



The Laws of Pitcairn, Henderson, Ducie and Oeno Islands

VOLUME II

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LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2002

CHAPTER XXXI

**EVIDENCE (SPECIAL MEASURES DIRECTIONS)
ORDINANCE**

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An ordinance to provide for special measures for giving evidence in criminal proceedings.

No. 7 of 2001

[31 October 2001]

PART I—PRELIMINARY

Citation

1. This ordinance may be cited as the Evidence (Special Measures Directions) Ordinance.

Interpretation

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

“accused”, in relation to any criminal proceedings means any person charged with an offence to which the proceedings relate (whether or not he or she has been convicted);

“complainant” in relation to any offence (or alleged offence) means a person against or in relation to whom the offence was (or is alleged to have been) committed;

“Court” means the Magistrate’s Court or the Supreme Court or the Court of Appeal, sitting in its criminal jurisdiction;

“eligible witness” means a witness eligible for assistance by virtue of section 3 or 4;

“legal representative” means any person duly admitted to practise as a legal practitioner under the provisions of the Legal Practitioners Ordinance and being the holder of a current annual practising certificate for the Islands;

“live link” has the meaning given by section 9(6);

“prosecutor” means any person duly acting as prosecutor;

“quality” in relation to the evidence of a witness, shall be construed in accordance with section 3(5);

“sexual offence” means an offence against the person of a sexual nature;

“special measures direction” means (in accordance with section 6(5)) a direction under section 6;

“witness”, in relation to any criminal proceeding, means any person called, or proposed to be called, to give evidence in the proceedings.

(2) In this ordinance references to the special measures available in relation to a witness shall be construed in accordance with section 5.

(3) In this ordinance references to a person being able to see or hear, or be seen or heard by, another person are to be read as not applying to the extent that either of them is unable to see or hear by reason of any impairment of eyesight or hearing.

(4) Nothing in this ordinance shall affect any power of a court to exclude evidence at its discretion (whether by preventing questions being put or otherwise) which is exercisable apart from this ordinance.

PART II—ELIGIBLE WITNESSES

3.—(1) For the purposes of this ordinance a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this section

Witnesses eligible for assistance on grounds of age or incapacity

- (a) if under the age of 17 at the time of the hearing; or
 - (b) if the Court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection (2).
- (2) The circumstances falling within this subsection are
- (a) that the witness
 - (i) suffers from mental disorder;
 - (ii) otherwise has a significant impairment of intelligence and social functioning;
 - (b) that the witness has a physical disability or is suffering from a physical disorder.

(3) In subsection (1)(a) “the time of the hearing”, in relation to a witness, means the time when it falls to the Court to make a determination for the purposes of section 6(2) in relation to the witness.

(4) In determining whether a witness falls within subsection (1)(b) the Court must consider any views expressed by the witness.

(5) In this ordinance references to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.

4.—(1) For the purposes of this ordinance a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this subsection if the Court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

Witnesses eligible for assistance on grounds of fear or distress about testifying

- (2) In determining whether a witness falls within subsection (1) the Court must take into account, in particular
- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
 - (b) the age of the witness;
 - (c) such of the following matters as appear to the Court to be relevant, namely
 - (i) the social and cultural background and ethnic origins of the witness,
 - (ii) the domestic and employment circumstances

- of the witness, and
- (iii) any religious beliefs or political opinions of the witness;
- (d) any behaviour towards the witness on the part of
- (i) the accused
 - (ii) members of the family or associates of the accused, or
 - (iii) any other person who is likely to be an accused or a witness in the proceedings.
- (3) In determining that question the Court must in addition consider any views expressed by the witness.
- (4) Where the complainant in respect of a sexual offence is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the Court of the witness's wish not to be so eligible by virtue of this subsection.

Special measures available to eligible witnesses.

5.—(1) For the purposes of this Part

- (a) the provision which may be made by a special measures direction by virtue of Part III of this ordinance is a special measure available in relation to a witness eligible for assistance by virtue of section 3; and
- (b) the provision which may be made by such a direction by virtue of Part III of this ordinance is a special measure available in relation to a witness eligible for assistance by virtue of section 4;

but this subsection has effect subject to subsection (2).

(2) Where (apart from this subsection) a special measure would, in accordance with subsection (1)(a) or (b), be available in relation to a witness in any proceedings, it shall not be taken by a court to be available in relation to the witness unless

- (a) the Court has been notified by the Governor that relevant arrangements may be made available in the area in which it appears to the Court that the proceedings will take place, and
- (b) the notice has not been withdrawn.

(3) In subsection (2) “relevant arrangements” means arrangements for implementing the measure in question which cover the witness and the proceedings in question.

(4) The withdrawal of a notice under that subsection relating to a special measure shall not affect the availability of that measure in relation to a witness if a special measures direction providing for that measure to apply to the witness's evidence has been made by the Court before the notice is withdrawn.

(5) The Governor may by order make such amendments

of this Part as he or she considers appropriate for altering the special measures which, in accordance with subsection (1)(a) or (b), are available in relation to a witness eligible for assistance by virtue of section 3 or (as the case may be) section 4, whether

- (a) by modifying the provisions relating to any measure for the time being available in relation to such a witness,
- (b) by the addition
 - (i) (with or without modifications) of any measure which is for the time being available in relation to a witness eligible for assistance by virtue of the other of those sections, or
 - (ii) of any new measure, or
- (c) by the removal of any measure.

PART III—SPECIAL MEASURES DIRECTIONS

6.—(1) This section applies where in any criminal proceedings

Special measures
direction relating to
eligible witness

- (a) a party to the proceedings makes an application for the Court to give a direction under this section in relation to a witness in the proceedings other than the accused, or
 - (b) the Court of its own motion raises the issue whether such a direction should be given.
- (2) Where the Court determines that the witness is eligible for assistance by virtue of section 3 or 4, the Court must then
- (a) determine whether any of the special measures available in relation to the witness (or any combination of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and
 - (b) if so
 - (i) determine which of those measures (or combination of them) would, in its opinion, be likely to maximise so far as practicable the quality of such evidence; and
 - (ii) give a direction under this section providing for the measure or measures so determined to apply to evidence given by the witness.
- (3) In determining for the purposes of this Part whether any special measure or measures would or would not be likely to improve or to maximise so far as practicable the quality of evidence given by the witness, the Court must consider all the circumstances of the case, including in particular
- (a) any views expressed by the witness; and

(b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) A special measures direction must specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.

(5) In this Part "special measures direction" means a direction under this section.

(6) Nothing in this Part is to be regarded as affecting any power of a Court to make an order or give leave of any description (in the exercise of its inherent jurisdiction or otherwise)

(a) in relation to a witness who is not an eligible witness, or

(b) in relation to an eligible witness where (as, for example, in a case where a foreign language interpreter is to be provided) the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

Further provisions
about directions:
general

7.—(1) Subject to subsection (2) and section 8(8), a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either

(a) determined (by acquittal, conviction or otherwise), or

(b) abandoned,

in relation to the accused or (if there is more than one) in relation to each of the accused.

(2) The Court may discharge or vary (or further vary) a special measures direction if it appears to the Court to be in the interests of justice to do so, and may do so either

(a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time, or

(b) of its own motion.

(3) In subsection (2) "the relevant time" means

(a) the time when the direction was given, or

(b) if a previous application has been made under that subsection, the time when the application (or last application) was made.

(4) Nothing in section 9(2) and (3) is to be regarded as affecting the power of the Court to vary or discharge a special measures direction under subsection (2).

(5) The Court must state in open court its reasons for

(a) giving or varying,

(b) refusing an application for or for the variation or

discharge of, or
 (c) discharging,
 a special measures direction and, if it is the Magistrate's Court,
 must cause them to be entered in the register of its proceedings.

(6) Rules of court may make provision

- (a) for uncontested applications to be determined by the Court without a hearing;
- (b) for preventing the renewal of an unsuccessful application for a special measures direction except where there has been a material change of circumstances;
- (c) for expert evidence to be given in connection with an application for or for varying or discharging such a direction;
- (d) for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to or withheld from a party to the proceedings.

8.—(1) For the purposes of this section

- (a) a witness in criminal proceedings is a “child witness” if he or she is an eligible witness by reason of section 3(1)(a) (whether or not he or she is an eligible witness by reason of any other provision of section 3 or 4);
- (b) a child witness is “in need of special protection” if the offence (or any of the offences) to which the proceedings relate is
 - (i) a sexual offence, or
 - (ii) an offence of kidnapping, false imprisonment, child abduction, assault on, injury or threat of injury to, any person.

Special provisions
 relating to child
 witnesses

(2) Where the Court, in making a determination for the purposes of section 6(2), determines that a witness in criminal proceedings is a child witness, the Court must

- (a) first have regard to subsections (3) to (7) below; and
- (b) then have regard to section 6(2);

and for the purposes of section 6(2), as it then applies to the witness, any special measures required to be applied in relation to him or her by virtue of this section shall be treated as if they were measures determined by the Court, pursuant to section 6(2)(a) and (b)(i), to be measures that (whether on their own or with any other special measures) would be likely to maximise, so far as practicable, the quality of his or her evidence.

- (3) The primary rule in the case of a child witness is that the Court must give a special measures direction in relation to the witness which complies with the following requirements
- (a) it must provide for any video recorded evidence in chief to be admitted; and
 - (b) it must provide for any evidence given by the witness in the proceedings which is not given by means of a video recording (whether in chief or otherwise) to be given by means of a live link in accordance with section 9.
- (4) The primary rule is subject to the following limitations
- (a) the requirement contained in subsection (3)(a) or (b) has effect subject to the availability (within the meaning of section 5(2)) of the special measure in question in relation to the witness;
 - (b) the rule does not apply to the extent that the Court is satisfied that compliance with it would not be likely to maximise the quality of the witness's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).
- (5) However, subsection (4)(b) does not apply in relation to a child witness in need of special protection.

PART IV—SPECIAL MEASURES

Evidence by live link

- 9.—**(1) A special measures direction may provide for the witness to give evidence by means of a live link.
- (2) Where a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the Court.
- (3) The Court may give permission for the purposes
- (a) of subsection (2) if it appears to the Court to be in the interests of justice to do so, and may do so either on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time, or
 - (b) of its own motion.
- (4) In subsection (3), “the relevant time” means
- (a) the time when the direction was given, or
 - (b) if a previous application has been made under that subsection, the time when the application (or last application) was made.
- (5) Where in proceedings before any Court evidence is to be given by means of a live link in accordance with a special measures direction, the Court may sit for the purposes of

the whole or any part of those proceedings at a place where suitable facilities for receiving such evidence are available and which has the approval of the presiding Magistrate or Judge.

(6) In this ordinance “live link” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the Judge or Magistrate and the assessors (if any), the legal representatives acting in the proceedings and any interpreter or other person appointed to assist the witness.

10.—(1) A special measures direction may provide for the exclusion from the Court during the giving of the witness’s evidence, of persons of any description specified in the direction.

Evidence given in private

(2) The persons who may be so excluded do not include

- (a) the accused,
- (b) legal representatives acting in the proceedings, or
- (c) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.

(3) A special measures direction providing for representatives of news gathering or reporting organisations to be so excluded shall be expressed not to apply to one named person who

- (a) is a representative of such an organisation, and
- (b) has been nominated for the purpose by one or more such organisations,

unless it appears to the Court that no such nomination has been made.

(4) A special measures direction may only provide for the exclusion of persons under this section where—

- (a) the proceedings relate to a sexual offence; or
- (b) it appears to the Court that there are reasonable grounds for believing that any person other than the accused has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

(5) Any proceedings from which persons are excluded under this section (whether or not those persons include representatives of news gathering or reporting organisations) shall nevertheless be taken to be held in public for the purposes of any privilege or exemption from liability available in respect of fair, accurate and contemporaneous reports of legal proceedings held in public.

11. A special measures direction may provide for the wearing of court robes to be dispensed with during the giving

Dispensing with court robes

of the witness's evidence.

Examination of
witness through
intermediary

12.—(1) A special measures direction may provide for any examination of the witness (however and wherever conducted) to be conducted through an interpreter or other person approved by the Court for the purposes of this section (“an intermediary”).

(2) The function of an intermediary is to communicate

- (a) to the witness, questions put to the witness, and
- (b) to any person asking such questions, the answers given by the witness in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.

(3) Any examination of the witness in pursuance of subsection (1) must take place in the presence of such persons as rules of court or the direction may provide, but in circumstances in which—

- (a) the Judge or Magistrate and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary, and
- (b) (except in the case of a video-recorded examination) the assessors (if any) are able to see and hear the examination of the witness.

(4) Where two or more legal representatives are acting for a party to the proceedings, subsection (3)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(5) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by rules of court, that he or she will faithfully perform his or her function as intermediary.

(6) Section 1 of the Perjury Act 1911 of the United Kingdom shall apply in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding; and for this purpose, where a person acts as an intermediary in any proceeding which is not a judicial proceeding for the purposes of that section, that proceeding shall be taken to be part of the judicial proceeding in which the witness's evidence is given.

Aids to
communication

13. A special measures direction may provide for the witness, while giving evidence (whether by testimony in Court or otherwise), to be provided with such device as the Court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any

disability or disorder or other impairment which the witness has or suffers from.

PART V—SUPPLEMENTARY

14.—(1) Subsections (2) to (4) apply to a statement made by a witness in criminal proceedings which, in accordance with a special measures direction, is not made by the witness in direct oral testimony in Court but forms part of the witness’s evidence in those proceedings.

Status of evidence given under this ordinance

(2) The statement shall be treated as if made by the witness in direct oral testimony in Court; and accordingly

- (a) it is admissible evidence of any fact of which such testimony from the witness would be admissible;
- (b) it is not capable of corroborating any other evidence given by the witness.

(3) In estimating the weight (if any) to be attached to the statement, the Court must have regard to all the circumstances from which an inference can reasonably be drawn (as to the accuracy of the statement or otherwise).

(4) Nothing in this ordinance affects the operation of any rule of law relating to evidence in criminal proceedings.

(5) Where any statement made by a person on oath in any proceeding which is not a judicial proceeding for the purposes of section 1 of the Perjury Act 1911 of the United Kingdom is received in evidence in pursuance of a special measures direction, that proceeding shall be taken for the purposes of that section to be part of the judicial proceeding in which the statement is so received in evidence.

(6) Where in any proceeding which is not a judicial proceeding for the purposes of that Act—

- (a) a person wilfully makes a false statement otherwise than on oath which is subsequently received in evidence in pursuance of a special measures direction, and
- (b) the statement is made in such circumstances that had it been given on oath in any such judicial proceeding that person would have been guilty of perjury,

he or she shall be guilty of an offence and liable to any punishment which might be imposed on conviction of an offence under section 57(2) of that Act (giving of false unsworn evidence in criminal proceedings).

(7) In this section “statement” includes any representation of fact, whether made in words or otherwise.

15. Where on a trial on information evidence has been given in accordance with a special measures direction, the

Warning to assessors

Judge must give the assessors(if any) such warning as the Judge considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the accused.

Ordinance does not
derogate from Part
VIIA of cap.3

16. Nothing in this ordinance shall be construed as derogating from the powers of the Magistrate's Court and the Supreme Court conferred on them by Part VIIA of the Justice Ordinance (cap.3).

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2010

CHAPTER XXXII

ANNUAL REVISION OF LAWS ORDINANCE

An ordinance to make provision for the annual preparation
and publication of a revised edition of any enactment

No. 1 of 2002
No. 4 of 2010

[8 March 2002]

1. This ordinance may be cited as the Annual Revision
of Laws Ordinance.

Short title

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

Interpretation

“effective date” means the 1st day of October 2001 (being
the date appointed by the Governor under section
7(1) of the Revised Edition of the Laws Ordinance
2001 for the coming into operation of the Revised
Edition of the Laws 2001);

“enactment” means any ordinance, proclamation, order,
rules, regulations, bye-laws and any other form of
subsidiary legislation and includes this ordinance;

“Revised Edition of the Laws 2001” means the general
revision of the laws which came into force on the
effective date or any revised edition superseding
the same.

3. As soon as practicable after the first day of January in
every year, with effect from the first day of January 2003, the
[Attorney General] shall, subject to the powers of omission
conferred upon him or her by section 4 of this ordinance—

Revision of
enactments

(a) cause to be prepared and published a new revised
edition of—

(i) any ordinance that has been amended since
the effective date;

(ii) all new ordinances that have been enacted
since the effective date (including this
ordinance), other than ordinances the sole
or substantial effect of which was to amend
other ordinances:

Provided that the [Attorney General] shall not be
required to prepare or publish a new revised edition
of any ordinance that has been amended or varied if

he or she considers that the amendments or variations are not sufficiently extensive to justify preparation and publication thereof, but all such amendments and variations shall be contained in the revised edition or in a separate booklet of minor amendments and indicated in the annual index; and

- (b) cause to be prepared and published a new table of contents and index to the revised edition, together with a chronological list of ordinances and a list of the current editions of the laws.

(2) The Governor may in his or her discretion direct that, in the case of any enactment which amends or affects any enactment contained in the Revised Edition of the Laws 2001 or any subsequent revision made under this ordinance, the enactment shall be published for the purposes of any loose-leaf volume of the laws in the form as it is so amended or affected and in each such case a replacement page or pages may be issued to holders of the Revised Edition of the Laws 2001 published in binder form with appropriate instructions as to its inclusion in such binder.

(Amended by Ordinance No. 4 of 2010)

4. In the preparation of any revised edition of any enactment, the [Attorney General] shall have the following powers—

- (a) to omit—
 - (i) all parts of the enactment 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 the enactment and all tables or lists of repealed enactments whether contained in schedules or otherwise;
 - (iii) any preamble or part of a preamble to the enactment and all or any recital in the enactment where such omission can, in the opinion of the [Attorney General], conveniently be made;
 - (iv) all words of enactment in the enactment;
 - (v) all enactments prescribing the date when the enactment or part of the enactment is to come into force, where such omission can, in the opinion of the [Attorney General], conveniently be made;
 - (vi) all amending enactments or parts of enactments where the amendments effected by such enactments or parts of enactments

have been embodied by the [Attorney General] in the enactment;

(Amended by Ordinance No. 4 of 2010)

- (b) to consolidate into one enactment two or more enactments in *pari materia*, making the alterations thereby rendered necessary in the consolidated enactment and affixing such date thereto as seems most convenient;
- (c) to alter the order of sections or other divisions in the enactment and, in all cases where it is necessary to do so, to renumber the sections or other divisions of the enactment;
- (d) to alter the form or arrangement of any section or other division of the enactment, either by combining it in whole or in part with another section or division or other sections or divisions or by dividing it into two or more subsections or other divisions;
- (e) to divide the enactment, whether consolidated or not, into parts or other divisions;
- (f) to supply or alter marginal notes and tables showing the arrangement of sections;
- (g) to correct cross-references;
- (h) to shorten or simplify the phraseology of the enactment;
- (i) to add a short title or citation to the enactment and, if necessary or expedient, to alter the long title, short title or citation of the enactment;
- (j) to correct grammatical and typographical mistakes in the existing copies of the enactment and, for that purpose, to make verbal additions, omissions or alterations not affecting the meaning of the enactment;
- (k) to correct the punctuation in the enactment;
- (l) to provide footnotes by way of amplification;
- (m) to make such formal alterations as to names, localities, offices and otherwise as are necessary to bring the enactment into conformity with the circumstances of the Islands;
- (n) to make such adaptations of or amendments to the enactment as appear to be necessary or proper as a consequence of changes in the constitutions of Commonwealth countries or in the composition of the Commonwealth;
- (o) to make such formal alterations to the enactment as are necessary or expedient for the purpose of securing uniformity of expression;

and power to do all other things relating to form and method, whether similar to the foregoing or not, which appear to him or her necessary for the perfecting of the revised edition.

Mode of dealing with alteration in substance

5.—(1) The powers conferred upon the [Attorney General] by section 4 shall not be taken to imply any power in him or her to make any alteration or amendment in the matter or substance of any enactment.

(2) If the [Attorney General] considers that it is desirable that in the preparation of the revised edition of any enactment there should be omissions, amendments or additions other than those authorised by section 4, the same may be collected and submitted to the Governor in the form of an ordinance.

(3) In the case of any such ordinance or ordinances enacted prior to the making of an order under section 6 bringing the revised edition into force—

- (a) the [Attorney General] 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 part of the enactment has been repealed or has expired or become spent or had its effect, that part shall be omitted from the revised edition.

(Amended by Ordinance No. 4 of 2010)

Bringing of a revised edition into force

6.—(1) The Governor may by order declare that the revised edition of any enactment shall come into force on such date as the Governor may think fit.

(2) From the date the revised edition of an enactment is brought into force under subsection (1), the revised edition shall be deemed to be and shall be without any question whatsoever in all courts and for all purposes whatsoever the sole and only authentic version of such enactment on the said date:

Provided that nothing in this section shall affect the operation of any enactment which, before the date of the coming into force of the revised edition, may be passed repealing, altering or amending any earlier enactment, although such enactment has already been included in the revised edition.

Copies to be signed and deposited

7. One copy of every enactment revised under this ordinance shall be dated and signed by the [Attorney General] and by the Governor and shall be sealed with the public seal and such copy shall thereafter be transmitted to the Chief

Justice of the Islands who shall deposit the same among the records of the Court.

(Amended by Ordinance No. 4 of 2010)

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

Distribution of copies
of revised edition

(2) There may be offered to the public such number of copies at such prices as the Governor may direct.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition Of Laws 2015

Order Bringing Annual Revised Edition of the Laws Into Force
(Pursuant to s 6 of the Annual Revision of Laws Ordinance)

and

Directing (pursuant to s 3(2) of the Annual Revision of Laws Ordinance) that each enactment in the Revised Edition of the Laws 2001 and subsequent revisions thereof that has been amended or affected shall be published (in the form in which it is so amended or affected) by way of replacement pages issued to holders of the Revised Edition of the Laws 2001 in binder form.

1. It is hereby declared that the revised edition of each enactment listed below shall be in force as from the date of this order.

2. It is directed that each enactment in the Revised Edition of the Laws 2001 and subsequent revisions thereof that has been amended or affected by the revised edition shall be published in the form in which it is so amended or affected, by way of the replacement pages (indicated below) issued to holders of the Revised Edition of the Laws 2001 in binder form.

3. It is noted that, in exercise of the powers in s 4 of the Annual Revision of Laws Ordinance, the alterations noted in the table below have been made in the revised edition of the enactments to which they relate.

The following are the new and amended enactments declared to be in force under paragraph 1, together with the corresponding loose-leaf pages to be added to the Revised Edition of the Laws 2001:

Enactment affected	Replacement pages	Alterations
Order under s 32 of the Constitution of Pitcairn	lxvi(a)	
Interpretation and General Clauses Ordinance	3 - 16	Correction of typographical errors in marginal notes of ss 11, 14, and 18
Local Government Ordinance	195-204B; 207(b)-207(c); 207(h)-207(i)	
Marriage Ordinance	325-338; 338C-338D	Section 1 text "husband and wife" amended to "both spouses together" to correct grammar; Section 23, new text "or her" amended to "or she" to correct grammar New subdivision "Part VIA – Miscellaneous" inserted before section 41 to reflect content of following sections. Section 43 marginal note amended from "Supreme Court" to "Magistrate's Court" to reflect content of section;
Revised Edition of Laws Order	503-504B	Previous Order omitted as spent
Local Government (Firearms Control) Regulations	705-710; 717-726	Regulation 23(7)(b), "is" amended to "his" to correct typographical error
Notice under s 3 of the Children Ordinance	739-740	Previous notice omitted as replaced by new notice
Notice under s 4(b) of the Children Ordinance	741-742	Previous notice omitted as replaced by new notice

Ordered and Directed this 31st day of December 2015

Jonathan Sinclair
Governor

[seal]

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2002

CHAPTER XXXIII

**PUBLIC DEFENDER IN CRIMINAL
PROCEEDINGS**

An ordinance to provide for the office of Public Defender in
criminal proceedings

No. 3 of 2002

[28 March 2002]

1. This ordinance may be cited as the Public Defender in
Criminal Proceedings Ordinance.

Citation

2. In this ordinance

Interpretation

“Court” means any Magistrate’s Court, the Supreme
Court or the Court of Appeal in its appellate
jurisdiction;

“Public Defender” means the Public Defender in
Criminal Proceedings appointed under section 3.

3.—(1) There is hereby established a public office to be
known as the Public Defender in Criminal Proceedings.

Establishment of
office of Public
Defender

(2) The Governor shall, after consultation with the Chief
Justice, appoint a suitable person, who has been admitted
to practise as a legal practitioner pursuant to the Legal
Practitioners Ordinance, to be the Public Defender for such
term and upon such conditions as the Governor may think fit.

cap.10

(3) The Public Defender shall have, subject to this
ordinance, independent status and authority and may be
removed or suspended from such office by the Governor only
by reason of incapacity or misconduct and after consultation
with the Chief Justice.

(4) The Public Defender shall have the same right of
audience and the same right of protection and immunity from
suit in civil and criminal causes as are conferred by section
19 of the Judicature (Courts) Ordinance.

cap. 2

4.—(1) The Public Defender shall be entitled to accept
instructions from and to appear as counsel for the defendant in
a prosecution or other proceeding for any criminal offence in
any Court. The Public Defender shall be remunerated therefor
in accordance with the Legal Aid (Criminal Proceedings)
Ordinance, provided that a certificate for legal aid is granted to
the defendant under section 3 whereupon the Public Defender

Powers and functions
of Public Defender

cap. 9

shall be deemed to have been assigned to represent him or her under section 9.

(2) The Public Defender shall have an advisory function on behalf of defendants in relation to criminal proceedings, whether potential or in being, concerning the practice and procedure and the administration or organisation of the business of the Courts. Every decision or matter significantly affecting the rights or interests of those defendants shall be referred by the Chief Justice or the Governor, as the case may be, to the Public Defender for advice.

(3) The Public Defender may, in any criminal proceeding in which the defendant is not legally represented, be appointed by the Chief Justice to appear as *amicus curiae* to argue any question of difficulty or importance or other point touching upon the public interest, in order to assist the Court in determining it. The provisions of subsection (1) as to remuneration shall apply to an appointment under this subsection.

(4) The Public Defender shall have such other powers or functions as the Governor may from time to time, after consultation with the Chief Justice, specify in writing to him or her.

Rules

5. The Governor may make such rules, upon the advice of the Chief Justice, as seem to him or her necessary for the implementation of the provisions of this ordinance

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2017

CHAPTER XXXIV

PAROLE ORDINANCE

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No. 6 of 2002
 No. 2 of 2007
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 No. 1 of 2016

An ordinance to reform the law relating to the release from detention of offenders serving sentences of imprisonment

[18 September 2002]

PART I—PRELIMINARY PROVISIONS

- 1.** This ordinance may be cited as the Parole Ordinance.

Short title

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

chairperson means the chairperson of the Commission appointed under section 90

Commission means the Pitcairn Parole Commission established under section 86; and includes a committee of the Commission, a committee convenor and the chairperson acting within their respective jurisdictions

compassionate release means release under section 38

determinate sentence means a sentence of imprisonment for a fixed term

final recall order means a final recall order made under section 63

[**home detention** has the meaning given to it in section 3(1) of the Sentencing Ordinance]

[**home detention residence** has the meaning given to it in section 3(1) of the Sentencing Ordinance]

hospital means a hospital wholly or partly for the treatment of mentally disordered persons as compulsory inpatients

indeterminate sentence means a sentence of imprisonment that is imprisonment for life or preventive detention

interim recall order means an interim recall order made under section 59

key date, in relation to a sentence of imprisonment, means the start date, sentence expiry date and release date of the sentence

long-term sentence means a sentence of imprisonment that is—

(a) a determinate sentence of more than 24 months; or

(b) a notional single sentence of more than 24 months; or

(c) an indeterminate sentence

non-parole period means the term within, or proportion of, a long-term sentence during which the offender who is subject to the sentence is not eligible to be released on parole from the sentence

non-release day means the Sabbath, Christmas Day, New Year's Day, the Sovereign's Birthday and Bounty Day

notional single sentence means the notional single sentence of imprisonment that is created when one determinate sentence is directed to be served

cumulatively on another determinate sentence (*see* section 74)

parole eligibility date means the date on and after which an offender who is subject to one or more long-term sentences of imprisonment is eligible to be released on parole (*see* section 17)

penal institution means a prison or other place of detention established under any ordinance, [but does not include a home detention residence]

postponement order means an order made under section 24 that postpones the date of an offender's next parole

release conditions means the standard release conditions and any special conditions imposed by the Commission or the sentencing court which apply to an offender released from detention

release date means, in relation to a determinate sentence of imprisonment, the date on which the offender who is subject to the sentence ceases to be liable to be recalled to continue serving that sentence in a penal institution (*see* section 81)

sentence expiry date means the date on which the offender who is subject to the sentence has served its full term and therefore ceases to be subject to it (*see* section 79)

short-term sentence means a sentence of imprisonment that is

(a) a determinate sentence of 24 months or less; or

(b) a notional single sentence of 24 months or less

special conditions means conditions of a type referred to in section 12

standard release conditions means the standard conditions of release set out in section 11

start date, in relation to a sentence of imprisonment, means the date on and from which an offender who is subject to the sentence begins to be subject to it (*see* sections 73 to 78)

statutory release date means the date on which an offender who is subject to one or more sentences of imprisonment—

(a) must be released from detention (*see* section 14); and

(b) ceases to be liable to be recalled to continue serving any sentence in a penal institution (*see* sections 56 to 63)

Supervision Officer means, for the purposes of this ordinance, the person appointed to that office in accordance with section 2 of the Sentencing (Community-based Sentences) Ordinance 2002

variation, in relation to the variation by the Commission of release conditions, [] includes the suspension and addition of conditions and the variation of their duration.

(Amended by Ordinance No. 1 of 2016)

3. This ordinance binds the Crown.

Ordinance binds the Crown

PART II—RELEASE

General provisions

4.—(1) This section is intended to give a broad overview of how and when offenders are released from detention. It does not confer rights or impose obligations and, if there is an inconsistency between this section and any other, the other section prevails.

Overview of release

(2) Unless an offender has been released earlier under this Part, he or she must be released from detention on his or her statutory release date and after that is no longer subject to recall. However, offenders may be subject to release conditions after their statutory release date.

[(3) This Part provides for two types of early release from detention—

- (a) parole; and
- (b) compassionate release.]

(Repealed and replaced by Ordinance No. 1 of 2016)

(4) Parole has the following characteristics—

- (a) it is available only to an offender who is subject to a long-term sentence;
- (b) it is granted by the Commission, which also imposes release conditions;
- (c) an offender on parole from a determinate sentence is subject to recall at any time until his or her statutory release date;
- (d) an offender on parole from an indeterminate sentence is subject to recall for life.

(5) (Repealed by Ordinance No. 1 of 2016)

(6) Compassionate release has the following characteristics—

- (a) it may be granted by the Commission in either of two specific circumstances;
- (b) the Commission may impose release conditions and may recall the offender.

Guiding principles

5.—(1) When making decisions about, or in any way relating to, the release of an offender, the paramount consideration for the Commission in every case is the safety of the community.

(2) Other principles which must guide the Commission's decisions are—

- (a) that offenders must not be detained any longer than is consistent with the safety of the community and that they must not be subject to release conditions [] that are more onerous or last longer than is consistent with the safety of the community; and
- (b) that offenders must be provided with information about decisions that concern them and be advised how they may participate in decision-making that directly concerns them; and
- (c) that decisions must be made on the basis of all the relevant information that is available to the commission at the time; and
- (d) that the rights of victims are upheld and victims' submissions and any restorative justice outcomes are given due weight.

(Amended by Ordinance No. 1 of 2016)

(3) When any person is required under this ordinance to assess whether an offender poses an **undue risk**, the person must consider both—

- (a) the likelihood of further offending; and
- (b) the nature and seriousness of any likely subsequent offending.

Application of ordinance

6.—(1) This ordinance applies to all offenders who are subject to a sentence of imprisonment.

(2) Every decision about, or in anyway relating to, the release of an offender that is made after the commencement date must be made under this ordinance unless specifically provided otherwise.

Application of ordinance to persons subject to term of imprisonment

7. Unless specifically provided otherwise, this ordinance applies to every person who is subject to a term of imprisonment (whether by committal, sentence or order) for non-payment of a fine or other sum of money, disobedience or a court order or contempt of court, as if—

- (a) every reference to a sentence of imprisonment included a reference to a term of imprisonment; and
- (b) every reference to an offender included a reference to a person who is subject to a term of imprisonment.

Application of ordinance to offenders detained in hospital

8.—(1) This section applies to an offender who is detained in or on leave from a hospital following his or her transfer from detention in a penal institution to that hospital under

relevant provisions of law by reason of mental disorder or illness.

(2) An offender to whom this section applies must be treated for the purposes of this ordinance as if he or she were detained in a penal institution and a reference to an offender detained in a penal institution is a reference to an offender detained in or on leave from a hospital.

(3) However, nothing in subsection (2) derogates from any provision that applies specifically to offenders to whom this section applies and the Commission and the Governor may make special arrangements for such offenders.

(4) When an offender to whom this section applies is released under this ordinance, he or she must be treated thereafter as an inpatient or a voluntary patient, as the case may be.

9. For the avoidance of doubt, a requirement in this Part that an offender be released from detention at a certain time is subject to any order of a court or other authority of competent jurisdiction that the offender be detained.

This ordinance
subject to other orders

10.—(1) The Commission must take all reasonable steps to ensure that the information received by the Commission on which it will make any decision relating to an offender is made available to the offender—

General rules about
information to be
given to offenders

- (a) at least 20 working days before the relevant hearing;
or
- (b) if that is not possible, as soon as practicable before the hearing.

(2) Notwithstanding subsection (1), the Commission must ensure that—

- (a) no information is given to the offender that discloses the address or contact details of any victim of the offender; and
- (b) if any written submissions by a victim or any victim impact statements are shown to an offender, they are not retained by the offender.

(3) Notwithstanding subsection (1), the Commission may, in exceptional circumstances, order that any information referred to in that subsection not be made available to an offender if, in the opinion of the relevant committee convenor, it would prejudice the mental or physical health of the offender or endanger the safety of any person.

(4) Information withheld under subsection (3) may be provided to the offender's counsel on a confidential basis, with the consent of the offender or, if the circumstances so require, without such consent.

(5) Information provided or shown to an offender under this section must be used only for the purpose of assisting the offender to make submissions to the Commission.

(6) The Commission must give a written copy of every order or determination to the offender who is the subject of the order or determination together with information as to how the offender may exercise any review or appeal rights that he or she has in relation to the order or determination.

(7) Any person who publishes information provided under this section in a form that identifies, or enables the identification of, a victim commits an offence and is liable on summary conviction to—

- (a) in the case of an individual, a term of imprisonment not exceeding 3 months or a fine not exceeding \$2,000; and
- (b) in the case of a body corporate, a fine not exceeding \$10,000.

Conditions

Standard release
conditions

11.—(1) An offender who is subject to the standard release conditions must comply with the following conditions—

- (a) the offender must report in person to the Supervision Officer as soon as practicable and not later than 72 hours after release;
- (b) the offender must report to the Supervision Officer as and when required to do so by the Supervision Officer and must notify the Supervision Officer of his or her residential address and the nature and place of his or her employment when asked to do so;
- (c) the offender must not move to a new residential address without the prior written consent of the Supervision Officer;
- (d) the offender must not reside at any address at which the Supervision Officer has directed the offender not to reside;
- (e) the offender must not engage, or continue to engage, in any employment or occupation in which the Supervision Officer has directed the offender not to engage or continue to engage;
- (f) the offender must not associate with any specified person, or with persons of any specified class, with whom the Supervision Officer has, in writing, directed the offender not to associate;
- (g) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to so do by the Supervision Officer.

(2) The conditions in subsection (1)(c) and (d) do not apply if, and to the extent that, they are inconsistent with any special conditions imposed by the Commission.

12.—(1) If the Commission imposes standard release conditions on an offender [], the Commission may (subject to subsections (2) and (4)) impose any one or more special conditions on the offender.

Special conditions

(Amended by Ordinance No. 1 of 2016)

(2) A special condition must not be imposed unless it is designed to—

- (a) reduce the risk of re-offending by the offender; or
- (b) facilitate or promote the rehabilitation and reintegration of the offender; or
- (c) provide for the reasonable concerns of victims of the offender.

(3) Without prejudice to the generality of this section, the kinds of conditions that may be imposed as a special condition include—

- (a) conditions relating to the offender's place of residence (which may include a condition that the offender reside at a particular place) or his or her finances or earnings;
- (b) conditions requiring the offender to participate in a programme (as defined in section 13) to reduce the risk of further offending by the offender through the rehabilitation and reintegration of the offender;
- (c) conditions that the offender not associate with any person, persons or class of persons;
- (d) conditions requiring the offender to take prescription medication;
- [(e) conditions prohibiting the offender from entering or remaining in specified places or areas, at specified times, or at all times;
- (f) conditions requiring the offender to submit to the electronic monitoring of compliance with any release conditions that relate to the whereabouts of the offender.]

(Amended by Ordinance No. 1 of 2016)

(4) No offender may be made subject to a special condition that requires the offender to take prescription medication unless the offender—

- (a) has been fully advised, by a person who is qualified or authorised by law to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and
- (b) consents to taking the prescription medication.

(5) An offender does not commit a breach of his or her conditions for the purposes of section 68 if he or she withdraws consent to taking prescription medication but the failure to take the medication may give rise to a ground for recall set out in section 58.

Electronic monitoring

[12A.—(1) The purpose of an electronic monitoring condition imposed under section 12(3)(f) is to deter the offender from breaching conditions that relate to his or her whereabouts, and to monitor compliance with those conditions.

(2) Information about an offender that is obtained through electronic monitoring may be used both for the purposes referred to in subsection (1) and for the following purposes:

- (a) to verify compliance with any release conditions;
- (b) to detect non-compliance with any conditions and the commission of offences;
- (c) to provide evidence of non-compliance with conditions and the commission of offences;
- (d) to verify that the offender has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately.]

(Inserted by Ordinance No. 1 of 2016)

Programmes

13. For the purposes of section 12, a **programme** means any of the following—

- (a) any psychiatric or other counselling or assessment;
- (b) attendance at any medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative or reintegrative programme;
- (c) placement in the care of any appropriate person, persons or agency approved by the Supervision Officer.

Release at statutory release date

Release at statutory
release date

14.—(1) The statutory release date of an offender is the release date of the sentence to which the offender is subject (including any notional single sentences) that has the latest release date.

(2) An offender who is detained in a penal institution [] on his or her statutory release date must be released from detention on that date.

(Amended by Ordinance No. 1 of 2016)

Conditions applying
to release at statutory
release date

15.—(1) An offender who is released under section 14 at the release date of a short-term sentence is, on release, subject to any release conditions imposed by the Court on that sentence unless subsection (3) or section 16 applies.

(2) If an offender is released under section 14 at the release-date of a long-term sentence, the Commission—

- (a) must impose the standard release conditions for a period of six months from the offender's statutory release date; and
- (b) may [impose] any special conditions for a period of up to six months from the offender's statutory release date.

(Amended by Ordinance No. 1 of 2016)

(3) If an offender who is subject to a long-term sentence is, while not on parole or compassionate release, sentenced within the year preceding his or her statutory release date to a short-term sentence of which the release date is after that statutory release date, then, if the offender is released at the release date of the short-term sentence, that release date must be treated as if it were the release date of a long-term sentence.

16.—(1) If an offender who is on parole is sentenced to a concurrent short-term sentence of which the release date is before the offender's statutory release date, then (provided the offender is not recalled) the offender must be released from detention on the release date of the short-term sentence.

Special provision for offenders sentenced to short-term sentences while on parole

(2) If subsection (1) applies, except that the offender is subject to more than one short-term sentence, the offender must be released on the release date of the short-term sentence (including any short-term notional single sentence) that has the latest release date.

(3) For the avoidance of doubt, subsection (2) does not apply in respect of any short-term sentences that are imposed cumulatively if the resulting notional single sentence is a long-term sentence.

(4) If an offender is released in accordance with subsection (1) or subsection (2)—

- (a) the offender is released on parole under section 25 and the Commission must impose release conditions under section 26 accordingly; but
- (b) the actual date of release is determined under sections 48(2) and 50 as if the offender were being released at his or her statutory release date.

(5) If for any reason an offender is released in accordance with subsection (1) or subsection (2) before the Commission has imposed release conditions as required by subsection (4)

(a), then—

- (a) if the offender was at the start date of the sentence (or earliest applicable sentence) subject to any release conditions, the Commission is deemed to have re-imposed those release conditions for the remainder of the period for which they were

originally imposed; and

- (b) if the offender was not, at the start date of the sentence (or earliest applicable sentence) subject to release conditions, the offender is not subject to release conditions when he or she is released under subsection (1) or subsection (2).

Parole

Parole eligibility date

17.—(1) The parole eligibility date of an offender who is subject [] to one or more sentences [] is the date on which the offender—

- (a) has finished serving the non-parole period of every long-term sentence to which he or she is subject; and
- (b) has passed the release date of every short-term sentence to which he or she is subject.

(Amended by Ordinance No. 1 of 2016)

(2) Notwithstanding anything in this section, an offender who is subject only to one or more short-term sentences does not have a parole eligibility date (unless the short-term sentences are cumulative and form a long-term notional single sentence, in which case subsection (1) applies to the notional single sentence and the offender will have a parole eligibility date under that subsection).

Consideration for parole of offenders detained in penal institution

18.—(1) The Commission must, as soon as practicable after the parole eligibility date of an offender who is detained in a penal institution, consider the offender for release on parole.

(2) The Commission must consider for parole every offender who is detained in a penal institution at least once in every 12 months after the offender’s last parole hearing unless, when the offender is due to be considered—

- (a) the offender has a new parole eligibility date that is more than 12 months after his or her last parole hearing (in which case subsection (1) applies); or
- (b) the offender is subject to a postponement order; or
- (c) the offender is detained following an application for a recall order, or under an interim or final recall order.

(3) If subsection 2(c) (but not subsection 2(a)) applies to an offender, the Commission must consider the offender for parole within twelve months of any final recall order that is, or is subsequently, made.

Date of hearings

19. For the purpose of administrative efficiency, the Commission may consider an offender for release on parole at any time within the month preceding the date on which the offender is due to be considered by the Commission; but

in no case may an offender who is considered early under this section be released on parole before his or her parole eligibility date.

20.—An offender who is released on compassionate release may not be considered for parole by the Commission.]

