vessel and the vessel being towed as authorized by Rule 36, in particular by illuminating the towline.

Sailing vessels
underway and vessels
under oars.

- 25.**—(a) A sailing vessel underway shall exhibit—
- (i) sidelights;
 - (ii) a sternlight.
- (b) In a sailing vessel of less than 20 metres in length the lights prescribed in paragraph (a) of this Rule may be combined in one lantern carried at or near the top of the mast where it can best be seen.
- (c) A sailing vessel underway may, in addition to the lights prescribed in paragraph (a) of this Rule, exhibit at or near the top of the mast, where they can best be seen, two all-round lights in a vertical line, the upper being red and the lower green, but these lights shall be exhibited in conjunction with the combined lantern permitted by paragraph (b) of this Rule.
- (d) (i) A sailing vessel of less than 7 metres in length shall, if practicable, exhibit the lights prescribed in paragraph (a) or (b) of this Rule, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.
- (ii) A vessel under oars may exhibit the lights prescribed in this Rule for sailing vessels, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.
- (e) A vessel proceeding under sail when also being propelled by machinery shall exhibit forward where it can be seen a conical shape, apex downwards.

Fishing vessels.

- 26.**—(a) A vessel engaged in fishing, whether underway or at anchor, shall exhibit only the lights and shapes prescribed in this Rule.
- (b) A vessel when engaged in trawling by which is meant the dragging through the water of a dredge net or other apparatus used as a fishing appliance, shall exhibit—
- (i) two all-round lights in a vertical line, the upper being green and the lower white, or a shape consisting of two cones with their apexes together in a vertical line one above the other; a vessel of less than 20 metres in length may instead of this shape exhibit a basket;
 - (ii) a masthead light abaft of and higher than the all-round green light; a vessel of less than 50 metres in length shall not be obliged to exhibit such a light but may do so;
 - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.
- (c) A vessel engaged in fishing, other than trawling, shall exhibit—
- (i) two all-round lights in a vertical line, the upper being red and the lower white, or a shape consisting of two cones with apexes together in a vertical line one above the other; a vessel of less than 20 metres length may

- instead of this shape exhibit a basket;
- (ii) when there is outlying gear extending more than 150 metres horizontally from the vessel, an all-round white light or a cone apex upwards in the direction of the gear;
 - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.
- (d) A vessel engaged in fishing in close proximity to other vessels engaged in fishing may exhibit the additional signals described in Annex II to these Regulations.
 - (e) A vessel when not engaged in fishing shall not exhibit the lights or shapes prescribed in this Rule, but only those prescribed for a vessel of her length.
- 27.—**(a) A vessel not under command shall exhibit—
- (i) two all-round red lights in a vertical line where they can best be seen;
 - (ii) two balls or similar shapes in a vertical line where they can best be seen;
 - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.
- (b) A vessel restricted in her ability to manoeuvre, except a vessel engaged in mine-clearance operations, shall exhibit—
- (i) three all-round lights in a vertical line where they can best be seen. The highest and lowest of these lights shall be red and the middle light shall be white;
 - (ii) three shapes in a vertical line where they can best be seen. The highest and lowest of these shapes shall be balls and the middle one a diamond;
 - (iii) when making way through the water, a masthead light or lights, sidelights and a sternlight, in addition to the lights prescribed in sub-paragraph (i);
 - (iv) when at anchor, in addition to the lights or shapes prescribed in sub-paragraphs (i) and (ii), the light, lights, or shape prescribed in Rule 30.
- (c) A power-driven vessel engaged in a towing operation such as severely restricts the towing vessel and her tow in their ability to deviate from their course shall, in addition to the lights or shapes prescribed in Rule 24(a), exhibit the lights or shapes prescribed in sub-paragraphs (b) (i) and (b) (ii) of this Rule.
- (d) A vessel engaged in dredging or underwater operations, when restricted in her ability to manoeuvre, shall exhibit the lights and shapes prescribed in sub-paragraphs (b) (i), (ii) and (iii) of this Rule and shall in addition, when an obstruction exists, exhibit—
- (i) two all-round red lights or two balls in a vertical line to indicate the side on which the obstruction exists;
 - (ii) two all-round green lights or two diamonds in a vertical line to indicate the side on which another vessel may pass;
 - (iii) when at anchor, the lights or shapes prescribed in this paragraph instead of the lights or shape prescribed in Rule 30.
- (e) Whenever the size of a vessel engaged in diving operations