(Repealed and replaced by Ordinance No. 1 of 2016)

No consideration for parole of offenders on compassionate release

21. An offender who is unlawfully at large on the date on which he or she is due to be considered for parole must be considered by the Commission for parole on the later of—

Consideration of offenders unlawfully at large when due to be considered for parole

- (a) the date that is 12 months after his or her return to custody (or as soon as practicable after it); or
- (b) if the offender, after being returned to custody, has a new parole eligibility date, the offender's parole eligibility date (or as soon as practicable after it).

22.—(1) The chairperson may, in exceptional circumstances, refer an offender who has not yet reached his or her parole eligibility date for consideration by the Commission for parole.

Early referral and consideration for parole

(2) A referral under this section must be in writing and must set out the reasons why the chairperson is making the referral.

(3) The Governor may designate a class of offenders who have not yet reached their parole eligibility dates for early consideration by the Commission for parole.

(4) The Commission must, as soon as practicable, consider for parole any offender referred to it under subsection (1) and every offender belonging to a class designated under subsection (3).

(5) The Commission may direct the release on parole of an offender considered under this section if—

- (a) the Commission is satisfied on reasonable grounds that the offender, if released on parole, will not pose an undue risk to the safety of the community or any person or class of persons within the term of the sentence, having regard to the matters set out in section 25(2)(a) and (b); and
- (b) in the Commission's opinion the interests of justice require that the offender be released before his or her parole eligibility date.

(6) An offender released on parole under this section is to be treated for all purposes as an offender released on parole under section 25(1).

23.—(1) The Commission may, at any time after an offender's parole eligibility date, consider the offender for release on parole at a time other than when the offender is due to be considered for parole and may make an order under section 25(1) directing his or her release on parole.

Other times when Commission may consider offenders for parole

(2) An offender may, at any time, apply to the Commission to exercise its discretion under subsection (1) to consider the offender for parole.

Postponement of
consideration for
parole

24.—(1) If the Commission is satisfied that, in the absence of a significant change in the offender's circumstances, an offender will not be suitable for release at the time when he or she is next due to be considered for parole, the Commission may make a postponement order in relation to the offender.

(2) If the Commission makes an postponement order, it must specify the date by which the offender must be further considered for parole, which—

- (a) in the case of an offender serving an indeterminate sentence, must be within three years of the offender's most recent parole hearing; or
- (b) in the case of an offender serving any other long-term sentence, must be within two years of the offender's most recent parole hearing.

(3) Despite being subject to a postponement order, an offender may at any time apply to the Commission requesting consideration for parole on the grounds that there has been a significant change in his or her circumstances.

(4) A postponement order may be made at—

- (a) an attended parole hearing; or
- (b) a special attended hearing convened for the purpose of considering whether to make a postponement order.

(5) The Commission may not make a postponement order in relation to an offender unless it has first—

- (a) advised the offender, at least 28 days before the hearing, that it is to consider making a postponement order; and
- (b) given the offender an opportunity to make written submissions to the Commission about whether the order should be made; and
- (c) held a hearing at which the offender (in person or through counsel) has been given an opportunity to make oral submissions.

Direction for release
on parole

25.—(1) The Commission may, after a hearing at which it has considered whether to release an offender on parole, direct that the offender be released on parole.

(2) The Commission may give a direction under subsection (1) only if it is satisfied on reasonable grounds that the offender, if released on parole, will not pose an undue risk to the safety of the community or any person or class of persons within the term of the sentence, having regard to—

- (a) the support and supervision available to the offender following release; and
 - (b) the public interest in the reintegration of the offender into society as a law-abiding citizen.
- (3) If the Commission directs the release of an offender on parole, it must specify the date on which the offender is to be released which must be a date that is—
- (a) not later than six months after the hearing; and
 - (b) not a non-release day.
- (4) Notwithstanding subsection (3)(b), the Commission may, in exceptional circumstances, specify a date for release that is a non-release day.
- (5) The Commission may revoke or amend any direction under this section at any time before the offender is released on parole but, if it does so, the Commission must hold another parole hearing as soon as practicable.

26.—(1) The Commission must specify, in respect of every offender who is released on parole—

Release conditions
applying to parole

- (a) how long the standard release conditions will apply to the offender; and
 - (b) whether any special conditions will apply and, if so, what they are and how long they will last.
- (2) If an offender who is released on parole is subject to one or more determinate sentences, the commission must impose the standard release conditions for a period of at least six months but it may impose them for any period up to a maximum of six months beyond the offender's statutory release date.
- (3) If an offender who is released on parole is subject to an indeterminate sentence, the Commission must impose the standard release conditions on the offender for the rest of the offender's life.
- (4) If the Commission imposes special conditions on an offender who is released on parole, the special conditions may apply for as long as, but no longer than, the standard release conditions apply to the offender.

27.—(1) The Commission may, when directing the release on parole of an offender who is detained in, or on leave from, a hospital, vary any standard release conditions or waive the obligation to comply with any or all of them.

Release conditions
applying to offenders
detained in hospital
who are released on
parole

(2) The offender's release conditions do not take effect until the offender is actually released from the hospital.

(3) However, for the purpose of determining when the release conditions are discharged, time starts to run from the

date on which the offender would have been released if he or she had been detained in a penal institution.

When release conditions discharged or suspended

28.—(1) The release conditions of an offender who is on parole (other than an offender who is subject to an indeterminate sentence) are discharged—

- (a) when the period for which they were imposed expires; or
- (b) if the offender resumes detention in a penal institution under a new sentence; or
- (c) when the Commission discharges all release conditions under section 55.

(2) The release conditions of an offender who is on parole are suspended during any period that the offender spends in custody under a court order (for instance, on remand) or an interim recall order, and time runs on the conditions during any period that they are suspended.

When parole ends

29. An offender who has been released on parole ceases to be on parole—

- (a) when the offender reaches his or her statutory release date (as determined under section 14(1)); or
- (b) if the offender resumes detention in a penal institution under a final recall order.

Home detention

(Sections 30–37 repealed by Ordinance No. 1 of 2016)

Compassionate release

Commission may direct early release on compassionate grounds

38.—(1) The Commission may, on referral by the chairperson, direct that an offender be released on compassionate release on either of the following grounds—

- (a) the offender has given birth to a child;
- (b) the offender is seriously ill and is unlikely to recover.

(2) Every referral by the chairperson for consideration for compassionate release must be in writing and set out the reasons why the chairperson is making the referral.

(3) The Commission may, as part of a direction for compassionate release, impose the standard release conditions and any special conditions on the offender and may vary or waive the obligation to comply with any standard release conditions if necessary in the circumstances.

(4) Before an offender is released, the Commission may cancel a direction for release or vary any of the conditions of release.

(5) After an offender is released, the Commission may vary or discharge any release conditions under section 55.

(6) An offender released on compassionate release is liable to recall as if he or she had been released on parole.

(7) When an offender is released under this section, a copy of the order for release, together with any conditions imposed on the offender, must be supplied to—

- (a) the offender; and
- (b) every victim of the offender; and
- (c) the Governor; and
- (d) the police.

Procedures for certain hearings

39. Sections 40 to 47 apply to every hearing of the Commission concerning an offender who—

Application of procedures set out in sections 40 to 47

- (a) is due to be released from detention on his or her statutory release date; or
- (b) is to be considered for parole [].

(Amended by Ordinance No. 1 of 2016)

40.—(1) When an offender is due to be released at his or her statutory release date, or to be considered by the Commission for parole [], the Supervision Officer must provide the Commission with—

Start of process

- (a) copies of all relevant information relating to the offender's current and previous convictions, including (for example) sentencing notes and pre-sentence reports; and
- (b) if the offender has engaged in any restorative justice processes, any reports arising from those processes; and
- (c) in the case of an offender detained in a penal institution, a report by the officer in charge; and
- (d) []
- (e) in the case of an offender currently detained in, or on leave from, a hospital, a report from the responsible clinical (or the most suitable other health professional to provide such a report) concerning the offender and any care programmes that the hospital has put, or intends to put, in place for the offender; and
- (f) in the case of a young offender placed under the control of a caregiver, a report by the caregiver of the conduct and social attitudes of the offender.

(Amended by Ordinance No. 1 of 2016)

(2) The Commission must take all reasonable steps to give notice to the following people that a hearing is pending—

- (a) the offender;
- (b) every victim of the offender;

- (c) the superintendent of the prison in which the offender is detained (if applicable);
- (d) []
- (e) the medical superintendent (in the case of an offender currently detained in a hospital);
- (f) the police.

(Amended by Ordinance No. 1 of 2016)

(3) If the hearing relates to an offender who is subject to a long-term sentence, any victim who is notified must be advised that he or she may request information on the offender under section 41.

(4) Any person notified under subsection (2) may write to the Commission by a given date, making submissions on or giving information relevant to—

- (a) the substantive matter to be decided; and
- (b) whether the hearing should be an unattended hearing or an attended hearing.

(5) For the purpose of providing the reports required under subsection (1)(e) and (f), the responsible clinician (or other health professional) referred to in subsection (1)(e) or the caregiver referred to in subsection (1)(f) (as the case may be) must, on request by the Supervision Officer, supply a report on the relevant offender to the Supervision Officer as required.

Information for victims

41. If a victim requests information on an offender under section 40(3), the Supervision Officer must prepare and send to the victim the following—

- (a) a list of any programmes that the offender has attended since commencing his or her sentence and a list of any programmes that the offender has completed;
- (b) a statement of the offender's current security classification;
- (c) a list of any convictions received by the offender since commencing his or her sentence;
- (d) an explanation of the hearing process and how the victim may participate;
- (e) an undertaking that the purpose of providing the victim with information about the offender is to assist the victim to make submissions and that the information is not to be used for any other purpose.

Decision on type of hearing

42.—(1) The committee convenor who is allocated to conduct a particular hearing must decide whether that hearing will be an unattended hearing under section 45 or an attended hearing under section 46.

(2) A decision under subsection (1) may not be made until—

- (a) the Commission has received the information referred to in section 40(1); and
 - (b) the given date referred to in section 40(4) has passed.
- (3) If the committee convenor believes on reasonable grounds that the Commission is able to make a proper decision on the basis of the information available to the Commission, without the need for any person other than Commission members to attend the hearing, the convenor may decide that the hearing will be an unattended hearing.
- (4) In deciding whether to hold an unattended hearing or an attended hearing, the committee convenor must consider—
- (a) whether and how often the offender has been considered by the Commission;
 - (b) the length of time since his or her last attended hearing (if any);
 - (c) whether there are significant advantages to be gained by having one type of hearing rather than the other;
 - (d) whether written submissions indicate that there are matters that warrant consideration at an attended hearing;
 - (e) any relevant cultural or personal factors;
 - (f) any other matter that the committee convenor considers relevant.
- (5) The decision on the type of hearing must be notified in writing to the offender and every victim of the offender and to any other person from whom the Commission wishes to receive information in relation to the hearing.
- (6) A committee convenor may, before or during an unattended hearing, determine that the hearing must be an attended one and, in that case, a time for the attended hearing must be fixed and the people referred to in subsection (5) must be notified accordingly.
- (7) Notification under subsections (5) or (6) must include—
- (a) if the hearing is to be an unattended one, a summary of the reasons for deciding that the hearing will be unattended and information about the right to an interview under section 44; and
 - (b) if the hearing is to be an attended one, the date of the hearing and relevant information about the rights of people attending; and
 - (c) information about the right of review given by section 43.

43.—(1) A person who is dissatisfied with a decision that a hearing will be an unattended hearing may seek a review of the decision by writing to the Commission within thirty days of the date of the notice.

Review of decision on
type of hearing

(2) The Commission must review a decision on the type of hearing as soon as practicable after a person has asked for a review of the decision.

(3) Following a review, the Commission may confirm the decision or determine that the hearing will be an attended hearing.

(4) If the hearing is to be an attended hearing, the Commission must fix a time for the attended hearing and notify the people referred to in section 42(5) accordingly.

(5) If the hearing is to be an unattended hearing, the Commission must notify the person who sought the review.

Interviews before
hearings

44.—(1) If a hearing is to be an unattended hearing, the offender and every victim of the offender must be given the opportunity to have an interview before the hearing with one member of the committee allocated to conduct the hearing.

(2) The member conducting the interview may conduct the interview at whatever place and in whatever manner he or she considers appropriate, subject to this section.

(3) In relation to an interview with a victim—

- (a) the victim may have a support person with him or her and the support person may, with the consent of the victim and the permission of the member conducting the interview, speak on behalf of the victim; and
- (b) if there are special circumstances, and with the consent of the victim and the prior written approval of the Commission, the victim may be represented at the interview by another person who must attend the interview in place of the victim; and
- (c) the interview may not take place at a penal institution unless the victim (or his or her representative) consents.

(4) At an interview with an offender, the offender may have a support person with him or her and the support person may, with the consent of the offender and the permission of the member conducting the interview, speak in support of the offender.

Unattended hearings

45.—(1) At an unattended hearing, the only people who may be present are—

- (a) the Commission members conducting the hearing; and
- (b) the staff assisting the Commission; and
- (c) any other person whom the Commission agrees in writing to allow to be present.

(2) An unattended hearing may be conducted with any or all of the people mentioned in subsection (1) being present by way of telephone or video link, rather than in person.

46.—(1) An attended hearing must be conducted in the manner of an inquiry and in an atmosphere that encourages persons appearing before the Commission to speak for themselves and as freely and openly as possible.

Attended hearing

(2) Within that context, the Commission may conduct the hearing as it thinks appropriate and, subject to this section, has the following powers—

- (a) to determine who may attend and determine whether a person may attend other than in person (for instance by telephone or video link);
 - (b) to determine who may speak;
 - (c) to impose limits on what a person may talk about and for how long;
 - (d) to require any person to leave the hearing, either temporarily or for the remainder of the hearing;
 - (e) to adjourn the hearing.
- (3) The offender who is being considered is entitled to—
- (a) appear and make oral submissions to the Commission; and
 - (b) attend while any other person is making submissions, provided that the offender may not be present unless the victim, the offender and the Commission agree; and
 - (c) with the leave of the Commission, be represented by counsel; and
 - (d) be accompanied by one or more support persons (subject to any limitation on numbers imposed by the Commission) who may, with leave of the Commission, speak in support of the offender.
- (4) Every victim of the offender is entitled to—
- (a) appear and make oral submissions to the Commission for the purpose of assisting the Commission to reach a decision;
 - (b) with the leave of the Commission, be represented by counsel; and
 - (c) be accompanied by one or more support persons (subject to any limitation on numbers imposed by the Commission) who may, with the leave of the Commission
 - (i) speak in support of the victim; and
 - (ii) with the permission of the victim, speak on behalf of the victim.

Decisions must be notified

47.—(1) After a hearing, every person who was notified under section 40(2) must be advised—

- (a) whether, and if so, when, the offender is to be released from detention []; and
- (b) of any release [] conditions applying to the offender; and
- (c) if a postponement order has been made, the duration of the postponement.

(2) Advice under subsection (1) to a victim may include all those release [] conditions which are of personal relevance to the victim or his or her family, or which address the victim's submissions.

(Amended by Ordinance No. 1 of 2016)

Actual release

Date of release

48.—(1) This section applies to an offender who is serving a sentence of imprisonment in a penal institution.

(2) An offender who is due to be released at his or her statutory release date must be released from the penal institution on that date, unless he or she is released earlier under section 49.

(3) An offender who has been directed by the Commission to be released on parole or compassionate release [] must be released from the penal institution on the date specified by the Commission.

(Amended by Ordinance No. 1 of 2016)

Release of offenders released at statutory release date

49.—(1) This section applies only to an offender who is serving a sentence of imprisonment of more than 14 days and who is due to be released from a penal institution [] at his or her statutory release date.

(Amended by Ordinance No. 1 of 2016)

(2) If the offender's statutory release date falls on a non-release day, the offender must be released on the nearest preceding date that is not a non-release day.

(3) If an offender is released early under subsection (2), the offender, during the period between the date of actual release and his or her statutory release date—

- (a) is subject to any release conditions that will apply on his or her statutory release date as if he or she had been released on his or her statutory release date (but time does not begin to run on any conditions until the offender's statutory release date); and
- (b) is liable to recall.

50.—(1) When an offender is released from detention in a penal institution [], he or she must be issued with a licence that sets out—

Licence issued on release

- (a) the release conditions [] that apply to the offender; and
- (b) the date or dates on which the conditions, or any of them, cease to apply; and
- (c) details about liability to recall[; and
- (d) the statutory provisions under which the conditions may be varied or discharged.]

(Amended by Ordinance No. 1 of 2016)

(2) Subsection (1) does not apply to an offender who is released from a short-term sentence if, on release, the offender is not subject to any release conditions.

(3) (Repealed by Ordinance No. 1 of 2016)

(4) If an offender's release conditions [] are varied or discharged, the offender must be given a new or amended licence that shows the conditions as varied or discharged.

(Amended by Ordinance No. 1 of 2016)

51.—(1) [Before] an offender is released from detention in a penal institution [], the Supervision Officer must advise the police of—

Police must be advised

- (a) the date on which the offender is released; and
- (b) the offender's release conditions; and
- (c) the offender's statutory release date.

(Amended by Ordinance No. 1 of 2016)

52.—(1) The Governor may, by notice in writing to the superintendent of a penal institution, order the release of an offender into the custody of any officer of the police if—

Release for purpose of deportation

- (a) the offender is subject to a sentence of imprisonment; and
- (b) the offender has been ordered to be deported from the Islands by the Governor under section 6 of the Landing and Residence Ordinance.

cap.12

(2) A notice issued under subsection (1) is sufficient authority for the superintendent to release the offender accordingly on request by any officer of the police.

(3) When a ship becomes available to take the offender from the Islands and it is practicable in all the circumstances for the offender to leave on that ship, an officer of the police may require the superintendent, in accordance with subsection (1), to deliver the offender into the custody of the officer; and the officer must escort the offender (or arrange for him or her to be escorted) to the Landing and ensure that the offender is placed upon the ship and detained there until the ship leaves the Islands.

(4) If for any reason that ship is delayed in the Islands for more than 24 hours, the offender must be returned to the custody of the superintendent and, for that purpose, the warrant by which the offender was originally committed to the institution is deemed to be still in force.

(5) If an offender is returned to custody under subsection (4), the superintendent must, on request by any officer of the police, release the offender into the custody of that officer for deportation and the provisions of this section apply in respect of every request until the offender is finally deported.

(6) Notwithstanding subsection (1), in respect of any offender to whom paragraphs (a) and (b) of that subsection apply, the Supervision Officer may, at any time within 28 days preceding the offender's statutory release date, by notice in writing to the superintendent of the penal institution in which the offender is detained, order the release of the offender into the custody of any officer of the police in possession of the notice; and that notice is sufficient authority for the superintendent to release the offender accordingly.

(7) If an offender is released into the custody of an officer of the police under subsection (6), subsections (3) to (5) apply as if the release were ordered by the Governor.

(8) If an offender is released and deported under this section, his or her sentence continues to run and, if the offender subsequently returns to the Islands before the sentence expiry date, the offender is liable to resume serving it.

Variation and discharge of conditions

Application for
variation or discharge
of conditions

53.—(1) An offender who is subject to release conditions [] imposed by the Commission may apply to the Commission at any time for the variation or discharge of any of those conditions.

(2) The Supervision Officer may at any time apply to the Commission for the variation or discharge of any release condition [] imposed by the Commission that applies to the offender.

(3) An application under this section must indicate whether or not the offender wishes to appear before the Commission to state his or her case.

(4) When the Supervision Officer applies for the variation or discharge of a condition, the Supervision Officer may suspend the condition until the application is determined.

(Amended by Ordinance No. 1 of 2016)

Procedure for
determining
applications

54.—(1) Before determining an application for variation or discharge, the Commission may seek information from anyone

it considers has, or may have, an interest in the application, such as the police or any victim of the offender.

(2) For the avoidance of doubt, section 10 (concerning information to be given to offenders) applies to hearings for the purpose of determining an application for variation or discharge.

(3) An application for variation or discharge may be determined without the Commission hearing from any person, unless—

- (a) the offender has asked to appear before the Commission to state his or her case; or
- (b) the Commission wishes to hear from any person orally.

55.—(1) On an application under section 53, the Commission may direct the variation or discharge of any release condition [] imposed by the Commission that applies to an offender.

Commission determines application for variation or discharge

(2) The Commission may not—

- (a) extend the duration of any release condition to a date that is later than six months after the offender's statutory release date; or
- (b) extend the duration of any special condition beyond the date on which the standard release [] conditions cease to apply.

(3) The Commission may not discharge the standard release conditions with effect from a date that is less than six months after the date on which the offender was released, unless the offender is released on compassionate release or was, at the time of his or her release, detained in a hospital.

(4) If the Commission directs the variation or discharge of a condition—

- (a) the variation or discharge takes effect on the date specified in the direction; and
- (b) every variation must be treated as part of the conditions that apply to the offender; and
- (c) notice of the direction must be given to the offender, the Supervision Officer, the police and (if reasonably practicable) any victim to whom notice of the original condition was given.

(Amended by Ordinance No. 1 of 2016)

Recall

56. A **recall application** is an application for an order that an offender be recalled to continue serving a sentence of imprisonment in a penal institution.

Definition of recall application

Making recall
application

57.—(1) The Supervision Officer may make a recall application to the Commission in respect of any offender who—

- (a) is subject to an indeterminate sentence; and
- (b) is on parole or on compassionate release.

(2) The Supervision Officer may make a recall application to the Commission in respect of any offender who—

- (a) is subject to a determinate sentence; and
- (b) has not yet reached his or her statutory release date; and
- (c) is on parole, [] or compassionate release.

(Amended by Ordinance No. 1 of 2016)

(3) A recall application must specify the ground or grounds in section 58 on which the applicant relies and the basis on which the applicant is satisfied that the ground or grounds apply.

[(4) When a recall application is made, the sentence to which the application relates ceases to run, except for any period between the lodgement of the application and the date on which it is determined during which the offender is in custody in a penal institution.]

(Repealed and replaced by Ordinance No. 1 of 2016)

Grounds for recall

58. The grounds for recall are that—

- (a) the offender poses an undue risk to the safety of the community or any person or class of persons; or
- (b) the offender has committed a breach of his or her release conditions []; or
- (c) the offender has committed an offence punishable by imprisonment; or
- (d) []
- (e) in the case of an offender who is subject to a special condition that requires his or her attendance at a residential programme—
 - (i) the offender is jeopardising the safety of any person at the residence or the order or security of the residence; or
 - (ii) the offender has failed to remain at the residence for the duration of the programme; or
 - (iii) the programme has ceased to operate or the offender's participation in it has been terminated for any reason.

(Amended by Ordinance No. 1 of 2016)

Making an interim
recall order

59.—(1) On receiving a recall order, the chairperson or any committee convenor must make an interim recall order if he or she is satisfied on reasonable grounds that—

- (a) the offender poses an undue risk to the safety of the community or to any person or class of persons; or
- (b) the offender is likely to abscond before the determination of the application for recall [].

(Amended by Ordinance No. 1 of 2016)

(2) When deciding whether to make an interim recall order in respect of an offender who is currently detained, the chairperson or committee convenor (as the case may be) must make the decision as if the offender were not detained.

60.—(1) When an interim recall order is made, the chairperson or a committee convenor (as the case may be) must issue a warrant in the prescribed form for the offender to be detained in a penal institution pending the determination of the application for recall.

What happens when interim recall order made

(2) At any time after a warrant is issued under subsection (1), a police officer may arrest the offender, whether or not the officer has possession of the warrant, for the purpose of returning the offender to a penal institution.

(3) On, or as soon as practicable after, being taken into custody following the issue of a warrant under subsection (1), the offender must be given a copy of the recall application and a notice that—

- (a) specifies the date on which the application is to be determined; and
- (b) advises the offender of his or her right to appear before the Commission and to state his or her case in person or through counsel; and
- (c) requires the offender to notify the Commission not later than 14 days before the date on which the application is to be determined, whether he or she wishes to make written submissions or to appear in person or to be represented by counsel.

(4) While an offender is subject to an interim recall order, he or she must be detained in custody.

61. If no interim recall order is made following a recall application, the Commission must cause to be served on the offender—

What happens if no recall order made

- (a) a copy of the recall application;
- (b) a notice of the kind described in section 60(3).

62.—(1) If an interim recall order is made, the Commission must determine the recall application on a date that is—

Procedure for determining recall applications

- (a) if the offender is in custody when the interim order is made, at least 21 days after, but not more than one month after, the date of the interim order; or

- (b) if the offender is not in custody when the interim order is made, at least 21 days after, but not more than one month after, the date on which the offender is taken into custody.

(2) If no interim recall order is made, the Commission must determine the recall application on a date that is at least 21 days after, but not more than two months after, the date on which the copy of the recall application is served on the offender.

(3) For the avoidance of doubt, section 10 (concerning information to be given to offenders) applies to hearings for the purpose of determining a recall application.

(4) The Commission may determine a recall application without the Commission hearing from any person orally unless—

- (a) the offender has indicated that he or she, in person or through counsel, wishes to appear to state his or her case; or
- (b) the Commission wishes to hear from any other person orally.

(5) Notwithstanding subsections (1) and (2), the Commission may from time to time adjourn the hearing of a recall application; but no adjournment may be for more than eight days, unless the offender consents to a longer period.

Commission may
make final recall order

63.—(1) The Commission may make a final recall order recalling an offender to continue serving his or her sentence in a penal institution if, following a hearing on a recall application, it is satisfied on reasonable grounds that one or more of the grounds for recall in section 58 have been established.

(2) When deciding whether to make a final recall order in respect of an offender who is currently detained, the Commission must make the decision as if the offender were not detained.

(3) On making a recall order, the Commission must issue a warrant in the prescribed form for the offender to resume serving his or her sentence in a penal institution.

(4) If the Commission refuses a recall application—

- (a) the Commission must direct the offender's release from custody under any warrant issued under section 60(1) (if applicable); and
- (b) any release conditions [] that were suspended resume (subject to paragraph (c)); and
- (c) the Commission may vary or discharge any conditions imposed by the Commission that apply

to the offender without the need for an application under section 53.

(Amended by Ordinance No. 1 of 2016)

Reviews and appeals from decisions

64.—(1) Subject to subsection (2), an offender who is the subject of any decision of the Commission under this ordinance may, within 28 days of the decision, apply in writing to the Commission for a review of that decision.

Review of decisions

(2) No review under this section may be sought in respect of—

- (a) a decision under section 42 about the type of hearing; or
- (b) a decision under section 43 on a review of a decision about the type of hearing.

(3) The grounds for an application for review under this section are that the Commission, in making the decision—

- (a) failed to comply with the procedures set out in this ordinance and any regulations made under it; or
- (b) made an error of law; or
- (c) failed to comply with a policy of the Commission developed under section 87(2)(a), which resulted in unfairness to the offender; or
- (d) based its decision on erroneous or irrelevant information that was material to the decision reached; or
- (e) acted without jurisdiction.

(4) A review under this section must be undertaken, as soon as practicable, by the chairperson or by a committee convenor to whom the chairperson delegates the conduct of the review.

(5) Following a review, the reviewer must—

- (a) confirm, quash, or amend the decision; or
- (b) refer the matter back to the Commission with a direction to reconsider and decide the matter.

(6) for the purposes of an appeal under section 65—

- (a) a decision to confirm, quash or amend the decision is the final decision of the Commission; and
- (b) a decision of the Commission taken following a reconsideration in accordance with a referral under subsection (5)(b) is the final decision of the Commission.

65.—(1) An offender who is subject to a postponement order or a final recall order may, within 28 days of the date of the decision on a review under section 64 (or whatever longer time the Court permits), appeal to the Supreme Court

Appeals to Supreme Court

against the decision on the grounds that the order ought not to have been made.

(2) No appeal may be made under this section until the decision to make the order has been reviewed under section 64.

(3) If an offender lodges an appeal, he or she remains subject to the order while the appeal is determined.

(4) In the case of an appeal against a final recall order, without limiting the matters that the Court may consider in determining the appeal, the Court must consider the need to protect the community or any person or class of persons.

Procedure on appeals

66.—(1) An appellant must forward a copy of his or her appeal to the Commission.

(2) On receiving a copy of an appeal, the Commission must forward to the Registrar of the Supreme Court all information in its possession regarding the decision appealed against.

(3) The Registrar of the Supreme Court must, on receipt of the information from the Commission, set down the appeal for hearing on the first practicable sitting day in the most convenient place where sittings of the Supreme Court are held, and must notify the appellant and the Commission accordingly.

(4) Subject to this section and, with any necessary modifications, the provisions of sections 11, 14 and 22 of the Judicature (Appeals in Criminal Cases) Ordinance shall apply to an appeal under section 65 as if the order appealed against were an order made by the Magistrate's Court.

cap.4

(5) On an appeal under section 65, the Court may receive in evidence anything that the Commission could have received at first instance.

(6) The Court is not bound to allow the appeal on the ground merely of the improper admission or rejection of evidence unless, in the opinion of the Court, a substantial wrong or miscarriage of justice occurred because of it.

Powers of Court on appeal

67.—(1) On an appeal against a postponement order, the Court may—

- (a) confirm, quash or amend the order; or
- (b) refer the matter back to the commission with a direction to reconsider and decide the matter, in which case it must—
 - (i) advise the Commission of its reasons for doing so; and
 - (ii) give the Commission any directions that it thinks just concerning any aspect of the reconsideration.

(2) On an appeal against a final recall order, the Court may—

- (a) confirm the order; or

- (b) quash the order and, unless the offender is liable to be detained under this or any other enactment,—
 - (i) direct the release of the offender from custody; or
 - (ii) direct the release of the offender on standard release [] conditions (in which case the conditions are deemed to have been imposed by the Commission) and refer the offender to the Commission for consideration of whether to impose any special conditions; or
- (c) refer the matter back to the Commission with a direction to reconsider and decide the matter, in which case it must—
 - (i) advise the Commission of its reasons for doing so; and
 - (ii) give the Commission any directions that it thinks just concerning any aspect of the reconsideration.

(Amended by Ordinance No. 1 of 2016)

Offences

68.—(1) Every offender commits an offence and is liable on summary conviction to imprisonment for a term not exceeding one year or to a fine not exceeding \$2,000, who commits any breach, without reasonable excuse, of any release conditions [] imposed by the Commission.

Offence to commit breach of conditions

(2) The conviction and sentencing of an offender under this section does not limit the power to recall the offender from parole [] or compassionate release.

(Amended by Ordinance No. 1 of 2016)

69. (Repealed by Ordinance No. 1 of 2016)

Offence to refuse entry to home detention residence

Arrest of offenders

70.—(1) Any police officer may arrest, without a warrant, an offender whom the officer has reasonable grounds to believe is unlawfully at large.

Arrest without warrant

(2) Any police officer or the Supervision Officer may arrest, without a warrant, an offender whom the police officer or Supervision Officer has reasonable grounds to believe has committed a breach of any of his or her release conditions [].

(Amended by Ordinance No. 1 of 2016)

Regulations

71. The Governor may, from time to time, make regulations for all or any of the following purposes—

Regulations

- (a) prescribing forms for the purpose of this Part;
- (b) prescribing the manner in which the key dates and non-parole periods of sentences of imprisonment are to be determined;
- (c) providing that specified information must be given to offenders and prescribing the manner and form in which that information is to be given;
- (d) regulating the operation of the Commission;
- (e) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this section and the amounts of the fines that may be imposed in respect of those offences;
- (f) generally providing for any other matters that are contemplated by, or necessary for giving full effect to, this Part and its due administration.

Sentence Calculation

Cumulative sentences

Cumulative sentences form notional single sentence

72.—(1) If, after the commencement date, an offender is sentenced to a sentence of imprisonment (a **later sentence**) that is directed to be served cumulatively on another sentence (an **earlier sentence**), the later sentence and the earlier sentence form a notional single sentence for the purpose of determining—

- (a) whether the offender is subject to a long-term sentence or a short-term sentence; and
- (b) the non-parole period to apply when determining the offender’s parole eligibility date; and
- (c) the release date to apply when determining the offender’s statutory release date.

(2) If the earlier sentence is part of a series of cumulative sentences, then all the sentences in that series, along with the later sentence, form a notional single sentence for the purpose described in subsection (1).

(3) Every sentence in a series of cumulative sentences links to the next one in the series at its sentence expiry date.

Start date of sentence of imprisonment

General rules about start date of sentence of imprisonment

73. The start date of a sentence of imprisonment imposed after the commencement date is the date on which the sentence is imposed, except as otherwise provided in sections 74 to 78.

Start date of notional single sentence

74. The start date of a notional single sentence is the start date of the first sentence in the series of sentences that forms the notional single sentence.

75. If a Court defers a start date under any provision of law, the start date of the sentence of imprisonment is the date on which the offender is taken into custody after the expiry of the period specified by the Court.

Deferred start date

76.—(1) Subject to this section, if a sentence of imprisonment is quashed or otherwise set aside and another sentence of imprisonment is substituted for it, the start date of the new sentence is the start date of the original sentence.

Start date if new sentence replaces original sentence

(2) Subsection (3) applies if—

- (a) a sentence of imprisonment that was directed to be served cumulatively on another sentence or term is quashed or otherwise set aside; and
- (b) a new sentence of imprisonment is substituted for the original sentence, but is not directed to be served cumulatively.

(3) In the situation described in subsection (2), the start date of the new sentence is the start date that the original sentence would have had if it had not been directed to be served cumulatively.

77.—(1) This section applies if an offender is temporarily surrendered to Pitcairn under the law of extradition in force in Pitcairn and—

Start date after temporary surrender to Pitcairn

- (a) is convicted and sentenced to a sentence of imprisonment; and
- (b) is required to be returned in accordance with such law to the country from which the offender was surrendered on completion of the proceedings to which the extradition related.

(2) Unless the Court otherwise directs, the start date of the sentence imposed is the date on which the person, having been returned to Pitcairn, is taken into custody.

(3) This section applies notwithstanding any other provision in this ordinance.

78. If a person on whom a term of imprisonment is imposed for non-payment of a sum of money, disobedience of a court order or contempt of court is not already detained under a sentence of imprisonment, then the start date of the sentence of imprisonment is the day on which the person is taken into custody to serve the term imposed.

Start date of sentence of imprisonment when term imposed

Sentence expiry dates

79.—(1) The sentence expiry date of a determinate sentence is the date that is reached when the offender who is subject to the sentence has served the full term of the sentence.

Sentence expiry date

(2) The sentence expiry date of a notional single sentence is the sentence expiry date of the last sentence in the series of sentences that forms the notional single sentence.

(3) An indeterminate sentence has no sentence expiry date.

Non-parole periods

Non-parole periods

80.—(1) The non-parole period of a long-term determinate sentence is one-third of the length of the sentence, unless the sentence is one to which subsection (2) or subsection (4) applies.

(2) The non-parole period of a sentence in respect of which the Court has imposed a minimum term of imprisonment is the minimum term imposed.

(3) The non-parole period of a sentence of imprisonment for life (other than one in respect of which the Court has imposed a minimum term of imprisonment) is ten years.

(4) The non-parole period of a long-term notional single sentence is the total obtained by adding together all the non-parole periods of every sentence that makes up the notional single sentence.

(5) For the purpose only of calculating the non-parole period of a long-term notional single sentence, every short-term sentence within the notional single sentence must be treated as if it had a non-parole period of one-third of its length.

Release dates

Release date of sentence

81.—(1) The release date of a short-term sentence (including a short-term notional single sentence) is the date on which the offender who is subject to the sentence has served half of it.

(2) The release date of a long-term determinate sentence (including a long-term notional single sentence) is its sentence expiry date.

(3) An indeterminate sentence has no release date.

Determining key dates

Supervision Officer must determine key dates etc.

82.—(1) The Supervision Officer must ensure that the key dates and non-parole period of every sentence to which an offender is subject and the offender's parole eligibility date and statutory release date (if any) are determined in accordance with this Part and any regulations made under this ordinance.

(2) Notwithstanding subsection (1), the non-parole period and release date of every sentence imposed on an offender need not be determined if the offender's parole eligibility date and statutory release date (if any) may be correctly calculated

without determining all the non-parole periods and release dates.

(3) A determination under this section may be revised at any time.

[82A. For the purpose of calculating the key dates and non-parole period of a sentence of imprisonment (including a notional single sentence) and an offender's statutory release date and parole eligibility date, an offender is deemed to have been serving the sentence during any period that the offender has spent in pre-sentence detention.

Period spent in pre-sentence detention deemed to be time served

(2) Where an offender is subject to 2 or more concurrent sentences,

- (a) the amount of pre-sentence detention applicable to each sentence must be determined; and
- (b) the amount of pre-sentence detention that is deducted from each sentence must be the amount determined in relation to that sentence.

(3) Where an offender is subject to 2 or more cumulative sentences that make a notional single sentence, any pre-sentence detention that relates to the cumulative sentences may be deducted only once from the single notional sentence.

82B.—(1) Pre-sentence detention is detention of a type described in subsection (2) that occurs at any stage during the proceedings leading to a conviction or pending sentence of the person, whether that period (or any part of it) relates to—

Meaning of pre-sentence detention

- (a) any charge on which the person was eventually convicted; or
- (b) any other charge on which the person was originally arrested; or
- (c) any charge that the person faced at any time between his or her arrest and before conviction.

(2) The types of detention that are pre-sentence detention are—

- (a) detention in a prison pursuant to section 4 of the Prisons Ordinance;
- (b) detention in a New Zealand prison pursuant to section 38(2) of the Pitcairn Trials Act 2002 (NZ);
- (c) detention in a New Zealand hospital or other similar institution pursuant to section 46 of the Pitcairn Trials Act 2002 (NZ).

(3) In the case of a person who is convicted of an offence following upon his or her extradition to the Islands, pre-sentence detention includes detention in custody overseas in relation to that extradition provided that the length of such

detention is recorded in a certificate supplied by the competent authority in the overseas country from which the person was extradited.

(4) The certificate referred to in subsection (3) shall be sought by the Governor from the competent authority in the country from which the person was extradited.

(5) In the event that no such certificate is made available, then the length of pre-sentence detention shall be determined having regard to the information that is available to the Governor, provided that the Governor is satisfied the information is accurate.

(6) Detention that would, under subsection [(2) or (3)], be pre-sentence detention, is not pre-sentence detention if the offender was, during that detention,—

- (a) serving a sentence of imprisonment in a penal institution []; or
- (b) in the case of a person who was extradited to the Islands, detained in custody under a sentence for an offence imposed under the law of the country from where the offender was extradited [under] the request for extradition.

(Amended by Ordinance No. 1 of 2016)

Islands time to be used in calculating key dates

82C.—In any case where the calculation of key dates or non-parole periods depends in whole or part upon the time at which an event (such as the commencement of pre-sentence detention) occurred in some place outside the Islands, the time at which that event took place shall be expressed in Islands time and the key dates or non-parole period shall be calculated accordingly.] **(Sections 82A—82C inserted by Ordinance No. 2 of 2007)**

Time ceases to run in certain circumstances

83. For the purpose of calculating how much time an offender who is subject to a sentence of imprisonment has served, time ceases to run—

- (a) for an offender detained in a penal institution, during any period when the offender is unlawfully at large from detention; and
- (b) for an offender on parole or compassionate [release], during any period between the date on which an application for a recall order is lodged and the date on which the offender is next taken [into] custody [].

(Amended by Ordinance No. 1 of 2016)

Time on bail pending appeal does not count as time served

84. Any time during which an offender is released from detention on bail pending an appeal does not count as time served under any sentence.

85.—(1) Subsection (2) applies if—

- (a) a sentence of imprisonment is passed on the conviction of an offender; and
- (b) that conviction is subsequently quashed and a new hearing or a new trial is ordered; and
- (c) following a new hearing or a new trial, the offender is again convicted and a new sentence of imprisonment is imposed on the offender.

Period between quashed sentence and new sentence does not count as time served

(2) In the situation in subsection (1), the period commencing on the quashing of the first sentence and the imposition of the new sentence does not count as time served under the new sentence.

PART III

Pitcairn Parole Commission

Establishment of Commission

86. The Pitcairn Parole Commission is established as an independent statutory body.

Pitcairn Parole Commission established

87.—(1) The functions of the Commission are—

- (a) to consider offenders for parole and, if appropriate, to direct offenders to be released on parole (under sections 17 to 29);
- (b) []
- (c) to consider offenders for release on compassionate release and, if appropriate, to give a direction for their release on compassionate grounds under section 38;
- (d) to set the conditions for—
 - (i) offenders released at their statutory release date (under section 15); and
 - (ii) offenders released on parole or compassionate release; and
 - (iii) []
 - (iv) offenders released at their final release date under section ;
- (e) to consider and determine applications for—
 - (i) the variation and discharge of release conditions [] under section 55; and
 - (ii) interim and final recall from parole [] or compassionate release;
- (f) to make postponement orders under section 24 in relation to offenders;
- (g) to make and review orders under this ordinance;
- (h) to review decisions in accordance with section 64;
- (i) to do anything else required under this ordinance or any other enactment.

Functions of Commission

(Amended by Ordinance No. 1 of 2016)

- (2) The Commission also has the following functions—
- (a) to develop policies on how to discharge its function under this section and to amend and revise those policies as it sees fit;
 - (b) to maintain a register of Commission decisions;
 - (c) to keep statistical and other records relating to its work;
 - (d) to provide information that is readily accessible to offenders, victims and the general public about matters relating to release from detention and the policies and operation of the Commission generally.

Administrative and
training support for
Commission

88. (Repealed by Ordinance No. 1 of 2016)*Membership of Commission*

Membership of
Commission

89.—(1) The Commission consists of members who are appointed by the Governor on the recommendation of the [Attorney General].

- (2) The Commission must include—
- (a) one member who is appointed as chairperson; and
 - (b) at least [two] members who are appointed as committee convenors; and
 - (c) a sufficient number of other members to enable the Commission to carry out its functions efficiently and effectively.

(Amended by Ordinance No. 1 of 2016)

(3) Before recommending a person as a member, the [Attorney General] must be satisfied that the person has—

- (a) knowledge or understanding of the criminal justice system; and
- (b) the ability to make a balanced and reasonable assessment of the risk an offender may present to the community when released from detention; and
- (c) the ability to operate effectively with people from a range of cultures; and
- (d) sensitivity to, and understanding of, the impact of crime on victims.

(Amended by Ordinance No. 4 of 2010)

Chairperson of
Commission

90.—(1) The member appointed as chairperson must be a Judge of the Supreme Court or a former Judge of the Supreme Court or a Magistrate or a former Magistrate.

(2) The primary function of the chairperson is to ensure that the Commission carries out its function in accordance with this ordinance in an efficient and effective manner.