Vessels not under command or restricted in their ability to manoeuvre.

makes it impracticable to exhibit all lights and shapes prescribed in paragraph (d) of this Rule, the following shall be exhibited—

- (i) three all-round lights in a vertical line where they can best be seen. The highest and lowest of these lights shall be red and the middle light shall be white;
 - (ii) a rigid replica of the International Code flag “A” not less than 1 metre in height. Measures shall be taken to ensure its all-round visibility.
- (f) A vessel engaged in mine-clearance operations shall in addition to the lights prescribed for a power-driven vessel in Rule 23 or to the lights or shape prescribed for a vessel at anchor in Rule 30 as appropriate, exhibit three all-round green lights or three balls. One of these lights or shapes shall be exhibited near the foremast head and one at each end of the foreyard. These lights or shapes indicate that it is dangerous for another vessel to approach within 1000 metres of the mine-clearance vessel.
- (g) Vessels of less than 12 metres in length, except those engaged in diving operations, shall not be required to exhibit the lights and shapes prescribed in this Rule.
- (h) The signals prescribed in this Rule are not signals of vessels in distress and requiring assistance. Such signals are contained in Annex IV to these Regulations.

Vessels constrained by their draught.

28. A vessel constrained by her draught may, in addition to the lights prescribed for power-driven vessels in Rule 23, exhibit where they can best be seen three all-round red lights in a vertical line, or a cylinder.

Pilot vessels.

- 29.—**(a) A vessel engaged on pilotage duty shall exhibit—
- (i) at or near the masthead, two all-round lights in a vertical line, the upper being white and the lower red;
 - (ii) when underway, in addition, sidelights and a sternlight;
 - (iii) when at anchor, in addition to the lights prescribed in subparagraph (i), the light, lights or shape prescribed in Rule 30 for vessels at anchor.
- (b) A pilot vessel when not engaged on pilotage duty shall exhibit the lights or shapes prescribed for a similar vessel of her length.

Anchored vessels and vessels aground.

- 30.—**(a) A vessel at anchor shall exhibit where it can best be seen—
- (i) in the forepart, an all-round white light or one ball;
 - (ii) at or near the stern and at a lower level than the light prescribed in sub-paragraph (i), an all-round white light.
- (b) A vessel of less than 50 metres in length may exhibit an allround white light where it can best be seen instead of the lights prescribed in paragraph (a) of this Rule.
- (c) A vessel at anchor may, and a vessel of 100 metres and more in length shall, also use the available working or equivalent lights to illuminate her decks.
- (d) A vessel aground shall exhibit the lights prescribed in paragraph (a) or (b) of this Rule and in addition, where they can best be seen—
- (i) two all-round red lights in a vertical line;
 - (ii) three balls in a vertical line.
- (e) A vessel of less than 7 metres in length, when at anchor, not in or near a narrow channel, fairway or anchorage, or where

other vessels normally navigate, shall not be required to exhibit the lights or shape prescribed in paragraphs (a) and (b) of this Rule.

- (f) A vessel of less than 12 metres in length, when aground, shall not be required to exhibit the lights or shapes prescribed in subparagraphs (d) (i) and (ii) of this Rule.

31. Where it is impracticable for a seaplane to exhibit lights and shapes of the characteristics or in the positions prescribed in the Rules of this Part she shall exhibit lights and shapes as closely similar in characteristics and position as is possible.

Seaplanes.

PART D—SOUND AND LIGHT SIGNALS

32.—(a) The word “whistle” means any sound signalling appliance capable of producing the prescribed blasts and which complies with the specifications in Annex III to these Regulations.

Definitions.

- (b) The term “short blast” means a blast of about one second’s duration.
 (c) The term “prolonged blast” means a blast of from four to six seconds’ duration.

33.—(a) A vessel of 12 metres or more in length shall be provided with a whistle and a bell and a vessel of 100 metres or more in length shall, in addition, be provided with a gong, the tone and sound of which cannot be confused with that of the bell. The whistle, bell and gong shall comply with the specifications in Annex III to these Regulations. The bell or gong or both may be replaced by other equipment having the same respective sound characteristics, provided that manual sounding of the prescribed signals shall always be possible.

Equipment for sound signals.

- (b) A vessel of less than 12 metres in length shall not be obliged to carry the sound signalling appliances prescribed in paragraph (a) of this Rule but if she does not, she shall be provided with some other means of making an efficient sound signal.