- (3) Without limiting the function described in subsection (2), it is also the function of the chairperson to—
- (a) make referrals to the Commission for early release under section 22; and
 - (b) make referrals to the Commission for compassionate release under section 38; and
 - (c) make interim recall orders under section 59; and
 - (d) allocate committee convenors to undertake reviews of decisions under section 64; and
 - (e) do anything else that the chairperson is required to do under this ordinance or any other enactment.
- (4) The chairperson may sit as a member (including as a committee convenor) at any committee hearing.

91.—(1) The chairperson may delegate any of his or her functions or powers to any one or more committee convenors.

Delegation of chairperson's functions, powers and duties.

(2) Every delegation must be in writing and may be revoked at will, either in writing or orally.

(3) A delegation under this section may not be further delegated.

(4) For the purpose of ensuring that the functions and powers of the chairperson are performed or exercised during any period when the chairperson is absent or incapacitated, the chairperson must ensure that all times he or she has nominated one committee convenor to serve as acting chairperson if the need arises.

(5) The fact that a person purports to exercise or to have exercised any function or power of the chairperson under a delegation or nomination is, in the absence of proof to the contrary, sufficient evidence of the person's authority to do so.

92.—(1) Every member who is appointed as a committee convenor must be a Magistrate, a former Magistrate or a barrister or solicitor who has held a practising certificate admitting him or her to practise in Pitcairn or in any Commonwealth country, or both, for at least seven years.

Committee convenors

(2) Notwithstanding subsection (1), at any time there may be appointed as a committee convenor one person who is a Judge of the Supreme Court or a former Judge of the Supreme Court.

(3) The functions of a committee convenor are—

- (a) to make the decision on whether to hold an attended or an unattended hearing for any decision relating to [release conditions or parole]; and
- (b) at a hearing—
 - (i) to preside at the hearing; and
 - (ii) to determine any matters of procedure that

- may arise during or in relation to the hearing;
and
- (iii) to sign the decision of the committee at that hearing; and
 - (c) to make interim recall orders under section 59; and
 - (d) to undertake reviews [under sections 43(2) and 64]; and
 - (e) to do anything else that a committee convener is required to do under this ordinance or any other enactment; and
 - (f) under the direction of the chairperson, to undertake or assist in the exercise of any of his or her functions.

(Amended by Ordinance No. 1 of 2016)

(4) The chairperson may appoint any member (whether or not qualified to be a committee convener) as an acting committee convener in respect of a particular hearing or number of hearings if, for any reason, a committee convener is not available for that hearing or those hearings.

(5) If the chairperson sits on a parole committee, he or she may act as a committee convener for the purposes of that sitting; and for that purpose the chairperson has all the functions and powers of a committee convener.

How Commission performs its functions

Parole committees

93.—(1) The Commission must operate in committees of at least three members, one of whom must be a committee convener or the chairperson.

(2) The decision of the majority of members of on a committee is the decision of the committee.

(3) Subsection (1) is subject to any other provision of this ordinance which requires or permits the Commission to perform its functions other than by way of committee hearings.

(4) Notwithstanding subsection (1), if a member leaves a hearing for any reason, the remaining two members may continue the hearing and, provided the absent member participates in the decision-making process, the validity of any resulting decision is not affected.

Decisions of Commission

94.—(1) A decision by a committee acting within its jurisdiction is a decision of the Commission.

(2) A decision by the chairperson or a committee convener, acting within their respective jurisdictions, is a decision of the Commission.

(3) A decision of the Commission on the detention or release of an offender or on his or her release [] conditions, must be in writing and include reasons for the decision.

(Amended by Ordinance No. 1 of 2016)

(4) A copy of every decision of the Commission that relates to an offender must be given to—

- (a) the offender to whom it relates; and
- (b) the Supervision Officer.

95.—(1) In any hearing before the Commission, the Commission may receive and take into consideration whatever information it thinks fit, whether or not the information would be admissible as evidence in a court of law.

Information before
Commission

(2) Information received by the Commission may be in a form other than writing, but only if the Commission is satisfied that—

- (a) the information adds significantly to the written information available to it; and
- (b) it will be possible, in relation to that information, to comply with the rule in section 10(1) about making information available to offenders.

96.—(1) The chairperson must ensure that no person involved in a parole committee hearing reviews a decision of that panel.

Avoiding actual or
perceived bias

(2) The chairperson must, if he or she becomes aware that a member has, or may be perceived as having, bias for or against an offender, require the member to excuse himself or herself from—

- (a) participating in a committee that considers an application by or relating to the offender; and
- (b) making, or participating in making, any other decision under this ordinance that relates to the offender.

General provisions about Commission and members

97.—(1) The Commission must, within two months of the end of each calendar year, give the [Attorney General] an annual report on the operation of the Commission and the performance of its functions, during the financial year.

Annual report

(Amended by Ordinance No. 4 of 2010)

(2) The Commission's annual report must include

- (a) information about every referral made by the chairperson to the Commission for early consideration for parole and for compassionate release; and
- (b) information about every class designated by the Governor under section 22(3) for early consideration by the Commission for parole.

98.—(1) Every member, including the chairperson, must be appointed for a term of three years or less.

Term of appointment
and reappointment

(2) A member continues in office despite the expiry of his or her term of office until—

- (a) the member is reappointed; or
- (b) the member's successor is appointed; or
- (c) the [Attorney General] informs the member in writing that the member is not to be reappointed and that no successor is to be appointed at that time.

(Amended by Ordinance No. 4 of 2010)

(3) A member who is involved in a hearing that is not complete on the date that he or she ceases to be in the office may complete the hearing after that date and is, for that purpose, deemed to be in office until the hearing is complete.

(4) Any member may be reappointed any number of times.

Remuneration and expenses of members

99.—(1) A member may at any time resign from office by written notice to the Governor.

(2) The Governor may at any time, on the recommendation of the [Attorney General], remove a member from office for just cause; and the member is not entitled to compensation for removal.

(Amended by Ordinance No. 4 of 2010)

Members ceasing to hold office

100.—(1) The remuneration of any member who is a Magistrate or a Judge of the Supreme Court must, so far as it relates to his or her membership of the Commission, be determined by the Governor.

(2) Every other member must be paid fees and expenses in accordance with the framework determined by the Governor from time to time for the classification and remuneration of statutory and other bodies.

(3) A person is not employed in the service of the Crown, merely as a result of being a member of the Commission.

Immunity of members

101. No member is personally liable for any act or omission done in pursuance, or intended pursuance, of the Commission's functions, unless the act or omission was done in bad faith.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

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CHAPTER XXXV

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[Ordinances:
No. 9 of 2002
No. 4 of 2010
No 1 of 2016.]

An ordinance to reform and consolidate the law as to
sentencing in criminal cases

[19 November, 2002]

Short title

1. This ordinance may be cited as the Sentencing Ordinance.

PART I SENTENCING PURPOSES AND PRINCIPLES

Purposes

- 2.** The purposes of this ordinance are—
- (a) to set out the purposes for which offenders may be sentenced or otherwise dealt with; and
 - (b) to promote those purposes and aid in the public's understanding of sentencing practices by providing principles and guidelines to be applied by Courts in sentencing or otherwise dealing with offenders; and
 - (c) to provide a sufficient range of sentences and other means of dealing with offenders; and
 - (d) to provide for the interests of victims of crime.

Interpretation

3.—(1) In this ordinance, unless the context otherwise requires—

commencement date means the date on which this ordinance comes into force

community-based sentence means a sentence of supervision or a sentence of community work

Court means a Magistrate's Court, the Supreme Court and, where appropriate, the Court of Appeal in its appellate jurisdiction

Court of Appeal means the Pitcairn Court of Appeal

[as constituted by section 49 of the Constitution of Pitcairn]

(Amended by Ordinance No. 4 of 2010)

designated work centre means such premises, building or land as may from time to time be declared by the Governor to be a place or facility wholly or partially available for the performance of work pursuant to a sentence of community work

[detention conditions means the standard conditions of a sentence of home detention set out in section 76C and any special conditions imposed by the court on an offender under section 76D]

[detention end date means the date on which an offender who is subject to a sentence of home detention ceases to be subject to detention conditions]

[determinate sentence means a sentence of imprisonment or a sentence of home detention for a fixed term]

[home detention means detention under a sentence given in accordance with section 76A]

[home detention residence means the residence, specified by a court, where an offender sentenced to home detention serves that sentence]

determinate sentence of imprisonment means a sentence of imprisonment for a fixed term

home detention means detention under a sentence of imprisonment, in a residence, of an offender who is on home detention under a direction made under section 32 of the Parole Ordinance 2002

hospital means a hospital wholly or partly for the treatment of mentally disordered persons as compulsory inpatients

immediate family, in relation to a victim—

- (a) means a member of the victim's family group who is in a close relationship with the victim at the time of the offence; and
- (b) for the avoidance of doubt, includes persons whose relationship to the victim at that time is close through a relationship which is, or one or more relationships which are, that of spouse or de facto partner (whether the partner and victim are of the same sex or of different sexes) child or step-child, brother or step-brother, sister or step-sister, parent or step-parent and grandparent

incapable means a person who

- (a) (i) lacks, wholly or partly, the capacity to understand the nature and to foresee the

consequences of decisions in respect of matters relating to his or her personal care and welfare; or

- (ii) has the capacity to understand the nature and to foresee the consequences of decisions in respect of matters relating to his or her personal care and welfare but wholly lacks the capacity to communicate decisions in respect of matters of that kind; and

- (b) includes a person who is in a state of continuing unconsciousness

indeterminate sentence of imprisonment means a sentence of imprisonment for life or a sentence of preventive detention

minimum period of imprisonment means the period of imprisonment which the Court has, under section 81 or section 84 or section 98, ordered that an offender must serve before he or she can be released under Part II of the Parole Ordinance 2002

[non-release day has the same meaning as in section 2 of the Parole Ordinance 2002]

offender includes a person who is dealt with or is liable to be dealt with for non-payment of a sum of money, disobedience or a court order or contempt of court

penal institution means a prison or other place of detention established under any ordinance [, but does not include a home detention residence]

[post-detention conditions means any standard post-detention condition and special post-detention conditions imposed under section 76L on an offender sentenced to home detention]

[Public Prosecutor has the same meaning as in section 2 of the Judicature (Courts) Ordinance]

[release conditions has the same meaning as in section 2 of the Parole Ordinance 2002]

sentence of imprisonment means a determinate sentence of imprisonment or an indeterminate sentence of imprisonment but does not include a term of imprisonment imposed for non-payment of a sum of money, disobedience of a court order or contempt of court

[short-term sentence of imprisonment has the same meaning as in section 2 of the Parole Ordinance]

Supervision Officer means a person appointed by the Governor to be a Supervision Officer for the purposes of this ordinance

victim means

- (a) a person against whom an offence is committed; and
- (b) every person who, through or by means of an offence committed by another person, suffers physical injury or loss of or damage to property; and
- (c) every member of the immediate family of a person who, as a result of an offence committed by another person, dies or is incapable.

(Amended by Ordinance No. 1 of 2016)

(2) For the purposes of this ordinance—

- (a) an offender is subject to a sentence of imprisonment until the sentence expires (in accordance with section 79 of the Parole Ordinance 2002);

[(ab)an offender is subject to a sentence of home detention from the date the sentence commences in accordance with section 76R or 76S until the sentence ends in accordance with section 76T, except when the sentence is suspended under section 76Y(2);]

- (b) except as provided in paragraph (c), an offender is subject to a sentence of community work from the date when the sentence commences in accordance with section 73 until the date upon which it expires in accordance with section 73;

- (c) an offender is not subject to a community-based sentence during any period when the community-based sentence is suspended under section 74(2)(a) or section 74(7).

(Amended by Ordinance No. 1 of 2016)

(3) For the purposes of this ordinance, **otherwise dealing with an offender** or **other means of dealing with an offender**—

- (a) means dealing with the offender in relation to an offence following a finding of guilt or a plea of guilty, instead of imposing a sentence; and
- (b) does not include dealing with a person for non-payment of a sum of money, disobedience of a court order or contempt of court.

4.—(1) Except as provided in subsection (2), this ordinance binds the Crown.

Application of this ordinance

(2) This ordinance does not apply to proceedings of a service court under the United Kingdom Forces (Jurisdiction of Colonial Courts) Order 1965 or to proceedings on appeal from any decision under that order except as expressly provided in that order.

(3) Subject to section 5, this ordinance applies to offences committed before or after the commencement date.

Penal enactments not to have retro-spective effect to disadvantage of offender

5. Notwithstanding any other enactment or rule of law, an offender has the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty.

Purposes of sentencing or otherwise dealing with offenders

6. The purposes for which a Court may sentence or otherwise deal with an offender are—

- (a) to hold the offender accountable for harm done to the victim and the community by the offending; or
- (b) to promote in the offender a sense of responsibility for, and an acknowledgement of, that harm; or
- (c) to ensure that the interests of the victim are given due recognition; or
- (d) to provide reparation for harm done by the offending; or
- (e) to denounce the conduct in which the offender was involved; or
- (f) to deter the offender or other persons from committing the same or a similar offence; or
- (g) to protect the community from the offender; or
- (h) to assist in the offender's rehabilitation and reintegration; or
- (i) any combination of two or more of the foregoing purposes.

Principles of sentencing or otherwise dealing with offenders

7. In sentencing or otherwise dealing with an offender, the Court—

- (a) shall take into account the gravity of the offending in the particular case, including the degree of culpability of the offender;
- (b) shall take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences;
- (c) should impose the maximum penalty prescribed for the offence only if the offending is within the most serious of cases for which that penalty is prescribed;
- (d) should impose a penalty near to the maximum prescribed for the offence if the offending is near to the most serious of cases for which that penalty is prescribed;
- (e) shall take into account the general desirability of consistency with appropriate levels in respect of similar offenders committing similar offences in similar circumstances;

- (f) shall take into account a particular circumstance of the offender that would mean that a sentence that would otherwise be appropriate would, in the particular instance, be disproportionately severe;
- (g) shall ensure that a sentence with a partly or wholly rehabilitative purpose is appropriate to the offender's personal, family, community or cultural background;
- (h) shall take into account any outcomes of any processes of reparation that have occurred, or that the Court is satisfied are likely to occur, in relation to the particular case (including, without limitation, any referred to in section 9).

8.—(1) In sentencing or otherwise dealing with an offender, the Court must take into account the following aggravating factors to the extent that they are applicable in the case—

Aggravating and
mitigating factors

- (a) that the offence involved actual or threatened violence or the actual or threatened use of a weapon;
- (b) that the offence involved unlawful entry into, or unlawful presence in, a dwelling place;
- (c) that the offence was committed while the offender was on bail or still subject to a sentence;
- (d) the extent of any loss, damage or harm resulting from the offence;
- (e) particular cruelty in the commission of the offence;
- (f) that the offender was abusing a position of trust or authority in relation to the victim;
- (g) that the victim was particularly vulnerable because of his or her age or health or any other factor;
- (h) that the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age or disability;
- (i) premeditation on the part of the offender;
- (j) the number, seriousness, date, relevance and nature of any previous convictions of the offender and of any convictions for which the offender is being sentenced or otherwise dealt with at the same time.

(2) In sentencing or otherwise dealing with an offender, the Court must take into account the following mitigating factors to the extent that they are applicable in the case—

- (a) the age of the offender;
- (b) whether and when the offender pleaded guilty;
- (c) the conduct of the victim;

- (d) that there was a limited involvement in the offence on the offender's part;
- (e) that the offender has, or had at the time the offence was committed, diminished intellectual capacity or understanding;
- (f) any remorse shown by the offender or anything as described in section 9;
- (g) any evidence of the offender's previous good character.

(3) Despite subsection (2)(e), the Court must not take into account by way of mitigation the fact that the offender was, at the time of committing the offence, affected by the voluntary consumption or use of alcohol or any drug or other substance (other than a drug or other substance used for bona fide medical purposes).

(4) Nothing in subsection (1) or subsection (2)—

- (a) prevents the Court from taking into account any other aggravating or mitigating factor that the Court thinks fit; or
- (b) implies that a factor referred to in those subsections must be given greater weight than any other factor that the Court might take into account.

9.—(1) In sentencing or otherwise dealing with an offender, the Court must take into account—

- (a) any offer of amends, whether financial or by means of the performance of any work or service, made by or on behalf of the offender to the victim;
- (b) any agreement between the offender and the victim as to how the offender can remedy the wrong, loss or damage caused by the offender;
- (c) the response of the offender or the offender's family or family group to the offending;
- (d) any measures taken or proposed to be taken by the offender or family group of the offender to—
 - (i) make compensation to any victim of the offending or family or family group of the victim; or
 - (ii) apologise to any victim of the offending or family or family group of the victim; or
 - (iii) otherwise make good the harm that has occurred.

(2) In deciding whether and to what extent any offer, agreement, response or measure should be taken into account, the Court may take into account whether or not it has been accepted by the victim as expiating or mitigating the wrong.

(3) If a Court determines that, despite an offer, agreement,

Court must take into account offer, agreement, re-sponse or measure to make amends

response or measure referred to in subsection (1), it is appropriate to impose a sentence, it may take that offer, agreement, response or measure into account when determining the appropriate sentence for the offender.

(4) Without limiting any other powers of a Court to adjourn in any case contemplated by this section, a Court may adjourn the proceedings until—

- (a) compensation has been paid; or
- (b) the performance of any work or service has been completed; or
- (c) any agreement between the victim and the offender has been fulfilled; or
- (d) any measure proposed under subsection (1)(d) has been completed.

PART II GENERAL PROVISIONS ABOUT DISCHARGE WITHOUT CONVICTION ETC. AND IMPOSITION OF REPARATION, FINES, COMMUNITY-BASED SENTENCES AND IMPRISONMENT

10.—(1) If a person who is charged with an offence is found guilty or pleads guilty, before entering a conviction and imposing a sentence the Court must consider whether the offender would be more appropriately dealt with by—

- (a) discharging the offender without conviction under section 101 ; or
- (b) convicting and discharging the offender under section 103; or
- (a) convicting the offender and ordering the offender under section 105 to come up for sentence if called on.

(2) If any provision applicable to the particular offence in this or any other enactment provides a presumption in favour of imposing, on conviction, a sentence of imprisonment, [a sentence of home detention,] a community-based sentence or a fine, then—

- (a) notwithstanding subsection (1), a Court is not obliged to consider whether the offender would be more appropriately dealt with in the manner described in any of paragraphs (a), (b) or (c) of that subsection; but
- (b) the Court is not precluded from dealing with the offender in that manner if the Court thinks that it is appropriate in the circumstances.

(Amended by Ordinance No. 1 of 2016)

11.— (1) If a Court is lawfully entitled under this ordinance to impose a sentence of reparation, it must impose it unless it is satisfied that the sentence would result in undue hardship

Discharge or order to come up for sentence if called on

Reparation

for the offender or the dependants of the offender, or that any other special circumstances would make it inappropriate.

(2) A sentence of reparation may be imposed, in relation to any particular offence, on its own or in addition to any other sentence.

(3) If a Court does not impose a sentence of reparation in a case where it is lawfully entitled to do so, it must give reasons for not doing so.

Sentence of fine

12.—(1) If a Court is lawfully entitled under this or any other enactment to impose a fine in addition to, or instead of, any other sentence, the Court must regard a fine as the appropriate sentence for the particular offence unless—

- (a) the Court is satisfied that the purpose or purposes for which sentence is being imposed cannot be achieved by imposing a fine; or
- (b) the Court is satisfied that the application of any of the principles in section 7 to the particular case make a fine inappropriate; or
- (c) any provision applicable to the particular offence in this or any other enactment provides a presumption in favour of imposing any other sentence or requires the Court to impose any other sentence; or
- (d) the Court is satisfied that a fine, on its own or in addition to a sentence of reparation, would otherwise be clearly inadequate in the circumstances.

Reparation, fines and financial capacity of offender

13.—(1) Even if it would be appropriate in accordance with section 12 to impose a fine, a Court may nevertheless decide not to impose a fine if it is satisfied that the offender does not nor will not have the means to pay it.

(2) If a Court considers that it would otherwise be appropriate to impose a sentence of reparation and a sentence of a fine, but it appears to the Court that the offender has or will have the means to pay a fine or make reparation but not both, the Court must sentence the offender to make reparation.

Community-based sentences

14.—(1) If a Court is lawfully entitled under this or any other enactment to impose a community-based sentence or a fine, or both, it may impose a community-based sentence only, if—

- (a) the Court, in accordance with section 12, does not regard a fine as the appropriate sentence; or
- (b) the Court is not going to impose a fine because of either of the circumstances referred to in section 13.

(2) This section is subject to any provision in this or any other enactment that—

- (a) provides a presumption in favour of or against

imposing a particular sentence in relation to a particular offence; or

- (b) requires a Court to impose a particular sentence in relation to a particular offence.

[14A.]—(1) If a court is lawfully entitled under this or any other enactment to impose a sentence of home detention, it may impose a sentence of home detention only if—

Sentence of home detention

- (a) the court is satisfied that the purpose or purposes for which the sentence is being imposed cannot be achieved by any less restrictive sentence or combination of sentences; and
- (b) the court would otherwise sentence the offender to a short-term sentence of imprisonment.

(2) This section is subject to any provision in this or any other enactment that—

- (a) provides a presumption in favour of or against imposing a sentence of home detention in relation to a particular offence; or
- (b) requires a court to impose a sentence of imprisonment in relation to a particular offence.]

(Inserted by Ordinance No. 1 of 2016)

15.—(1) When considering the imposition of a sentence of imprisonment for any particular offence, the Court must have regard to the desirability of keeping offenders in the community as far as that is practicable and consonant with the safety of the community.

Sentence of imprisonment

(2) The Court must not impose a sentence of imprisonment unless it is satisfied that—

- (a) a sentence is being imposed for all or any of the purposes in section 6(a) to (c), (e), (f) or (g); and
- (b) those purposes cannot be achieved by a sentence other than imprisonment; and
- (c) no other sentence would be consistent with the application of the principles in section 7, to the particular case.

(3) This section is subject to any provision in this or any other enactment that—

- (a) provides a presumption in favour of or against imposing a sentence of imprisonment in relation to a particular offence; or
- (b) requires a Court to impose a sentence of imprisonment in relation to a particular offence.

16. Nothing in this Part limits the discretion of a Court to impose a sentence of imprisonment on an offender if the Court is satisfied on reasonable grounds that the offender is

Imprisonment may be imposed if offender is unlikely to comply with other sentences

unlikely to comply with any other sentence it could lawfully impose and that would otherwise be appropriate.

Limitation on
[home detention or]
imprisonment of
person under 17 years

17. No Court may impose a sentence of imprisonment [or a sentence of home detention] on an offender in respect of a particular offence other than an offence triable only by the Supreme Court if, at the time of the commission of the offence, the offender was under the age of 17 years.

(Amended by Ordinance No. 1 of 2016)

PART III PERMITTED COMBINATIONS OF SENTENCES

Limitations on use of
certain combinations
of sentences

18.—(1) Unless the particular enactment expressly provides otherwise, no Court may, in respect of any particular offence, impose on an offender both a fine and a sentence of imprisonment.

(2) No Court may, in respect of any particular offence, or in respect of two or more offences, impose on an offender both a community-based sentence and a sentence of imprisonment.

(3) If an offender who is before a Court for sentence is already detained under a sentence of imprisonment imposed on an earlier occasion, the Court must not impose on the offender any kind of community-based sentence.

Use of combination
sentences

19.— (1) This section applies to the imposition on an offender of a combination of sentences [] in respect of a particular offence.

(2) No Court may impose both a fine and a sentence of community work but, subject to this section, may impose—

- (a) a sentence of supervision and a sentence of community work; or
- (b) a sentence of supervision and a fine; or
- (c) a sentence of home detention and a sentence of community work; or
- (d) a sentence of home detention and a fine.]

(3) A Court may only impose [a particular combination of sentences on an offender] if the Court is satisfied that [any] of those sentences, if imposed individually [or in any less restrictive combination], would not be in accordance with—

- (a) the purpose or purposes for which sentence is imposed; or
- (b) the application of the principles in section 7 to the particular case.

(4) A Court may only impose both a sentence of supervision and a sentence of community work if the Court is satisfied that [] a sentence of community work is appropriate but the offender requires the imposition of standard conditions or any of the special conditions available under a sentence of

supervision to address the causes of his or her offending.

(Amended by Ordinance No. 1 of 2016)

20. Nothing in sections 18 and 19—

- (a) empowers a Court to impose any sentence that it would not otherwise be empowered to impose; or
- (b) limits the power of a Court to make any order that it is empowered to make on the conviction of any person, whether under this or any other enactment.

Effect of provisions concerning multiple sentences on powers of Court

Provisions of general application restricting cumulative sentences

21. No sentence of any kind may be imposed cumulatively on a non-association order.

No sentence may be cumulative on non-association order

22. No sentence of any kind may be imposed cumulatively on an indeterminate sentence of imprisonment.

No sentence may be cumulative on indeterminate sentence of imprisonment

Proof of facts

23.—(1) In determining a sentence or other disposition of the case, a Court—

Proof of facts

- (a) may accept as proved any fact that was disclosed by evidence at the hearing or trial and any facts agreed on by the prosecutor and the offender; and
- (b) must accept as proved all facts, express or implied, that are essential to a plea of guilty or a finding of guilt.

(2) If a fact that is relevant to the determination of a sentence or other disposition of the case is asserted by one party and disputed by the other—

- (a) the Court must indicate to the parties the weight that it would be likely to attach to the disputed fact if it were found to exist and its significance to the sentence or other disposition of the case;
- (b) if a party wishes the Court to rely on that fact, the parties may adduce evidence as to its existence unless the Court is satisfied that sufficient evidence was adduced at the hearing or trial;
- (c) the prosecutor must prove beyond a reasonable doubt the existence of any disputed aggravating fact and must negate any disputed mitigating fact raised by the defence (other than a mitigating fact referred to in paragraph (d)) that is not wholly implausible or manifestly false;
- (d) the offender must prove on the balance of probabilities the existence of any disputed mitigating fact that is not related to the nature of the offence or to the offender's part in the offence;

- (e) either party may cross-examine any witness called by the other party.

Sentencing procedure

Power of adjournment
for inquiries as to
suitable punishment

24.—(1) A court may adjourn the proceedings in respect of any offence after the offender has been found guilty or has pleaded guilty and before the offender has been sentenced or otherwise dealt with for any one or more of the following purposes—

- (a) to enable inquiries to be made or to determine the most suitable method of dealing with the case;
- (b) to enable a restorative process to occur;
- (c) to enable a restorative justice agreement to be fulfilled;
- (d) to enable a rehabilitation programme or course of action to be undertaken;
- (e) to enable the Court to take account of the offender's response to any process, agreement, programme or course of action referred to in paragraph (b), (c) or (d).

(2) If proceedings are adjourned under this section or under section 9(4), a Judge or Magistrate having jurisdiction to deal with offences of the same kind (whether or not the same Judge or Magistrate before whom the case was heard) may, after inquiry into the circumstances of the case, sentence or otherwise deal with the offender for the offence to which the adjournment relates.

Pre-sentence reports

25.—(1) If an offender who is charged with an offence punishable by imprisonment is found guilty or pleads guilty, the Court may direct a Supervision Officer to provide a report to the Court under subsection (2).

(2) A pre-sentence report may include—

- (a) information regarding the personal, family, community and cultural background and social circumstances of the offender;
- (b) information regarding the factors contributing to the offence and the rehabilitative needs of the offender;
- (c) information regarding any offer, agreement, response or measure of a kind referred to in section 9(1) or the outcome of any other restorative justice processes that have occurred in relation to the case;
- (d) recommendations on the appropriate sentence or other disposition of the case, taking into account the risk of further offending by the offender;
- (e) in the case of a proposed sentence of supervision [or home detention], recommendations on the

- appropriate conditions of [that sentence];
- (f) in the case of a proposed sentence of supervision [or home detention] involving one or more programmes—
 - (i) a report on the programme or programmes, including a general description of the conditions that the offender will have to abide by; and
 - (ii) confirmation that the report has been made available to the offender;
 - (g) in the case of a proposed sentence of supervision [or home detention] involving a special condition requiring the offender to take prescription medication, confirmation that the offender—
 - (i) has been fully advised by a person who is qualified to prescribe that medication about the nature and likely or intended effect of the medication and any known risks; and
 - (ii) consents to taking the prescription medication;
 - (h) in the case of a proposed sentence of community work, information regarding the availability of community work of a kind referred to in section 61 in the area in which the offender will reside.

(Amended by Ordinance No. 1 of 2016)

(3) The Court must not direct the preparation of a report under subsection (1) on any aspects of the personal characteristics or personal history of an offender if a report covering those aspects is readily available to the Court and there is no reason to believe that there has been any change of significance to the Court since the report was prepared.

(4) On directing the preparation of a report under subsection (1) the Court may indicate to the Supervision Officer the type of sentence or other mode of disposition that the Court is considering and may also give any other guidance to the Supervision Officer that will assist the officer to prepare the report.

(5) If a Court has directed the preparation of a report under subsection (1), the Supervision Officer charged with the preparation of the report may seek the further directions of the Court on—

- (a) any particular item of information sought by the Court; or
- (b) any alternative sentence or other mode of disposition that may be considered by the Court if it appears that the sentence or other mode of disposition under consideration is inappropriate.

Additional
requirements when
considering sentence
of home detention

[25A.—(1) This section applies to reports prepared under section 25 if—

- (a) the court has indicated that it is considering a sentence of home detention; or
- (b) the Supervision Officer intends to recommend a sentence of home detention.

(2) A pre-sentence report to which subsection (1) applies may include any of the matters outlined in section 25(2), and must include—

- (a) information regarding the suitability of the proposed home detention residence, including the safety and welfare of the occupants of the proposed home detention residence; and
- (b) confirmation that the offender consents to the standard detention conditions and any special conditions recommended by the Supervision Officer or that the court has indicated it is considering imposing.

(3) Before completing a report that covers the matters in subsection (2) of this section, the Supervision Officer must—

- (a) ensure that every relevant occupant of the proposed home detention residence is aware of the nature of the offender's past and current offending; and
- (b) tell every relevant occupant that the reason for giving that information is to enable the occupant to make an informed decision about whether to consent to the offender serving the sentence at the home detention residence; and
- (c) tell every relevant occupant that the information provided about the offender must not be used for any purpose other than that described in paragraph (b); and
- (d) obtain the consent of every relevant occupant to the offender serving the sentence in the home detention residence; and
- (e) inform every relevant occupant that they may withdraw their consent, at any time, to the offender serving the sentence in the home detention residence.

(4) In subsection (3) **relevant occupant** means—

- (a) in the case of a family residence, every person of or over the age of 16 who ordinarily lives there; and
- (b) in the case of any other residence, every person whom the Supervision Officer identifies as being a relevant occupant for the purpose of subsection (3).]

(Inserted by Ordinance No. 1 of 2016)

26.—(1) If an offender appears before a Court for sentencing, the offender may request the Court to hear any person or persons called by the offender to speak on—

Offender may request
Court to hear certain
persons

- (a) the personal, family, community and cultural background of the offender;
- (b) the way in which that background may have related to the commission of the offence;
- (c) any processes that have been tried to resolve, or that are available to resolve, issues relating to the offence involving the offender and his or her family or community and the victim or victims of the offence;
- (d) how support from the family or community may be available to help prevent further offending by the offender;
- (e) how the offender's background or family or community support may be relevant in respect of possible sentences.

(2) The Court must hear a person or persons called by the offender under this section on any of the matters specified in subsection (1) unless the Court is satisfied that there is some special reason which makes this unnecessary or inappropriate.

(3) If the Court declines to hear a person called by the offender under this section, the Court must give reasons for doing so.

(4) Without limiting any other powers of a Court to adjourn, the Court may adjourn the proceedings to enable arrangements to be made to hear a person or persons under this section.

(5) If an offender does not make a request under this section, the Court may suggest to the offender that it may be of assistance to the Court to hear a person or persons called by the offender on any of the matters specified in subsection (1).

27.—(1) If a written report is submitted to a Court, whether under section 25 or section 32 or otherwise, a copy of the report must be given—

Disclosure of reports

- (a) except as provided in subsection (2), to the offender; and
- (b) if the offender is represented, to the offender's counsel, whether or not an order is made under subsection (2).

(2) The Court may order that any part of the report not be disclosed to the offender if it is of the opinion that the disclosure would be likely to prejudice the offender's physical or mental health or endanger the safety of any person.

(3) The offender or his or her counsel may tender evidence on any matter referred to in any report, whether written or oral, that is submitted to a Court under section 25 or section 32.

(4) Failure to give a copy of any report in accordance with this section does not affect the validity of the proceedings in a Court or of any order made or sentence imposed by a Court.

Access to reports

28.—(1) The following persons may have access to any report submitted to a Court under section 25 or section 32 and held by the Court—

- (a) the superintendent or other person in charge of a penal institution to which the offender is sent, whether during any proceedings or in accordance with any sentence imposed;
- (b) the medical superintendent of a hospital—
 - (ii) to which the offender is remanded; or
 - (ii) in which the offender is detained as a compulsory inpatient or from which he or she is on leave;
- (c) an officer or employee of the administration who requires access to the report for the purposes of his or her official duties;
- (d) a member of the Pitcairn Parole Commission;
- (e) the prosecutor appearing on sentence or on appeal against sentence.

No sentence of imprisonment [or home detention] to be imposed without opportunity for legal representation

29.—(1) No Court may impose a sentence of imprisonment [or a sentence of home detention] on an offender who has not been legally represented at the stage of the proceedings at which the offender was at risk of conviction, except as provided in subsection (2).

(Amended by Ordinance No. 1 of 2016)

(2) Subsection (1) does not apply if the Court is satisfied that the offender—

- (a) was informed of his or her rights relating to legal representation including, where appropriate, the right to apply for legal aid under the Legal Aid (Criminal Proceedings) Ordinance; and
- (b) fully understood those rights; and
- (c) had the opportunity to exercise those rights; and
- (d) refused or failed to exercise those rights or engaged counsel but subsequently dismissed him or her.

cap.9

(3) If, on any appeal against sentence, a Court finds that a sentence was imposed in contravention of subsection (1), the Court must either—

- (a) quash the sentence imposed and impose in substitution for it any other lawful sentence that the Court thinks ought to have been imposed; or
- (b) quash the conviction and direct a new hearing or trial or make any other order that justice requires.

(4) For the purposes of this section, an offender refuses or fails to exercise his or her rights relating to legal representation if the offender—

- (a) refuses to apply for legal aid under the Legal Aid (Criminal Proceedings) Ordinance or applies for it unsuccessfully; and cap.9
- (b) refuses or fails to engage counsel by other means.

30.—(1) A Court must give reasons in open court—

- (a) for the imposition of a sentence or for any other means of dealing with the offender; and
- (b) for the making of an order under Part IV. General requirement to give reasons

(2) The reasons may be given under this section with whatever level of particularity is appropriate to the particular case.

(3) Nothing in this section limits any other provision of this or any other enactment which requires a Court to give reasons.

(4) The fact that a Court, in giving reasons in a particular case, does not mention a particular principle in section 7 or a particular factor in section 8 or a consideration under section 9 or section 10 is not in itself grounds for an appeal against a sentence imposed or an order made in that case.

PART IV

SENTENCES, ORDERS AND RELATED MATTERS

Monetary penalties

31.—(1) A Court may impose a sentence of reparation if an offender has, through or by means of an offence of which the offender is convicted, caused a person to suffer—

- (a) loss or damage to property; or
- (b) emotional harm; or
- (c) loss or damage consequential on any emotional or physical harm or loss of or damage to property. Sentence of reparation

(2) Notwithstanding subsection (1), a Court must not impose a sentence of reparation in respect of emotional harm or loss or damage consequential on emotional harm, unless the person who suffered the emotional harm is a person described in paragraph (a) of the definition of victim in section 3.

(3) In determining whether a sentence of reparation is appropriate or the amount of reparation to be made for any consequential loss or damage described in subsection (1)(c), the Court must take into account whether there is or may be, under the provisions of any enactment or rule of law, a right available to the person who suffered the loss or damage to bring proceedings or to make any application in relation to that loss or damage.

(4) Subsection (3) applies whether or not the right to bring proceedings or make the application has been exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired.

(5) When determining the amount of reparation to be made, the Court must take into account any offer, agreement, response, measure or action as described in section 9.

(6) The Court must not impose as part of a sentence of reparation an obligation on the offender to perform any form of work or service for the person who suffered the harm, loss or damage.

Court may order
reparation report

32.—(1) If the Court considers that a sentence of reparation should be imposed, the Court may order a Supervision Officer, or any other person designated by the Court for the purpose, to prepare a reparation report for the Court in accordance with section 33 on all or any of the following matters—

- (a) in the case of loss or damage to property, the value of that loss or damage and any consequential loss or damage;
- (b) in the case of emotional harm, the nature of that harm and any consequential loss or damage;
- (c) in the case of any loss or damage consequential on physical harm, the nature of the loss or damage;
- (d) the financial capacity of the offender;
- (e) the maximum amount that the offender is likely to be able to pay under a sentence of reparation;
- (f) the frequency and magnitude of any payments that should be required under a sentence of reparation, if provision for payment by instalments is thought desirable.

(2) The Court may decline to seek a report under subsection (1) and impose a sentence of reparation without further inquiry if—

- (a) the Court is satisfied as to the amount of reparation that the offender should pay; or
- (b) the type of information referred to in a reparation report is available through other means (including, without limitation, a declaration made following a direction under section 40); or
- (c) in all the circumstances the Court considers that a report is unnecessary.

(3) For the purposes of the preparation of a reparation report, a Court may direct the offender to make a declaration as to his or her financial capacity in accordance with section 41.

Reparation reports

33.—(1) A Supervision Officer or other person who is required by a Court to prepare a report under section 32 must

attempt to gain agreement between the offender and the person who suffered the harm, loss, or damage on the amount that the offender should be required to pay by way of reparation.

(2) If agreement is reached, the Supervision Officer or other person must report the terms of the agreement to the Court (in addition to any other matters on which the Court has required a report).

(3) If no agreement is reached, the Supervision Officer or other person must—

- (a) in respect of emotional harm, state in the report the respective positions of the offender and the person who suffered the harm and that the matter is unresolved; and
- (b) in respect of loss of, or damage to, property, either
 - (i) determine the value of the loss or damage and the consequential loss or damage on the evidence available and include that value in the report; or
 - (ii) state in the report that the matter is unresolved; and
- (c) in respect of loss or damage consequential on emotional or physical harm, either
 - (i) determine the value of the loss or damage on the evidence available and include that value in the report; or
 - (ii) state in the report the respective positions of the offender and the person who suffered the loss or damage and that the matter is unresolved.

(4) Notwithstanding subsections (1) to (3), the person who suffered the harm, loss or damage is not obliged to meet with the offender or otherwise participate in the preparation of the report.

(5) The person who prepared a report under this section must give a copy to the person who suffered the harm, loss or damage unless the Court orders otherwise.

(6) Failure to give a copy of any report in accordance with subsection (5) does not affect the validity of the proceedings in a Court or of any order made or sentence imposed by a Court.

34.—(1) If the offender has insufficient means to pay the total value of the loss, damage or harm, the Court may sentence the offender to make—

- (a) reparation for any amount that is less than the value of the loss, damage or harm; or
- (b) payment by instalments in respect of the loss, damage or harm; or

Taking into account
financial capacity of
offender

(c) both (a) and (b).

(2) If the Court imposes on an offender a sentence of reparation and a sentence of a fine, any payments received from the offender must be applied first in satisfaction of the amount due under the sentence of reparation.

Conditions of
sentence of reparation

35. If a Court sentences an offender to make reparation, the Court must determine the conditions of the sentence in respect of the following matters—

- (a) the total amount of reparation to be paid by the offender;
- (b) whether the amount is to be paid in one lump sum or in instalments;
- (c) if the amount is to be paid in one lump sum, whether it is to be paid immediately or at some specified future date;
- (d) if the amount is to be paid in instalments, the frequency and amounts of the instalments.

Copies of conditions
of reparation to be
given to person who
suffered harm, loss or
damage

36.—(1) A copy of the conditions of a sentence of reparation must be given to the person who suffered the harm, loss or damage.

(2) Failure to give a copy of the conditions of the sentence in accordance with this section does not affect the validity of the proceedings in the Court or of the sentence imposed by the Court.

Payment of sums
to person who
suffered harm, loss or
damage

37.—(1) Every sum payable under a sentence of reparation must be paid to the person who suffered the harm, loss or damage or, with that person's consent, to that person's insurer.

(2) A sentence of reparation does not affect any right that the person who suffered the harm, loss or damage has to recover by civil proceedings any damages in excess of the amount recovered under the sentence.

Fines

Power to impose
fine instead of
imprisonment[,
home detention,] or
community-based
sentence

38.—(1) If an enactment provides that a Court may sentence an offender to imprisonment but does not prescribe a fine, the Court may sentence the offender to pay a fine instead of sentencing the offender to imprisonment.

[(1A) If an enactment provides that a Court may sentence an offender to a sentence of home detention but does not provide for a fine, the Court may sentence the offender to pay a fine instead of imposing a sentence of home detention.]

(Inserted by Ordinance No. 1 of 2016)

(2) If an enactment provides that a Court may sentence an offender to a community-based sentence but does not prescribe

a fine, the Court may sentence the offender to pay a fine instead of imposing a community-based sentence.

(3) Subsections (1)[, (1A)] and (2) are subject to any express provision to the contrary in the relevant enactment.

(Amended by Ordinance No. 1 of 2016)

(4) No person may be sentenced by a Magistrate's Court in accordance with this section to pay a fine exceeding—

- (a) \$10,000, if the Court is presided over by a Magistrate appointed under section 11(1) and (4) of the Judicature (Courts) Ordinance.
- (b) \$400, if the Court is presided over by the Island Magistrate.

39.—(1) In determining the amount of a fine, the Court must take into account, in addition to the provisions of sections 6 to 9, the financial capacity of the offender.

Determining amount of fine

(2) Subsection (1) applies whether taking into account the financial capacity of the offender has the effect of increasing or reducing the amount of the fine.

cap.2

(3) If under an enactment an offender is liable to a fine of a specified amount, the offender may be sentenced to pay a fine of any less amount unless a minimum fine is expressly provided for by that enactment.

(4) If a Court imposes a fine in addition to a sentence of reparation, it must, in fixing the amount of the fine, take into account the amount payable under the sentence of reparation.