34.—(a) When vessels are in sight of one another, a power-driven vessel underway, when manoeuvring as authorized or required by these Rules, shall indicate that manoeuvre by the following signals on her whistle—

Manoeuvring and warning signals.

- one short blast to mean
“I am altering my course to starboard”;
- two short blasts to mean
“I am altering my course to port”;
- three short blasts to mean
“I am operating astern propulsion”.

- (b) Any vessel may supplement the whistle signals prescribed in paragraph (a) of this Rule by light signals, repeated as appropriate, whilst the manoeuvre is being carried out—

- (i) these light signals shall have the following significance—
 - one flash to mean
“I am altering my course to starboard”;
 - two flashes to mean
“I am altering my course to port”;

- three flashes to mean
“I am operating astern propulsion”.
 - (ii) the duration of each flash shall be about one second, the interval between flashes shall be about one second and the interval between successive signals shall be not less than ten seconds;
 - (iii) the light used for this signal shall, if fitted, be an all-round white light, visible at a minimum range of 5 miles, and shall comply with the provisions of Annex I to these Regulations.
- (c) When in sight of one another in a narrow channel or fairway—
- (i) a vessel intending to overtake another shall in compliance with Rule 9(e) (i) indicate her intention by the following signals on her whistle—
 - two prolonged blasts followed by one short blast to mean “I intend to overtake you on your starboard side”;
 - two prolonged blasts followed by two short blasts to mean “I intend to overtake you on your port side”;
 - (ii) the vessel about to be overtaken when acting in accordance with Rule 9(e) (i) shall indicate her agreement by the following signal on her whistle—
 - one prolonged, one short, one prolonged and one short blast, in that order.
- (d) When vessels in sight of one another are approaching each other and from any cause either vessel fails to understand the intentions or actions of the other, or is in doubt whether sufficient action is being taken by the other to avoid collision, the vessel in doubt shall immediately indicate such doubt by giving at least five short and rapid blasts on the whistle. Such signal may be supplemented by a light signal of at least five short and rapid flashes.
- (e) A vessel nearing a bend or an area of a channel or fairway where other vessels may be obscured by an intervening obstruction shall sound one prolonged blast. Such signal shall be answered with a prolonged blast by any approaching vessel that may be within hearing around the bend or behind the intervening obstruction.
- (f) If whistles are fitted on a vessel at a distance apart of more than 100 metres, one whistle only shall be used for giving manoeuvring and warning signals.

Sound signals in
restricted visibility.

35. In or near an area of restricted visibility, whether by day or night, the signals prescribed in this Rule shall be used as follows—

- (a) A power-driven vessel making way through the water shall sound at intervals of not more than 2 minutes one prolonged blast.
- (b) A power-driven vessel underway but stopped and making no way through the water shall sound at intervals of not more than 2 minutes two prolonged blasts in succession with an interval of about 2 seconds between them.
- (c) A vessel not under command, a vessel restricted in her ability to manoeuvre, a vessel constrained by her draught, a sailing vessel, a vessel engaged in fishing and a vessel engaged in towing or pushing another vessel shall, instead of the signals

- prescribed in paragraphs (a) or (b) of this Rule, sound at intervals of not more than 2 minutes three blasts in succession, namely one prolonged followed by two short blasts.
- (d) A vessel engaged in fishing, when at anchor, and a vessel restricted in her ability to manoeuvre when carrying out her work at anchor, shall instead of the signals prescribed in paragraph (g) of this Rule sound the signal prescribed in paragraph (c) of this Rule.
 - (e) A vessel towed or if more than one vessel is towed the last vessel of the tow, if manned, shall at intervals of not more than 2 minutes sound four blasts in succession, namely one prolonged followed by three short blasts. When practicable, this signal shall be made immediately after the signal made by the towing vessel.
 - (f) When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit they shall be regarded as a power-driven vessel and shall give the signals prescribed in paragraphs (a) or (b) of this Rule.
 - (g) A vessel at anchor shall at intervals of not more than one minute ring the bell rapidly for about 5 seconds. In a vessel of 100 metres or more in length the bell shall be sounded in the forepart of the vessel and immediately after the ringing of the bell the gong shall be sounded rapidly for about 5 seconds in the after part of the vessel. A vessel at anchor may in addition sound three blasts in succession, namely one short, one prolonged and one short blast, to give warning of her position and of the possibility of collision to an approaching vessel.
 - (h) A vessel aground shall give the bell signal and if required the gong signal prescribed in paragraph (f) of this Rule and shall, in addition, give three separate and distinct strokes on the bell immediately before and after the rapid ringing of the bell. A vessel aground may in addition sound an appropriate whistle signal.
 - (i) A vessel of less than 12 metres in length shall not be obliged to give the above-mentioned signals but, if she does not, shall make some other efficient sound signal at intervals of not more than 2 minutes.
 - (j) A pilot vessel when engaged on pilotage duty may in addition to the signals prescribed in paragraphs (a), (b) or (f) of this Rule sound an identity signal consisting of four short blasts.

36. If necessary to attract the attention of another vessel any vessel may make light or sound signals that cannot be mistaken for any signal authorized elsewhere in these Rules, or may direct the beam of her searchlight in the direction of the danger, in such a way as not to embarrass any vessel. Any light to attract the attention of another vessel shall be such that it cannot be mistaken for any aid to navigation. For the purpose of this Rule the use of high intensity intermittent or revolving lights, such as strobe lights, shall be avoided

Signals to attract attention.

37. When a vessel is in distress and requires assistance she shall use or exhibit the signals described in Annex IV to these Regulations.

Distress signals.

PART E—EXEMPTIONS

Exemptions.

38. Any vessel (or class of vessels) provided that she complies with the requirements of the International Regulations for Preventing Collisions at Sea, 1960, the keel of which is laid or which is at a corresponding stage of construction before the entry into force of these Regulations may be exempted from compliance therewith as follows—

- (a) The installation of lights with ranges prescribed in Rule 22, until four years after the date of entry into force of these Regulations.
- (b) The installation of lights with colour specifications as prescribed in section 7 of Annex I to these Regulations, until four years after the date of entry into force of these Regulations.
- (c) The repositioning of lights as a result of conversion from Imperial to metric units and rounding off measurement figures, permanent exemption.
- (d)
 - (i) The repositioning of masthead lights on vessels of less than 150 metres in length, resulting from the prescriptions of section 3(a) of Annex I to these Regulations, permanent exemption.
 - (ii) The repositioning of masthead lights on vessels of 150 metres or more in length, resulting from the prescriptions of section 3(a) of Annex I to these Regulations, until nine years after the date of entry into force of these Regulations.
- (e) The repositioning of masthead lights resulting from the prescriptions of section 2(b) of Annex I to these Regulations, until nine years after the date of entry into force of these Regulations.
- (f) The repositioning of sidelights resulting from the prescriptions of sections 2(g) and 3(b) of Annex I to these Regulations, until nine years after the date of entry into force of these Regulations.
- (g) The requirements for sound signal appliances prescribed in Annex III to these Regulations, until nine years after the date of entry into force of these Regulations.
- (h) The repositioning of all-round lights resulting from the prescription of section 9(b) of Annex I to these Regulations, permanent exemption.

ANNEX I
Positioning and technical details
of lights and shapes

Definition.

1. The term “height above the hull” means height above the uppermost continuous deck. This height shall be measured from the position vertically beneath the location of the light.

Vertical positioning and spacing of lights.

- 2.—(a)** On a power-driven vessel of 20 metres or more in length the masthead lights shall be placed as follows—
- (i) the forward masthead light, or if only one masthead light is carried, then that light, at a height above the hull of not less than 6 metres, and, if the breadth of the vessel exceeds 6 metres, then at a height above the hull not less than such breadth, so however that the light need not be placed at a greater height above the hull than 12 metres;
 - (ii) when two masthead lights are carried the after one

shall be at least 4.5 metres vertically higher than the forward one.