40.—(1) If the Court considers that a fine of less than \$100 may be an appropriate sentence, it may assume that the offender has the means to pay the fine unless evidence is presented to the contrary.

Financial capacity of offender

(2) If the Court considers that a fine of \$100 or more may be an appropriate sentence but it is uncertain about the offender's ability to pay the fine, the Court may direct the offender to make a declaration as to his or her financial capacity in accordance with section 41.

(3) The Court may decline to give a direction under subsection (2) and impose a fine without further inquiry if—

- (a) the type of information referred to in a declaration is available through other means (including, for example, a reparation report under section 32); or
- (b) in all the circumstances, the Court considers that a declaration is unnecessary.

Declaration as to financial capacity

41. A declaration as to financial capacity must contain information on all sources of income, assets, liabilities and

Declaration as to financial capacity

outgoings, including, without prejudice to the generality of the foregoing —

- (a) salary and wages;
- (b) benefits and pensions;
- (c) commissions;
- (d) interest and dividends;
- (e) income from rental property;
- (f) ownership of land;
- (g) vehicle ownership;
- (h) ownership of other property;
- (i) income and realisable assets that the offender does not currently have but which it is anticipated that the offender will receive during the 12 months following the date of giving the declaration;
- (j) debts;
- (k) essential outgoings of the offender and his or her dependants.

Offence of providing false or misleading information

42. Every person is liable on summary conviction to imprisonment for a period not exceeding three months or to a fine not exceeding \$1,000 who provides false or misleading information in a declaration of financial capacity provided in accordance with section 41.

PART V COMMUNITY-BASED SENTENCES

Supervision

Sentence of supervision

43.—(1) A Court may sentence an offender to supervision if—

- (a) the offender is convicted of an offence punishable by imprisonment; or
- (b) the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.

(2) The sentence may be for a period, being not less than 6 months and not more than 2 years, that the Court thinks fit.

(3) This section is subject to sections 44 and 45.

Guidance on use of sentence of supervision

44. A Court may impose a sentence of supervision only if the Court is satisfied that a sentence of supervision would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

Sentences of supervision in respect of two or more offences must be served concurrently

45. If a Court imposes a sentence of supervision in respect of each of two or more offences (whether on the same occasion or on different occasions) the sentences must be served concurrently.

46. An offender who is sentenced to supervision is subject to—

Conditions of
sentence of
supervision

- (a) the standard conditions in section 47; and
- (b) any special conditions imposed by the Court under section 48 or section 50 or both.

47.—(1) If an offender is sentenced to supervision, the following standard conditions apply—

Standard conditions
of supervision

- (a) the offender must report in person to the Supervision Officer as soon as practicable, and not later than 72 hours, after the sentence is imposed;
- (b) the offender must report to the Supervision Officer as and when required to do so by the Supervision Officer and must notify the officer of his or her residential address and the nature and place of his or her employment when asked to do so;
- (c) the offender must not move to a new residential address without the prior written consent of the Supervision Officer;
- (d) if consent is given under paragraph (c), the offender must report in person to the Supervision Officer as soon as practicable, and not later than 72 hours, after the offender's arrival in the new area;
- (e) the offender must not reside at any address at which the Supervision Officer has directed the offender not to reside;
- (f) the offender must not engage, or continue to engage, in any employment or occupation in which the Supervision Officer has directed the offender not to engage or continue to engage;
- (g) the offender must not associate with any specified person, or with persons of any specified class, with whom the Supervision Officer has, in writing, directed the offender not to associate;
- (h) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by the Supervision Officer.

(2) The conditions in subsection (1)(c) to (e) do not apply if, and to the extent that, they are inconsistent with any special condition imposed by the Court.

48. A Court may impose any special condition or conditions related to a programme if the Court is satisfied that—

Special conditions
related to programme

- (a) there is a significant risk of further offending by the offender; and
- (b) standard conditions alone would not adequately reduce that risk; and

- (c) the offender requires a programme to reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

Programmes

49. For the purposes of section 48, **programme** means any of the following:

- (a) any psychiatric or other counselling or assessment;
- (b) attendance at any medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative or reintegrative programme;
- (c) placement in the care of any appropriate person, persons, or agency, approved by the Supervision Officer, such as, without limitation, a religious group, a church or religious order or any members or particular members of any such group, church or order.

Other special conditions

50.—(1) A Court may impose any of the special conditions described in subsection (2) if the Court is satisfied that—

- (a) there is a significant risk of further offending by the offender; and
- (b) standard conditions alone would not adequately reduce the risk; and
- (c) the imposition of special conditions would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

(2) The conditions referred to in subsection (1) are—

- (a) any conditions that the Court thinks fit relating to the offender's place of residence (which may include a condition that the offender not move residence), finances or earnings;
- (b) conditions requiring the offender to take prescription medication;
- (c) any other conditions that the Court thinks fit to reduce the likelihood of further offending by the offender.

(3) No Court may impose a condition under this section that the offender pay any fine, reparation or other sum ordered to be paid on conviction or that the offender perform any service that he or she could have been required to perform if he or she had been sentenced to community work.

[(3A) No court may impose a condition under this section that the offender submit to electronic monitoring.]

(Inserted by Ordinance No. 1 of 2016)

(4) No offender may be made subject to a special condition

that requires the offender to take prescription medication unless the offender—

- (a) has been fully advised by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and
 - (b) consents to taking the prescription medication.
- (5) An offender does not commit a breach of his or her conditions for the purposes of section 68 if he or she withdraws consent to taking prescription medication.

51. An offender who is subject to a sentence of supervision must be under the supervision of the Supervision Officer or of any other supervision officer that the Governor may direct.

Offender to be under supervision of Supervision Officer

52.—(1) An offender who is subject to a sentence of supervision, or the Supervision Officer, may apply in accordance with section 70 for an order under subsection (3) of this section on the grounds that—

Variation or cancellation of sentence of supervision

- (a) the offender is unable to comply, or has failed to comply with any of the conditions of the sentence;
- (b) any programme to which the offender is subject is no longer available or suitable for the offender;
- (c) having regard to any change in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence—
 - (i) the rehabilitation and reintegration of the offender would be advanced by the remission, suspension, or variation of conditions, or the imposition of additional conditions; or
 - (ii) the continuation of the sentence is no longer necessary in the interests of the community or the offender.

(2) The Supervision Officer may apply in accordance with section 70 for an order under subsection (3) of this section if an offender who is subject to a sentence of supervision is convicted of an offence punishable by imprisonment.

(3) On an application under subsection (1) or subsection (2), the Court may, if it is satisfied that the grounds on which the application is based have been established—

- (a) remit, suspend or vary conditions imposed by the Court or impose additional conditions;
- (b) cancel the sentence;
- (c) cancel the sentence and substitute any other sentence (including another sentence of supervision) that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(4) The Court must not vary any existing condition or impose any new condition of a kind referred to in section 50(2)(b) without the consent of the offender.

(5) When determining a substitute sentence under subsection (3)(c), the Court must take into account the portion of the original sentence that remains unserved at the time of the order.

(6) If the Court cancels a sentence under this section, the sentence expires on the date that the order is made, or on any other date that the Court may specify.

(7) If an application is made under this section for the remission, suspension or variation of any condition imposed by the Court, the Supervision Officer may suspend the condition until the application has been heard and disposed of.

Community Work

Sentence of
community work

53.—(1) A Court may sentence an offender to community work—

- (a) if the offender is convicted of an offence punishable by imprisonment; or
- (b) if the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.

(2) The sentence may be for the number of hours, being not less than 40 or more than 400, that the Court thinks fit.

(3) This section is subject to sections 54 and 55.

Guidance on use
of sentence of
community work

54.—(1) In considering whether to impose a sentence of community work, the Court must give particular consideration to—

- (a) whether the nature and circumstances of the offending make it appropriate for the offender to make compensation to the community in the form of work, in addition to, or instead of, making reparation to any person in respect of the offending; and
- (b) whether the sentence is appropriate, having regard to the offender's character and personal history, and to any other relevant circumstances.

(2) A sentence of community work is inappropriate if the Court is satisfied that—

- (a) the offender has alcohol, drug, psychiatric, or intellectual problems that indicate that it is unlikely that he or she would complete a sentence of community work; or
- (b) for any other reason it is unlikely that the offender would complete a sentence of community work.

(3) The Court may assume that suitable work is available for the offender to perform under the sentence unless the Court is advised otherwise by the Supervision Officer.

55.—(1) If a Court imposes a sentence of community work on an offender who is already subject to a sentence of community work, the sentences must be served concurrently unless the Court directs that they are to be served cumulatively.

Concurrent and
cumulative sentences
of community work

(2) If a Court imposes a sentence of community work in respect of each of two or more offences, the sentences must be served concurrently unless the Court directs that they are to be served cumulatively.

[(3) A sentence of community work must be served concurrently with any sentence of supervision or home detention, whether or not the sentences are imposed at the same time.]

(Repealed and replaced by Ordinance No. 1 of 2016)

[55A. If a Court imposes both a sentence of community work and a sentence of home detention, the Court may defer the commencement of the sentence of community work for a specified period if, in its opinion, deferral is necessary to enable the offender to comply with any conditions imposed under section 76C or 76D.]

Court may defer
commencement
date of sentence of
community work

(Inserted by Ordinance No. 1 of 2016)

56.—(1) If the Court imposes a sentence of community work of 200 hours or less, that sentence must be served within 12 months of the date that it commences under section 73.

Length of sentence of
community work.

(2) If the Court imposes a sentence of community work of more than 200 hours, that sentence must be served within 24 months of the date that it commences under section 73.

(3) Any work done by an offender under a sentence of community work must be treated as having been done under that sentence and under any and each other concurrent sentence of community work that the offender was subject to at the time that the work was done.

57. An offender who is subject to a sentence of community work must report in person to the Supervision Officer

Offender must report
to Supervision Officer

- (a) as soon as practicable and not later than 72 hours after the sentence is imposed; and
- (b) as directed at any other time during the sentence for the purpose of monitoring the sentence.

58. If an offender who is subject to a sentence of community work moves to a new residential address, the offender must, within 72 hours, notify the Supervision Officer of the offender's new residential address.

Offender must notify
Supervision Officer
if offender changes
residential address

Supervision Officer
must determine
placement of offender
for community work

59. As soon as practicable after a sentence of community work is imposed and at any other time during the sentence if the Supervision Officer thinks fit, the Supervision Officer must determine in accordance with sections 60 and 61 whether the community work will be done—

- (a) on placement at a designated work centre; or
- (b) on placement with another agency; or
- (c) on placement at a designated work centre for a certain number of the hours of work and on placement with another agency for a certain number of the hours of work, as specified by the Supervision Officer.

Guidance to
Supervision Officer
in determining
placement of offender
for community work

60. For the purpose of section 59, the Supervision Officer must take into account—

- (a) the circumstances of the offending; and
- (b) how the offender could benefit from learning work habits or skills through the sentence; and
- (c) the offender's character and personal history; and
- (d) the offender's physical and mental capabilities; and
- (e) the outcome of any restorative justice processes that have occurred in the case; and
- (f) whether there is a designated work centre within a reasonable distance of the offender's place of residence; and
- (g) whether there is an agency within a reasonable distance of the offender's place of residence that has sufficient suitable work available for the offender; and
- (h) any other relevant circumstances.

Authorised work for
person sentenced to
community work

61. (1) The type of work that an offender may be required to perform for the purposes of a sentence of community work is work—

- (a) at or for any hospital, clinic or church or at or for any charitable, educational, cultural or recreational institution or organisation; or
- (b) at or for any other institution or organisation for old, infirm or disabled persons or at the home of any old, infirm or disabled person; or
- (c) on any land of which the Crown or any public body is the owner or lessee or occupier or any land that is administered by the Crown or any public body.

(2) No offender may be directed for the purposes of a sentence of community work to do any work if, in doing so, the offender would take the place of any person who would otherwise be employed in doing that work in the ordinary course of paid employment.

62.—(1) If community work is to be done on placement with an agency other than a designated work centre, the days on which and the times at which the offender does the work must be fixed by agreement between the Supervision Officer and the agency and notified in writing to the offender.

When community work must be done

(2) If the community work is to be done on placement at a designated work centre, the days on which and the times at which the offender performs the work must be determined by the Supervision Officer and notified in writing to the offender.

(3) It is not necessary for all the periods of work to be of the same duration but no period may be longer than 10 hours and no offender may be required to do more than 40 hours of community work in any week.

(4) The times at which the offender is required to report and the periods during which he or she is required to do community work must be such as to avoid interference, so far as practicable, with the offender's attendance at any place of education or employment, or with his or her religious observances.

63.—(1) An offender who is directed to do community work on placement at a designated work centre is subject to the control, direction and supervision of the Supervision Officer—

Supervision of offender while doing community work

- (a) while the offender is at a designated work centre; and
- (b) while the offender is at any other place at the direction or with the permission of the Supervision Officer; and
- (c) while the offender is travelling between a designated work centre and any other place referred to in paragraph (b) or between any two such places.

(2) An offender who is directed to do community work on placement with an agency other than a designated work centre is subject to the control, direction and supervision of the Supervision Officer at all times while the offender is doing work or is required to be doing work under the sentence.

64.—(1) An offender who is subject to a sentence of community work may be excused from reporting during any period when the designated work centre or other agency at which the offender is required to report is closed.

Offender excused from reporting in certain circumstances

(2) In special circumstances, the Supervision Officer may excuse an offender from reporting on any day or during any period.

(3) Without limiting subsection (2), if an offender is unable to report on any day or during any period because of illness or injury, the Supervision Officer must, on being

satisfied (whether before or after the failure to report) with the circumstances of the case, excuse the offender from the requirement to report on that day or during that period.

(4) For the purpose of determining whether or not to excuse an offender under subsection (3), the Supervision Officer may require that the offender obtain a medical certificate as to whether the offender is, will be or was unfit to report on the day or during the period.

(5) A certificate obtained in accordance with subsection (4) is not conclusive as to whether the offender is, will be or was unfit to report.

(6) For the avoidance of doubt, if an offender is excused under this section from reporting, that does not have the effect of remitting any of the hours of community work required to be done under the sentence.

Remission of sentence
of community work

65. If the Supervision Officer is satisfied that the offender has a good record of compliance with a sentence of community work, the Supervision Officer may remit up to 10% from the number of hours imposed by the Court.

Variation or
cancellation
of sentence of
community work

66.—(1) An offender who is subject to a sentence of community work or the Supervision Officer, may apply in accordance with section 70 for an order under subsection (3) of this section on the grounds that—

- (a) there has been a change of circumstances since the sentence was imposed which would justify the variation or cancellation of the sentence; or
- (b) having regard to any change in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence, the continuation of the sentence is no longer necessary in the interests of the community or the offender.

(2) The Supervision Officer may apply in accordance with section 70 for an order under subsection (3) of this section—

- (a) if an offender who is subject to a sentence of community work is convicted of an offence punishable by imprisonment; or
- (b) on the grounds that the offender has behaved in a manner described in any of paragraphs (a) to (j) of section 69(1).

(3) On an application under subsection (1) or subsection (2), the Court may, if it is satisfied that the grounds on which the application is based have been established—

- (a) vary the sentence by reducing the number of hours of work to be done; or

- (b) cancel the sentence; or
- (c) cancel the sentence and substitute any other sentence, (including another sentence of community work) which could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(4) When determining a substitute sentence under subsection (3)(c), the Court must take into account the portion of the original sentence which remains unserved at the time of the order.

(5) If the Court cancels the sentence, the sentence expires on the date that the order is made or on any other date which the Court may specify.

67.—(1) An offender who is subject to a sentence of community work or the Supervision Officer may apply in accordance with section 70 for an extension of the period within which the work must be done on the grounds that—

Extension of period within which community work must be done

- (a) because of incapacity or any humanitarian or other reasons, it will be impossible for the offender to do the work during a certain period; or
- (b) it would be unreasonable to require the offender to do the work during that period.

(2) On an application under subsection (1), the Court may, if it is satisfied that the grounds in subsection (1) have been established, extend the period within which the work must be done by the amount that the Court thinks fit.

Offences related to community-based sentences

68. An offender commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$400 who—

Offences related to breach of conditions of supervision

- (a) fails without reasonable excuse to comply with any condition of a sentence of supervision; or
- (b) fails without reasonable excuse to report when required to do so under section 74 or section 76.

69.—(1) An offender who is sentenced to community work commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$400 who—

Offences relating to breach of sentence of community work

- (a) fails without reasonable excuse to report to the Supervision Officer in accordance with section 57 or section 74 or section 76; or
- (b) fails without reasonable excuse to notify the Supervision Officer of any new residential address in accordance with section 58; or

- (c) fails without reasonable excuse to—
 - (i) do any work satisfactorily in accordance with the sentence; or
 - (ii) comply with the terms of any agreement entered into for the purposes of section 62 (1); or
- (d) fails without reasonable excuse to complete the required number of hours of work within the period prescribed under section 56 or within any extended period granted under section 67; or
- (e) accepts remuneration whether by way of gift or otherwise for any work that the offender is required to do for the purposes of the sentence; or
- (f) fails without reasonable excuse to report or to remain at any place as required by or under this ordinance; or
- (g) fails without reasonable excuse to obey any rules governing a designated work centre; or
- (h) fails without reasonable excuse to obey any directions lawfully given regarding the manner in which his or her time must be spent while under the supervision of the Supervision Officer under section 63; or
- (i) refuses to work or fails to work in the manner reasonably required of the offender or neglects or intentionally mismanages his or her work while under the supervision of the Supervision Officer under section 63; or
- (j) behaves in an offensive, threatening, insolent, insulting, disorderly, or indecent manner while under the supervision of the Supervision Officer under section 63.

(2) A person commits an offence and is liable on summary conviction to a fine not exceeding \$250 who without lawful justification or excuse loiters about any designated work centre or any place where persons sentenced to community work are placed and refuses or neglects to depart after being warned by a police officer or by the Supervision Officer.

Review of Community-based Sentences

70.—(1) Every application under section 52 or section 66 must be made—

- (a) to the Supreme Court, if the sentence was passed—
 - (i) by the Court of Appeal on appeal from the Supreme Court; or
 - (ii) by the Supreme Court otherwise than on appeal from the Magistrate’s Court; or

(b) in any other case, to the Magistrate's Court presided over by a Senior Magistrate.

(2) A copy of the application must, either before or as soon as practicable after the application is lodged in the office of the Court, be served—

- (a) on the offender, if the offender is not the applicant; or
- (b) on the Supervision Officer if the Supervision Officer is not the applicant.

(3) If an application under section 52 or section 66 has been lodged in the Court by the Supervision Officer, the Supervision Officer or a police officer may, for the purpose of having the offender brought before the Court, apply for the issue of a warrant to arrest the offender.

cap. 2

(4) No warrant issued under subsection (3) may be executed otherwise than by a police officer.

(5) If an offender is arrested under a warrant issued under subsection (3), sections 18, 21 and 22 of the Justice Ordinance, so far as they are applicable and with any necessary modifications, apply as if the application were a charge.

71. For the purposes of any appeal or application for leave to appeal,—

Appeal in respect of substituted sentence

- (a) a sentence substituted for a community-based sentence imposed on the conviction of the offender on information is deemed to be a sentence imposed in the conviction of the offender on information; and
- (b) a sentence substituted for a community-based sentence imposed on the offender on the determination of a charge in the Magistrate's Court is deemed to be a sentence imposed on the determination of a charge against the offender in the Magistrate's Court.

cap. 3

Miscellaneous provisions as to community-based sentences

72.—(1) If a Court imposes a community-based sentence on an offender, the particulars of the sentence must be drawn up in the form of an order.

Order must be drawn up and copy given to offender, etc.

(2) Wherever practicable, a copy of the order must be given to the offender before he or she leaves the Court.

(3) The order must include information regarding—

- (a) the nature of the sentence; and
- (b) the initial reporting obligations; and
- (c) the date on which the sentence commences; and
- (d) the obligations to comply with the instructions of the

Supervision Officer and the terms of the sentence;
and

- (e) the consequences of non-compliance with the terms of the sentence; and
- (f) the statutory provisions under which the sentence may be varied or cancelled.

(4) For the purposes of subsection (1), a Court may direct that the offender be detained in the custody of the Court for a period, not exceeding 2 hours, as may be necessary to enable the order to be drawn up and a copy given to the offender.

(5) If it is not practicable to give a copy of the order to the offender before the offender leaves the Court, a copy must be given to the offender in person as soon as practicable after the offender leaves the Court.

(6) A copy of the order must be given to the Supervision Officer as soon as possible after it is drawn up.

Commencement of
community-based
sentences

73.—(1) A community-based sentence commences on the day on which it is imposed.

(2) Subsection (1) applies—

- (a) subject to the remainder of this section; and
- (b) regardless of whether or not the sentence is imposed in substitution for another sentence.

[(2A) If the commencement date of a sentence of community work is deferred under section 55A, the sentence commences on the date specified in the order of the court.]

(Inserted by Ordinance No. 1 of 2016)

(3) If a sentence of community work is imposed cumulatively on another sentence of community work imposed at the same time—

- (a) at least one of the sentences must commence on the day that the sentence is imposed; and
- (b) the commencement date for the subsequent sentence is the date of the completion of the hours of community work under the first sentence of community work to be served.

(4) If a sentence of community work is imposed cumulatively on another sentence of community work to which the offender is already subject, the commencement date for the subsequent sentence is the date of the completion of the hours of community work under the first sentence of community work to be served.

(5) For the avoidance of doubt, if a sentence of community work is imposed cumulatively on another sentence of community work, hours of work done under either of the sentences on the date referred to in subsection (3)(b) or subsection (4) are not counted towards the hours of work

required to be done under the other sentence.

(6) If a sentence of community work is imposed cumulatively on another sentence of community work (hereinafter called **the first sentence**) whether or not imposed at the same time, and the first sentence is subsequently quashed—

- (a) the commencement date for the subsequent sentence is the date on which the subsequent sentence was imposed; and
- (b) any hours of work completed under the quashed sentence must be treated as having been done under the subsequent sentence.

(7) If a sentence of community work is imposed cumulatively on another sentence of community work (hereinafter called **the first sentence**), whether or not imposed at the same time and the first sentence is subsequently cancelled,—

- (a) the commencement date for the subsequent sentence is the date on which the first sentence was cancelled; and
- (b) for the avoidance of doubt, any hours of work completed under the cancelled sentence must not be treated as having been done under the subsequent sentence.

(8) A sentence of community work expires on the date that the offender completes the hours of work required under the sentence (taking into account any hours remitted under section 65) whether or not the period of time allowed under section 56 or any extended period granted under section 67 has expired.

74.—(1) Subsection (2) applies if an offender who is subject to a community-based sentence is subsequently sentenced to—

Effect of subsequent sentence of imprisonment

- (a) a term of imprisonment of not more than 12 months; or
 - (b) two or more terms of imprisonment to be served concurrently, each term of which is not more than 12 months; or
 - (c) two or more terms of imprisonment which are cumulative, the total term of which is not more than 12 months.
- (2) If this subsection applies, the Court must either—
- (a) order that the community-based sentence be suspended; or
 - (b) order that the community-based sentence be suspended for the duration of the period in which the offender is detained under the sentence or sentences of imprisonment.

(3) If the Court suspends the community-based sentence under subsection (2)(b), it may if it thinks fit remit, suspend or vary any conditions of the sentence imposed by the Court or impose additional conditions.

(4) The Court must not vary any existing condition or impose any new condition of a kind referred to in section 50(2)(b) (which involves prescription medication) unless the offender—

- (a) has been fully advised by a person who is qualified to prescribe that medication about the nature and likely or intended effect of any variation or new condition in relation to the medication and any known risks; and
- (b) consents to taking the prescription medication.

(5) If a community-based sentence is suspended under subsection (2)(b)—

- (a) the offender must report to the Supervision Officer as soon as practicable and not later than 72 hours after being released from detention; and
- (b) the sentence does not resume until the offender has reported to the Supervision Officer as required by paragraph (a).

(6) Subsection (7) applies if an offender who is subject to a community-based sentence is subsequently sentenced to—

- (a) a term of imprisonment of more than 12 months; or
- (b) two or more terms of imprisonment to be served concurrently, each term of which is more than 12 months; or
- (c) two or more terms of imprisonment which are cumulative, the total term of which is more than 12 months.

(7) If this subsection applies, the community-based sentence is suspended.

Period of suspension not counted towards sentence

75.—(1) No period during which a sentence of supervision is suspended under section 74(2) or (7) is counted towards the period under section 43(2).

(2) No period during which a sentence of community work is suspended under section 74(2) or (7) is counted towards the periods referred to in section 56(1) and (2).

Resumption of community-based sentence if sentence of imprisonment quashed.

76.—(1) This section applies to a community-based sentence which is suspended under section 74(2)(a) or section 74(7).

(2) The community-based sentence is suspended until the earlier of the following events:

- (a) it resumes under section (3); or
- (b) it is cancelled under subsection (5).

(3) If the sentence or sentences of imprisonment based on which the community-based sentence was suspended are quashed and that results in the offender no longer being detained under a sentence of imprisonment—

- (a) the offender must report to the Supervision Officer as soon as practicable and not later than 72 hours after being released from detention; and
- (b) the community-based sentence resumes when the offender has reported as required by paragraph (a).

(4) The Registrar of the Court in which the sentence or sentences of imprisonment are quashed must notify the Supervision Officer thereof.

(5) If the community-based sentence never resumes under subsection (3), it is cancelled when the offender ceases to be detained under the sentence or sentences of imprisonment.

PART VA HOME DETENTION

76A. (1) A court may sentence an offender to a sentence of home detention if the offender is convicted of an offence punishable by imprisonment.

Sentence of home
detention

(2) A court may sentence an offender to home detention under subsection (1) if the court is satisfied that—

- (a) the proposed home detention residence is suitable; and
- (b) the relevant occupants (as defined in section 25A(4)) of the proposed home detention residence—
 - (i) understand the conditions of home detention that will apply to the offender; and
 - (ii) consent to the offender serving the sentence in the residence in accordance with those conditions; and
 - (iii) have been informed that they may withdraw their consent to the offender serving the sentence in the residence at any time; and
- (c) the offender has been made aware of and understands the conditions that will apply during home detention, and he or she agrees to comply with them.

(3) A sentence of home detention may be for such period as the court thinks fit, but must not be for less than 14 days or more than 12 months.

(4) The court must specify the home detention residence when sentencing the offender to a sentence of home detention.

(5) An offender sentenced to home detention is not in custody while serving the sentence.

(6) This section is subject to section 76B.

Concurrent and
cumulative sentences
of home detention

76B. (1) If a court imposes a sentence of home detention on an offender who is already subject to a sentence of home detention, the sentences must be served concurrently unless the court directs that they are to be served cumulatively.

(2) If a court imposes cumulative sentences of home detention or imposes 1 or more sentences of home detention on an offender who is already serving a sentence of home detention, the total term of the sentences of home detention must not be more than 12 months.

(3) Before deciding to impose 2 or more sentences of home detention cumulatively or concurrently, the court must consider the guidance under sections 78 and 79 as if it applied to sentences of home detention.

(4) Subject to section 55A, if a court imposes a sentence of community work and a sentence of home detention, or imposes one of them on an offender who is already subject to the other, the sentences must be served concurrently.

Detention conditions
applying to offender
sentenced to home
detention

76C. (1) An offender who is serving a sentence of home detention is subject to detention conditions comprising—

- (a) the standard detention conditions set out in subsection (2); and
- (b) any special conditions that may be imposed by the court under section 76D.

(2) The standard detention conditions for a sentence of home detention are that—

- (a) the offender is under the supervision of the Supervision Officer and must co-operate with the Supervision Officer and comply with any lawful direction given by that Supervision Officer;
- (b) the offender must not leave the home detention residence at any time except in the circumstances set out in subsections (3) or (4);
- (c) the offender must keep in his or her possession the order drawn up under section 76W, and, if requested to do so by a member of the police or the Supervision Officer, must produce the order for inspection;
- (d) the offender must, when required by the Supervision Officer, submit to the electronic monitoring of compliance with his or her detention conditions;
- (e) the offender must not engage, or continue to engage, in any employment or occupation in which the Supervision Officer has directed the offender not to engage or continue to engage;
- (f) the offender must not associate with any specified person, or with persons of any specified class, with

whom the Supervision Officer has, in writing, directed the offender not to associate; and

- (g) the offender must take part in rehabilitative and reintegrative needs assessment if and when directed to do so by the Supervision Officer.

(3) An offender may leave the home detention residence only—

- (a) to seek urgent medical or dental treatment; or
- (b) to avoid or minimise a serious risk of death or injury to the offender or any other person; or
- (c) with the approval of the Supervision Officer—
 - (i) to comply with any special condition; or
 - (ii) to seek or engage in employment; or
 - (iii) to attend training or other rehabilitative or reintegrative activities or programmes; or
 - (iv) to attend a restorative justice conference or other process relating to the offender's offending; or
 - (v) to carry out any undertaking arising from any restorative justice process; or
 - (vi) for any other purpose specifically approved by the Supervision Officer.

(4) The Supervision Officer may approve an alternative residence under section 76H pending determination of an application to vary the residence under section 76F.

76D. (1) In addition to the standard conditions that apply under section 76C, the court may, subject to subsections (2) and (6), impose 1 or more special conditions described in subsection (3).

Special conditions
of sentence of home
detention

(2) A court may impose any of the special conditions described in subsection (3) if the court is satisfied that—

- (a) there is a significant risk of further offending by the offender; and
- (b) standard conditions alone would not adequately reduce the risk; and
- (c) the imposition of special conditions would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

(3) The special conditions referred to in subsection (1) or (2) are—

- (a) any conditions that the court thinks fit relating to the offender's finances or earnings;
- (b) conditions requiring the defendant to take prescription medication;
- (c) conditions relating to a programme;

- (d) any other conditions that the court thinks fit to reduce the likelihood of further offending by the offender.
- (4) For the purposes of subsection (3), **programme** has the same meaning as in section 49.
- (5) No court may impose a condition under this section that—
 - (a) the offender pay any fine, reparation, or other sum ordered to be paid on conviction; or
 - (b) the offender perform any service that he or she could have been required to perform if he or she had been sentenced to community work.
- (6) No offender may be made subject to a special condition that requires the offender to take prescription medication unless the offender—
 - (a) has been fully advised, by a person who is qualified or authorised by law to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and
 - (b) consents to taking the prescription medication.
- (7) An offender does not breach his or her detention conditions for the purposes of section 76N if he or she withdraws consent to taking prescription medication; but the failure to take the medication may give rise to a ground for variation or cancellation of the sentence of home detention under section 76F.

Electronic monitoring

76E. (1) The purpose of an electronic monitoring condition is to deter the offender from breaching conditions that relate to his or her whereabouts, and to monitor compliance with those conditions.

- (2) Information about an offender that is obtained through electronic monitoring may be used both for the purposes referred to in subsection (1) and for the following purposes:
- (a) to verify compliance with any detention conditions;
 - (b) to detect non-compliance with any detention conditions and the commission of offences;
 - (c) to provide evidence of non-compliance with detention conditions and the commission of offences;
 - (d) to verify that the offender has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately.

76F. (1) An offender who is subject to a sentence of home detention, or a Supervision Officer, may apply for an order under subsection (3) on the grounds that—

Application
for variation or
cancellation of
sentence of home
detention

- (a) the offender is unable to comply, or has failed to comply, with any detention conditions;
- (b) any programme to which the offender is subject is no longer available or suitable for the offender;
- (c) the home detention residence is no longer available or suitable because of a change in circumstances;
- (d) having regard to any changes in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence—
 - (i) the rehabilitation and reintegration of the offender would be advanced by the remission, suspension, or variation of any special conditions, or the imposition of additional special conditions; or
 - (ii) the continuation of the sentence is no longer necessary in the interests of the community or the offender.

(2) The Supervision Officer may apply for an order under subsection (3) if an offender, who is subject to a sentence of home detention, is convicted of an offence punishable by imprisonment.

(3) On an application under subsection (1) or (2), the court may, if it is satisfied that the grounds on which the application is based have been established—

- (a) remit, suspend, or vary any special conditions imposed by the court, or impose additional special conditions; or
- (b) vary the home detention residence; or
- (c) cancel the sentence; or
- (d) cancel the sentence and substitute any other sentence (including another sentence of home detention) that could have been imposed on the offender at the time that the offender was convicted of the offence for which the sentence was imposed.

(4) An application under subsection (1) or (2) may be made at any time before or after the sentence commences.

(5) Section 70 applies, with any necessary modifications, to an application under this section.

76G. (1) If the court cancels a sentence of home detention under section 76F(3)(d), the court may at the same time cancel any sentence of community work that the offender is serving concurrently with the sentence of home detention.

Matters relating to
orders under section
76F

(2) When determining a substitute sentence under section 76F(3)(d), the court must take into account the portion of the original sentence that remains unserved at the time of the order.

(3) If the court varies a special condition or imposes a new special condition under section 76F(3)(a), section 76D applies:

(4) If the court cancels the sentence, the sentence expires on the date that the order is made or on any other date that the court may specify.

(5) If an application is made under section 76F for the remission, suspension, or variation of any special condition of a sentence of home detention, the Supervision Officer may suspend the condition until the application has been heard and disposed of.

Alternative residence pending determination of application under section 76F

76H. (1) This section applies if a Supervision Officer or an offender who is subject to a sentence of home detention intends to apply, or has applied, for a variation of conditions under section 76F(1)(c) (which relates to the offender's home detention residence).

(2) A Supervision Officer may approve an alternative residence in which the sentence of home detention must be served pending the determination of an application.

(3) If a Supervision Officer approves an alternative residence before an application under section 76F has been made, the Supervision Officer must make an application to the court under that section within 5 working days.

(4) Subsection (3) does not apply if an offender makes an application under section 76F within the 5-day period specified in subsection (3).

(5) If, in the opinion of the Supervision Officer, there is no suitable alternative residence available and the Supervision Officer has not made an application under section 76F, the Supervision Officer must make an application to the court under that section at the earliest opportunity.

Leave to apply for cancellation of sentence of imprisonment and substitution of sentence of home detention in certain cases

76I. (1) This section applies if—

- (a) a court has sentenced an offender to a sentence of imprisonment; and
- (b) at the time of sentencing, the court would have sentenced the offender to a sentence of home detention if a suitable residence had been available.

(2) At the time of sentencing, the court must make an order granting the offender leave to apply to the court of first instance for cancellation of the sentence of imprisonment and substitution of a sentence of home detention if the offender finds a suitable residence at a later date.

(3) For the purposes of appeal, an order made under this section is a sentence.

76J. (1) An offender who is subject to a sentence of imprisonment and who has leave to apply for cancellation of a sentence of imprisonment and substitution of a sentence of home detention under section 76I may apply to the court at any time.

Application for cancellation of sentence of imprisonment and substitution of sentence of home detention

(2) An application must be served as soon as practicable on the Public Prosecutor.

(3) An application must be accompanied by a pre-sentence report updated in accordance with 76K.

(4) On application under subsection (1), the court may, if satisfied of the matters in section 76A(2), cancel the sentence of imprisonment and substitute a sentence of home detention.

(5) A sentence of home detention substituted under subsection (4) may be for any period the court thinks fit, but must not be longer than the maximum term of imprisonment specified for the relevant offence.

(6) When substituting a sentence of home detention, the court must take into account the portion of the original sentence that remains unserved at the time of the order.

(7) If the court does not substitute a sentence of home detention, the court—

- (a) must reconsider the issue of leave to apply for cancellation of the sentence of imprisonment and substitution of a sentence of home detention; and
- (b) may make a further order granting the offender leave to apply to the court at any time for cancellation of the sentence of imprisonment and substitution of a sentence of home detention.

(8) For the purposes of appeal, an order made under subsection (7) is a sentence.

(9) A sentence of imprisonment that is cancelled under this section is a custodial sentence for the purposes of any other enactment.

76K. (1) An offender subject to a sentence of imprisonment who makes an application for substitution of a sentence of home detention under section 76J must agree to the Supervision Officer updating the offender's pre-sentence report with any new information.

Updated pre-sentence report

(2) If an offender agrees to the Supervision Officer updating the offender's pre-sentence report under subsection (1) the Supervision Officer must update the report in accordance with section 25A.

76L. (1) In this section—

post-detention conditions means any standard post-detention conditions and special post-detention conditions imposed on an offender under this section

Imposition of post-detention conditions on offender

that apply to the offender after the detention end date

special post-detention conditions includes, without limitation, conditions of a kind described in section 12(3) of the Parole Ordinance 2002, other than an electronic monitoring condition as referred to in section 12(3)(f) of that Ordinance

standard post-detention conditions means the conditions of the sort described in section 11(1) of the Parole Ordinance.

(2) A court that sentences an offender to a term of home detention of 6 months or less may impose the standard post-detention conditions and any special post-detention conditions on the offender and, if it does so, must specify when the conditions expire.

(3) If a court sentences an offender to a term of home detention of more than 6 months, —

- (a) the standard post-detention conditions apply to the offender for a period of 12 months from the detention end date, unless the court specifies otherwise; and
- (b) the court may, at the same time, impose any special post-detention conditions on the offender and, if it does so, must specify when the conditions expire.

(4) The court must specify that post-detention conditions imposed under this section expire on a date that is no more than 12 months from the detention end date.

(5) If the court imposes special post-detention conditions on the offender under this section, the special post-detention conditions may apply for as long as, but not longer than, the standard conditions that apply to the offender.

(6) If the court sentences the offender to more than 1 sentence of home detention on the same occasion —

- (a) only one order under this section may be made; and
- (b) that order applies in respect of all the sentences of home detention imposed on that occasion.

Variation or discharge
of post-detention
conditions

76M. (1) An offender who is subject to post-detention conditions imposed under section 76L, or a Supervision Officer, may apply for an order under subsection (3).

(2) Section 70 applies, with any necessary modifications to an application under this section.

(3) On an application under subsection (1), the court may, if it thinks fit, —

- (a) suspend or vary any condition, or impose any additional conditions described in section 76L, that could have been imposed on the offender at the time

when the offender was convicted of the offence for which the sentence was imposed; or

- (b) discharge a condition and substitute any other condition described in section 76L that could have been imposed on the offender at the time that the offender was convicted of the offence for which the sentence was imposed.

(4) If an application is made under this section for the suspension, variation, or discharge of any condition, a Supervision Officer may suspend the condition until the application has been heard and disposed of.

76N. An offender commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2000, who—

Offence to breach
detention conditions

- (a) breaches, without reasonable excuse, any detention conditions of a sentence of home detention; or
- (b) fails to report when required to do so under section 76Y.

76O. (1) Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding \$5,000, who refuses or fails, without reasonable excuse, to allow the Supervision Officer who has identified himself or herself to enter into the home detention residence if the offender is required to be at the residence at the time that the Supervision Officer seeks entry.

Offence to refuse
entry to home
detention residence

(2) Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding \$5,000, who refuses or fails, without reasonable excuse, to allow an authorised person to enter into the home detention residence for the purpose of servicing or inspecting any equipment used in the electronic monitoring of the offender's compliance with the sentence of home detention (whether or not the offender is required to be at the home detention residence at the time).

(3) For the purposes of subsection (2), an **authorised person** is a person who—

- (a) is the Supervision Officer and has identified himself or herself; or
- (b) accompanies the Supervision Officer; or
- (c) is authorised in writing by the Supervision Officer and has produced that written authority to an occupant of the residence.

76P. (1) An offender commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding \$1,500, who breaches,

Offence to breach
post-detention
conditions

without reasonable excuse, any post-detention conditions imposed under section 76L or 76M.

Arrest without
warrant for breach
of detention or post-
detention conditions

76Q. Any member of the police or any Supervision Officer may arrest, without warrant, an offender who the member or Officer has reasonable grounds to believe has breached any of his or her detention conditions or post-detention conditions.

Court may defer start
date of sentence of
home detention

76R. (1) The court may defer the start date of a sentence of home detention for a specified period of up to 6 months.

(2) If a sentence of home detention is deferred in accordance with subsection (1), the sentence of home detention starts on the date to which the court has ordered that the sentence be deferred.

(3) An offender whose sentence of home detention is deferred under this section must be granted bail in accordance with section 37A or 62A of the Bail Ordinance.

(4) Despite subsection (1), no court may defer the start date of a sentence of home detention if—

- (a) the sentence of home detention is imposed cumulatively on any other sentence of home detention; or
- (b) the sentence of home detention is imposed in substitution for a sentence of home detention or imprisonment that has been quashed or set aside; or
- (c) an order under this section has already been made in respect of the sentence; or
- (d) the offender has already commenced serving the sentence or is detained under any other sentence or order.

Commencement of
sentence of home
detention

76S. (1) A sentence of home detention commences on the day it is imposed unless the start date of the sentence is deferred under section 76R.

(2) Subsection (1) applies—

- (a) subject to the remainder of this section; and
- (b) regardless of whether or not the sentence is imposed in substitution for another sentence.

(3) If a sentence of home detention is imposed cumulatively on another sentence of home detention imposed at the same time,—

- (a) at least 1 of the sentences must commence on the day that the sentence is imposed or to which the start date has been deferred under section 76R; and
- (b) the commencement date for the subsequent sentence is the detention end date of the first sentence.

(4) If a sentence of home detention is imposed cumulatively on another sentence of home detention to which the offender

is already subject, the commencement date of the subsequent sentence is the detention end date of the first sentence.

(5) If a sentence of home detention is imposed cumulatively on another sentence of home detention, whether or not imposed at the same time, and the first sentence is subsequently quashed, —

- (a) the commencement date for the subsequent sentence is the date on which the subsequent sentence was imposed; and
- (b) any time served under the quashed sentence must be treated as having been served under the subsequent sentence.

(6) If a sentence of home detention is imposed cumulatively on another sentence of home detention, whether or not imposed at the same time, and the first sentence is subsequently cancelled, —

- (a) the commencement date for the subsequent sentence is the date on which the first sentence was cancelled; and
- (b) any time served under the cancelled sentence must not be treated as having been served under the subsequent sentence.

76T. (1) An offender ceases to be subject to a sentence of home detention when —

When home detention ends

- (a) the offender reaches his or her detention end date; or
- (b) a court cancels the sentence of home detention.

(2) If the offender's detention end date falls on a non-release day, the offender ceases to be subject to detention conditions on the nearest preceding day that is not a non-release day.

76U. The detention conditions of an offender serving a sentence of home detention are suspended during any period that the offender spends in custody under a court order (for example, on remand), but time continues to run during any period that they are suspended.