- (b) The vertical separation of masthead lights of power-driven vessels shall be such that in all normal conditions of trim the after light will be seen over and separate from the forward light at a distance of 1,000 metres from the stern when viewed from sea level.
- (c) The masthead light of a power-driven vessel of 12 metres but less than 20 metres in length shall be placed at a height above the gunwale of not less than 2.5 metres.
- (d) A power-driven vessel of less than 12 metres in length may carry the uppermost light at a height of less than 2.5 metres above the gunwale. When however a masthead light is carried in addition to sidelights and a sternlight, then such masthead light shall be carried at least 1 metre higher than the sidelights.
- (e) One of the two or three masthead lights prescribed for a power-driven vessel when engaged in towing or pushing another vessel shall be placed in the same position as either the forward masthead light or the after masthead light, provided that, if carried on the aftermast, the lowest after masthead light shall be at least 4.5 metres vertically higher than the forward masthead light.
 - (i) The masthead light or lights prescribed in Rule 23(a) shall be so placed as to be above and clear of all other lights and obstructions except as described in subparagraph (ii).
 - (ii) When it is impracticable to carry the all-round lights prescribed by Rule 27(b) (i) or Rule 28 below the masthead lights, they may be carried above the after masthead light(s) or vertically in between the forward masthead light(s) and after masthead light(s), provided that in the latter case the requirement of section 3(c) of this Annex shall be complied with.
- (g) The sidelights of a power-driven vessel shall be placed at a height above the hull not greater than three-quarters of that of the forward masthead light. They shall not be so low as to be interfered with by deck lights.
- (h) The sidelights, if in a combined lantern and carried on a power-driven vessel of less than 20 metres in length, shall be placed not less than 1 metre below the masthead light.
- (i) When the Rules prescribe two or three lights to be carried in a vertical line, they shall be spaced as follows—
 - (i) on a vessel of 20 metres in length or more such lights shall be spaced not less than 2 metres apart, and the lowest of these lights shall, except where a towing light is required, be placed at a height of not less than 4 metres above the hull;
 - (ii) on a vessel of less than 20 metres in length such lights shall be spaced not less than 1 metre apart and the lowest of these lights shall, except where a towing light is required, be placed at a height of not less than 2 metres above the hull;
 - (iii) when three lights are carried they shall be equally spaced.
- (j) The lower of the two all-round lights prescribed for a vessel

when engaged in fishing shall be at a height above the sidelights not less than twice the distance between the two vertical lights.

- (k) The forward anchor light prescribed in Rule 30(a) (i), when two are carried, shall not be less than 4.5 metres above the after one. On a vessel of 50 metres or more in length this forward anchor light shall be placed at a height of not less than 6 metres above the hull.

Horizontal positioning and spacing of lights.

- 3.—(a) When two masthead lights are prescribed for a power-driven vessel, the horizontal distance between them shall not be less than one-half of the length of the vessel but need not be more than 100 metres. The forward light shall be placed not more than one-quarter of the length of the vessel from the stem.
- (b) On a power-driven vessel of 20 metres or more in length the sidelights shall not be placed in front of the forward masthead lights. They shall be placed at or near the side of the vessel.
- (c) When the lights prescribed in Rule 27(b) (i) or Rule 28 are placed vertically between the forward masthead light(s) and the after masthead light(s) these all-round lights shall be placed at a horizontal distance of not less than 2 metres from the fore and aft centreline of the vessel in the athwartship direction.

Details of location of direction-indicating lights for fishing vessels, dredgers and vessels engaged in underwater operations

- 4.—(a) The light indicating the direction of the outlying gear from a vessel engaged in fishing as prescribed in Rule 26(c) (ii) shall be placed at horizontal distance of not less than 2 metres and not more than 6 metres away from the two all-round red and white lights. This light shall be placed not higher than the all-round white light prescribed in Rule 26(c) (i) and not lower than the sidelights.
- (b) The lights and shapes on a vessel engaged in dredging or underwater operations to indicate the obstructed side and/or the side on which it is safe to pass, as prescribed in Rule 27(d) (i) and (ii), shall be placed at the maximum practical horizontal distance, but in no case less than 2 metres, from the lights or shapes prescribed in Rule 27(b) (i) and (ii). In no case shall the upper of these lights or shapes be at a greater height than the lower of the three lights or shapes prescribed in Rule 27(b) (i) and (ii).

Screens for sidelights.

5. The sidelights of vessels of 20 metres or more in length shall be fitted with inboard screens painted matt black, and meeting the requirements of section 9 of this Annex. On vessels of less than 20 metres in length the sidelights, if necessary to meet the requirements of section 9 of this Annex, shall be fitted with inboard matt black screens. With a combined lantern, using a single vertical filament and a very narrow division between the green and red sections, external screens need not be fitted.

Shapes.

- 6.—(a) Shapes shall be black and of the following sizes—
- (i) a ball shall have a diameter of not less than 0.6 metre;
 - (ii) a cone shall have a base diameter of not less than 0.6 metre and a height equal to its diameter;
 - (iii) a cylinder shall have a diameter of at least 0.6 metre and a height of twice its diameter;
 - (iv) a diamond shape shall consist of two cones as defined in (ii) above having a common base.
- (b) The vertical distance between shapes shall be at least 1.5

metres.

- (c) In a vessel of less than 20 metres in length shapes of lesser dimensions but commensurate with the size of the vessel may be used and the distance apart may be correspondingly reduced.

7. The chromaticity of all navigation lights shall conform to the following standards, which lie within the boundaries of the area of the diagram specified for each colour by the International Commission on Illumination (CIE).

Colour specification of lights.

The boundaries of the area for each colour are given by indicating the corner co-ordinates, which are as follows—

(i)	White						
	x	0.525	0.525	0.452	0.310	0.310	0.443
	y	0.382	0.440	0.440	0.348	0.283	0.382
(ii)	Green						
	x	0.028	0.009	0.300	0.203		
	y	0.385	0.723	0.511	0.356		
(iii)	Red						
	x	0.680	0.660	0.735	0.721		
	y	0.320	0.320	0.265	0.259		
(iv)	Yellow						
	x	0.612	0.618	0.575	0.575		
	y	0.382	0.382	0.425	0.406		

- 8.—(a) The minimum luminous intensity of lights shall be calculated by using the formula—

Intensity of lights.

$$I = 3.43 \times 10^6 \times T \times D^2 \times K^{-D}$$

Where I is luminous intensity in candelas under service conditions,

T is threshold factor 2×10^{-7} lux,

D is range of visibility (luminous range) of the light in nautical miles,

K is atmospheric transmissivity.

For prescribed lights the value of K shall be 0.8, corresponding to a meteorological visibility of approximately 13 nautical miles.

- (b) A selection of figures derived from the formula is given in the following table—

Range of visibility (luminous range) of light in nautical miles D	Luminous intensity of light in candelas for K = 0.8 I
1	0.9
2	4.3
3	12
4	27
5	52
6	94

Note: The maximum luminous intensity of navigation lights should be limited to avoid undue glare. This shall not be achieved by a variable control of the luminous intensity.

- 9.—(a) (i) In the forward direction, sidelights as fitted on the vessel shall show the minimum required intensities. The intensities shall decrease to reach practical cut-off

Horizontal sectors.

between 1 degree and 3 degrees outside the prescribed sectors.

- (ii) For sternlights and masthead lights and at 22.5 degrees abaft the beam for sidelights, the minimum required intensities shall be maintained over the arc of the horizon up to 5 degrees within the limits of the sectors prescribed in Rule 21. From 5 degrees within the prescribed sectors the intensity may decrease by 50 per cent up to the prescribed limits; it shall decrease steadily to reach practical cut-off at not more than 5 degrees outside the prescribed sectors.

- (b) All-round lights shall be so located as not to be obscured by masts, topmasts or structures within angular sectors of more than 6 degrees, except anchor lights prescribed in Rule 30, which need not be placed at an impracticable height above the hull.

Vertical sectors.

10.—(a) The vertical sectors of electric lights as fitted, with the exception of lights on sailing vessels shall ensure that—

- (i) at least the required minimum intensity is maintained at all angles from 5 degrees above to 5 degrees below the horizontal;
- (ii) at least 60 per cent of the required minimum intensity is maintained from 7.5 degrees above to 7.5 degrees below the horizontal.

- (b) In the case of sailing vessels the vertical sectors of electric lights as fitted shall ensure that—

- (i) at least the required minimum intensity is maintained at all angles from 5 degrees above to 5 degrees below the horizontal;
- (ii) at least 50 per cent of the required minimum intensity is maintained from 25 degrees above to 25 degrees below the horizontal.

- (c) In the case of lights other than electric these specifications shall be met as closely as possible.

Intensity of non-electric lights.

11. Non-electric lights shall so far as practicable comply with the minimum intensities, as specified in the Table given in section 8 of this Annex.

Manoeuvring light.

12. Notwithstanding the provisions of paragraph 2(f) of this Annex the manoeuvring light described in Rule 34(b) shall be placed in the same fore and aft vertical plane as the masthead light or lights and, where practicable, at a minimum height of 2 metres vertically above the forward masthead light, provided that it shall be carried not less than 2 metres vertically above or below the after masthead light. On a vessel where only one masthead light is carried the manoeuvring light, if fitted, shall be carried where it can best be seen, not less than 2 metres vertically apart from the masthead light.

Approval.

13. The construction of lights and shapes and the installation of lights on board the vessel shall be to the satisfaction of the appropriate authority of the State whose flag the vessel is entitled to fly.

ANNEX II
Additional signals for fishing vessels
fishing in close proximity

1. The lights mentioned herein shall, if exhibited in pursuance of Rule 26(d), be placed where they can best be seen. They shall be at least 0.9 metre apart but at a lower level than lights prescribed in Rule 26(b) (i) and (c) (i). The lights shall be visible all round the horizon at a distance of at least 1 mile but at a lesser distance than the lights prescribed by these Rules for fishing vessels.