When detention conditions suspended

76V. For the purpose of calculating how much time an offender who is subject to a sentence of home detention has served, time ceases to run on the sentence during any period —

Time ceases to run in certain circumstances

- (a) between the date on which an application for a variation or cancellation of the sentence under section 76F is lodged and the earlier of —
 - (i) the date on which the offender is next taken into custody; and
 - (ii) the date on which the offender resumes serving his or her sentence in accordance with

- his or her detention conditions; or
- (b) in which an offender is released on bail pending an appeal.

Order must be drawn up

76W. (1) If a court imposes a sentence of home detention on an offender, the particulars of the sentence must be drawn up in the form of an order.

(2) A copy of the order must be given to the offender before he or she leaves the court wherever practicable.

(3) The order must include information regarding—

- (a) the nature of the sentence; and
- (b) the start date and the term of the sentence; and
- (c) the detention conditions that apply to the offender while he or she is serving the sentence; and
- (d) the post-detention conditions (if any) that apply and the period for which those conditions apply; and
- (e) the obligations to comply with the instructions of the Supervision Officer and the terms of the sentence; and
- (f) the consequences of non-compliance with the terms of the sentence; and
- (g) the statutory provisions under which the sentence may be varied or cancelled.

(4) For the purposes of subsection (1), a court may direct that the offender be detained in the custody of the court for a period, not exceeding 2 hours, that may be necessary to enable the order to be drawn up and a copy given to the offender.

(5) If it is not practicable to give a copy of the order to the offender before the offender leaves the court, a copy must be given to the offender in person as soon as practicable after the offender leaves the court.

(6) A copy of the order must be given to the Supervision Officer as soon as possible, but no later than 24 hours, after it has been drawn up.

Offender must be given copy of new or amended order

76X. If an offender's detention conditions or post-detention conditions are varied or discharged, the offender must be given a copy of the new or amended order that shows the conditions as varied or discharged, and the provisions of this section and section 76W apply.

Effect of a subsequent sentence of imprisonment

76Y. (1) This section applies if an offender who is subject to a sentence of home detention is subsequently sentenced to a term of imprisonment.

(2) If this section applies, the sentence of home detention is suspended until the earlier of the following events—

- (a) it resumes under subsection (4)(b); or
- (b) it is cancelled under subsection (6).

(3) No period during which a sentence of home detention is suspended under subsection (2) is counted towards the period under section 76A(3).

(4) If the sentence or sentences of imprisonment are quashed and that results in the offender no longer being detained under a sentence of imprisonment, -

- (a) the offender must report to the Supervision Officer as soon as practicable and not later than 72 hours after being released from detention; and
- (b) the sentence of home detention resumes when the offender has reported as required under paragraph (a).

(5) The Registrar of the court in which the sentence or sentences of imprisonment are quashed must notify the Supervision Officer.

(6) If the sentence of home detention never resumes under subsection (4)(b), it is cancelled when the offender ceases to be detained under the sentence of imprisonment.]

(Part VA inserted by Ordinance No. 1 of 2016)

PART VI IMPRISONMENT

77. If under any enactment an offender is liable to imprisonment for life or for any specified term, the Court may, in accordance with this ordinance, impose imprisonment for the maximum term provided for the particular offence or any lesser term, unless a minimum term of imprisonment is expressly provided for.

Length of sentence of imprisonment

78.—(1) A determinate sentence of imprisonment may be imposed cumulatively on any other determinate sentence of imprisonment that the Court directs, whether then imposed or to which the offender is already subject, including any sentence in respect of which a direction of that kind is or has been given.

Cumulative and concurrent sentences of imprisonment

(2) Notwithstanding subsection (1), if a sentence of imprisonment is imposed on an offender who is, at the time of sentencing, still subject to a sentence of imprisonment but is not detained under it, a subsequent sentence must not be imposed cumulatively.

(3) For the purposes of subsection (2), a person who is detained under an interim recall order under the Parole Ordinance 2002 is not detained under the sentence to which the interim recall order applies.

(4) An indeterminate sentence of imprisonment must not be imposed cumulatively on any other sentence.

(5) Any sentence of imprisonment may be imposed concurrently with any other sentence of imprisonment.

(6) For the purpose of this section, a term of imprisonment imposed on an offender (whether by committal, sentence or order) in respect of the non-payment of a sum of money, contempt of court or disobedience of a court order is deemed to be a determinate sentence of imprisonment.

Guidance on use of cumulative and concurrent sentences of imprisonment

79.—(1) Cumulative sentences of imprisonment are generally appropriate if the offences for which an offender is being sentenced are different in kind, whether or not they are a connected series of offences.

(2) Concurrent sentences of imprisonment are generally appropriate if the offences for which an offender is being sentenced are of a similar kind and are a connected series of offences.

(3) In determining for the purpose of this section whether two or more offences committed by one offender are a connected series of offences, the Court may consider—

- (a) the time at which they occurred; or
- (b) the overall nature of the offending; or
- (c) any other relationship between the offences that the Court considers relevant.

Court to consider totality of offending

80.—(1) Subject to this section, if a Court is considering imposing sentences of imprisonment for two or more offences, the individual sentences must reflect the seriousness of each offence.

(2) If cumulative sentences of imprisonment are imposed, whether individually or in combination with concurrent sentences, they must not result in a total period of imprisonment wholly out of proportion to the gravity of the overall offending.

(3) If, because of the need to ensure that the total term of cumulative sentences is not disproportionately long, the imposition of cumulative sentences would result in a series of short sentences that individually fail to reflect the seriousness of each offence, then longer concurrent sentences, or a combination of concurrent and cumulative sentences, must be preferred.

(4) If only concurrent sentences are to be imposed—

- (a) the most serious offence must, subject to any maximum penalty provided for that offence, receive the penalty that is appropriate for the totality of the offending; and
- (b) each of the lesser offences must receive the penalty appropriate to that offence.

Imposition of minimum period of imprisonment

81.—(1) If a Court sentences an offender to a determinate

sentence of imprisonment of more than two years for a particular offence, it may, at the same time as it sentences the offender, order that the offender serve a minimum period of imprisonment in relation to that particular sentence.

Imposition of minimum period of imprisonment in relation to determinate sentence of imprisonment

(2) The Court may impose a minimum period of imprisonment under this section if it is satisfied that the circumstances of the offence are sufficiently serious to justify a minimum period of imprisonment that is longer than the period otherwise applicable under section 80 of the Parole Ordinance 2002.

(3) For the purposes of this section, the circumstances of an offence may be regarded as sufficiently serious if the Court is satisfied that the circumstances take out of the ordinary range of offending of the particular kind.

(4) A minimum period of imprisonment imposed under this section must not exceed the lesser of—

- (a) two-thirds of the full term of the sentence; or
- (b) 10 years.

(5) For the purposes of eligibility for appeal, an order under this section is a sentence.

Preventive detention

82.—(1) The purpose of preventive detention is to protect the community from those who pose a significant and ongoing risk to the safety of its members.

Sentence of preventive detention

(2) This section applies if—

- (a) a person is convicted of a qualifying sexual or violent offence (as that term is defined in subsection (5)); and
- (b) the person was 18 years of age or over at the time of committing the offence; and
- (c) the Court is satisfied that the person is likely to commit another qualifying sexual or violent offence if the person is released at the sentence expiry date (as specified in section 79(1) and (2) and section 81(1) and (2) of the Parole Ordinance 2002) of any sentence, other than a sentence under this section, that the Court is able to impose.

(3) The Supreme Court may, on the application of the prosecutor or on its own motion, impose a sentence of preventive detention on the offender.

(4) When considering whether to impose a sentence of preventive detention, the Court must take into account—

- (a) any pattern of serious offending disclosed by the offender's history; and
- (b) the seriousness of the harm to the community caused by the offending; and

- (c) information indicating a tendency to commit serious offences in future; and
- (d) the absence of, or failure of, efforts by the offender to address the cause or causes of the offending; and
- (e) the principle that a lengthy determinate sentence is preferable if this provides adequate protection for society.

(5) In this section and in sections 83 and 85, **qualifying sexual or violent offence** means any sexual offence, or offence of violence against the person, punishable by seven or more years imprisonment.

Offender must be notified that sentence of preventive detention will be considered and reports must be obtained

83. A sentence of preventive detention must not be imposed unless—

- (a) the offender has been notified that a sentence of preventive detention will be considered and has been given sufficient time to prepare submissions on the sentence; and
- (b) the Court has considered reports from at least two appropriate health assessors about the likelihood of the offender committing a further qualifying sexual or violent offence.

Imposition of minimum period of imprisonment

84.—(1) If a Court sentences an offender to preventive detention, it must also order that the offender serve a minimum period of imprisonment, which in no case may be less than five years.

(2) The minimum period of imprisonment imposed under this section must be the longer of—

- (a) the minimum period of imprisonment required to reflect the gravity of the offence; or
- (b) the minimum period of imprisonment required for the purposes of the safety of the community in the light of the offender's age and the risk posed by the offender to that safety at the time of sentencing.

(3) For the purpose of eligibility for appeal, an order under subsection (1) is a sentence.

Procedure if offender convicted in Magistrate's Court

85.—(1) This section applies if a person is convicted by a Magistrate's Court of a qualifying sexual or violent offence and the Court has reason to believe, from a report of a Supervision Officer or otherwise, that a sentence of preventive detention may be appropriate.

(2) In the circumstances described in subsection (1) the Court must decline jurisdiction on the ground that it has reason to believe that the offender should be considered for a sentence of preventive detention and commit the offender to the Supreme Court for sentence.

86.—(1) If a Court imposes a sentence of imprisonment, a warrant must be issued stating briefly the particulars of the offence and directing the detention of the offender in accordance with the sentence.

Warrant of
commitment
for sentence of
imprisonment

(2) A warrant issued under this section must include a statement as to whether the offender was or was not legally represented as contemplated by section 29(1).

(3) If the offender was not legally represented, the warrant must state the way in which the requirements of that section have been satisfied.

(4) **(Repealed by Ordinance No. 1 of 2016)**

(5) **(Repealed by Ordinance No. 1 of 2016)**

(6) If the sentence is imposed by a Magistrate's Court, any Magistrate appointed under section 11(1) and (4) of the Judicature (Courts) Ordinance may sign the warrant.

(7) If the sentence is imposed by the Supreme Court, any Judge of that Court may sign the warrant.

(8) If the sentence is imposed by the Court of Appeal, any Judge of that Court may sign the warrant.

(9) A warrant under this section may be issued in respect of any number of sentences imposed in respect of the same offender at the same sitting of the Court.

[Release conditions for short term sentences]

87.—(1) For the purposes of section 88, a Court sentences an offender to imprisonment for a particular period if—

References to period
of imprisonment for
purposes of section 88

- (a) in a case where the offender was not already subject to a sentence or sentences of imprisonment, it sentences the offender to one sentence of imprisonment, the term of which is equal to that period; or
- (b) in a case where the offender was not already subject to a sentence or sentences of imprisonment, it sentences the offender to two or more sentences of imprisonment, the total term of which is equal to that period; or
- (c) in a case where the offender was already subject to a sentence or sentences of imprisonment, it sentences the offender to one or more sentences of imprisonment, the total term of which, including the existing sentences of imprisonment, is equal to that period.

cap.2

(2) For the purposes of this section, the total term of two or more sentences of imprisonment is a term beginning with the commencement date of the first of the sentences to commence and ending with the sentence expiry date (as defined in the Parole Ordinance 2002) of the sentence last to expire.

Imposition of conditions on release of offender sentenced to imprisonment for short term

88.—(1) If a Court sentences an offender to a term of imprisonment of 12 months or less, it may impose on the offender—

- (a) the standard conditions described in section 11(1) of the Parole Ordinance 2002; and
- (b) any special conditions of a kind described in section 12(3)(a) to (c) of the Parole Ordinance 2002.

(2) If a Court sentences an offender to a term of imprisonment of more than 12 months but not more than 24 months, it—

- (a) must impose on the offender the standard conditions described in section 11(1) of the Parole Ordinance 2002; and
- (b) may impose on the offender any special conditions including, for example, any conditions of a kind described in section 12(3)(a) to (c) of the Parole Ordinance 2002

(3) A special condition must not be imposed unless it is designed to—

- (a) reduce the risk of re-offending by the offender; or
- (b) facilitate or promote the rehabilitation and reintegration of the offender; or
- (c) provide for the reasonable concerns of victims of the offender.

(4) No offender may be made subject to a special condition which requires the offender to take prescription medication unless the offender—

- (a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and
- (b) consents to taking the prescription medication.

(5) If a Court sentences an offender to a term of imprisonment of more than 24 months, it must not impose conditions on the offender's release from imprisonment (and section 15(2) of the Parole Ordinance 2002 applies).

(6) A Court must not impose conditions on an offender's release from imprisonment if—

- (a) the Court sentences an offender to an indeterminate sentence or imprisonment; or
- (b) the Court sentences an offender to imprisonment who is already subject to an indeterminate sentence of imprisonment.

(7) The Court must specify the duration of conditions imposed under this section but no condition may apply in relation to a particular sentence of imprisonment beyond the

sentence expiry date as defined in the Parole Ordinance 2002.

(8) If the Court sentences the offender to more than one term of imprisonment on the same occasion—

- (a) only one order under this section may be made; and
- (b) that order applies in respect of all the sentences of imprisonment imposed on that occasion.

89.—(1) An offender who is subject to conditions imposed under section 88, or a Supervision Officer, may apply for an order under subsection (3) of this section.

Variation of release conditions

(2) Section 70 applies with any necessary modifications to an application under this section.

(3) On an application under subsection (1), the Court may, if it thinks fit,—

- (a) suspend any condition or vary the duration of any condition or impose additional conditions; or
- (b) discharge a condition and substitute any other condition described in section 88 which could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(4) The Court must not vary any existing condition or impose any new condition of a kind referred to in section 88(4) (which involves prescription medication) unless the offender—

- (a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of any variation or new condition in relation to the medication and any known risks; and
- (b) consents to taking the prescription medication.

(5) If an application is made under this section for the suspension, variation or discharge of any condition, a Supervision Officer may suspend the condition until the application has been heard and disposed of.

90.— (1) This section applies if—

Review of conditions if conditions incompatible

- (a) an offender is, at the same time, subject to conditions imposed under two or more orders made under section 88; and
- (b) a Supervision Officer is satisfied that—
 - (i) any condition to which the offender is subject under any of the orders is incompatible with any other condition to which the offender is subject under any other of the orders; or
 - (ii) in light of all the conditions to which the offender is subject under the orders, it is

unreasonable to expect the offender to comply with any one or more of the conditions.

(2) The Supervision Officer must apply for a review of the conditions to which the offender is subject under the orders made under section 88.

(3) Section 89 applies with any necessary modifications to an application made under this section.

Offence to commit
breach of conditions

91.—(1) Every offender commits an offence and is liable on summary conviction to imprisonment for a term not exceeding one year or to a fine not exceeding \$2,000, who commits any breach without reasonable excuse of any conditions imposed under section 88 or section 89.

(2) In the case of a condition of a kind referred to in section 88(4) (which involves prescription medication) an offender does not commit a breach of his or her conditions for the purposes of this section if he or she withdraws consent to taking prescription medication.

(Sections 92–94 repealed by Ordinance No. 1 of 2016)

Provisions about start date of sentence of imprisonment

Court may defer start
date of sentence of
imprisonment

95.—[(1) The court may defer the start date of a sentence of imprisonment for a specified period of up to six months.]

(2) []

(3) The sentence of imprisonment starts on the date specified in section 75 of the Parole Ordinance 2002.

[(3A) An offender whose sentence of imprisonment is deferred under this section must be granted bail in accordance with section 37A or 62A of the Bail Ordinance.]

(4) Notwithstanding subsection (1), no Court may defer the start date of a sentence of imprisonment if—

(a) the sentence of imprisonment is imposed cumulatively on any other sentence of imprisonment; or

(b) the sentence of imprisonment is imposed in substitution for a sentence of imprisonment which has been quashed or set aside.

(5) For the purpose of this section, a term of imprisonment imposed on an offender (whether by committal, sentence or order) in respect of the non-payment of a sum of money, contempt of court or disobedience of a court order is deemed to be a determinate sentence of imprisonment.

(Amended by Ordinance No. 1 of 2016)

Start date of sentence
of imprisonment

96.—(1) Except as provided in section 95, the start date of a sentence of imprisonment is that set out in section 73 of the Parole Ordinance 2002.

(2) For the purpose of this section, a term of imprisonment imposed on an offender (whether by committal, sentence or order) in respect of the non-payment of a sum of money, contempt of court or disobedience of a court order is deemed to be a determinate sentence of imprisonment.

Sentencing for murder

97.—(1) An offender who is convicted of murder must be sentenced to imprisonment for life unless, given the circumstances of the offence and the offender, a sentence of imprisonment for life would be manifestly unjust.

Presumption in relation to sentence for murder

(2) If a Court does not impose a sentence of imprisonment for life on an offender convicted of murder, it must give written reasons for not doing so.

98.—(1) If the Court does not impose a minimum period of imprisonment under this section, an offender sentenced to imprisonment for life for murder will serve a minimum period of imprisonment of 10 years as provided in section 80(3) of the Parole Ordinance 2002.

Imposition of minimum period of imprisonment

(2) If a Court sentences an offender convicted of murder to imprisonment for life, it may, within 28 days of the imposition of the sentence, on the application of the prosecutor or on its own motion, also order that the offender serve a minimum period of imprisonment of more than 10 years.

(3) The Court may impose a minimum period of imprisonment of more than 10 years if it is satisfied that the circumstances of the offence are sufficiently serious to justify doing so.

(4) The duration of the minimum period of imprisonment imposed under this section must be the minimum period of imprisonment that the Court considers to be justified having regard to the circumstances of the case, including those of the offender.

(5) For the purposes of this section, the circumstances of an offence may be regarded as sufficiently serious if the Court is satisfied that the circumstances take the offence out of the ordinary range of offending of the particular kind.

(6) If the court makes an order under this section, it must give written reasons for doing so.

(7) This section is subject to section 99.

99. The Court must make an order under section 98 imposing a minimum period of imprisonment of at least 17 years in the following circumstances, unless it is satisfied that it would be manifestly unjust to do so—

Minimum period of imprisonment of 17 years or more

(a) if the murder was committed in an attempt to avoid

the detection, prosecution or conviction of any person for any offence or in any other way to attempt to subvert the course of justice; or

- (b) if the murder involved calculated or lengthy planning, including making an arrangement under which money or anything of value passes (or is intended to pass) from one person to another; or
- (c) if the murder involved the unlawful entry into or unlawful presence in a dwelling place; or
- (d) if the murder was committed in the course of another serious offence; or
- (e) if the murder was committed with a high level of brutality, cruelty, depravity or callousness; or
- (f) if the deceased was a member of the police or a prison officer acting in the course of his or her duty; or
- (g) if the deceased was particularly vulnerable because of his or her age, health or because of any other factor; or
- (h) if the offender has been convicted of two or more counts of murder, whether or not arising from the same circumstances; or
- (i) in any other exceptional circumstances.

Appeal against imposition of minimum period of imprisonment

100. For the purposes of eligibility for appeal, an order under section 98 is a sentence.

Discharge and miscellaneous orders

Discharge without conviction

101.—(1) If a person who is charged with an offence is found guilty or pleads guilty, the Court may discharge the offender without conviction, unless by any enactment applicable to the offence, the Court is required to impose a minimum sentence.

(2) A discharge under this section is deemed to be an acquittal.

(3) A Court discharging an offender under this section may—

- (a) make an order for payment of costs or the restitution of any property; or
- (b) make any order for the payment of any sum that the Court thinks fair and reasonable to compensate any person who, through or by means of the offence, has suffered—
 - (i) loss of or damage to property; or
 - (ii) emotional harm; or
 - (iii) loss or damage consequential on any emotional or physical harm or loss of or damage to property;

(c) make any order that the Court is required to make on conviction.

(4) Despite subsection (3)(b), the Court must not order the payment of compensation in respect of any emotional harm or loss or damage consequential on emotional harm unless the person who suffered the emotional harm is a person described in paragraph (a) of the definition of **victim** in section 3.

(5) When determining the amount of compensation to be paid, the Court must take into account any offer, agreement, response, measure or action as described in section 9.

102. The Court must not discharge an offender without conviction unless the Court is satisfied that the direct and indirect consequences of a conviction would be out of all proportion to the gravity of the offence.

Guidance for
discharge without
conviction

103.—(1) If a person is convicted of an offence, a Court before which the offender appears for sentence may, instead of imposing sentence, direct that the offender be discharged, unless by any enactment applicable to the offence the Court is required to impose a minimum sentence.

Conviction and
discharge

(2) A Court discharging an offender under this section may—

- (a) make an order for the payment of costs or for the restitution of any property; or
- (b) make any order for the payment of any sum that the Court thinks fair and reasonable to compensate any person who, through or by means of, the offence, has suffered—
 - (i) loss of or damage to property; or
 - (ii) emotional harm; or
 - (iii) loss or damage consequential on any emotional or physical harm or loss of or damage to property;
- (c) make any order that the Court is required to make on conviction.

(3) Notwithstanding subsection (2)(b) the Court must not order the payment of compensation in respect of any emotional harm, or loss or damage consequential upon emotional harm, unless the person who suffered the emotional harm is a person described in paragraph (a) of the definition of **victim** in section 3.

(4) When determining the amount of compensation to be paid, the Court must take into account any offer, agreement, response, measure or action as described in section 9.

104. The Court must not convict and discharge an offender unless it is satisfied that a conviction is sufficient penalty in itself.

Guidance on
conviction and
discharge.

Order to come up for sentence if called on

Order to come up for sentence if called on.

105.—(1) If a person is convicted of an offence, a Court before which the offender appears for sentence may, instead of imposing sentence, order the offender to appear for sentence if called on to do so within the period described in subsection (2).

(2) The period referred to in subsection (1) is a period, not exceeding one year commencing with the date of conviction, that the Court may specify in the order.

(3) A Court making an order under this section may—

- (a) make an order for the payment of costs or for the restitution of any property; or
- (b) make any order for the payment of any sum that the Court thinks fair and reasonable to compensate any person who, through or by means of, the offence, has suffered—

- (i) loss of or damage to property; or
- (ii) emotional harm; or
- (iii) loss or damage consequential on any emotional or physical harm or loss of or damage to property;

(4) Notwithstanding subsection (3)(b) the Court must not order the payment of compensation in respect of any emotional harm, or loss or damage consequential on emotional harm, unless the person who suffered the emotional harm is a person described in paragraph (a) of the definition of **victim** in section 3.

(5) When determining the amount of compensation to be paid, the Court must take into account any offer, agreement, response, measure or action as described in section 9.

Calling an offender to come up for sentence

106.—(1) This section applies if an offender in respect of whom an order is made under section 105—

- (a) is convicted of a subsequent offence punishable by imprisonment for a term of more than three months; or
- (b) fails to comply with any other order referred to in section 105(3); or
- (c) fails to comply with any agreement or fails to take any measure or action of a kind referred to in section 9(1)(b), (d) or (e) which was brought to the attention of the Court at the time the Court made the order under section 9.

(2) Any of the following persons may, at any time within the period specified in the order, apply to a Court having jurisdiction to deal with the original offence to have the offender brought before the Court to be dealt with for that offence:

- (a) a member of the police
- (b) the Public Prosecutor or Deputy Public Prosecutor
- (c) the [Attorney General]
- (d) any person designated by the Governor

(Amended by Ordinance No. 4 of 2010)

- (3) On an application under subsection (2), the Court may—
- (a) issue a summons in the prescribed form requiring the offender to appear at the time and place appointed in the summons to show cause why he or she should not be dealt with for the original offence; or
 - (b) if the offender fails to appear before the Court in answer to the summons issued under paragraph (a), issue a warrant to arrest the offender and bring him or her before the Court; or
 - (c) issue an arrest warrant without first issuing a summons.

(4) If an application is made under subsection (2), the Court shall have and may exercise power to adjourn the hearing of the application from time to time to a time and place then appointed and to exercise its discretion to release the defendant at large or remand the defendant thereto on bail or in custody, as if the application were a charge. If at the time and place appointed for the hearing or when the defendant is brought before the Court on arrest, the Court by reason of its constitution has no jurisdiction to hear the application, the Registrar or Deputy-Registrar may adjourn the hearing to a time and place then appointed.

(5) Where pursuant to subsection (4) a defendant is remanded in custody, the Court or Magistrate or Registrar or Deputy-Registrar must issue a warrant in the prescribed form for the detention of the defendant in custody for the period of the adjournment.

(6) If a person appears before a Court under this section and the Court is satisfied of any of the matters specified in subsection (1), the Court—

- (a) must inquire into the circumstances of the original offence and the conduct of the offender since the order was made (including, where appropriate, the circumstances and gravity of the subsequent offence); and
- (b) may sentence or otherwise deal with the offender for the original offence.

Non-association orders

107.—(1) If an offender is convicted of an offence punishable by imprisonment, the Court may make a non-association order in respect of the offender.

Non-association order

(2) Before making a non-association order, the Court must be satisfied that the making of the order is reasonably necessary to ensure that the offender does not commit further offences punishable by imprisonment.

(3) Subject to subsection (4), a non-association order may be made in addition to, or instead of, imposing a sentence or making any other order.

(4) If the Court makes a non-association order, it must not at the same time impose on the offender a sentence of imprisonment, whether for the offence for which that order was made or for any other offence for which the offender has appeared for sentence.

(5) The Court must not make a non-association order if the offender is already detained under a sentence of imprisonment of more than 24 months imposed on an earlier occasion.

(6) On the making of a non-association order, a Court may make an order prohibiting the publication of the name, address or occupation of the offender or of any other person connected with the proceedings or any other particulars likely to lead to any such person's identification. Such order may have effect for only a limited period but, if not so directed, shall have effect permanently.

Effect of non-association order

108.—(1) A non-association order prohibits the offender from associating with—

- (a) any person or persons specified in the order; or
- (b) any person or persons of any class specified in the order.

(2) A non-association order has effect for the period, not exceeding 12 months, that the Court may specify in the order.

Cumulative orders and sentences

109.—(1) A non-association order must not be cumulative on another non-association order or on a sentence of any kind imposed at the same time as the non-association order.

(2) If the Court imposes a non-association order on an offender who is already detained under a sentence of imprisonment of 24 months or less, the non-association order is cumulative on the other sentence.

Order must be drawn up and copy given to offender, etc.

110.—(1) If a Court makes a non-association order, the particulars of non-association must be drawn up in the form of an order.

(2) For the purposes of subsection (1), a Court may direct that the offender be detained in the custody of the Court for a period, not exceeding 2 hours, that may be necessary to enable the order to be drawn up and a copy given to the offender.

(3) If it is not practicable to give a copy of the order to the offender before the offender leaves the Court, a copy must be

given to the offender in person as soon as practicable after the offender leaves the Court.

- (4) A copy of the order must be given to—
- (a) the Governor; and
 - (b) the officer in charge of the police.

111. For the purposes of eligibility for appeal, a non-association order is a sentence.

Right of appeal
against non-
association order

112.—(1) Except as provided in subsection (2), the period of non-association specified by a non-association order commences on the day on which the order is made.

Commencement
of period of non-
association

(2) If a non-association order is, under section 109(2), cumulative on a sentence of imprisonment, the period of non-association specified by the non-association order commences on the day on which the offender is released from detention under the sentence of imprisonment.

113.—(1) An offender who is subject to a non-association order commits an offence who, without reasonable excuse, associates with any person in contravention of the order.

Breach of non-
association order
constitutes offence

(2) A person who commits an offence against this section is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding \$1,000.

114. If an offender who is subject to a non-association order (whether or not it is cumulative on a sentence of imprisonment and whether or not the period of non-association has commenced) is subsequently sentenced for another offence, the following provisions apply—

Effect of subsequent
sentences on
non-association
order

- (a) if the offender is subsequently sentenced to imprisonment for a term of more than 24 months, the non-association order is suspended;
- (b) if any other sentence is imposed, the Court may make an order suspending the non-association order;
- (c) if the offender is sentenced to imprisonment for a term of 24 months or less and the Court makes no order under paragraph (b)—
 - (i) if the non-association order is cumulative on a sentence of imprisonment and the period of non-association specified by the order has not commenced, the period of non-association does not commence until the day on which the offender is released from detention after serving each sentence of imprisonment to which he or she is subject;
 - (ii) in any other case, the period of non-association continues to run while the offender is detained

and, on the offender's release, he or she continues to be subject to the non-association order for any unexpired residue of the period of non-association.

Resumption of non-association order if sentence of imprisonment quashed

115.—(1) This section applies to a non-association order that is suspended under section 114(a) or (b).

(2) The non-association order is suspended until the earlier of the following events—

- (a) it resumes under subsection (3); or
- (b) it is cancelled under subsection (5).

(3) The non-association order is resumed if the sentence of imprisonment based on which the non-association order was suspended is quashed and which results in the offender no longer being detained under a sentence of imprisonment.

(4) If a non-association order is resumed under subsection (3), no period during which the order was suspended is counted towards the period under section 108(2).

(5) If the non-association order never resumes under subsection (3), it is cancelled when the offender ceases to be detained under the sentence of imprisonment based on which the non-association order was suspended.

Application for review of non-association order

116.—(1) An offender may, at any time after the expiration of half the period of non-association under a non-association order, apply to the Court in accordance with section 118 for the variation or cancellation of the order.

(2) If a non-association order is cumulative on a sentence of imprisonment, the offender may, before the period of non-association commences, apply to the Court in accordance with section 118 for the variation or cancellation of the order.

(3) A Supervision Officer may apply to a Court in accordance with section 118 for the variation or cancellation of a non-association order if—

- (a) the offender who is subject to it is convicted of an offence punishable by imprisonment; or
- (b) a Supervision Officer believes on reasonable grounds that the offender has failed or is unable to comply with the order.

(4) Subsection (3) does not apply if the order is cancelled under section 114.

(5) If an application is made under this section by a Supervision Officer, the Supervision Officer may suspend the order until the application has been heard and disposed of.

Determination of application for variation or cancellation of order

117.—(1) On an application under section 116, the Court must have regard to—

- (a) any change in circumstances since the non-association order was made; and
 - (b) if the period of non-association specified by the order has commenced, the manner in which the offender has responded to the order.
- (2) The Court may —
- (a) vary the particulars of non-association; or
 - (b) cancel the order; or
 - (c) cancel the order and substitute any other sentence which could have been imposed on the offender at the time when the offender was convicted of the offence for which the order was made.
- (3) When determining any substitute sentence under subsection (2)(c), the Court must take into account the portion of the non-association order which remains unserved at the time.
- (4) If the Court cancels the order —
- (a) in any case where the period of non-association specified by the order has commenced, the period of non-association expires on the date which the Court may specify;
 - (b) in any other case, the period of non-association expires on the date upon which the order cancelling the non-association order is made.

118.—(1) Section 70 applies, with any necessary modifications, to every application under section 116.

Jurisdiction and procedure

(2) Before determining the application, the Court may make any inquiries as to the circumstances of the case that the Court considers reasonable and may hear any evidence relevant to those circumstances

(3) If the Court varies or cancels the non-association order, the Registrar must give written notice of the decision to the Governor and the officer in charge of the police.

PART VII MISCELLANEOUS, TRANSITIONAL AND REPEAL PROVISIONS

119.—(1) If a Court imposes a sentence of imprisonment on an offender who appears to the Court to have been at the time of conviction of an age at which the offender would have been liable to that sentence, the sentence is not invalid by reason only of the fact that, because of the offender's age at the time of conviction, the offender was not liable to that sentence.

Sentence not invalidated by mistake in age of offender

(2) If it appears that, because of the offender's age at the time of conviction, the offender was not liable to the sentence, the offender or the prosecutor or any counsel on behalf of the

Crown may, at any time, apply in accordance with this section for the substitution of some other sentence.

- (3) An application under this section must be made—
- (a) to the Supreme Court, if the sentence was passed—
 - (i) by the Court of Appeal on appeal from the Supreme Court; or
 - (ii) by the Supreme Court otherwise than on appeal from the Magistrate’s court; or
 - (b) to the Magistrate’s Court presided over by a Magistrate appointed under section 11(1) and (4) of the Judicature (Courts) Ordinance.

cap.2

(4) The Judge or Magistrate to whom the application is made, after inquiry into the circumstances of the case, may impose in substitution for the original sentence any sentence that could have been imposed on the offender at the time of conviction.

(5) For the purposes of an appeal or application for leave to appeal against the substituted sentence—

- (a) the substituted sentence is deemed to be a sentence passed on the conviction of the offender; but
- (b) the time allowed for giving notice of the appeal or application runs from the date on which the substituted sentence was in fact imposed.

Royal prerogative not affected

120. Nothing in this ordinance limits or affects the Royal prerogative of mercy.

Consent to treatment, etc., not affected

121.—(1) No sentence or condition imposed or order made under this ordinance limits or affects in any way any enactment or rule of law relating to consent to any medical or psychiatric treatment.

(2) Subsection (1) applies except as expressly provided by any other enactment.

Regulations

122. The Governor may from time to time make regulations for all or any of the following purposes—

- (a) prescribing forms for the purposes of this ordinance;
- (b) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this ordinance and the amounts of fines that may be imposed in respect of those offences;
- (c) generally providing for any other matters that are contemplated by or necessary for giving full effect to this ordinance and for its due administration.

Repeals
No. 2 of 2002
No. 5 of 2002

123. The Power of Courts on Sentencing (Offences against the Person) Ordinance 2002 and the Sentencing (Community-based Sentences) Ordinance 2002 are hereby repealed.

PITCAIRN, HENDERSON, DUCIE AND OENO
ISLANDS

**SENTENCING (PRESCRIBED FORMS)
REGULATIONS 2004**

Made by the Governor in exercise of the powers conferred by section 122(a) of the Sentencing Ordinance (cap. 35).

[7 December 2004]

Amended by the Governor by Regulations dated 24 February 2016

Arrangement of Regulations

- Form 1 Warrant of Committal for Imprisonment
- Form 2 Order for Sentence of Supervision
- Form 3 Order for Sentence of Community Work
- Form 4 Order for Minimum Period of Imprisonment within
Determinate Sentence or Sentence for Imprisonment
for Life
- Form 5 Order for Minimum Period of Imprisonment within
Sentence of Preventive Detention
- Form 6 Order for Sentence of Home Detention

1. These regulations may be cited as the Sentencing (Prescribed Forms) Regulations.

Title

2. Subject to these regulations, the forms prescribed in the Schedule shall be used in connection with sentencing of offenders.

Forms in schedule to be used on sentencing

3. Such variations may be made in any prescribed form as the circumstances of a 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 circumstances of the case allow, is sufficient.

Strict compliance with forms not necessary

SCHEDULE**FORM 1****Warrant of Committal for Imprisonment***[Section 86 of the Sentencing Ordinance 2002, CAP 35]*

Case No. of 20__

To: Every Police Officer and to the Superintendent of prisons in the Islands

Name:

Address:

Occupation:

was on the _____ day of _____ 20__

convicted of

[specify offence or offences]

by the _____ Court at

and was sentenced:

to imprisonment for life*

to imprisonment for a term of _____ years*

to preventive detention*

Start date of sentence

Pursuant to section 73 of the Parole Ordinance 2002 the start date is the date on which the sentence was imposed, namely the _____ day of _____ 20__ *

The start date is deferred, under section 95 of the Sentencing Ordinance 2002, for a period of [specify period] or the period ending with the date on which the Pitcairn Parole Commission determines an application for home detention, whichever is sooner.*

* Delete one.

Legal representation

The offender was legally represented in accordance with section 29(1) of the Sentencing Ordinance 2002.*

The offender was not legally represented but he/she was informed of his/her rights relating to legal representation and to legal aid; he/she fully understood those rights; and he/she had the opportunity to exercise those rights and refused or failed to exercise them.*

The offender was not legally represented, having dismissed counsel that he/she had earlier engaged.*

*Delete one.

[]

(Amended by Regulations of 24 February 2016)

You the members of the Police are directed to deliver the offender to the Superintendent of prisons in the Islands.

You the Superintendent are directed to receive the offender into your custody and detain the offender for the purposes of the sentence.

Release conditions imposed by the Court

The offender was a person to whom section 88(1) of the Sentencing Ordinance applies, and the Court imposed:

- (a) The standard release conditions set out in section 11(1) of the Parole Ordinance 2002, which expire on []
- (b) The special conditions listed below, which expire on []

The offender was a person to whom section 88(2) of the Sentencing Ordinance applies, and:

- (a) The standard release conditions set out in section 11(1) of the Parole Ordinance 2002 apply until they expire on []
- (b) The special conditions listed below apply until they expire on []

Special conditions

[]

Dated at Court at this day
of 20__

[Name of Magistrate, Judge of the Supreme Court, or Judge of the Court of Appeal]

[Signature of same]

FORM 2**Order for Sentence of Supervision***[Section 43 of the Sentencing Ordinance 2002]*

Case No. of 20__

Name**Address****Occupation**

At a sitting of the _____ Court at _____ on _____ day the
 day of _____ 20__, you were convicted of _____ [specify
 charge(s)] and sentenced to supervision for a period of _____ [period]

The standard terms of supervision are set out on the reverse of this form.
 In addition, the Court imposed the following special conditions:

Dated at _____ this _____ day of _____ 20

[Court]

Judge

[Back of form]

Section 47 of the Sentencing Ordinance provides for the following standard conditions:

- (a) the offender must report in person to the Supervision Officer as soon as practicable, and not later than 72 hours after the sentence is imposed;
- (b) the offender must report to the Supervision Officer as and when required to do so by the Supervision Officer and must notify the Officer of his or her residential address and the nature and place of his employment when asked to do so;
- (c) the offender must not move to a new residential address without the consent of the Supervision Officer;
- (d) if consent is given under paragraph (c), the offender must report in person to the Supervision Officer as soon as practicable, and not later than 72 hours, after the offender's arrival in the new area;
- (e) the offender must not reside at any address at which the Supervision Officer has directed the offender not to reside;
- (f) the offender must not engage or continue to engage, in any employment or occupation in which the Supervision Officer has directed the offender not to engage or continue to engage;
- (g) the offender must not associate with any specified person, or with persons of any specified class, with whom the Supervision Officer has, in writing, directed the offender not to associate;
- (h) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to by the Supervision Officer.

Statement of Service

This Order was served by me by delivering a copy of the same to the offender personally at _____ on the _____ day of _____ 20__.

[Signed]

[Officer of the Court]

FORM 3

Order for Sentence of Community Work

[Section 53 of the Sentencing Ordinance 2002]

Case No. of 20__

Name

Address

Occupation

At a sitting of the Court at on day the day of 20__ you were convicted of [specify charge(s)] and sentenced to community work for a total of [] hours

The sentence commences on [specify date in accordance with s 73 of Sentencing Ordinance]

You must report to the Supervision Officer as soon as practicable and not less than 72 hours after the sentence was imposed.

During your sentence you must report to the Supervision Officer as directed.

You must work as directed by the Supervision Officer until the completion of your sentence.

Note:

In accordance with sections 56(1) and (2) of the Sentencing Ordinance 2002:

If your sentence requires you to perform 200 hours or less community work that sentence must be served within 12 months of the date on which the sentence commences.

If your sentence requires you to perform more than 200 hours community work that sentence must be served within 24 months of the date on which the sentence commences.

If you move to a new address during your sentence you must advise the Supervision Officer of your new address.

You may not be required to work for more than 10 hours in succession nor more than 40 hours in a week.

If the Supervision Officer is satisfied that you have a good record of compliance with your sentence of community work the Supervision Officer may remit up to 10% of the hours imposed by the Court.

Dated at the Court at this day of 20__

[Court]

[Judge]

Statement of Service

This Order was served by me by delivering a copy of the same to the offender personally at _____ on the _____ day of _____ 20__.

[Signed]

[Officer of the Court]

FORM 4

Order for Minimum Period of Imprisonment within Determinate Sentence or Sentence for Imprisonment for Life

[To be attached to warrant of commitment]

[Section 81 Sentencing Ordinance 2002]

Case No. of 20__

To all Police Officers and the Superintendent of Prisons on the Islands

Name

Address

Occupation

(the offender) was on the _____ day of _____ 20__ convicted of

[charge(s)]

by the _____ Court at _____ and was this day sentenced to

imprisonment for life*

imprisonment for a term of _____.*

* delete one

I am satisfied that the circumstances of the offence were sufficiently serious to justify a minimum term of imprisonment that is longer than the period otherwise applicable under section 80 of the Parole Ordinance 2002.

The Court therefore orders under section 81 of the Sentencing Ordinance 2002 that the offender must serve a minimum period of imprisonment of [] .

Dated at the _____ Court at _____ this _____ day of _____ 20__

[Court]

[Judge]

FORM 5

Order for Minimum Period of Imprisonment within Sentence of Preventive Detention

[To be attached to warrant of commitment]

[Section 84 Sentencing Ordinance 2002]

Case No. of 20__

To all Police Officers and the Superintendent of prisons on the Islands

Name

Address

Occupation

(the offender) was on the day of 20__ convicted of

[charge(s)]

by the Court at and was this day sentenced to preventive detention.

The Court orders under section 84 of the Sentencing Ordinance 2002 that the offender must serve a minimum period of imprisonment of [].

Dated at the Court at this day of 20__

[Court]

[Judge]

FORM 6**Order for sentence of home detention**

[Section 76A and 76W, Sentencing Ordinance]

Case No:

To *[full name]* of *[address]*, *[occupation]*

At a sitting of the *[court and place]* this *[date]* you were sentenced to home detention for a period of *[specify period]* for *[offence]* to be served at the home detention residence at *[address]*

*This sentence is cumulative on *[specify cumulative sentences]*.

*Delete if inapplicable

*The start date of the sentence is the date of this order, or the expiry of any sentence this order is cumulative upon (if applicable).

OR if deferred:

*The start date of your sentence was deferred under section 76R of the Sentencing Ordinance. The start date of your sentence is *[deferred start date]*.

*Delete one

*You must go to and remain at the residence where the sentence is to be served immediately upon receiving this order, unless a Supervision Officer has authorised you to be absent for a particular reason.

OR if deferred:

*You must go to and remain at the residence where the sentence is to be served on *[deferred start date]*, unless a Supervision Officer has authorised you to be absent for a particular reason.

*Delete one

Conditions

The standard conditions of home detention are set out in section 76C of the Sentencing Ordinance (a list of which is attached to this form).

*In addition to the standard conditions for home detention, the Court imposed the following special conditions under section 76D of the Sentencing Ordinance: *[specify special conditions]*.

*Delete if inapplicable.

*Post-detention conditions apply or have been imposed by the Court under section 76L of the Sentencing Ordinance (a list of which is attached to this form) and will apply to your home detention sentence for a period of *[duration]* from the detention end date

*Delete if inapplicable

*In addition to the standard post-detention conditions the Court imposed the following special post-detention conditions under section 76L: *[specify special post-detention conditions]*

*Delete if inapplicable

Consequences of non-compliance

Failure to comply with the terms of this sentence, without reasonable excuse, may result in you being charged under section 76N of the Sentencing Ordinance with an offence punishable by a maximum of 1 year's imprisonment or a fine not exceeding \$2,000.

Any person who refuses or fails, without reasonable excuse, to allow a Supervision Officer to enter the home detention residence at a time when you are required to be at the residence may be charged under section 76O(1) of the Sentencing Ordinance with an offence punishable by a maximum of 3 months' imprisonment or a fine not exceeding \$5,000.

Any person who refuses or fails, without reasonable excuse, to allow an authorised person to enter the home detention residence at any time for the purpose of servicing or inspecting the electronic monitoring equipment, may be charged under 76O(2) of the Sentencing Ordinance with an offence punishable by a maximum of 3 months' imprisonment or a fine not exceeding \$5,000.

Failure to comply with the post-detention conditions, without reasonable excuse, may result in your being charged with an offence under section 76P of the Sentencing Ordinance.

Variation or cancellation of sentence

You, or your Supervision Officer, may apply under section 76F of the Sentencing Ordinance for variation or cancellation of this sentence if you are unable to comply with its terms, or if one of the other grounds for variation or cancellation in that section applies.

Variation or discharge of post-detention conditions

You, or your Supervision Officer, may apply under section 76M of the Sentencing Ordinance for variation or discharge of your post-detention conditions.

Dated at the *[specify]* Court at *[place]* on *[date]*

.....

Registrar

Standard conditions of sentence of home detention

Under section 76C of the Sentencing Ordinance, the following conditions apply to every sentence of home detention:

- (a) the offender is under the supervision of the Supervision Officer and must co-operate with the Supervision Officer and comply with any lawful direction given by that Supervision Officer;
- (b) the offender must not leave the home detention residence at any time except in the circumstances set out in section 76C(3) or (4) of the Sentencing Ordinance (see below);

- (c) the offender must keep in his or her possession this order and, if requested to do so by a member of the police or the Supervision Officer, must produce the order for inspection;
- (d) the offender must, when required by the Supervision Officer, submit to the electronic monitoring of compliance with his or her detention conditions;
- (e) the offender must not engage, or continue to engage, in any employment or occupation in which the Supervision Officer has directed the offender not to engage or continue to engage;
- (f) the offender must not associate with any specified person, or with persons of any specified class, with whom the Supervision Officer has, in writing, directed the offender not to associate;
- (g) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by the Supervision Officer.

Section 76C(3) of the Sentencing Ordinance provides that the offender must not leave the home detention residence at any time except in the following circumstances:

- (a) to seek urgent medical or dental treatment; or
- (b) to avoid or minimise a serious risk of death or injury to the offender or any other person; or
- (c) with the approval of the Supervision Officer—
 - (i) to comply with any special condition; or
 - (ii) to seek or engage in employment; or
 - (iii) to attend training or other rehabilitative or reintegrative activities or programmes; or
 - (iv) to attend a restorative justice conference or other process relating to the offender's offending; or
 - (v) to carry out any undertaking arising from any restorative justice process; or
 - (vi) for any other purpose specifically approved by the Supervision Officer.

Section 76C(4) of the Sentencing Ordinance provides that the Supervision Officer may approve an alternative residence pending determination of an application to vary the home detention residence under section 76F.

Standard post-detention conditions of sentence of home detention

Section 76 of the Sentencing Ordinance provides that conditions of the sort described in s 11(1) of the Parole Ordinance apply to every offender subject to post-detention conditions. Those conditions are:

- (a) the offender must report in person to the Supervision Officer as soon as practicable and not later than 72 hours after the detention end date;
- (b) the offender must report in person to the Supervision Officer as and when required to do so by the Supervision Officer and must notify the Supervision Officer of his or her residential address and the nature and place of his or her employment when asked to do so;
- (c) the offender must not move to a new residential address without the prior written consent of the Supervision Officer;

- (d) the offender must not reside at any address at which the Supervision Officer has directed the offender not to reside;
- (e) the offender must not engage, or continue to engage, in any employment or occupation in which the Supervision Officer has directed the offender not to engage or continue to engage;
- (f) the offender must not associate with any specified person, or with persons of any specified class, with whom the Supervision Officer has, in writing, directed the offender not to associate;
- (g) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by the Supervision Officer.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2017

CHAPTER XXXVI

VICTIMS OF OFFENCES (NO. 2) ORDINANCE

An ordinance to make provision for ensuring the rights and protection of victims of crime

Ordinances
No. 10 of 2002
No. 16 of 2002
No. 2 of 2014
No. 1 of 2016

[14 November 2002]

Preliminary

1. This ordinance may be cited as the Victims of Offences Ordinance (No. 2)

Citation

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

Interpretation

victim means a person who, through or by means of a criminal offence (whether or not any person is convicted of that offence), suffers physical or emotional harm or loss of or damage to property; and, where an offence results in death, the term includes the members of the immediate family of the deceased.

Declaration of Principles

3. Members of the Police, prosecutors, judicial officers, counsel, officials and other persons dealing with victims should treat them with courtesy, compassion and respect for their personal dignity and privacy.

Treatment of victims

4. Victims and, where needed, their families should have access to welfare, health, counselling, medical and legal assistance responsive to their needs, where it is available.

Access to services

5.—(1) Members of the Police, officers of the Court and health and social services personnel should, wherever practicable, inform victims at the earliest opportunity of the services and remedies available to them.

Early information for victims

(2) Victims should also be told of available protection against unlawful intimidation.

6. The prosecuting authority or officers of the Court, as the case may require, should, according to the circumstances

Information about proceedings

of the particular case, make available to a victim information about the progress of the investigation of the offence, the charges laid or the reasons for not laying charges, the role of the victim as a witness in the prosecution of the offence, the date and place of the hearing of the proceedings and the outcome of the proceedings, including any proceedings on appeal.

Return of property

7. Law enforcement agencies and the Courts should return the property of a person (other than the defendant) which is held for evidentiary purposes as promptly as possible so as to minimise inconvenience to that person.

Power to clear Court and forbid report of proceedings

8.—(1) Subject to the provisions of subsections (2) and (3) of this section and any other enactment, every sitting of any Court dealing with any proceedings in respect of an offence shall be open to the public.

(2) Where a Court is of the opinion that the interests of justice or of public morality or of the reputation of any victim of any alleged sexual offence or offence of extortion so require, it may make any one or more of the following orders—

- (a) an order forbidding publication of any report or account of the whole or any part of—
 - (i) the evidence adduced; or
 - (ii) the submissions made;
- (b) an order forbidding the publication of the name of any witness or witnesses or any name or particulars likely to lead to the identification of the witness or witnesses;
- (c) subject to subsection (3) of this section, an order excluding all or any persons other than the complainant, any member of the police, the defendant, any counsel engaged in the proceedings and any officer of the Court from the whole or any part of the proceedings.

(3) The power conferred by paragraph (c) of subsection (2) of this section shall not be exercised so as to exclude any accredited news media reporter.

(4) An order made under paragraph (a) or paragraph (b) of subsection (2) of this section—

- (a) may be made for a limited period or permanently; and
- (b) if it is made for a limited period, may be renewed for a further period or periods by the Court; and
- (c) if it is made permanently, may be reviewed by the Court at any time.

(5) The powers conferred by this section to make orders

of any kind described in subsection (2) of this section are in substitution for any such powers that a Court may have had under any inherent jurisdiction or any rule of law; and no Court shall have power to make any order of any such kind except in accordance with this section or any other enactment.

(6) Notwithstanding that an order is made under subsection (2)(c) of this section, the announcement of the verdict or decision of the Court (including a decision to commit the defendant for trial or sentence) and the passing of sentence shall in every case take place in public; but, if the Court is satisfied that exceptional circumstances so require, it may decline to state in public all or any of the facts, reasons or other considerations that it has taken into account in reaching its decision or verdict or in determining the sentence passed by it on any defendant.

[(7) Subject to subsection (8) of this section, every person who commits a breach of any order made under paragraph (a) or paragraph (b) of subsection (2) of this section commits an offence and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(8) Where a corporation commits a breach of any order made under paragraph (a) or paragraph (b) of subsection (2) of this section, every director of that corporation shall be deemed to be a person who has committed an offence as described in subsection (7) of this section punishable as aforesaid and the corporation shall be guilty of an offence punishable on conviction by a fine not exceeding \$100,000.

(9) The offences prescribed by subsections (7) and (8) shall be justiciable in the Supreme Court notwithstanding that the acts constituting those offences or any of those acts may have taken place outside the territorial limits of the Court's jurisdiction.

(10) For the avoidance of doubt it is hereby declared that nothing in this section shall be taken to detract from the power of the Supreme Court to punish any person for criminal contempt in accordance with the common law or under the provisions of the Contempt of Court Act 1981 of the Parliament of the United Kingdom.]

(Replaced by Ordinance No. 16 of 2002)

9.—(1) No person shall publish, in any report or account relating to any proceedings commenced in any Court in respect of an offence of a sexual nature, the name of any person upon or with whom the offence has been or is alleged to have been committed or any name or particulars likely to lead to the identification of that person unless—

Prohibition against
publication of names
in certain sexual cases

- (a) that person is of or over the age of 16 years; and
- (b) the Court, by order, permits such publication.

(2) No person shall publish, in any report or account relating to proceedings in respect of any offence of incest or sexual intercourse with a [person] under 21 years of age in the offender's care or protection, the name of the person accused or convicted of the offence or any name or particulars likely to lead to the person's identification.

(Amended by Ordinance No. 2 of 2014)

(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who publishes any name or particular in contravention of subsection (1) or subsection (2) of this section.

Court may prohibit
publication of names

10.—(1) Except as otherwise expressly provided in any enactment, a Court may make an order prohibiting the publication, in any report or account relating to any proceedings in respect of an offence, of the name, address or occupation of the person accused or convicted of the offence or of any other person connected with the proceedings or any particulars likely to lead to any such person's identification.

(2) Any such order may be made to have effect only for a limited period, whether fixed in the order or to terminate in accordance with the order; or if it is not so made, it shall have effect permanently.

(3) If any such order is expressed to have effect until the determination of an intended appeal and no notice of appeal or of application for leave to appeal is filed or given within the time limited or allowed by or under the relevant enactment, the order shall cease to have effect on the expiry of that time; but if such a notice is given within that time, the order shall cease to have effect on the determination of the appeal or on the occurrence or non-occurrence of any event as a result of which the proceedings or prospective proceedings are brought to an end.

(4) The making under this section of an order having effect only for a limited period shall not prevent any Court from making under this section any further order having effect either for a limited period or permanently.

(5) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who commits a breach of any order made under this section or evades or attempts to evade any such order.

Views of victims

11. When considering an application for bail in respect of a charge of sexual violation or other serious assault or injury any views of the victim must be taken into account.

(Inserted by Order of Commissioner dated 28.04.03)

12.—(1) The victim of an offence of sexual violation or other serious assault or injury should be given the opportunity to request notification of any of the following—

Notification of offender's parole hearing, release or escape in certain cases

- (a) the offender's impending release from penal custody or release to or from home detention;
- (b) the offender's escape from penal custody or home detention;
- (c) the time and date of the offender's hearing or hearing for release to home detention.

(2) Where the victim makes such a request, then, provided that the victim has supplied a current address and telephone number to a member of the police or the Registrar of the Court concerned, the victim should be—

- (a) promptly notified of the offender's impending release or escape from penal custody or home detention; and
- (b) given reasonable prior notice of the time and date of the offender's parole hearing or hearing for release to home detention.

13.—(1) This section applies to the victim of an alleged offence, or of an offence, of sexual violation or other serious assault or injury, if the defendant is lawfully held in custody in prison or detained in a [home detention residence, or a] hospital or similar institution.

Notification of compulsorily detained person's escape or discharge

(2) Such a victim should be given the opportunity to request notification of—

- (a) any escape by the defendant;
- (b) any impending discharge of the defendant;
- (c) any grant of leave to the defendant from custody in prison or detention in [a home detention residence,] hospital or other institution;
- [(d) any impending release or grant of early release of the defendant from home detention under the Parole Ordinance 2002.]

(3) Such a victim should be promptly notified of the matters described in subsection (2), if he or she has—

- (a) requested notification;
- (b) supplied a current address and telephone number to a member of the police or the Registrar of the Court concerned.

(Amended by Ordinance No. 1 of 2016)

14. The Victims of Offences Ordinance 2002 is hereby repealed.

Repeal

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2017

CHAPTER XXXVII

BAIL ORDINANCE

Arrangement of sections

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Ordinances
No. 15 of 2002
No. 4 of 2010
No. 1 of 2016

An ordinance to make provision for bail in criminal cases

[24 December 2002]

Preliminary

Citation

1. This ordinance may be cited as the Bail Ordinance.

Interpretation

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

cap.3

committal for trial means committal to the Supreme Court under section 65A or section 65B of the Justice Ordinance or a Magistrate’s Court under section 70(3)(b) of the Justice Ordinance

conviction includes an order; and **convicted** has a corresponding meaning

Court of Appeal means the Pitcairn Court of Appeal [as constituted by section 49 of the Constitution of Pitcairn]

(Amended by Ordinance No. 4 of 2010)

drug dealing offence means the unlawful trafficking in prohibited or restricted drugs and includes the unlawful importation and possession for sale or supply of any such drug prohibited or restricted under any enactment

[home detention residence has the meaning given under section 3 of the Sentencing Ordinance]

(Inserted by Ordinance No. 1 of 2016)

cap.2

Island Magistrate means the person appointed to hold such office by the Governor under section 11(1) and (2) of the Judicature (Courts) Ordinance

Magistrate’s Court includes a Senior Magistrate or the Island Magistrate presiding over a Magistrate’s Court; but does not include a Registrar

offence means any act or omission for which anyone can be punished under the criminal law or under any

other enactment containing penal sanctions, whether on conviction on information or on summary conviction

Registrar means any Registrar of the Supreme Court or of the Magistrate’s Court, as the case may require; and includes a Deputy Registrar

Senior Magistrate means a person appointed to hold office as a magistrate by the Governor under section 11(1) and (4) of the Judicature (Courts) Ordinance

[Superintendent of Prisons means the person appointed in accordance with section 5 of the Prisons Ordinance]

[Supervision Officer has the meaning given under section 3 of the Sentencing Ordinance].

(Inserted by Ordinance No. 1 of 2016)

3. This ordinance binds the Crown.

Ordinance binds the Crown

PART I GENERAL PROVISIONS REGARDING BAIL

4. Unless expressly stated otherwise in this or in any other enactment, any decision regarding the granting of bail under this ordinance is subject to the provisions of this Part.

Application of this Part

5.—(1) A defendant is bailable as of right who is charged with an offence which is not punishable by imprisonment.

Rules as to granting bail

(2) A defendant is bailable as of right who is charged with an offence for which the maximum punishment is less than 3 years’ imprisonment, unless the offence is one which relates to assault on a child, or by a male on a female.

(3) A defendant is bailable as of right who is charged with any offence against the Summary Proceedings Ordinance or any offence which is triable only summarily by virtue of the First Schedule to the Justice Ordinance.

cap. 5

cap. 3

(4) Notwithstanding the provisions of this section, a defendant who is charged with an offence punishable by imprisonment is not bailable as of right if the defendant has been previously convicted of an offence punishable by imprisonment.

(5) Subject to sections 7 to 15, a defendant who is charged with an offence and is not bailable as of right must be released by a Court on reasonable terms and conditions unless the Court is satisfied that there is just cause for continued detention.

6.—(1) In considering whether there is just cause for continued detention, the Court must take into account the following considerations—

Consideration of just cause for continued detention

(a) whether there is a risk that the defendant may fail to appear in Court on the date to which the defendant

has been remanded;

- (b) whether there is a risk that the defendant may interfere with witnesses or other evidence;
- (c) whether there is a risk that the defendant may offend while on bail.

(2) In addition to the considerations in subsection (1), when considering whether there is just cause for continued detention, the Court may take into account—

- (a) the nature of the offence with which the defendant is charged and whether it is a grave or less serious one of its kind;
- (b) the strength of the evidence and the probability of conviction or otherwise;
- (c) the seriousness of the punishment to which the defendant is liable and the severity of the punishment which is likely to be imposed;
- (d) the character and past conduct or behaviour, in particular proven criminal behaviour, of the defendant;
- (e) whether the defendant has a history of offending while on bail or breaching Court orders, including orders imposing bail conditions;
- (f) the likely length of time before the matter comes to hearing or trial;
- (g) the possibility of prejudice to the defence in the preparation of the defence if the defendant is remanded in custody;
- (h) any other special matter which is relevant in the particular circumstances.

(3) When considering an application for bail in respect of a charge of sexual violation or other serious assault or injury, any views of the victim, conveyed in accordance with section 11 of the Victims of Offences Ordinance 2002, must be taken into account.

(4) In deciding, in relation to a defendant charged with any offence involving violence to a person, whether or not to grant bail to the defendant or allow the defendant to go at large, the need to protect the victim of the alleged offence is the paramount consideration.

7. No defendant who is charged with an offence involving treason, espionage, piracy, hijacking or terrorism may be granted bail except by order of the Governor or a Supreme Court Judge.

Restriction on bail
if defendant charged
with treason or
espionage

8.—(1) This section applies to a defendant of or over the age of seventeen years who is charged with a specified offence (as defined in subsection (2)) and who has one or more previous convictions for a specified offence (whether those convictions were for the same specified offence or for different specified offences).

Restriction on bail if defendant with previous conviction for specified offence charged with further specified offence

(2) In this section, **specified offence** means any offence of the following nature—

- (a) sexual violation;
- (b) murder;
- (c) rape;
- (d) manslaughter;
- (e) attempt to murder;
- (f) wounding with intent to cause grievous bodily harm;

- (g) assault occasioning actual bodily harm;
- (h) aggravated wounding or assault;
- (i) using any firearm against a law enforcement officer;
- (j) commission of crime with firearm;
- (k) robbery;
- (l) aggravated robbery.

(3) No defendant to whom this section applies may be granted bail or allowed to go at large except by order of a Supreme Court Judge or a Senior Magistrate.

(4) No defendant to whom this section applies may be granted bail or allowed to go at large unless the defendant satisfies the Judge or Senior Magistrate that bail or remand at large should be granted.

(5) In particular (but without limiting any other matters in respect of which the defendant must satisfy the Judge or Senior Magistrate under subsection (4)), the defendant must satisfy the Judge or Senior Magistrate on the balance of probabilities that the defendant will not, while on bail or at large, commit any offence involving violence against, or danger to the safety of, any other person.

(6) In deciding whether or not to grant bail to a defendant to whom this section applies or allow the defendant to go at large, the need to protect the safety of the public and, where appropriate, the need to protect the safety of the victim or victims of the alleged offending are primary considerations.

9. No defendant of or over the age of seventeen years who is found guilty of or pleads guilty to a specified offence (as defined in section 8(2)) and who has one or more previous convictions for a specified offence (whether those convictions were for the same specified offence or for different specified offences) may, while waiting to be sentenced or otherwise dealt with for the first-mentioned specified offence, be granted bail or allowed to go at large.

Restriction on bail if defendant with previous conviction for specified offence found guilty or pleads guilty to further specified offence

10.—(1) This section applies to a defendant if—

- (a) the defendant is of or over the age of seventeen years and—
 - (i) is charged with an offence under any law which carries a maximum sentence of three or more years' imprisonment; and
 - (ii) at the time of the alleged commission of the offence was remanded at large or on bail awaiting trial for another offence under any law which carries a maximum sentence of three or more years' imprisonment; and
 - (iii) has at any time previously received a full-time

Further restriction on bail in certain cases

- custodial sentence for one or more offences against any law; or
- (b) the defendant is of or over the age of seventeen years and—
- (i) is charged with an offence which carries a maximum sentence of three or more years' imprisonment; and
 - (ii) has previously received fourteen or more full-time sentences for offences against any law; and
 - (iii) has previously been convicted of an offence which was committed while the defendant was remanded at large or on bail and which carries a maximum sentence of three or more years' imprisonment (whether or not the conviction resulted in any of the full-time custodial sentences referred to in subparagraph (ii)).

(2) For the purposes of subsection (1), a full-time custodial sentence is counted whether or not it was served concurrently with any other one or more sentences.

(3) No defendant to whom this section applies may be granted bail or allowed to go at large except by order of a Supreme Court Judge or a Senior Magistrate.

(4) No defendant to whom this section applies may be granted bail or allowed to go at large unless the defendant satisfies the Judge or Senior Magistrate that bail or remand at large should be granted.

(5) In particular (but without limiting any other matters in respect of which the defendant must satisfy the Judge or Senior Magistrate under subsection (4)), the defendant must satisfy the Judge or Senior Magistrate on the balance of probabilities that the defendant will not, while on bail or at large, commit—

- (a) any offence involving violence against, or danger to the safety of, any other person; or
- (b) burglary or any other serious property offence.

(6) For the purposes of subsection (5), **serious property offence** means an offence against rights of property punishable by imprisonment for a term of more than seven years.

(7) In deciding whether or not to grant bail to a defendant to whom this section applies or allow the defendant to go at large, the need to protect the safety of the public and, where appropriate, the need to protect the safety of the victim or victims of the alleged offending are primary considerations.

11.—(1) If a defendant is found guilty or if a defendant pleads guilty, the Court must not grant bail unless it is satisfied

on the balance of probabilities that it would be in the interests of justice in the particular case to do so.

(2) The onus is on the defendant to show cause why bail should be granted.

(3) When considering the interests of justice under subsection (1), the Court may, instead of the considerations in section 6, take into account the following considerations—

- (a) whether the defendant is likely to receive a sentence of imprisonment;
- (b) the likely length of time that will pass before the defendant is sentenced;
- (c) the personal circumstances of the defendant and the defendant's immediate family;
- (d) any other consideration that the Court considers relevant.

(4) If the defendant is unlikely to receive a sentence of imprisonment, this must count against the defendant being remanded in custody.

(5) This section is subject to section 9.

12.—(1) If a person is in custody under a conviction and is appealing against the conviction or sentence, or both, the Court must not grant bail unless it is satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so.

Exercise of discretion when considering bail pending appeal

(2) The onus is on the appellant to show cause why bail should be granted.

(3) When considering the interests of justice under subsection (1), the Court may, instead of the considerations in section 6, take into account the following considerations—

- (a) the apparent strength of the grounds of appeal;
- (b) the length of the sentence which has been imposed on the appellant;
- (c) the likely length of time which will pass before the appeal is heard;
- (d) the personal circumstances of the appellant and the appellant's immediate family;
- (e) any other consideration which the Court considers relevant.

Special provision as to bail of young person remanded or committed for trial or sentence

13.—(1) Notwithstanding anything in any other enactment, no person under the age of sixteen years shall be remanded to a penal institution pending the hearing or trial of any charge or pending sentence.

Granting of bail to defendant under 20 years of age

(2) Notwithstanding anything in any other enactment, no

person who has attained the age of sixteen years but has not attained the age of seventeen years shall be remanded to a penal institution pending the hearing or trial of any charge or pending sentence, except where the person is charged with or has been convicted of an offence triable only by the Supreme Court.

(3) If a Court remands or commits for trial or for sentence a defendant who appears to the Court to be of or over the age of seventeen years but under the age of twenty years, it must release the defendant on bail or otherwise subject to such conditions as it thinks fit.

(4) Subsection (3) is subject to sections 5 (except subsection (5)) 7 to 10, 14 and 15 of this ordinance.

(5) Subject to subsections (1) and (2), this section applies in respect of a defendant who is under the age of seventeen years and who is charged with or convicted of any offence in a Magistrate's Court or the Supreme Court.

(6) Notwithstanding the provisions of subsection (1), the Court may in any case direct that a person under the age of sixteen years be detained in a penal institution if in its opinion no other course is desirable, having regard to all the circumstances.

(7) Notwithstanding the provisions of subsection (1), the Court may remand a person under the age of sixteen years in the custody of the chief executive officer of any recognised child protection authority if in its opinion it is desirable to do so by reason of special circumstances and if it is satisfied that such authority is able and willing to keep the person in custody in accordance with this section.

*Special provisions in respect of bail for
drug dealing offences*

Bail allowable for
drug dealing offence
only by order of
Judge or Senior
Magistrate

14.—(1) A defendant who is charged with or convicted of a drug dealing offence may be granted bail—

- (a) in any case, by order of a Supreme Court Judge; or
- (b) if the defendant does not have any previous convictions for a drug dealing offence, by order of a Senior Magistrate.

(2) A defendant who is charged with or convicted of a drug dealing offence may be granted bail only under subsection (1).

Bail for drug dealing
offence may be
continued or renewed
by Magistrate's Court

15. The Magistrate's Court may, despite the limitation imposed on Senior Magistrates by section 14(1)(b) but without limiting the powers of the Supreme Court, continue or renew bail granted under that section (whether granted by a Supreme Court Judge or a Senior Magistrate—

- (a) on the same or substantially the same conditions as

- were imposed under that section; or
- (b) with the consent of the defendant and the prosecution, on any conditions.

General provisions relating to bail hearings

16. A Court may, having regard to the interests of the defendant or any other person and to the public interest, order that the whole or any part of an application for bail or an appeal against a bail decision be heard in private.

Bail hearing may be in private

17. A Court may make an order prohibiting the publication of any report or description of the hearing or any part of the hearing including, without limitation, all or any of the following—

Court may prohibit publication of matters relating to hearing

- (a) the identity of the defendant applying for bail;
- (b) the decision of the Court on the application;
- (c) the conditions of bail, if bail is granted.

18.—(1) In hearing an application for bail, a Court may receive as evidence any statement, document, information or matter that it considers relevant, whether or not it would be otherwise admissible in a Court of law.

Evidence in bail hearing

(2) Notwithstanding subsection (1), when considering the matter described in section 6(2)(b), the Court may receive only evidence that would be admissible in a Court of law.

**PART II
POLICE BAIL**

19.—(1) Any member of the police may, if he or she considers it prudent to do so, take the bail bond of a person who—

Defendant admitted to bail by member of police

- (a) is charged with an offence for which that person may be proceeded against summarily; and
- (b) has been arrested without warrant; and
- (c) cannot practicably be brought immediately before a Court.

(2) In determining whether it is prudent to grant bail under subsection (1) to any person charged with an offence involving the use of violence against any person, the need to protect the victim of the alleged offence is the paramount consideration.

(3) Any bail bond taken under this section—

- (a) may be either with or without sureties as the member of the police thinks fit; and
- (b) must be in such sum or sums as the member of the police thinks sufficient; and
- (c) is subject to the condition that, at a time and place to be specified in the bond, being a time not later

that seven days from the date of the bond, the person bailed attend personally before a Court.

(4) If a person is granted bail under this section, the member of the police who takes the bail bond of the person may, in addition to the conditions that may be imposed under subsection (3), also impose any condition that might be imposed by a Magistrate's Court or Registrar under subsection (2) or subsection (3) of section 29.

(5) A bail bond taken under this section has the same effect as if it had been taken before a Magistrate.

Mode of taking bail
bond by member of
police

20.—(1) The member of the police taking a bail bond under section 19 must enter in it—

- (a) the names, residence and occupation of the defendant; and
- (b) the names, residence and occupation of the defendant's surety or sureties (if any) entering into the bond; and
- (c) the condition or conditions of the bond; and
- (d) the sums respectively acknowledged.

(2) The bond must be signed by the defendant and the defendant's surety or sureties (if any).

(3) If the member of the police taking the bail bond thinks fit, the defendant may be required to deposit a sum of money equal to the sum acknowledged by the defendant.

(4) If, at the time and place specified in the bond, the defendant does not attend personally and, after hearing the charge in the defendant's absence, the Court convicts the defendant, the sum deposited may be applied in payment or part payment of any amount payable under the conviction.

(5) In a case referred to in subsection (4), if the sum deposited is applied in payment or part payment of any amount payable under the conviction—

- (a) section 23(2) does not apply; and
- (b) if the defendant is entitled to a refund of the sum deposited or any part of it and does not claim it, the member of the police must pay the amount into Court.

Bail and breach of
protection order

21.—(1) If a person is arrested and charged with an offence involving the use of serious violence against any other member of his or her family or household, the person must not be released on bail by a member of the police under section 19 during the 24 hours immediately following the arrest.

(2) Nothing in subsection (1) limits or affects the obligation of the police to bring a person who is charged with an offence before a Court as soon as possible.

(3) If a person to whom subsection (1) applies is not brought before a Court during the 24 hours immediately following the arrest, the person may, at the expiry of that period be released on bail by a member of the police under section 19.

(4) If a person to whom subsection (1) applies has also been charged with one or more other offences arising out of the same incident, the person must not be released on bail by a member of the police under section 19 in respect of any of those offences during the 24 hours immediately following the arrest for such offence.

22. A defendant commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, having been released on bail by a member of the police, fails without reasonable excuse to attend personally at the time and the Court specified in the bail bond.

Failure to answer
police bail

23.—(1) A bail bond taken by a member of the police is void if the defendant attends personally to answer the charge brought against him or her at the time and place—

Effect on bond of
attendance or non-
attendance of person
bailed by member of
police

- (a) specified in the bail bond; or
- (b) to which the hearing has been adjourned.

(2) The Magistrate's Court or Registrar may certify on the back of the bond or of a copy of the bond drawn up and certified by a member of the police the non-performance of the condition of the bond if—

- (a) the hearing has not been adjourned and the defendant does not attend personally at the time and place specified in the bond; or
- (b) the hearing has been adjourned, but the defendant does not attend personally at the time and place to which the hearing has been adjourned.

24. If section 23(2) applies to a defendant who has been released on bail by a member of the police, sections 36 and 41 also apply, with any necessary modifications.

Breach of condition
of police bail

PART III BAIL IN SUMMARY PROCEEDINGS

Application of this Part

25. This Part applies to any proceeding where a defendant is proceeded against summarily.

Application of this
Part

Granting of bail

26.—(1) In any case referred to in section 27 of the Justice Ordinance (which relates to dealing with a defendant on adjournment), the Magistrate's Court may (instead of allowing

Bail on cap.3
adjournment

the defendant to go at large or to remand him or her in custody) grant the defendant bail under this section for the period of the adjournment.

(2) A Registrar may exercise the power conferred by subsection (1) to grant bail if—

- (a) the prosecutor does not oppose bail; and
- (b) the offence with which the defendant has been charged—
 - (i) is not punishable by imprisonment; or
 - (ii) is punishable by a term of not more than 5 years (unless the offence charged involves assault on a child or by a man on a woman).

Warrant for detention
of defendant
remanded on bail

27. If the defendant is granted bail under section 26, a Magistrate's Court or Registrar may, and must if the defendant is not released within the period specified in section 30(3)(a)—

- (a) issue a warrant for the detention of the defendant in custody for the period of the adjournment; and
- (b) certify on the back of the warrant the fact that the Magistrate's Court or Registrar has granted the defendant bail and the condition or conditions imposed.

Defendant, if bailable
as of right, to be
brought before Court
on request

28.—(1) A defendant who is bailable as of right must, if the defendant so requests, be brought before a Court for the purpose of making an application for bail if—

- (a) the defendant has been remanded in custody; and
- (b) the defendant did not make an application for bail under this ordinance at the time of the remand.

(2) The application may be granted as if it were an application made at the time at which the defendant was remanded.

(3) If bail is granted under this section, the particulars required to be certified by the Magistrate's Court or Registrar under section 27(b) must be certified in writing by the Court granting bail, and forwarded to the Superintendent of the penal institution in which the defendant is detained under the remand warrant.

Conditions of bail

29.—(1) Subject to section 30, if a defendant is granted bail, the defendant must be released on condition that the defendant attend personally—

- (a) at the time and place to which the hearing is adjourned; or
- (b) at every time and place to which, during the course of the proceedings, the hearing may from time to time be adjourned.

(2) The Magistrate's Court or Registrar may impose, as a

further condition of the defendant's release, a condition that the defendant report to the police at the time or times and at the place or places which the Court or Registrar orders.

(3) Whether or not the Magistrate's Court or Registrar imposes a condition under subsection (2), the Court or Registrar may impose any other condition that the Court or Registrar considers reasonably necessary to ensure that the defendant—

- (a) appears in Court on the date to which the defendant has been remanded; and
- (b) does not interfere with any witness or any evidence against the defendant; and
- (c) does not commit any offence while on bail.

(4) Notwithstanding subsection (3), the Court or Registrar must not require as a further condition of the defendant's release the deposit of any sum or the entering into of any obligation in the nature of a bond, guarantee or surety, whether by the defendant or any other person.

Procedures after grant of bail

30.—(1) If a defendant is granted bail, the Registrar must prepare a notice of bail setting out the conditions of bail imposed by or under section 29.

Release of defendant
granted bail

(2) The Registrar or (as the case may require) the Magistrate's Court or Superintendent of the penal institution in which the defendant is detained must—

- (a) give the notice of bail to the defendant; and
- (b) be satisfied that the defendant understands the conditions of bail; and
- (c) require the defendant to sign the notice of bail.

(3) If a defendant is granted bail, the Magistrate's Court or Registrar may direct that the defendant be detained in the custody of the Court—

- (a) for such time, not exceeding 2 hours, as may be necessary to enable the notice of bail to be prepared and signed; and
- (b) if, within the period of 2 hours, the defendant is not released (whether by reason of having refused to sign the notice of bail or for any other reason), for such time as may be necessary to enable a warrant to be issued under section 27.

(4) If bail is granted to a defendant who has been remanded in custody and is in custody only under the warrant issued in respect of the remand, the defendant must be released from custody as soon as is reasonably practicable after the defendant has signed the notice of bail.

(5) A copy of the notice of bail must be given to the defendant on his or her release or as soon as practicable after that.

Warrant of
deliverance

31.—(1) Subject to subsection (3), in any case where a warrant has been issued under section 27, a warrant of deliverance in the prescribed form must be issued and sent to the Superintendent of the penal institution in which the defendant is detained.

(2) The warrant of deliverance may be issued by any Magistrate or Registrar on being satisfied that the defendant is entitled to be released and that the requirements of section 30 have been met.

(3) No warrant of deliverance need be issued if the Registrar before whom the defendant signs the notice of bail endorses on the remand a certificate that the defendant has signed the notice of bail and that the defendant is accordingly entitled to be released.

Variation of
conditions of bail

32.—(1) If the defendant has been granted bail, a Magistrate's Court may, on the application of the defendant or the prosecutor, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail.

(2) A Registrar may exercise the power conferred by subsection (1) to make an order if—

- (a) the prosecutor does not object; and
- (b) the offence with which the defendant has been charged—
 - (i) is not punishable by imprisonment; or
 - (ii) is punishable by a term of imprisonment of not more than 5 years (other than an offence involving assault upon a child or by man upon woman).

(3) If a Magistrate's Court or Registrar has, in granting bail to any defendant, imposed the condition that the defendant report to the police at such time or times and at such place or places as the Court or Registrar orders, any Registrar may, on the application of the defendant, make an order varying the time or times or the place or places at which the defendant is required to so report.

(4) If a Magistrate's Court or Registrar varies or revokes any condition of bail or substitutes or imposes any other condition of bail under subsection (1), the following provisions apply—

- (a) if the defendant is present at the Court, the Registrar must—
 - (i) as soon as is reasonably practicable prepare a

- new notice of bail setting out the conditions of bail as amended (if any); and
- (ii) be satisfied that the defendant understands the conditions of bail; and
 - (iii) require the defendant to sign the notice of bail.
- (b) if the defendant is not present at the Court, the Registrar must send written notice to the defendant requiring the defendant to attend at a specified time and place for the execution of a fresh notice of bail containing the conditions as amended (if any).
- (5) If, in any case to which subsection (4) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to sign a fresh notice of bail, the Registrar or a Magistrate may issue a warrant for the arrest of the defendant.

33.—(1) Any member of the police may arrest without warrant a defendant who has been released on bail by a Magistrate’s Court or Registrar or member of the police if the member of the police believes on reasonable grounds that—

Defendant on bail may be arrested without warrant in certain circumstances

- (a) the defendant has absconded or is about to abscond for the purpose of evading justice; or
 - (b) the defendant has contravened or failed to comply with any condition of bail.
- (2) A defendant who is arrested under subsection (1) must be brought before a Magistrate’s Court as soon as possible.
- (3) In any such case, the Magistrate’s Court, on being satisfied that the defendant had absconded or was about to abscond or has contravened or failed to comply with any condition of bail, must reconsider the question of bail.
- (4) After a defendant has been arrested under subsection (1), the defendant cannot be bailed as of right and is bailable only under section 5(5).
- (5) Nothing in this section prevents a member of the police from seeking a warrant to arrest a defendant under section 34.

34.—(1) A Magistrate’s Court or Registrar may issue a warrant in the prescribed form for the arrest of a defendant if—

Issue of warrant to arrest defendant absconding or breaching bail condition or who fails to answer bail

- (a) the Magistrate’s Court or Registrar is satisfied by evidence on oath that—
 - (i) the defendant has absconded or is about to abscond for the purpose of evading justice; or
 - (ii) the defendant has contravened or failed to comply with any condition of bail; or
- (b) the defendant—

- (i) does not attend personally at the time and place specified in the notice of bail or, as the case may be, the bail bond; or
- (ii) does not attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned.

(2) A warrant to arrest a defendant under this section must be directed to a member of the police by name or generally to every member of the police. The warrant may be executed by any member of the police.

(3) For the purpose of executing a warrant issued under this section, the member of the police executing it may at any time enter on to any premises, by force if necessary, if the member of the police has reasonable grounds to believe that the defendant against whom it is issued is on those premises.

(4) The member of the police executing the warrant—

- (a) must have the warrant with him or her; and
- (b) must produce it on initial entry and, if requested, at any subsequent time; and
- (c) if he or she is not in uniform and is unknown to the defendant, produce evidence that he or she is a member of the police.

(5) If a defendant is arrested under a warrant issued under this section, subsections (2) to (4) of section 33 apply as if the defendant had been arrested under section 33(1).

Failure to answer bail

35. A defendant commits an offence and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$2,000 who, having been released on bail by a Magistrate's Court or Registrar—

- (a) fails without reasonable excuse to attend personally at the time and the Court specified in the notice of bail; or
- (b) fails without reasonable excuse to attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned.

Non-performance of condition of bail may be certified and recorded

36.—(1) If a defendant who has been released on bail at any time fails to comply with any condition of bail, a Magistrate's Court may certify on the back of the notice of bail or, as the case may require, the bail bond, the non-performance of that condition.

(2) A certificate given by a Magistrate's Court under subsection (1) is, in the absence of proof to the contrary, sufficient evidence for the purposes of section 22 and section 35 that the defendant has failed to comply with the condition of the notice of bail or bail bond specified in the certificate.

(3) In addition to the certification described in subsection (1), if a defendant who has been released on bail at any time fails to comply with any condition of bail, without reasonable excuse, a Magistrate's Court must direct the Registrar that the nature of the condition and the non-performance of the condition be entered in a register to be known as the Criminal Records of the Court.

(4) Notwithstanding subsection (3), the Magistrate's Court may decide not to direct that the failure to comply be entered in the Criminal Records if in the Court's opinion the failure to comply is of such a minor nature that it does not warrant being taken into account when considering an application for bail from the defendant on a subsequent occasion.

(5) Any entry of a non-performance of a bail condition in the Criminal Records shall be admissible in evidence without further proof in the form of an extract or copy of the Criminal Records appearing or purporting to be a true copy thereof and signed by the Registrar as such.

(6) A failure to comply with any condition of bail which is entered in the Criminal Records under subsection (3) may be considered in any subsequent application for bail made by that defendant.

Bail pending sentencing

37.—(1) If the Magistrate's Court finds the defendant guilty, or if the defendant pleads guilty and if the defendant is not sentenced or dealt with in any other manner, then the Court may in its discretion—

Bail pending
sentencing

- (a) remand the defendant in custody; or
- (b) grant the defendant bail to appear for sentence at some future sitting of the Court when called upon.

(2) In any such case, any Magistrate may, at a subsequent sitting, sentence the defendant or deal with the defendant in any other manner authorised by law.

[Bail on deferment of sentence

37A.—(1) This section applies if the start date of a sentence imposed on an offender is deferred under section 76R or section 95 of the Sentencing Ordinance.

Bail on deferment of
sentence

(2) If this section applies, the court that defers the start date of the offender's sentence must grant the offender bail.

(3) An offender who is granted bail under this section must be released on condition that the offender must—

- (a) if the sentence is deferred under section 76R of the Sentencing Ordinance, —
 - (i) go to and remain at the home detention residence at the expiry of the period of

deferral specified by the court, unless absent in accordance with section 76C(3) (a) or (b) of that Ordinance; and

(ii) advise a Supervision Officer as soon as possible of any change in circumstances affecting the availability or suitability of the home detention residence; or

(b) if the sentence is deferred under section 95 of the Sentencing Ordinance, surrender himself or herself to the Superintendent of Prisons at the expiry of the period of deferral specified by the court.

(4) The provisions of sections 29 to 36 and 38 to 42 of this Ordinance, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant who had been granted bail.]

(Inserted by Ordinance No. 1 of 2016)

Appeals on question of bail

Appeals from
decisions of Island
Magistrate

38.—(1) Either party to any proceedings which are heard by the Magistrate's Court presided over by the Island Magistrate has the same rights of appeal under section 39 as the party would have had if the Court which heard the proceedings had been presided over by a Senior Magistrate.

(2) For the purposes of an appeal to which subsection (1) applies, sections 39 to 45 apply, subject to such modifications as may be required or directed by the Court.

Appeal from decision
of Magistrate's Court
relating to bail

39.—(1) If a Senior Magistrate refuses to grant bail to a defendant (whether before or after conviction), the defendant may appeal to the Supreme Court against that refusal.

(2) If a Senior Magistrate grants bail to a defendant (whether before or after conviction), the prosecutor may appeal to the Supreme Court against that decision.

(3) If, in respect of any grant of bail to a defendant (whether before or after conviction)—

(a) a Senior Magistrate has imposed any condition of bail or has refused to impose any condition of bail, or any particular condition of bail; or

(b) a Senior Magistrate has, on an application made under section 32(1), made an order varying or revoking any condition of bail or substituting or imposing any other condition of bail or refused to make such an order,

the defendant or the prosecutor may appeal to the Supreme Court against the imposition of that condition of bail or, as

the case may be, against that refusal or against the decision in respect of that application.