General.

2.—(a) Vessels when engaged in trawling, whether using demersal or pelagic gear, may exhibit—

Signals for trawlers.

- (i) when shooting their nets:
two white lights in a vertical line;
- (ii) when hauling their nets:
one white light over one red one in a vertical line;
- (iii) when the net has come fast upon an obstruction:
two red lights in a vertical line.

(b) Each vessel engaged in pair trawling may exhibit—

- (i) by night, a searchlight directed forward and in the direction of the other vessel of the pair;
- (ii) when shooting or hauling their nets or when their nets have come fast upon an obstruction, the lights prescribed in 2(a) above.

3. Vessels engaged in fishing with purse seine gear may exhibit two yellow lights in a vertical line. These lights shall flash alternately every second and with equal light and occultation duration. These lights may be exhibited only when the vessel is hampered by its fishing gear.

Signals for purse seiners.

ANNEX III Technical details of sound signal appliances

1.—(a) Frequencies and range of audibility.

Whistles.

The fundamental frequency of the signal shall lie within the range of 70-700 Hz.

The range of audibility of the signal from a whistle shall be determined by those frequencies, which may include the fundamental and/or more higher frequencies, which lie within the range 180-700 Hz (± 1 per cent) and which provide the sound pressure levels specified in paragraph 1(c) below.

(b) Limits of fundamental frequencies.

To ensure a wide variety of whistle characteristics, the fundamental frequency of a whistle shall be between the following limits—

- (i) 70-200 Hz, for a vessel 200 metres or more in length;
- (ii) 130-350 Hz, for a vessel 75 metres but less than 200 metres in length;
- (iii) 250-700 Hz, for a vessel less than 75 metres in length.

(c) Sound signal intensity and range of audibility.

A whistle fitted in a vessel shall provide in the direction of maximum intensity of the whistle and at a distance of 1 metre from it, a sound pressure level in at least one 1/3rd-octave band within the range of frequencies 180-700 Hz (± 1 per cent) of not less than the appropriate figure given in the table below.

Length of vessel in metres	1/3rd-octave band level at 1 metre	Audibility range in
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	in dB referred to $2 \times 10^{-5} \text{ N/m}^2$	nautical miles
200 or more	143	2
75 but less than 200	138	1.5
20 but less than 75	130	1
Less than 20	120	0.5

The range of audibility in the table above is for information and is approximately the range at which a whistle may be heard on its forward axis with 90 per cent probability in conditions of still air on board a vessel having average background noise level at the listening posts (taken to be 68 dB in the octave band centred on 250 Hz and 63 dB in the octave band centred on 500 Hz).

In practice the range at which a whistle may be heard is extremely variable and depends critically on weather conditions; the values given can be regarded as typical but under conditions of strong wind or high ambient noise level at the listening post the range may be much reduced.

(d) Directional properties.

The sound pressure level of a directional whistle shall be not more than 4 dB below the prescribed sound pressure level on the axis at any direction in the horizontal plane within ± 45 degrees of the axis. The sound pressure level at any other direction in the horizontal plane shall be not more than 10 dB below the prescribed sound pressure level on the axis, so that the range in any direction will be at least half the range on the forward axis. The sound pressure level shall be measured in that 1/3rd-octave band which determines the audibility range.

(e) Positioning of whistles.

When a directional whistle is to be used as the only whistle on a vessel, it shall be installed with its maximum intensity directed straight ahead.

A whistle shall be placed as high as practicable on a vessel, in order to reduce interception of the emitted sound by obstructions and also to minimize hearing damage risk to personnel. The sound pressure level of the vessel's own signal at listening posts shall not exceed 110 dB (A) and so far as practicable should not exceed 100 dB (A).

(f) Fitting of more than one whistle.

If whistles are fitted at a distance apart of more than 100 metres, it shall be so arranged that they are not sounded simultaneously.

(g) Combined whistle systems.

If due to the pressure of obstructions the sound field of a single whistle or of one of the whistles referred to in paragraph 1(f) above is likely to have a zone of greatly reduced signal level, it is recommended that a combined whistle system be fitted so as to overcome this reduction. For the purposes of the Rules a combined whistle system is to be regarded as a single whistle. The whistles of a combined system shall be located at a distance apart of not more than 100 metres and arranged to be sounded simultaneously. The frequency of any one whistle shall differ from those of the others by at least 10 Hz.