(4) For the purposes of an appeal under this section, the failure of a Senior Magistrate to impose any condition of bail or any particular condition of bail, on any occasion on which the condition could lawfully have been imposed, is deemed to be a refusal to impose the condition.

(5) No person—

- (a) who has been refused bail by a Senior Magistrate; or
- (b) in respect of whom a Senior Magistrate has imposed any condition of bail or refused to impose any condition of bail or any particular condition of bail—

may seek bail in the Supreme Court except in accordance with this section.

(6) An appeal under this section is by way of rehearing.

40.—(1) Subject to subsections (2) and (4), Part II of the Judicature (Appeals in Criminal Cases) Ordinance, as far as it is applicable and with all necessary modifications, applies to an appeal under section 39.

Procedural provisions
cap.4 relating to
appeal under s. 39

(2) Notwithstanding the provisions of any other enactment or rule of law, on the hearing of an appeal under section 39 it is not necessary to produce—

- (a) any note or transcript of the evidence adduced to the Magistrate's Court appealed from; or
- (b) any note of the reasons for the decision appealed against; or

(c) any copy of any note or transcript referred to in paragraph (a) or paragraph (b).

(3) Nothing in section 21 of the Judicature (Appeals in Criminal Cases) Ordinance applies in respect of an appeal under section 39.

(4) No decision of a Senior Magistrate appealed against under section 39 is suspended merely because notice of that appeal has been given.

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(5) An appeal under section 39, which is not heard before the date on which the decision appealed against ceases to have any effect, lapses on that date and is deemed to have been dismissed by the Supreme Court for want of prosecution.

(6) If, in the case of an appeal under section 39(2), the defendant does not appear at the hearing of the appeal, the Supreme Court may, if it thinks fit, issue a warrant for the arrest of the defendant.

41.—(1) If a Magistrate directs that the non-performance of a bail condition be entered in the Criminal Records under section 36, the defendant may, within 28 days of the direction being made, appeal against the direction to the Supreme Court.

Appeal against entry of non-performance of condition of bail in Criminal Records

(2) After considering an appeal under subsection (1), the Supreme Court may order that—

- (a) the direction stand; or
- (b) the direction be amended; or
- (c) the direction be revoked.

(3) There is no further right of appeal against a direction to enter the non-performance of a condition of bail in the Criminal Records than that given by this section.

(4) No direction appealed against under this section is suspended merely because notice of that appeal has been given.

42.—(1) If, on an appeal under section 39, the Supreme Court determines that bail should not be granted or, as the case may be, should not be continued, a warrant for the detention of the defendant in custody must be issued out of the Supreme Court and signed by a Judge.

Execution of decision of Supreme Court on appeal relating to bail

(2) The person who executes the warrant must ensure that a copy of the notice of the result of the appeal is given to the defendant when the warrant is executed or as soon as practicable after the warrant is executed.

(3) If, on an appeal in respect of any condition of bail, the Supreme Court varies or revokes any condition of bail, or substitutes or imposes any other condition of bail, the following provisions apply

- (a) if the defendant is present at the Supreme Court, the Registrar of the Supreme Court must—

- (i) as soon as is reasonably practicable prepare a new notice of bail setting out the conditions of bail as amended (if any); and
 - (ii) satisfy himself or herself that the defendant understands the conditions of bail; and
 - (iii) require the defendant to sign the notice of bail;
- (b) if the defendant is not present at the Supreme Court, the Registrar of the Magistrate's Court appealed from must send written notice to the defendant requiring him or her to attend at a specified time and place for the execution of a fresh notice of bail containing the conditions, (if any) required to give effect to the Supreme Court's decision.
- (4) If, in any case to which subsection (3) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh notice of bail, the Registrar of the Magistrate's Court appealed from must refer the matter to a Senior Magistrate who may issue a warrant for the arrest of the defendant.

Bail pending appeal against conviction or sentence

Granting of bail to appellant who is in custody

43.—(1) This section applies if a person is in custody under a conviction and is appealing against the conviction or sentence, or both.

(2) If the appellant is in custody only under the conviction to which the appeal relates, the appellant is bailable at any time before the hearing of the appeal—

- (a) at the discretion of the Senior Magistrate who presided over the Magistrate's Court whose determination is appealed against; or
- (b) if that Senior Magistrate is not available, at the discretion of some other Senior Magistrate.

(3) Subject to the provisions of section 30 (as applied by subsection (4)), if an appellant is granted bail, the appellant must be released on condition that the appellant attend personally at the Supreme Court on the day on which the appeal is to be heard and on any day to which the hearing may from time to time be adjourned.

(4) If an appellant is granted bail under this section, the provisions of sections 29 to 36, and 41, as far as they are applicable and with any necessary modifications, apply as if the appellant were a defendant remanded in custody who had been granted bail.

(5) If an appellant is granted or refused bail under this section, or any decision is made under section 32(1) (as applied

by subsection (4)) in respect of any appellant, the provisions of sections 39 and 41, as far as they are applicable and with all necessary modifications, apply as if the appellant were a defendant who had been granted or, as the case may be, refused bail.

(6) For the purposes of this section, an appellant is not deemed to be in custody only under the conviction to which the appeal relates if a direction has been given that another sentence or term of imprisonment is to follow the sentence imposed on that conviction and the appellant has not appealed against the conviction in respect of which that other sentence or term was imposed.

44. The time during which an appellant is released on bail pending his or her appeal does not count as part of any term of detention under his or her sentence, whether it is the sentence passed by the Magistrate's Court or the sentence passed or varied by the Supreme Court or the sentence imposed in the circumstances described in section 76 of the Parole Ordinance 2002.

Time on bail pending appeal not to be taken as time served

45. An appellant who has been released from custody on bail pending the hearing of the appeal may surrender himself or herself and apply to a Senior Magistrate for the discharge of bail and the Senior Magistrate may then issue a warrant in the prescribed form for the arrest of the appellant and for his or her committal to a penal institution for the unexpired term of the sentence originally imposed.

Surrender of appellant released on bail

Part IV

Bail when proceedings taken by way of information

Application of this part

Application of this part

46. This Part applies to any proceeding where a defendant is proceeded against by way of information filed in the Supreme Court.

Bail and preliminary inquiry

47.—(1) The following provisions of Part III, with the necessary modifications, apply with respect to proceedings to which Part VII of the Justice Ordinance (which relates to preliminary hearings of information offences) applies, as if the references in those provisions to the hearing were references to the preliminary inquiry or the proceedings under section 59A of the Justice Ordinance, as the case may be, namely—

Application of provisions of Part III

- (a) section 26 (bail on adjournment);
- (b) section 27 (warrant for detention of defendant)

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cap. 3

- remanded on bail);
- (c) section 28 (bringing before the Court of a defendant bailable as of right who requests bail);
 - (d) section 29 (conditions of bail);
 - (e) section 30 (release of defendant granted bail);
 - (f) section 32 (variation of conditions of bail);
 - (g) section 33 (defendant on bail may be arrested without warrant in certain circumstances);
 - (h) section 34 (issue of warrant to arrest defendant absconding or breaching bail condition or who fails to answer bail);
 - (i) section 35 (failure to answer bail);
 - (j) section 36 certification and recording of non-performance of condition of bail
 - (k) section 41 (appeal against entry of non-performance of condition of bail in Criminal Records).

(2) If, by virtue of any of the provisions applied by subsection (1) with respect to proceedings to which this Part applies, a defendant is granted or refused bail, or any Magistrate's Court varies or revokes or substitutes or imposes any condition of bail, or refuses to vary or revoke or impose any condition of bail, the provisions of sections 39 and 40, as far as they are applicable and with all necessary modifications, apply accordingly.

Additional bail provisions if proceedings brought cap.3 under section 59A of Justice Ordinance

48.—(1) If a defendant pleads guilty before or during the preliminary inquiry and proceedings are adjourned under section 59A of the Justice Ordinance, then the Magistrate's Court, in its discretion, may grant bail to the defendant.

(2) If the defendant is granted bail, the provisions of Part III apply.

Bail if evidence adduced at preliminary hearing sufficient for defendant to be committed for trial or for sentence and defendant then pleads guilty

49.—(1) If proceedings are adjourned for sentencing after a guilty plea then, subject to any Supreme Court bail determination that is for the time being in force in respect of the defendant, the Magistrate's Court may, in its discretion, grant bail to the defendant.

(2) If the defendant is granted bail, the provisions of Part III apply.

Bail after committal

Release on bail of defendant committed for trial

50.—(1) If a defendant committed for trial is granted bail, sections 27, 28(3), 29 to 36 and 41, as far as they are applicable and with any necessary modifications apply as if—

- (a) that person were a defendant remanded in custody who had been granted bail; and
- (b) for section 29(1) there were substituted subsection

(2) of this section.

(2) Subject to section 30, if a defendant is granted bail, the defendant must be released on condition that—

- (a) the defendant attend personally and report to the Registrar of the Court specified in the notice of bail, at the place specified, on the date during the sittings of that Court then current for the trial of criminal cases at the place as may be notified by the Registrar in writing to the defendant or to his or her counsel and also to the sureties under any surety bond; or
- (b) the defendant report on the first day of the next sitting of the Court specified in the notice of bail, at the place specified and that the defendant attend personally after the first day of those next sittings on such other day or days (being a day or days that occur during the then current sittings of the Court or during the next or any subsequent such sittings) as may be notified by the Registrar in writing, to the defendant or his or her counsel.

(3) If the defendant has been committed for trial and is granted bail, any variation of the conditions of bail under section 32 (as applied by this section) may be made at any time before the first date on which the defendant is required in accordance with this section to report to the Registrar of the Supreme Court or Magistrate's Court, as the case may be.

51.—(1) Except where otherwise expressly required by any other enactments, if a defendant is committed for sentence, then the committing Court may, in its discretion, grant bail to the defendant.

Release on bail of
defendant committed
for sentence

(2) If the defendant is granted bail, sections 26, 29 to 36, and 41 as far as they are applicable and with any necessary modifications apply as if—

- (a) that person were a defendant remanded in custody who had been granted bail; and
- (b) for all the words in paragraphs (a) and (b) of section 29(1) there were substituted the words “at the Supreme Court at the place and on the date specified in the notice of bail”.

52.—(1) If a defendant committed for trial or sentence is granted bail, the Magistrate's Court must certify on the back of the warrant issued under section 66(1) of the Justice Ordinance its consent to the defendant being bailed and the condition or conditions imposed.

Further provisions
applying to defendant
cap.3 committed for
trial or sentence

(2) No warrant issued under section 66(1) of the Justice Ordinance ceases to have effect by reason only that the

cap.3

defendant is released on bail but the warrant is deemed to be suspended during any period that the defendant is on bail.

(3) If, by virtue of any of the provisions of this section or of Part III (as applied by sections 50 and 51), a defendant who has been committed for trial or for sentence is granted or refused bail or any Magistrate's Court varies, revokes, substitutes or imposes any condition of bail or refuses to vary, revoke, substitute or impose any condition of bail, sections 39 and 40, as far as they are applicable and, with all necessary modifications, apply accordingly.

General provisions relating to bail in information proceedings

Detention while bail bond prepared and signed

53. If a defendant is granted bail by the Supreme Court, a Supreme Court Judge may direct that the defendant be detained in the custody of the Supreme Court—

- (a) for such time, not exceeding two hours, as may be necessary to enable the bail bond to be prepared and signed; and
- (b) if, within that period of two hours, the defendant is not released (whether by reason of having refused to sign the bail bond or for any other reason), for such time as may be necessary to enable the issue of a warrant for the detention of the defendant in custody.

Variation of conditions of bail

54.—(1) Subject to subsection (3), if a defendant is granted bail by the Supreme Court, a Supreme Court Judge may, on the application of the prosecutor or the defendant, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail.

(2) Subject to subsection (3), if the Supreme Court has, in granting bail to a defendant, imposed the condition that the defendant report to the police at such time or times and at such place or places as the Court orders, any Registrar of the Supreme Court or of a Magistrate's Court may, on the application of the defendant, make an order varying the time or times or the place or places at which the defendant is required to report.

(3) No application may be made under subsection (1) or subsection (2) in respect of a bail bond which has been entered into in any case where sureties are required, unless the sureties to the bail bond have consented in writing to the making of the application.

(4) If the Supreme Court varies or revokes any condition of bail or substitutes or imposes any other condition of bail under subsection (1), the following provisions apply—

- (a) if the defendant is present at the Supreme Court, the Registrar must—
 - (i) as soon as is reasonably practicable prepare a new bail bond setting out the conditions of bail as amended (if any); and
 - (ii) satisfy himself or herself that the defendant granted bail understands the conditions of bail; and
 - (iii) require the defendant to sign the bail bond;
- (b) if the defendant is not present at the Supreme Court, the Registrar of the Court which varied or revoked or substituted or imposed the condition must send written notice to the defendant and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions as amended (if any).

(5) If, in any case to which subsection (4) applies, the defendant fails without reasonable excuse to attend at the time and place required or fails to enter into a fresh bail bond, the Registrar must refer the matter to a Judge who may issue a warrant for the arrest of the defendant.

55.—(1) If, in respect of a defendant who has been released on bail by the Court of Appeal or the Supreme Court or a Magistrate’s Court, any member of the police believes on reasonable grounds that

- (a) the defendant has absconded or is about to abscond for the purpose of evading justice; or
- (b) the defendant has contravened or failed to comply with any condition of bail;

the member of the police may arrest the defendant without warrant.

(2) A defendant who is arrested under subsection (1) must be brought before a Supreme Court Judge or a Senior Magistrate as soon as possible.

(3) In any such case, the Judge or Magistrate, on being satisfied that the defendant had absconded or was about to abscond or had contravened or failed to comply with any condition of bail, must reconsider the question of bail.

(4) A defendant arrested under this section is, after that, bailable only at the discretion of the Judge or Magistrate.

(5) This section does not apply if section 56 applies.

(6) Nothing in this section prevents a member of the police from seeking a warrant to arrest a defendant under section 57.

56.—(1) If a defendant has been released on bail under

Defendant on bail may be arrested without warrant in certain circumstances

Arrest of defendant charged with drug dealing offence

section 14, any member of the police may arrest the defendant without warrant if

- (a) the member of the police believes on reasonable grounds that the defendant has absconded or is about to abscond for the purpose of evading justice; or
- (b) the police have been notified in writing by any surety for the defendant that the surety believes that the defendant has absconded or is about to abscond for the purpose of evading justice and the member of the police is satisfied that there are reasonable grounds for that belief; or
- (c) the member of the police believes, on reasonable grounds, that the defendant has broken, is breaking or is about to break any condition of bail (whether imposed under section 29 or otherwise); or
- (d) the police have been notified in writing by any surety for the defendant that the surety believes that the defendant has broken, is breaking or is about to break any such condition of bail and the member of the police is satisfied that there are reasonable grounds for that belief.

(2) A defendant who has been arrested under subsection (1) must be brought before a Supreme Court Judge as soon as possible.

(3) If a defendant is brought before a Supreme Court Judge under subsection (2), the Judge must, if satisfied on the balance of probabilities that the defendant has absconded or was about to abscond, remand the defendant in custody.

(4) If a defendant is brought before a Supreme Court Judge under subsection (2), the Judge may—

- (a) if satisfied on the balance of probabilities that the defendant has broken, was breaking or was about to break any condition of bail, remand the defendant in custody; or
- (b) release the defendant.

(5) If a defendant is released under subsection (4)(b), the defendant's bail bond continues in force in all respects as if the defendant had not been arrested under subsection (1).

(6) Notwithstanding subsections (4)(b) and (5), if a defendant was arrested under subsection (1)(d), the Judge may release the defendant under subsection (4)(b) only if—

- (a) the surety consents in writing to the release; or
- (b) a fresh bail bond is issued.

(7) Nothing in this section prevents a member of the police from seeking a warrant to arrest a defendant under section 57.

57.—(1) The Supreme Court or a Magistrate's Court or

a Registrar of the Supreme Court or a Magistrate's Court may issue a warrant in the prescribed form for the arrest of a defendant if the Supreme Court or Magistrate's Court or Registrar is satisfied by evidence on oath that—

- (a) the defendant has absconded or is about to abscond for the purpose of evading justice; or
- (b) the defendant has contravened or failed to comply with any condition of bail.

(2) A warrant to arrest a defendant under this section must be directed to a member of the police by name or generally to every member of the police. The warrant may be executed by any member of the police.

(3) For the purposes of executing a warrant issued under this section, the member of the police executing it may at any time enter on to any premises, by force if necessary, if the member of the police has reasonable grounds to believe that the defendant against whom it is issued is on those premises.

(4) The member of the police executing the warrant—

- (a) must have the warrant with him or her; and
- (b) must produce it on initial entry and, if requested, at any subsequent time; and
- (c) if he or she is not in uniform and is not known to the defendant, produce evidence that he or she is a member of the police.

(5) If a defendant is arrested under a warrant issued under this section—

- (a) subsections (2) to (4) of section 55 apply as if the defendant had been arrested under section 55(1); or
- (b) in the case of a person who is charged with or convicted of a drug dealing offence and who has been released on bail in relation to that offence, subsections (2) to (6) of section 56 apply as if the defendant had been arrested under section 56(1).

58.—(1) If a defendant against whom an information has been filed or who has been committed for sentence does not attend to plead to the information or, as the case may require, to be sentenced, the Court before which the defendant would have been tried or by which the defendant would have been sentenced may issue a warrant for the defendant's arrest, whether or not the defendant is under bond to attend.

Bench warrant

(2) If the Court which issued the warrant is not sitting for the trial of criminal cases when the defendant is arrested, the defendant must be brought before a Magistrate who may remand the defendant in custody to attend before the Court at its next sittings or may grant the defendant bail.

(3) If the defendant has failed without reasonable excuse

to attend according to his or her bond, the defendant is not bailable as of right.

(4) If a defendant who has been committed for sentence is arrested pursuant to a warrant issued under subsection (1), the defendant must be brought before a Supreme Court Judge at the most convenient place.

Failure to answer bail

59. A defendant commits an offence and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$2,000 who having been released on bail by the Court of Appeal or the Supreme Court or a Magistrate's Court —

- (a) fails without reasonable excuse to attend personally at the time and Court specified in the bail bond or, as the case may require, the notice of bail; or
- (b) fails without reasonable excuse to attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned.

Non-performance of condition of bail may be certified and recorded

60.—(1) If a defendant who has been released on bail at any time fails to comply with any condition of bail, a Supreme Court Judge or a Magistrate may certify on the back of the bail bond or, as the case may require, the notice of bail the non-performance of that condition.

(2) A certificate given by a Supreme Court Judge or a Magistrate under subsection (1) is, in the absence of proof to the contrary, sufficient evidence for the purposes of section 59 that the defendant has failed to comply with the condition of the bail bond or notice of bail specified in the certificate.

(3) In addition to the certification described in subsection (1), if a defendant who has been released on bail at any time fails without reasonable excuse, to comply with any condition of bail, a Supreme Court Judge or a Magistrate must direct the Registrar of the Court to enter the nature of the condition and the non-performance of the condition in the Criminal Records or any other Register that the Registrar chooses to keep for the purpose.

(4) Notwithstanding subsection (3), the Judge may decide not to direct that the failure to comply be entered into the Criminal Records or other Register referred to in that subsection if in the Judge's opinion the failure to comply is of such a minor nature that it does not warrant being taken into account when considering an application for bail from the defendant on a subsequent occasion.

(5) Access to any entry of a non-performance of a bail condition in the Criminal Records or other Register referred to in subsection (3) and the evidential status of the entry is

governed by the provisions of section 36(5) of this ordinance.

(6) A failure to comply with any condition of bail that is entered into the Criminal Records or other Register referred to in subsection (3) may be considered in any subsequent application for bail made by that person.

61. If an order is made for the trial of a defendant at a substituted Court under section 15B of the Judicature (Courts) Ordinance, the Judge of the Court of committal may grant the defendant bail or commit the defendant to custody pending the defendant's trial.

Powers of Court of committal as to custody or bail of defendant when order made for trial at substituted Court

Bail pending sentencing

cap.2

62. If the Court finds the defendant guilty or if the defendant pleads guilty and if no motion in arrest of judgment is made or if the Supreme Court finds against the defendant on any such motion and if the defendant is not sentenced or dealt with in any other way authorised by law, then, unless otherwise required by any enactment, the Court may, in its discretion—

Bail pending sentencing

- (a) remand the defendant in custody; or
- (b) discharge the defendant from custody on the defendant's entering into a bail bond, with or without sureties as it thinks fit, to appear for sentence at some future sitting of the Court or when called upon.

[Bail on deferment of sentence

62A.—(1) This section applies if the start date of a sentence imposed on an offender is deferred under section 76R or section 95 of the Sentencing Ordinance.

Bail on deferment of sentence

(2) If this section applies, the court that defers the start date of the offender's sentence must grant the offender bail.

(3) An offender who is granted bail under this section must be released on condition that the offender must —

- (a) if the sentence is deferred under section 76R of the Sentencing Ordinance, —
 - (i) go to and remain at the home detention residence at the expiry of the period of deferral specified by the court, unless absent in accordance with 76C(3) (a) or (b) of that Ordinance; and
 - (ii) advise a Supervision Officer as soon as possible of any change in circumstances affecting the availability or suitability of the home detention residence; or
- (b) if the sentence is deferred under section 95 of the

Sentencing Ordinance, surrender himself or herself to the Superintendent of Prisons at the expiry of the period of deferral specified by the court.

(4) The provisions of sections 54, 55, 57, 59 and 60 of this Ordinance, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant who had been granted bail.]

(Inserted by Ordinance No. 1 of 2016)

Appeals on question of bail

Appeal from decision of Supreme Court relating to bail

63.—(1) Subject to subsection (4), this section applies to any decision made (whether under any enactment or rule of law or otherwise) by a Supreme Court Judge to—

- (a) grant or refuse bail to a defendant; or
- (b) impose or substitute or revoke or vary any condition of bail; or
- (c) refuse to impose any condition of bail or any particular condition of bail; or
- (d) refuse to vary or revoke any condition of bail.

(2) Either the prosecutor or the defendant may appeal to the Court of Appeal against any decision to which this section applies.

(3) For the purposes of an appeal under this section, the failure of a Supreme Court Judge to impose any condition of bail or any particular condition of bail, on any occasion on which the condition could lawfully have been imposed, is deemed to be a refusal to impose the condition.

(4) Nothing in this section applies in respect of any decision made by a Supreme Court Judge if that decision was made on appeal from any decision of a Magistrate's Court.

Procedural provisions relating to appeal under s. 63

64.—(1) A defendant wishing to appeal under section 63 must file notice of the defendant's intention to appeal with the Registrar of the Court of Appeal within ten days after the date of the decision to be appealed against.

(2) An appeal under section 63 which is not heard before the date on which the decision appealed against ceases to have any effect lapses on that date and is deemed to have been dismissed by the Court of Appeal for want of prosecution.

(3) No decision of a Supreme Court Judge appealed against under section 63 is suspended merely because notice of that appeal has been given.

(4) On an appeal under section 63, the Court of Appeal may confirm the decision appealed against 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.

65.—(1) If a Supreme Court Judge or a Magistrate directs that the non-performance of a bail condition be entered into the Criminal Records or other Register referred to in section 60(3), the defendant may, within 28 days of the direction being made, appeal against the direction to the Supreme Court or the Court of Appeal, as the case may require.

Appeal against entry of non-performance of condition of bail into Criminal Records or other Register

(2) After considering an appeal under subsection (1), the Supreme Court or Court of Appeal may order that—

- (a) the direction stand; or
- (b) the direction be amended; or
- (c) the direction be revoked.

(3) There is no further right of appeal against a direction to enter the non-performance of a condition of bail into the Criminal Records or other Register referred to in section 60(3) than that given by this section.

(4) No direction appealed against under this section is suspended merely because notice of that appeal has been given.

66.—(1) If, on an appeal under section 63 against a refusal to grant bail to a defendant, the Court of Appeal determines that bail should be granted, the Court of Appeal must order that the defendant be released on bail subject to such conditions as the Court of Appeal thinks fit.

Execution of decision of Court of Appeal on appeal relating to bail

(2) If, on an appeal under section 63 in respect of any condition of bail, the Court of Appeal cancels or amends a condition of bail or substitutes or imposes any other condition, the Registrar of the Court whose decision was appealed against must send written notice to the defendant and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions (if any) required to give effect to the Court of

Appeal's decision.

(3) If, in any case to which subsection (2) applies, the defendant fails without reasonable excuse to attend at the time and place required or fails to enter into a fresh bail bond, the Registrar must refer the matter to a Supreme Court Judge who may issue a warrant for the arrest of the defendant.

(4) If, on an appeal under section 63 against a grant of bail, the Court of Appeal determines that bail not be granted or, as the case may be, not be continued, a warrant for the detention in custody of the defendant must be issued out of the Court of Appeal and signed by a Judge of the Court.

(5) The person who executes the warrant under subsection (4) for the detention in custody of the defendant must ensure that a copy of the notice of the result of the appeal is given to the defendant when the warrant is executed or as soon as practicable after the warrant is executed.

(6) A defendant to whom subsection (4) applies and who is not in custody may be arrested without warrant by any member of the police or any officer of a penal institution.

Bail pending appeal against conviction or sentence

67.—(1) This section applies if a person is in custody under a conviction and is appealing against the conviction or sentence, or both, to the Court of Appeal.

Granting of bail to appellant and custody pending appeal

(2) The Court of Appeal or the Judge who presided at the trial in the Court below may, if it or the Judge thinks fit, on the application of an appellant and on such terms and subject to such conditions as the Court or Judge thinks fit, grant bail to the appellant pending the determination of the appeal, if the appellant is in custody only under the conviction to which the appeal relates.

(3) The time during which an appellant is released on bail pending the determination of the appeal does not count as part of any term of detention under the appellant's sentence, whether it is the sentence passed by the Court from which the appeal is brought or the sentence passed or varied by the Court of Appeal or the sentence imposed in the circumstances described in section 76 of the Parole Ordinance 2002.

(4) If a case is stated under Part III of the Judicature (Appeals in Criminal Cases) Ordinance, this section applies to any person in relation to whose conviction the case is stated as it applies to an appellant.

cap. 4

(5) For the purposes of this section, an appellant is not deemed to be in custody only under the conviction to which the appeal relates if a direction has been given under section 72 of the Parole Ordinance 2002 that another sentence or

term of imprisonment is to follow the sentence imposed on that conviction and the appellant has not appealed against the conviction in respect of which that other sentence or term was imposed.

Intermediate effects
of appeal

68.—(1) In every case where the Court of Appeal directs a new trial, that Court must issue a warrant for the detention of the defendant pending the trial.

(2) The Court may in its discretion, either at the same time or at any subsequent time, grant bail to the defendant on such terms and subject to such conditions as it thinks fit.

(3) If no application for bail has been made to the Court of Appeal, the defendant may at any time apply to a Supreme Court Judge or a Senior Magistrate (as the case may require) who may in his or her discretion grant bail on such terms and subject to such conditions as he or she thinks fit.

(4) While a defendant is released on bail under subsection (2), the warrant for his or her detention is suspended.

PART V MISCELLANEOUS PROVISIONS

Rules

69.—(1) The Governor may make rules regulating the practice and procedure of any Court in proceedings under this ordinance.

(2) Until rules are made under this section, or if they are made so far as they do not extend, the existing practice and procedure in England in relation to bail is not affected as far as it is not altered by or inconsistent with the provisions of this ordinance.

S. 24 of cap.3
cap.3 to be read and
construed with this
ordinance

70. The provisions of section 24 of the Justice Ordinance shall be read and construed together with and in accordance with this ordinance.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2002

CHAPTER XXXVIII

JUDICATURE AMENDMENT ORDINANCE

An ordinance to give effect in Pitcairn law to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand signed at Wellington on 11 October 2002 concerning the holding of Pitcairn trials in New Zealand and other related matters

Ordinances
No. 1 of 2003
No. 3 of 2005

[14 March 2003]

1. This ordinance may be cited as the Judicature Amendment Ordinance.

Citation and
commencement

2.—(1) In this ordinance, unless the context otherwise requires, the words, terms and expressions

Interpretation

Agreement, community-based sentence, country, enforcement order, Governor, hospital order, Minister, Pitcairn accused or accused, Pitcairn Court, Pitcairn defence counsel, Pitcairn Magistrate, Pitcairn offender or offender, Pitcairn Prosecutor, Pitcairn sentence, Pitcairn trial, Pitcairn witness, premises in relation to a Pitcairn Court, **Registrar** in relation to a Pitcairn Court, **sentence of imprisonment and specified investigations trial**

shall each have the same meaning as it has been given in section 4(1) of the Act.

(2) In this ordinance unless the context otherwise requires, **the Act** means the Pitcairn Trials Act 2002 of the Parliament of New Zealand;

the Order means the Pitcairn Order 1970 as from time to time amended.

(3) In this ordinance, unless the context otherwise requires, **trial** has the meaning assigned to it by section 5 of the Act.

3.—(1) This ordinance gives effect in Pitcairn law to the provisions of the Agreement

Purposes and intent of
ordinance

(a) for the sitting of Pitcairn Courts in New Zealand (in accordance with section 5(2A) of the Order) for the purpose of a Pitcairn trial or any part thereof; and

- (b) for the serving or enforcement in New Zealand of sentences imposed by the Pitcairn Court in any such trial.

(2) The purpose of this ordinance is to give the force of law in Pitcairn law to the Agreement and to implement in Pitcairn law the obligations of Pitcairn under the Agreement.

Power to remand persons to Pitcairn Court in New Zealand

4.—(1) In any case to which this section applies, a Pitcairn Court (the remanding Court) may upon the application of the prosecutor or the defendant, or of its own motion, remand any person to appear, by means of travel specified in such order, before a Pitcairn Court sitting in New Zealand for the purposes of a trial there.

(2) This section applies in the following circumstances, namely, that at the time of the making of an order under subsection (1)—

- (a) the remanding Court is sitting at a place within the Islands and
- (b) New Zealand has been appointed by the Governor, acting on the advice of the Chief Justice under section 5(2A) of the Order, as a place outside the Islands where the Court may sit for the purposes of the particular trial.

(3) Every order or warrant of remand under this section shall be in the form prescribed in the schedule to this ordinance.

(4) In the case of the entry to or the removal from New Zealand of a person so remanded by a Pitcairn Court, the Registrar of that Court shall forthwith send a sealed copy of the remand warrant to the Minister.

Bail may be granted for remand

5.—(1) When making an order of remand under section 4, the Court may in its discretion grant bail to the person remanded upon such terms and conditions as it shall think fit, as may be expedient to ensure that the person appears before the Pitcairn Court in accordance with the terms of the order of remand.

(2) A person duly entering into a bail bond in accordance with this section shall be indemnified by the Crown for his or her costs of travel, living expenses and accommodation arising directly from compliance with the order of remand, as settled and approved by the Registrar.

(3) The person remanded shall travel directly to New Zealand in a single journey, which must be approved by the Registrar in advance, and shall notify the Registrar of his or her arrival and appearance before the Pitcairn Court in the host country.

(4) The Registrar shall consider any further claims for

indemnity by the person so remanded and may approve or decline them or if necessary refer them to the Chief Justice for determination.

[5A.—(1) Any person to whom this section applies shall be indemnified by the Crown in like manner as is prescribed by subsections (2) and (4) of section 5.

Further provisions for indemnity

(2) This section applies to any Pitcairn accused or Pitcairn offender who has travelled to New Zealand from another country (other than the Islands) in accordance with or as a result of extradition proceedings taken against him or her in such other country and on or after his or her arrival has been granted bail within New Zealand by a Pitcairn court sitting in New Zealand, whether before or after his or her appearance before such court for the purposes of a trial there.]

(Inserted by Ordinance No. 3 of 2005)

6.—(1) Unless granted bail under section 5, a person remanded to appear before a Pitcairn Court in New Zealand under section 4 shall be detained forthwith under a warrant of arrest and conveyed in custody to New Zealand for surrender to the competent authority in accordance with the procedure in Article 17 or 23 of the Agreement, as the case may be.

Remand in custody

(2) It shall be a condition of every order of remand in custody to a Pitcairn Court in New Zealand that the transfer shall take place and be effected as soon as reasonably possible, and shall be undertaken in a single unbroken voyage by sea direct to New Zealand. Any variation of the means of travel must have the specific approval of the remanding Court.

(3) The person remanded in custody shall be accompanied by one or more prison officers or police officers of the same gender as the person remanded, who shall keep him or her secure and under surveillance at all times, without exercising an unnecessary level of restraint, and having due respect at all times for his or her comfort, dignity and safety, as far as is practicable.

(4) Without prejudice to the generality of the foregoing, the person remanded in custody shall be strictly entitled, during the remand process, to the following rights—

- to communicate in privacy with his or her family on every third day, if necessary facilities are available
- to communicate in privacy with his or her legal adviser on every third day, if necessary facilities are available
- to obtain and receive any necessary medication duly prescribed for his or her welfare
- to be provided with adequate meals and sleeping

facilities

- to be afforded such facilities as are reasonably required for his or her personal hygiene and welfare
- not to be questioned at any time about any matter touching upon a pending trial in the Pitcairn Court
- to be treated, so far as the circumstances permit, with courtesy and respect at all times.

(5) Section 27 of the Justice Ordinance does not apply with respect to a remand in custody under the provisions of this section.

cap.3

(6) A sealed copy of the warrant of remand referred to in section 4(3) in the possession of the officer or officers accompanying the person remanded shall be at all times sufficient authority and justification for detaining and conveying the said person to New Zealand in accordance with subsection (1).

On the making of a remand in custody, the Governor to make request to Minister

7.—(1) Upon the making of an order by a Pitcairn Court for the remand of a Pitcairn accused or witness in custody to appear before a Pitcairn Court sitting in New Zealand, the Governor shall make a request to the Minister that the Pitcairn accused or witness may enter New Zealand from another country and be transported through New Zealand territory to a Pitcairn Court's premises in New Zealand for trial in a Pitcairn trial which is to take place in New Zealand.

(2) In making a request under subsection (1), the Governor shall satisfy the Minister that the request relates to a Pitcairn trial which is to take place in New Zealand and that the accused or witness, as the case may be, sought to be transferred is an accused or witness in that trial. The Minister may grant the request subject to any conditions he or she may think fit.

Remand on bail

8.—(1) For the purposes of sections 39 to 45 of the Act, the Bail Ordinance 2002, subject only to section 24 of the Justice Ordinance (which prescribes the general procedure for bail in the Magistrate's Court), applies to all proceedings in Pitcairn Courts in New Zealand.

cap. 37

cap. 3

(2) Notwithstanding subsection (1), in deciding whether to release an accused on bail in New Zealand the Pitcairn Court shall, in addition to any relevant factors under Pitcairn law, also have regard to the considerations that a New Zealand Court would take into account in a case of a similar nature, including whether there is a risk that the accused may interfere with witnesses or other evidence in New Zealand and whether there is a risk that the accused may offend against New Zealand law while on bail. The Pitcairn Court shall not impose any bail conditions on a person released on bail in New Zealand

which could not have been imposed under New Zealand law.

9.—(1) At any time in the course of a Pitcairn trial, the persons to whom this section applies may be detained under Pitcairn law and practice at the premises of the Pitcairn Court, for the purpose of allowing the trial to be conducted there on that date.

Detention in premises
of Pitcairn court

(2) This section applies to any Pitcairn accused, Pitcairn offender or person subject to a hospital order, who is present in those premises in relation to a trial.

(3) This section also applies to those persons in respect of whom the Pitcairn Court makes an order for detention in the Pitcairn Court's premises, namely—

- (a) a witness giving evidence;
- (b) a person who may have committed contempt of court or an offence against Pitcairn law, within the Pitcairn Court's premises;
- (c) a person found guilty summarily of a contempt of court.

10. Notwithstanding any other provision of Pitcairn law, a Pitcairn accused or a Pitcairn offender who is yet to be sentenced, or otherwise dealt with, may be ordered by a Pitcairn Court sitting in New Zealand to be remanded in custody in prison for any period not exceeding 28 days or for any two or more such periods successively.

Remand in custody
in prison

11. A Pitcairn Court sitting in New Zealand may order that a Pitcairn accused or Pitcairn offender be remanded in custody in a hospital or other secure medical facility for psychiatric examination which may help the Court in determining—

Remand for
psychiatric
examination

- (a) whether the accused is fit to plead or is insane;
- (b) the type and length of any sentence which might be imposed upon the offender or any condition or order which it might impose in conjunction with that sentence

and such order shall remain valid for a period of 14 days from the making thereof or for any two or more such periods successively.

12. A Pitcairn Court sitting in New Zealand may order that a Pitcairn accused be remanded in custody in a hospital or other similar institution during the course of a trial for a period not exceeding 28 days after the making of the order or for two or more such periods successively.

Remand in custody in
hospital etc.

13.—(1) In this section—

Pitcairn law means the Mental Health Act 1983 of the United Kingdom (as in force in Pitcairn);

the corresponding provisions means those provisions

Procedure when
accused ceases to be
unfit to plead

of Pitcairn law which, upon an accused ordered to be detained subject to a restricted hospital order ceasing to be unfit to plead, empower the Secretary of State to remit him or her to Court for trial or result in the discharge of the order by the responsible medical officer with the agreement of the Secretary of State, or by the order of the mental health review tribunal.

(2) Upon the Attorney-General of New Zealand making a direction under section 116 of the Criminal Justice Act 1985 of New Zealand that a Pitcairn accused who is subject to a hospital order made by a Pitcairn Court on the grounds that he or she was unfit to plead, either be brought before the appropriate court or be held thereafter as a patient, shall be recognised and implemented by the Pitcairn Court in all respects as though it had been made under the corresponding provisions of Pitcairn law.

Pitcairn witnesses.

14.—(1) If it is desired that a Pitcairn witness who is in another country (but not imprisoned there) should come to New Zealand for the purpose of giving evidence in a trial before the Pitcairn Court, a request shall be made by the Governor to the Attorney-General of New Zealand to permit the entrance to New Zealand of the Pitcairn witness.

(2) If it is desired that a Pitcairn witness in another country, who is imprisoned there (a foreign prisoner), should come to New Zealand for the purpose of giving evidence in a trial before the Pitcairn Court, be transported through New Zealand territory to the Pitcairn Court's premises and to be held in a New Zealand prison while in New Zealand, the Governor shall make a request to the Attorney-General of New Zealand to authorise the entry, transport and holding of the foreign prisoner as aforesaid.

(3) If it is desired that a Pitcairn witness who is in New Zealand, whether at large or in prison for a Pitcairn offence or a New Zealand offence, attend before a Pitcairn Court sitting in New Zealand and give evidence in a Pitcairn trial, the request made by the Governor shall be dealt with under Part III of the Mutual Assistance in Criminal Matters Act 1992 of the New Zealand Parliament and sections 31 to 38 and 40 to 42 of the said Act shall apply with all necessary modifications as if the request related to the giving of evidence in a Court which is a Court of a foreign country and which is not sitting in New Zealand.

(4) If so requested by the Attorney-General of New Zealand, the Governor shall provide an undertaking that, while a New Zealand prisoner is present in the Pitcairn Court's premises,

he or she will not be released from custody without the prior consent in writing of the Attorney-General of New Zealand, and an undertaking as to any other matters which the Attorney-General thinks appropriate.

(5) If assistance from New Zealand is desired in relation to a Pitcairn trial of a kind other than that referred to in subsection (4), a request must be made by the Governor to the Attorney-General of New Zealand, which shall be dealt with under the said Mutual Assistance in Criminal Matters Act 1992, as applied with necessary modifications.

15.—(1) The Governor may in writing request the Minister to agree to enforce a Pitcairn sentence or hospital order in New Zealand and for that purpose to make an enforcement order.

Enforcement of
Pitcairn sentences

(2) The request of the Governor under subsection (1) shall include the particulars prescribed by Article 18(3) of the Agreement and shall include any further information which he or she considers relevant within the meaning of Article 18(4) of the Agreement.

(3) The Minister may seek from the Governor any relevant information of the kind described in the said article 18(4) and the Governor shall supply the same.

(4) The Governor shall consent to any conditions of enforcement proposed by the Minister.

16.—(1) When a Pitcairn offender is sentenced by a Pitcairn Court, the offender shall be detained in custody for the period determined under subsection (3) or (4) as if he or she were remanded in custody between conviction and sentence.

Interim status of
offenders pending
decisions on
enforcement

(2) Notwithstanding subsection (1), the Minister may order the release of an offender sentenced only to a community-based sentence, subject to any conditions he or she may think fit.

(3) An offender ceases to be liable to be detained under this section on the date

- (a) on which the chief executive of the Department of Corrections of New Zealand receives notice from the Minister that an enforcement order will not be made;
- (b) which is 28 days after the sentence was imposed, unless the said chief executive has been advised that a request for enforcement has been made, in which case paragraph (c) applies;
- (c) which is three months after the sentence was imposed, unless, before that date—
 - (i) an enforcement order is made; or

- (ii) the Minister by order extends the said period by three months, for the reason that the offender has commenced an appeal against conviction or sentence and he or she considers that the decision should be delayed pending the outcome of the appeal.

Interim status of person subject to hospital order pending decision on enforcement

17.—(1) When a Pitcairn Court makes a hospital order in relation to a person, the person must be detained in a hospital as if he or she were a special patient as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 of the Parliament of New Zealand.

(2) A person subject to a hospital order may not be detained under this section after the date

- (a) on which the Director of Mental Health receives notice that an enforcement order will not be made;
- (b) which is 28 days after the order was made, unless the Director is advised that a request for enforcement has been made, in which case paragraph (c) applies;
- (c) which is three months after the order was made, unless
 - (i) an enforcement order is made; or
 - (ii) the Minister by order extends the said period by three months for the reason that the person has commenced an appeal to the Pitcairn Court against the hospital order and he or she considers that the decision as to an enforcement order should be delayed pending the outcome of the appeal.

Amendment or cancellation of enforcement orders

18.—(1) In the circumstances described in subsection (2), the Minister must amend, or if appropriate cancel, the relevant enforcement order in a manner which gives effect to the actions of the Pitcairn Court.

(2) The circumstances referred to in subsection (1) are

- (a) that a Pitcairn Court has quashed or otherwise nullified the Pitcairn conviction to which the sentence referred to in the enforcement order relates;
- (b) that a Pitcairn Court has amended the sentence to which the enforcement order relates;
- (c) that a Pitcairn Court has amended or cancelled the hospital order to which the enforcement order relates.