Bell or gong.

2.—(a) Intensity of signal.

A bell or gong, or other device having similar sound characteristics shall produce a sound pressure level of not less

than 110 dB at a distance of 1 metre from it.

(b) Construction.

Bells and gongs shall be made of corrosion-resistant material and designed to give a clear tone. The diameter of the mouth of the bell shall be not less than 300 mm for vessels of 20 metres or more in length, and shall be not less than 200 mm for vessels of 12 metres or more but of less than 20 metres in length.

Where practicable, a power-driven bell striker is recommended to ensure constant force but manual operation shall be possible. The mass of the striker shall be not less than 3 per cent of the mass of the bell.

3. The construction of sound signal appliances, their performance and their installation on board the vessel shall be to the satisfaction of the appropriate authority of the State whose flag the vessel is entitled to fly.

Approval.

ANNEX IV Distress Signals

1. The following signals, used or exhibited either together or separately, indicate distress and need of assistance—

- (a) a gun or other explosive signal fired at intervals of about a minute;
- (b) a continuous sounding with any fog-signalling apparatus;
- (c) rockets or shells, throwing red stars fired one at a time at short intervals;
- (d) a signal made by radiotelegraphy or by any other signalling method consisting of the group **•••—•••** (SOS) in the Morse Code;
- (e) a signal sent by radiotelephony consisting of the spoken word "Mayday";
- (f) the International Code Signal of distress indicated by N.C.;
- (g) a signal consisting of a square flag having above or below it a ball or anything resembling a ball;
- (h) flames on the vessel (as from a burning tar barrel, oil barrel, etc);
- (i) a rocket parachute flare or a hand flare showing a red light;
- (j) a smoke signal giving off orange-coloured smoke;
- (k) slowly and repeatedly raising and lowering arms outstretched to each side;
- (l) the radiotelegraph alarm signal;
- (m) the radiotelephone alarm signal;
- (n) signals transmitted by emergency position-indicating radio beacons.

2. The use or exhibition of any of the foregoing signals except for the purpose of indicating distress and need of assistance and the use of other signals which may be confused with any of the above signals is prohibited.

3. Attention is drawn to the relevant sections of the international Code of Signals, the Merchant Ship Search and Rescue Manual and the following signals—

- (a) a piece of orange-coloured canvas with either a black square and circle or other appropriate symbol (for identification from the air);
- (b) a dye marker.

SECOND SCHEDULE

NOTE: The description of the provisions set out in the second column is a guide only and reference must be made to the full wording of the Rules in question.

Rule	General subject matter of rule
5	maintenance of proper look-out
6	proceeding at safe speed
7	use of all available means to determine if risk of collision exists
8	taking action to avoid collision
9	correct navigation of narrow channels
10	compliance with traffic separation schemes
12	right of way between sailing vessels
13	proper means of overtaking vessels
14	alteration of course to avoid risk of head-on collision between power-driven vessels
15	right of way between power-driven vessels crossing
16	early and substantial action to keep out of way of other vessel
17	vessel having right of way to keep course and speed unless forced to take avoidance action
18	special rules for giving way to other vessels
19(b)	vessels to proceed at safe speed in conditions of restricted visibility
(d)	procedure when another vessel detected by radar alone
(e)	procedure when fog signal of other vessel heard forward of beam or close proximity of other vessel forward of beam cannot be avoided
20(b)(c)	prescribed lights and no others to be shown from sunset to sunrise and by day in restricted visibility conditions
(d)	prescribed shapes to be carried by day
22	range of visibility of prescribed lights
23	lights for certain power-driven and air-cushion vessels
24	lights and shapes when towing and pushing
25	lights and shapes for sailing vessels under way and vessels under oars
26	lights and shapes on fishing vessels
27	lights and shapes on vessels not under command or with restricted manoeuvrability
28	additional lights and shape for vessels constrained by draught
29	lights and shapes on pilot vessels
30	lights and shapes on vessels at anchor or aground
31	lights and shapes for seaplanes
33	equipment on vessels for sound signals
34	sound and light signals for manoeuvring and warning
35	sound signals in restricted visibility
36	signals to attract attention of other vessel
37	distress signals
Annex I	position and technical details of lights and shapes
Annex II	additional signals for fishing vessels fishing in close proximity
Annex III	technical details of sound signal appliances
Annex IV	particulars of distress signals