(3) The references in subsection (2) to a Pitcairn Court include a court sitting outside New Zealand to which the conviction, sentence or order of a Pitcairn Court has been appealed.

(4) If a Pitcairn sentence the subject of an enforcement order

has been affected by the exercise of the prerogative of mercy under Pitcairn law, the Minister must give effect thereto by amending or cancelling the enforcement order accordingly.

Regulations

(5) The Minister may cancel an enforcement order on the request of the Governor—

on the grounds that the Pitcairn sentence or hospital order is to be enforced elsewhere than in New Zealand;
if the Minister is satisfied that, in all the circumstances, the order ought to be cancelled.

19. The Governor may make regulations for all or any of the following purposes—

prescribing the form of notices and other documents for the implementation of this ordinance;
providing for any other matters contemplated by this ordinance, necessary for its administration, or necessary for giving it full effect.

(Section 4(3))

SCHEDULE**WARRANT FOR REMAND IN CUSTODY**

To all police officers on Pitcairn Island

Whereas (a) _____ of (b) _____
has been charged upon the complaint of the Pitcairn Public Prosecutor with
the offence(s) set out in the charge sheet(s) annexed hereto

And whereas this Court being satisfied that it is necessary or expedient
that (a) _____ of (b) _____
should appear before the Magistrate's/Supreme Court of Pitcairn sitting
at (c) _____ Auckland, New Zealand,
for the purposes of the trial of the charge(s) against the abovenamed
(a) _____

You the said police officers are therefore commanded to take the said
(a) _____ to the Pitcairn Island Prison and
there safely deliver him/her together with this warrant to the warder in
charge of the said prison who is hereby directed to receive the said (a) and
thence to release him/her to the appointed police or prison escort, together
with this warrant, to be conveyed in custody aboard the first available ship
bound directly for New Zealand in good accommodation and with full
enjoyment of his/her rights under the law

And further the said (a) _____ is upon arrival
in New Zealand to be forthwith surrendered in custody to the Pitcairn
Magistrate's Court/Supreme Court at (c) _____
either directly or by means of transfer by the New Zealand Police.

Dated at Adamstown, Pitcairn Island, this _____ day of _____ 200

(seal) _____ Magistrate/Judge

- (a) Insert full name of defendant/witness
- (b) Insert address of defendant/witness
- (c) Insert address of New Zealand Courthouse

**Order under section 5(2A) of the Pitcairn Order 1970
(28 March 2003) is now spent and superceded by
provisions of the Constitution of Pitcairn, the Judicature
(Courts) Ordinance (cap 2) and the Notice under s43(4)
of the Constitution of Pitcairn (p lxvi)**

**Order designating premises in New Zealand for use by
Pitcairn Courts (1 May 2003) is now spent.**

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2010

CHAPTER XXXIX

**PITCAIRN COURT OF APPEAL (REGISTRY)
ORDINANCE**

(Repealed by Ordinance No. 2 of 2016)

**PITCAIRN COURT OF APPEAL (CRIMINAL)
RULES 2014**

Made by the Honourable Sir Bruce Robertson, President,
pursuant to Section 51 of the Constitution of Pitcairn.

Arrangement of rules

Rule

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3. Interpretation
4. Application or Rules
5. Forms

PART II—PROCEDURE

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7. Other applications may be included in notice of appeal or of application for leave to appeal
8. Persons required or authorised to sign notices and other documents
9. Notice of application for leave to appeal is sufficient notice of appeal
10. Mode of bringing appeal and effecting service
11. Application for extension of time
12. Form must be treated as application for extension of time if notice given out of time

Preparation for hearing

13. Documents required for general appeals
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15. Documents required for extension of time
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17. Court may request Trial Court to provide report
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20. Authorities bundles

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22. Submissions on mode of hearing
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24. Decision on mode of hearing

25. Further mode of hearing submissions

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26. Registrar to give parties notice of fixture for oral appeals

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31. Panel for hearing on papers

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33. Mode of delivery of decisions

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40. Register must be kept

41. Mode of giving notice to Court

42. Mode of giving notice to parties

43. Court order may enforce rules

44. Effect of non-compliance with rules

45. Cases not provided for in rules

Rules 7 Feb 2014

**PART I
PRELIMINARY PROVISIONS**

- Title **1.** These rules are the Pitcairn Court of Appeal (Criminal) Rules 2014.
- Commencement **2.** These rules come into force on 7 February 2014.
- Interpretation **3.** In these rules, unless the context otherwise requires—
appeal on the papers means an appeal to be disposed of by way of a hearing on the papers as described in section 35B of the Ordinance
appellant includes an applicant for leave to appeal
bail appeal means an appeal under section 63 or section 65 of the Bail Ordinance 2002 which relates to a decision on bail made by a Supreme Court Judge
Court means the Pitcairn Court of Appeal
exhibit
(a) includes all books, papers, video and audio tapes, documents and all other property, matters and things connected with the proceedings against any appellant which
 (i) were received in the Trial Court when the appellant was committed for trial or for sentence; or
 (ii) have been produced or used in evidence in the proceedings;
and
(b) includes any written statement given to the Judge by the appellant;
but
(c) does not include original statements or depositions not used at trial or an information or plea filed in the Trial Court
general appeal means
(a) an appeal under section 36(1) of the Ordinance against conviction or sentence or both; or
(b) an appeal under the Contempt of Court Act 1981 of the Parliament of the United Kingdom against a finding of criminal contempt or a sentence for criminal contempt or both
oral appeal means
(a) an appeal to be disposed of under section 35A of the Ordinance by way of a hearing involving oral submissions; or
(b) a bail appeal; or

(c) a summary proceedings appeal

Ordinance means the Judicature (Appeals in Criminal Cases) Ordinance (cap. 4)

prosecutor means the Public Prosecutor or a prosecutor acting on his or her behalf

prosecutor appeal means an appeal or an application for leave to appeal by or behalf of the Public Prosecutor under any enactment

Registrar means the registrar of the Pitcairn Court of Appeal

summary proceedings appeal means an appeal under section 21 of the Ordinance

Trial Court means a Magistrate's Court or the Supreme Court, as the case may require

Trial Judge includes a sentencing Judge

4.—(1) These rules apply to

- (a) applications for leave to appeal; and
- (b) prosecutor appeals; and
- (c) general appeals; and
- (d) bail appeals; and
- (e) summary proceedings appeals.

Application of Rules

(2) These rules also apply to steps which are incidental to appeals referred to in subclause (1) (including applications made to the Court for leave to appeal in relation to those appeals).

(3) On its own initiative, or on the application of a party, the Court or a Judge of the Court may direct, authorise or accept a departure from these rules or shorten or extend any appointed period for reasons of urgency or for any other reason.

5. The forms set out in the schedule, or forms to the same effect, must be used in all appropriate cases.

Forms

PART II—PROCEDURE

Institution of appeal

6.—(1) An application for leave to appeal (other than by a prosecutor) under Part IIA or Part III of the Ordinance must be made by notice of application for leave to appeal in form 1.

(2) A prosecutor appeal must be made by notice of appeal or notice of application for leave to appeal (as the case requires) in form 2.

(3) A general appeal must be made by notice of appeal in form 3.

Form of notice of appeal and notice of application for leave to appeal

(4) A bail appeal (other than by a prosecutor) must be made by notice of appeal in form 4.

(5) A summary proceedings appeal (other than by a prosecutor) must be made by notice of appeal in form 5.

Other applications may be included in notice of appeal or of application for leave to appeal

7. A notice of appeal or notice of application for leave to appeal given in any of forms 1 to 5 may include either or both of the following

- (a) an application for leave to call a witness;
- (b) an application for leave to be present.

Persons required or authorised to sign notices and other documents

8.—(1) The appellant must sign a notice of appeal or a notice of application for leave to appeal unless

- (a) the notice is required to be marked and signed in accordance with subclause (2); or
- (b) another person signs the notice under any of subclauses (3) to (5).

(2) An appellant who is unable to write must affix his or her mark on the notice in the presence of a witness who must also sign the notice.

(3) A notice required to be signed by an appellant who contends that the appellant was not responsible for his or her actions on the ground that he or she was insane at the relevant time may be signed by the appellant's solicitor or counsel or by any other person authorised to act on the appellant's behalf.

(4) A notice or other document required to be signed by an appellant which is a body corporate may be signed on its behalf by a duly authorised agent of the body corporate.

(5) A notice or other document required to be signed by the Public Prosecutor may be signed on his or her behalf by an authorised prosecutor.

Notice of application for leave to appeal is sufficient notice of appeal

9. An appellant's notice of application for leave to appeal is a sufficient notice of appeal if the Court grants the appellant leave to appeal.

Mode of bringing appeal and effecting service

10.—(1) A person appeals by filing in the registry of the Court a notice of appeal or a notice of application for leave to appeal (as the case requires).

(2) An appeal is brought, or an application for leave to appeal is made, when the notice of appeal or the notice of application for leave to appeal, as the case may be, is received in the registry of the Court.

(3) The Registrar is responsible for effecting service of notices of appeal and notices of application for leave to appeal.

Application for extension of time

11. An appellant who seeks an extension of time within which to appeal, or to apply for leave to appeal, may include an application for an extension of time within his or her notice

of appeal, or his or her notice of application for leave to appeal, by completing the relevant part of the form.

12. A notice in any of forms 1 to 5 which is given out of time must be treated as if it contains an application for extension of time.

Form must be treated as application for extension of time if notice given out of time

Preparation for hearing

13.—(1) On receiving a notice of appeal for a general appeal, the Registrar must obtain for the use of the Court the documents and records relating to the trial (which include the trial transcript, the trial Judge’s notes (if the Registrar considers them relevant to the grounds of appeal) and the other documents, exhibits and things connected with the proceeding which the Registrar considers relevant to the grounds of appeal and appropriate for inclusion in the preliminary case on appeal).

Documents required for general appeals

(2) The preliminary case on appeal, together with any additional material required to enable the Court to decide the appeal, constitutes the final case on appeal for a general appeal.

14. On receiving notice of appeal or notice of application for leave to appeal in any of forms 1,2,4 or 5, the Registrar must obtain for the use of the Court the material relevant to the decision or ruling under appeal.

Documents required for other appeals

15. On receiving an application for extension of time under rule 11 or a form having that effect under rule 12, the Registrar must comply with rule 13 (in the case of a general appeal) or rule 14 (in the case of any other appeal) and the relevant rule applies with the necessary modifications.

Documents required for extension of time

16.—(1) A Judge of the Trial Court may direct that a document, exhibit or other thing be delivered out of the Trial Court to any person the Judge considers entitled to delivery and the Judge may make delivery subject to any conditions he or she thinks fit.

Trial Court may direct delivery of documents, etc.

(2) However, subclause (1) does not apply to property which could be made subject to an order for the restitution of property under any enactment.

17.—(1) In any proceeding under Part III of the Ordinance, the Registrar must, if the Court or a Judge of the Court so directs, request the Judge of the Trial Court to provide the Court with a report in writing setting out his or her opinion about the case generally or about any particular point arising in the proceeding.

Court may request Trial Court to provide report

(2) The Registrar must disclose the report

(a) to any party who requests a copy of it unless the

Court otherwise directs; and

(b) to any other person on the direction of the Court.

(3) To enable a Judge to prepare the report, the Registrar must provide the Judge with any document concerning the proceeding and in the Registrar's possession if the Judge requests the document or the Court or a Judge of the Court directs the Registrar to provide the document.

Examination of witnesses otherwise than before Court

18.—(1) If the Court orders the examination of witnesses to be conducted otherwise than before the Court, the examination must, subject to any special directions the Court may give, be conducted in accordance with the provisions of rules of the Supreme Court made under paragraph (b) of section 20 of the Judicature (Courts) Ordinance (cap.2 of the 2001 Revised Edition of the Laws) or if there are no such rules, so far as practicable as may be directed by the Chief Justice or other Judge of the Supreme Court under subsections (2) and (3) of section 17 of the said ordinance.

(2) The parties or their counsel are entitled to be present at, and take part in, the examination of any witness.

Registrar may issue witness subpoenas

19. The registrar may issue a writ of subpoena in the name of the Court if the Court makes an order under rules of Court to secure the attendance of a person as a witness either before

- (a) the Court; or
- (b) any officer of the Court or any Magistrate or any other person appointed by the Court for the purpose.

Authorities bundles

20.—(1) In this rule, **authorities bundle** means a bundle of authorities and legislation on which a party relies.

(2) This rule applies whenever written submissions are filed, whether for the purpose of an appeal on the papers or of an oral appeal.

(3) At the time a party provides his or her submissions to the Court, he or she must also provide to the Court

- (a) if the appeal is to be heard by three Judges, four copies of an authorities bundle for Court use;
- (b) if the appeal is to be heard by five Judges, six copies of an authorities bundle for Court use;
- (c) if the appeal is to be heard on the papers, sufficient additional copies of an authorities bundle so that the Registrar can provide one copy for each other party.

(4) An authorities bundle must contain

- (a) only cases to which counsel intends to refer the Court and to rely on for more than a general principle; and
- (b) as its first page, a list of the authorities, including

their citations.

Mode of hearing

21. Rules 22 to 25 (mode of hearing) and rules 29 to 32 (appeals on the papers apply to all appeals except bail appeals and summary proceedings appeals. Application of mode of hearing provisions and appeals on papers provisions

22. A party's initial submissions on the mode of hearing must be set out in the notice of appeal or notice of application for leave to appeal required by rule 6. Submissions on mode of hearing

23.—(1) The initial decision on the mode of hearing must be made by the Court or a Judge in accordance with section 35A of the Ordinance (which enables the Court or Judge to have regard to the criteria set out in section 35A(2) of the Ordinance. Procedure within Court to determine initially mode of hearing

(2) The Court 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 in accordance with section 35A(4) of the Ordinance.

24. The Registrar must notify the parties in writing of the decision about the mode of hearing and the reasons, in accordance with section 35A(6) of the Ordinance. Decision on mode of hearing

25. If a party to an appeal wishes the Court to reconsider a decision under section 35A of the Ordinance on the mode of hearing, the party may include further submissions on this matter in written submissions on the merits under rule 29. Further mode of hearing submissions

Oral appeals

26.—(1) This rule applies to oral appeals. Registrar to give parties notice of fixture for oral appeals

(2) The Registrar must allocate a fixture for every oral appeal.

(3) Notice of the time and place fixed for the hearing must be given by the Registrar to

- (a) the prosecutor; and
- (b) the accused person or convicted person; and
- (c) if the appellant is in custody and the Court has granted the appellant leave to be present at the hearing, the superintendent of the penal institution concerned.

27.—(1) This rule applies to oral appeals Timing of submissions on merits

(2) The appellant must provide full written submissions on the appeal.

(3) The appellant must provide his or her written submissions to the Court and to the respondent not less than 28 days before the hearing date.

(4) The respondent must provide his or her written submissions to the Court and to the appellant not less than 14 days before the hearing date.

(5) If the appeal is to be heard by three Judges, four copies of the submissions must be provided for Court use.

(6) If the appeal is to be heard by five Judges, six copies of the submissions must be provided for Court use.

Right of reply at oral hearing

28. A party who wishes to exercise the right of reply in an appeal that is to be heard as an oral appeal must exercise that right orally at the hearing.

Appeals on papers

Period allowed for making written submissions on merits

29.—(1) This rule applies to appeals on the papers.

(2) In this rule, **appointed period** means a period appointed under subclause (4) and, when used in subclause (9), includes a period appointed under subclause (7)(a).

(3) For the purposes of this rule

- (a) the time allowed for making submissions begins to run on the date on which the appellant or respondent receives the relevant notice or material;
- (b) if sent by mail or fax, the notice or material must be treated as having been received three days after the date on which it is sent to that party's last known postal address or fax address.

(4) The Registrar must appoint a period of not less than 28 days within which the appellant may make written submissions in support of the appeal (including further submissions about the Court's decision on the mode of hearing).

(5) Notice of the appointed period must be given by the Registrar to

- (a) the appellant; and
- (b) the respondent.

(6) A copy of all written submissions received by the Court from the appellant within the appointed period must be sent by the Registrar to the respondent and the respondent may make written submissions within

- (a) 14 days if the respondent is the Public Prosecutor; or
- (b) 28 days in the case of any other respondent.

(7) A copy of all written submissions received by the Court from the respondent within the applicable period stated in subclause (6) must be sent by the Registrar to the appellant and

- (a) the appellant may make written submissions in reply within a period of not less than 14 days appointed by the Registrar; and

- (b) the Registrar must send the respondent a copy of the appellant's submissions in reply.
- (8) Each party must file in the Court
 - (a) four copies of that party's submissions for Court use; and
 - (b) sufficient additional copies so that the Registrar can provide one copy for each other party.
- (9) The Court or a Judge of the Court may extend any appointed period.

30. The Court must not begin hearing an appeal on the papers until all the periods prescribed or directed under rule 29 have expired. Timing of appeal on papers

31. A hearing on the papers under section 35A of the Ordinance must be conducted by three Judges and may take the form of each Judge separately considering the relevant materials (including any written submissions) before the Judges arrive at their decision. Panel for hearing on papers

32.—(1) If the Court, having considered any further submissions on the mode of hearing under rules 25 and 29(4), decides to change the mode of hearing, it must give its decision in accordance with section 35A(6) of the Ordinance. Change of mode of hearing

- (2) If the Court orders a hearing involving oral submissions
 - (a) the Registrar must allocate a fixture; and
 - (b) notice of the time and place fixed for the hearing of the appeal or application must be given in accordance with rule 26(3).

(3) The submissions already filed constitute the written submissions for the hearing unless the Court otherwise directs.

(4) If the Court, having considered any further submissions on the mode of hearing under rules 25 and 29(4), decides not to change the mode of hearing, it may give its decision on that matter at the same time as it gives its decision on the merits of the appeal or application.

Decisions

33.—(1) All decisions of the Court may be delivered— Mode of delivery of decisions

- (a) in open Court; or
- (b) through the Registrar.

34.—(1) As soon as a Judge or the Court has delivered a decision, the Registrar must give notice of it to Notification of decisions

- (a) the parties; and
- (b) if appropriate, the Registrar of the Trial Court; and
- (c) if appropriate and if a party is in custody, the superintendent of the relevant penal institution.

(2) Whenever a power of the Court has been exercised by a Judge and a party has the right to have that decision reviewed by the Court, the Registrar must, at the same time as giving notice of the decision, inform that party of his or her right to have that decision reviewed by the Court.

(3) Any application for review must be in writing and must be filed within seven days after receipt of the notification referred to in subclause (2).

PART III—MISCELLANEOUS PROVISIONS

Abandonment of appeal

35.—(1) An appellant may, at any time abandon an appeal by filing in the registry of the Court a notice advising that he or she

- (a) does not intend further to prosecute the appeal; and
- (b) abandons all further proceedings concerning that appeal.

(2) The notice must be signed by

- (a) the appellant personally; or
- (b) the appellant's solicitor or counsel.

(3) If the notice is signed by the appellant personally, the appellant's signature must be witnessed and the witness must add the witness's address and description after the witness's signature.

(4) A notice under this rule may be in form 6.

Persons to be heard by Court before restitution order annulled or varied

36.—(1) This rule applies if, on the trial of a person entitled or given leave to appeal under the Ordinance, an order for restitution of property has been made in the Supreme Court.

(2) Before any order is made by the Court of Appeal, the following persons are entitled to be heard before the Court of Appeal

- (a) the person in whose favour or against whom the order of restitution has been made;
- (b) with the leave of the Court, any other person.

Payment received under fine must be retained until appeal decided

37.—(1) A person who lawfully receives a fine paid by a person sentenced on conviction to payment of a fine must retain the fine until the Registrar of the Trial Court is notified of the Court's decision on any related appeal.

(2) An appellant who is in custody in default of payment of a fine must be treated for the purposes of Part III of the Ordinance and these rules as a person sentenced to imprisonment.

Successful appellant entitled to return of amount paid towards fine

38. An appellant who has paid a fine in accordance with a sentence and is successful on appeal is entitled, subject to the order of the Court, to the return of the amount paid or part of the amount paid, as the case may be.

39. A Judge of the Trial Court may give any directions that he or she considers proper concerning

Trial Court Judge may give directions concerning order to pay pro-secution costs, etc.

- (a) the suspension, pending appeal, of any order made under any enactment for the payment of the costs of the prosecution or any part thereof.
- (b) any consequence flowing from a conviction.

40.—(1) The Registrar must keep a register, in any form he or she thinks fit, of all

Register must be kept

- (a) notices of appeal and notices of application for leave to appeal received by the Registrar; and
- (b) decisions of the Court given in the appeals referred to in those notices.

(2) The register must be open for public inspection during the Court's ordinary office hours or, if necessary, at any other time arranged by the Registrar.

41. Notices may be given to the Court by serving them by hand or by sending them to the Registrar, at his or her office, by mail, fax or any other written or printed means.

Mode of giving notice to Court

42. A notice may be given to a party

Mode of giving notice to parties

- (a) at his or her postal address by mail or by any other written or printed means; or
- (b) by faxing it to a fax number supplied by the party.

43. The performance of any duty imposed on any person under Part III of the Ordinance or these rules may be enforced by order of the Court.

Court order may enforce rules

44.—(1) Non-compliance by a party with these rules does not prevent that party from continuing to take part in the appeal if the Court considers that the non-compliance may be waived or remedied by amendment or otherwise.

Effect of non-compliance with rules

(2) The Court may, in any manner that it thinks fit

- (a) direct the party to remedy the non-compliance; and
- (b) if the party was not present in Court when the direction was given, direct the Registrar to transmit its direction to the party.

45. In any matter not expressly provided for by these rules, the Court may give any direction that it thinks best calculated to carry out the purposes of Part III of the Ordinance or other relevant enactment.

Cases not provided for in rules

SCHEDULE**Forms**

Form 1

Notice of application for leave to appeal

*Sections 35DD, 35E, 36(1)(a)(iii) and 36(1)(b), Judicature (Appeals in Criminal Cases) Ordinance**In the Pitcairn Court of Appeal**Queen v***To the Registrar of the Court of Appeal**

I, [full name], the person named in the proceeding described above, give you notice that I apply for the leave of the Court of Appeal to appeal to that Court against [Give particulars of the decision against which you wish to appeal, including the date on which and the place at which it was made] on the grounds set out below and I give answers as follows to the following questions

- 1 (a) Is any lawyer now acting for you?
(b) If so, give his or her name and address and fax number.
(c) Have you applied, or do you intend to apply for a grant of legal aid under the Legal Aid (Criminal Proceedings) Ordinance?
- 2 If you are currently in a penal institution, which one?
- 3 If you do not currently have a lawyer, what is your current postal address and fax number (if any)?
- 4 (a) If you are in custody and are granted an oral hearing, do you wish to apply for leave to be present?
(b) If so, what are your reasons for seeking leave to be present?
[If you wish to have bail, you must apply separately in writing setting out the reasons and grounds for your application.]
- 5 You have 28 days from the date of the decision against which you wish to appeal in which to file your application. The Court may extend this time. If your application is out of time, what are your reasons for saying that the Court should nevertheless extend the time and consider your application?
- 6 What are the grounds of your application for leave to appeal?
- 7 Include in this application anything that is relevant to the decision about whether your appeal should be considered at an oral hearing or be dealt with on the papers, such as
 - (a) whether you have been assisted by counsel in preparing your application for leave;
 - (b) (if relevant) whether you have 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 your application;
 - (e) whether any evidence should be called;
 - (f) any relevant cultural or personal factors.

Dated this *[date]* day of *[month]* *[year]*

.....
Signature of applicant

Note

Your application will be considered at an oral hearing (i.e. a hearing at which oral submissions may be made) *unless* the Court or a Judge determines that the application can be fairly dealt with on the papers and either has no realistic prospect of success or clearly should be allowed. In that case, the application will be dealt with at a hearing on the papers. This is a hearing at which the Court makes its decision solely on the basis of the written material before it.

Form 2

Appeal/notice of application for leave to appeal
by Public Prosecutor

In the Pitcairn Court of Appeal

CA
Queen (or Police or prosecutor)
Appellant/applicant

v

[Name and full address]
Respondent

Take notice that under *[identify section and ordinance]* the Public Prosecutor appeals (or applies for leave to appeal) against *[identify decision or ruling to be appealed against]*.

Upon the grounds that *[identify grounds of appeal or application]*.

[If the appeal or application is out of time, state that here and give the reasons for saying that the Court should extend the time and consider the appeal or application.]

Dated this *[date]* day of *[month]* *[year]*.

.....
Public Prosecutor

The address for service is *[insert address]*.

Form 3

Notice of appeal by person convicted

Section 36, Judicature (Appeals in Criminal Cases) Ordinance
Contempt of Court Act 1981 (U.K.)

Name of appellant:

Offence(s) of which convicted:

Court in which conviction entered: Magistrate's Court ator
Supreme Court at.....

Date of conviction:

Date when sentence passed:

Court in which sentence passed: Magistrate's Court ator
Supreme Court at

Sentence:

To the Registrar of the Court of Appeal

I, the above-named appellant, give you notice that I wish to appeal/seek leave to appeal to the Court of Appeal against

[my conviction] [my sentence] [my conviction and sentence]

[the finding of criminal contempt] [the finding of criminal contempt and sentence]

on the grounds set out below and I give answers as follows to the following questions

- 1 (a) Is any lawyer now acting for you?
(b) If so, give his or her name and address and fax number
(c) Have you applied, or do you intend to apply for a grant of legal aid under the Legal Aid (Criminal Proceedings) Ordinance?
- 2 If you are currently in a penal institution, which one?
- 3 If you do not currently have a lawyer, what is your current postal address and fax number (if any)?
- 4 (a) If you are in custody and are granted an oral hearing, do you wish to apply for leave to be present?
(b) If so, what are your reasons for seeking leave to be present?
[If you wish to have bail, you must apply separately in writing setting out the reasons and grounds for your application.]
- 5 (a) Do you wish to apply for leave to call any witnesses on your appeal?
(b) If so, then state
 - (i) the name and address of the witness(es)
 - (ii) whether the witness(es) gave evidence at the trial
 - (iii) if not, the reason why the witnesses did not give evidence
 - (iv) on what matters you wish the witness(es) to give evidence
 - (v) briefly, what evidence you think the witness(es) can give

6 You have 28 days from the date on which you were sentenced in which to file your notice of appeal with the Court of Appeal. The Court may extend this time. If your appeal is out of time, what are your reasons for saying that the Court should nevertheless extend the time and consider your appeal?

7 What are the grounds of your appeal?

8 Include in this notice of appeal anything that is relevant to the decision about whether your appeal should be considered at an oral hearing or be dealt with on the papers, such as

- (a) whether you have been assisted by counsel in preparing your application for leave;
- (b) whether you have 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 your application;
- (e) whether any evidence should be called;
- (f) any relevant cultural or personal factors.

Dated this [date] day of [month] [year]

.....
Signature of appellant

Note

Your application will be considered at an oral hearing (i.e. a hearing at which oral submissions may be made) *unless* the Court or a Judge determines that the application can be fairly dealt with on the papers and either has no realistic prospect of success or clearly should be allowed. In that case, the application will be dealt with at a hearing on the papers. This is a hearing at which the Court makes its decision solely on the basis of the written material before it.

Form 4

Notice of appeal relating to bail

Sections 63 and 65, Bail Ordinance 2002

In the Pitcairn Court of Appeal

Queen v

Name of appellant:

Decision being appealed against:

[Describe the decision against which you are appealing. You may appeal against a decision of a Supreme Court Judge to—

- *refuse bail (section 63); or*
- *impose or substitute or revoke or vary any condition of bail (section 63); or*
- *Refuse to impose any condition of bail or any particular condition of bail (section 63); or*
- *refuse to vary or revoke any condition of bail (section 63); or*
- *direct that the non-performance of a bail condition be entered into the Crown Records or other Register referred to in section 65 of the Bail Ordinance 2002.*

Date of decision:

To the Registrar of the Court of Appeal;

I, the above-named appellant, give you notice under section 63 (or section 65) of the Bail Ordinance 2002 that I wish to appeal to the Court of Appeal against the bail decision described above on the grounds set out below and I give answers as follows to the following questions:

- 1 (a) Is any lawyer now acting for you?
(b) If so, give his or her name and address and fax number
- 2 If you are currently in a penal institution, which one?
- 3 If you do not currently have a lawyer, what is your current postal address and fax number (if any)?
- 4 (a) If you are in custody and are granted an oral hearing, do you wish the Court of Appeal to grant you leave to be present at the hearing of your appeal?
(b) If so, what are your reasons for seeking leave to be present?
- 5 If your appeal or application is out of time, what are your reasons for saying that the Court should nevertheless consider your appeal?
- 6 What are the grounds of your appeal?

Dated this [date] of [month] [year].

.....
Signature of appellant

Form 5

Notice of appeal (summary proceedings appeal)

Section 21, Judicature (Appeals in Criminal Cases) Ordinance

Name of appellant:

Determination of the Supreme Court being appealed against:

Date of the determination of the Supreme Court:

Date on which the Supreme Court granted leave to appeal:

Question or questions of law in respect of which leave has been granted:

To the Registrar of the Court of Appeal

I, the above-named appellant, give you notice that I wish to appeal to the Court of Appeal against the determination of the Supreme Court described above on the grounds set out below and I give answers as follows to the following questions:

- 1 (a) Is any lawyer now acting for you?
(b) If so, give his or her name and address and fax number.
(c) Have you applied, or do you intend to apply for a grant of legal aid under the Legal Aid (Criminal Proceedings) Ordinance?
- 2 If you are currently in a penal institution, which one?
- 3 If you do not currently have a lawyer, what is your current postal address and fax number (if any)?
- 4 (a) If you are in custody, do you wish for leave to be present?
(b) If so, what are your reasons for seeking leave to be present?
[If you wish to have bail, you must apply separately in writing setting out the reasons and grounds for your application.]
- 5 What should the answer to the question or questions of law be? *[In addition, briefly set out the grounds for that answer or those answers.]*
- 6 What else do you wish the Court of Appeal to do in addition to answering the question or questions of law?

Dated this [date] of [month] [year].

.....
Signature of appellant

Form 6

Notice of abandonment of appeal

Rule 35

In the Pitcairn Court of Appeal

Queen v

To the Registrar of the Court of Appeal

I, *[full name]*, having sent to the Court of Appeal a notice of appeal or application for leave to appeal against *[set out the determination of the Supreme Court against which you are appealing]*, now give you notice that—

- 1 I do not intend further to prosecute my appeal or application; and
- 2 As from the date of this notice, I abandon all further proceedings concerning that appeal or application.

Dated this *[date]* of *[month]* *[year]*.

.....
Signature of appellant

*Witness to signature of *[full name]*—

Signature of witness

Address

Description

[*Signature of the appellant or applicant must be witnessed only if the appellant or applicant signs the notice in person.]

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2003

CHAPTER XL

**FIREARMS OFFENCES (PROSECUTION AND
PUNISHMENT) ORDINANCE**

An ordinance to provide for the prosecution and punishment of offences under the Local Government (Firearms Control) Regulations. No. 5 of 2003

[28 March 2003]

1. This ordinance may be cited as the Firearms Offences (Prosecution and Punishment) Ordinance. Citation

2. In this ordinance, unless the context otherwise requires, **the Regulations** means the Local Government (Firearms Control) Regulations made by the Island Council under section 7(6) of the Local Government Ordinance; Interpretation

all words and expressions defined by regulation 2(1) of the Regulations shall respectively bear the same meaning and be construed in the same manner in and for the purposes of this ordinance. cap.11

3.—(1) The Schedule to this ordinance shall have effect with respect to the manner in which offences under the Regulations may be tried and, on conviction, are punishable. Application

(2) For the purposes of subsection (1) the Schedule is comprised as follows—

- (a) the first column specifies the regulation of the Regulations in which the offence is contained;
- (b) the second column describes the general nature of the offence;
- (c) the third column shows whether the offence is triable only summarily (by the Magistrate's Court), or only on information preferred by the Public Prosecutor (by the Supreme Court) or either way;
- (d) the fourth column shows the maximum punishment by way of fine or imprisonment or both under this ordinance which may be imposed on a person convicted of the offence in the way specified in relation thereto in the third column (that is to

say, summarily by the Magistrate's Court or on information by the Supreme Court); any reference in the fourth column to a sum of money being construed as a reference to a maximum fine of that amount and any reference to a period of years or months being construed as a reference to a maximum term of imprisonment of that duration.

SCHEDULE

PROSECUTION AND PUNISHMENT OF OFFENCES

TABLE OF PUNISHMENTS

Regulation creating offence	General nature of offence	Mode of prosecution	Punishment (maximum)
Regulation 4(1)	Possessing etc. firearm or ammunition without certificate	(a) Summary	6 months and/or \$1,500
		(b) On information	(i) where offence is committed in an aggravated form within the meaning of regulation 7(3), 5 years and/or a fine ii) in any other case, 3 years and/or a fine
Regulation 4(2)	Non-compliance with condition of firearm certificate	Summary	6 months and/or \$1500
Regulation 5(1)	Possessing etc. shotgun without shot gun certificate	(a) Summary	6 months and/or \$1500
		(b) On information	3 years and/or a fine
Regulation 5(2)	Non-compliance with condition of shot gun certificate	Summary	6 months and/or \$1500
Regulation 6(1)	Trading etc. in firearms	(a) Summary	6 months and/or \$1500
		(b) On information	3 years and/or a fine
Regulation 6(2)	Selling firearm to person without a certificate	(a) Summary	6 months and/or \$1500
		(b) On information	3 years and/or a fine
Regulation 6(3)	Falsifying certificate etc. with view to acquiring firearm	(a) Summary	6 months and/or \$1500
		(b) On information	3 years and/or a fine
Regulation 7 (1) and (2)	Shortening a shot gun and conversion of firearms	(a) Summary	6 months and/or \$1500
		(b) On information	(i) Where offence is committed in an aggravated form within the meaning of regulation 7(3), 5 years and/or a fine (ii) in any other case 3 years and/or a fine
Regulation 8(1)	Possessing or distributing prohibited weapons or ammunition	(a) Summary	6 months and/or \$1500
		(b) On information	5 years and/or a fine
Regulation 8(4)	Non-compliance with condition of authority	Summary	3 months and/or \$900
Regulation 8(6)	Non-compliance with requirement to surrender authority to possess etc. prohibited weapon or ammunition	Summary	\$300

Regulation creating offence	General nature of offence	Mode of prosecution	Punishment (maximum)
Regulation 9(3)	Contravention of order restricting importation or removal of firearms and ammunition	Summary	3 months and or \$900 (for each firearm or parcel of ammunition in respect of which the offence is committed)
Regulation 13(4)	Failing to comply with condition of authority for entertainment activity	Summary	3 months and/or \$900
Regulation 15(1)	Possession of firearm with intent to endanger life or injure property	On information	Life imprisonment and/or a fine
Regulation 15(3)	Possessing firearm with intent to cause etc. belief that unlawful violence will be used	On information	Life imprisonment and/or a fine
Regulation 16(1)	Use of firearm to resist arrest	On information	Life imprisonment and/or a fine
Regulation 16(2)	Possessing firearm while committing an offence	On information	Life imprisonment and/or a fine
Regulation 17(1)	Possessing firearm when a trespasser on land	Summary	3 months and/or \$900
Regulation 17(2)	Carrying loaded firearm in a public place	(a) Summary (b) On information	6 months and/or \$1500 5 years and/or a fine
Regulation 18(4)	Contravention of provisions denying firearms to ex-prisoners and others	(a) Summary (b) On information	6 months and/or \$1500 3 years and/or a fine
Regulation 19(1)	Person under 16 years acquiring firearm	Summary	3 months and/or \$900
Regulation 19(2)	Person under 16 years having unlawful possession of firearm	Summary	3 months and/or \$900
Regulation 19(3)	Person under 16 years having shot gun without adult supervision	Summary	\$600
Regulation 19(4)	Person under 16 years having air weapon or ammunition in a public place	Summary	\$600
Regulation 20(1)	Supplying firearms or ammunition to person under 16 years	Summary	6 months and/or \$1500
Regulation 20(2)	Supplying firearm or ammunition of a kind to which regulation 4 applies to person under 16 years etc.	Summary	6 months and/or \$1500
Regulation 20(3)	Transfer of shot gun or ammunition to person under 16 years	Summary	\$600

Regulation creating offence	General nature of offence	Mode of prosecution	Punishment (maximum)
Regulation 20(4)	Supplying air weapon to person under 16 years	Summary	\$600
Regulation 21	Supplying firearm to person drunk or of unsound mind	Summary	6 months and/or \$1500
Regulation 22(8)	Making false statement to produce grant or renewal of a firearm or shot gun certificate	Summary	6 months and/or \$1500
Regulation 26(4)	Making false statement to procure amendment of a firearm or shot gun certificate	Summary	6 months and/or \$1500
Regulation 27(3)	Failing to surrender certificate on revocation	Summary	\$600
Regulation 28(3)	Failure to comply with instructions in firearm certificate when transferring firearm to person other than registered dealer, or failure to give notice to Police Officer	(a) Summary (b) On information	6 months and/or \$1500 3 years and/or a fine
Regulation 30(2)	Failure to hand over firearm when so required by police officer	Summary	3 months and/or a fine
Regulation 30(6)	Failure to comply with any request by police officer exercising powers to stop and search	Summary	3 months and/or \$900
Regulation 31(3)	Failure to give or declaring false name or address to police officer	Summary	\$900
Regulation 32(3)	Failure to give police or customs officer facilities for examination of firearms about to be exported or to produce relevant documents	Summary	3 months and/or \$900 (for each firearm or parcel of ammunition in respect of which the offence is committed)
Regulation 34(3)	Failure to surrender certificate cancelled by Court on conviction of offence, etc.	Summary	\$900

**LOCAL GOVERNMENT (FIREARMS CONTROL)
REGULATIONS**

Arrangement of sections

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Section

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2. Interpretation
3. Application

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WEAPONS AND AMMUNITION AND PUBLIC SAFETY.**

4. Requirement of firearm certificate
5. Requirement of certificate for possession of shot gun
6. Business and other transactions with firearms and ammunition
7. Conversion of weapons
8. Weapons subject to general prohibition
9. Power to prohibit movement of arms and ammunition
10. Exemption for certain businesses
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12. Weapons used in sporting activities
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14. Equipment for ships and other vessels
15. Possession of firearm for specific purposes
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18. Possession of firearm by previously convicted person
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PART III—FIREARM AND SHOT GUN CERTIFICATES

23. Applications for certificates
24. Form of firearm certificate
25. Special provisions for shot gun certificates
26. Variation of firearms and shot gun certificates
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28. Transactions involving firearms

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29. General powers of search, seizure and examination

30. Powers to stop and search
31. Production of certificates
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33. Prosecution and punishment of offences
34. Court's powers to order forfeiture and disposal, and cancellation of certificates.

PART V—MISCELLANEOUS PROVISIONS

35. Service of notice
36. Power of the Police Officer to delegate
37. Mayor's power to make rules

LOCAL GOVERNMENT (FIREARMS CONTROL) REGULATIONS

Made by the Island Council under the power conferred by section 7(6) of the Local Government Ordinance to regulate the importation into, exportation from and the possession and use of firearms and other weapons in the Islands and for matters connected therewith or incidental thereto.

[28 March 2003]

Regulations 2003,
Ordinance No. 4 of
2014
Ordinance No. 1 of
2016

PART I—PRELIMINARY

Short title

1. These Regulations may be cited as the Local Government (Firearms Control) Regulations.

Interpretation

2.—(1) In these Regulations—

“acquire” means to hire, accept as a gift, purchase or borrow and **“acquisition”** shall be construed accordingly;

[**“Administrator”** means the person appointed by the Governor to the public office of Administrator, and includes any person acting on his or her behalf;]

“air weapon” includes an air rifle, air gun or air pistol;

“ammunition” means any missile capable of being used in any firearm and includes bombs, grenades and other missiles whether capable of use with a firearm or not;

“certificate” means a firearm certificate or a shot gun certificate; and—

(a) **“firearms certificate”** means a certificate granted by the Governor pursuant to regulation 23; and

(b) **“shot gun certificate”** means a certificate granted by the Police Officer pursuant to regulation 25 authorising a person to possess a shotgun or guns;

“firearm” means any lethal, barrelled weapon of any description from which any shot, bullet or other missile can be discharged, including ammunition for use with any such weapon and including an air weapon;

[]

“imitation firearm” means any article which has the appearance of being a firearm, whether or not it is capable of discharging any shot, bullet or other missile, but shall not include a water pistol or any other article specifically manufactured for use as

a toy;

“**land**” includes land covered with water;

“**Police Officer**” means the person, being a police officer duly appointed under section 2 of the Justice Ordinance, designated by the Governor as having principal authority and responsibility for the administration of these Regulations and the general supervision and control of firearms in the Islands;

“**premises**” includes land with or without a building or buildings erected on such land;

“**prescribed**” means anything prescribed by rules made by the Mayor pursuant to regulation 45;

“**prohibited weapon**” means any weapon of a kind specified in regulation 8;

“**public place**” includes any road and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise;

“**revolver**”, in relation to a smooth-bore gun, means a gun containing a series of chambers which revolve when the gun is fired;

“**self-loading**” and “**pump-action**” in relation to any weapon mean respectively that it is designed or adapted (otherwise than as mentioned in regulation 8(1)(a)) so that it is automatically re-loaded or that it is so designed or adapted that it is re-loaded by the manual operation of the fore-end or forestock of the weapon;

“**Senior Magistrate**” means a Magistrate appointed by the Governor under sections 11(1) and 11(4) of the Judicature (Courts) Ordinance;

“**shot gun**” means any weapon of a kind referred to in regulations 5 and 25;

“**slaughtering instrument**” means a firearm which is specially designed or adapted for the instantaneous slaughter of animals or for the instantaneous stunning of animals with a view to slaughtering them;

“**transfer**” includes letting on hire, giving, lending or otherwise parting with possession and “transferor” and “transferee” shall be construed accordingly.

(Amended by Ordinance No. 4 of 2014)

(2) For the purposes of these Regulations—

- (a) the length of the barrel of a firearm shall be measured from the muzzle to the point at which the charge is exploded on firing; and
- (b) a shot gun or an air weapon shall be deemed to be

loaded if there is ammunition in the chamber or barrel or in any magazine or other device which is in such a position that the ammunition can be fed into the chamber or barrel by the manual or automatic operation of some part of the gun or weapon.

Application

3. These Regulations shall not apply to any Police Officer of the Islands or to any member of Her Majesty's armed forces when respectively acting in the lawful discharge of their duties as such.

**PART II—POSSESSION, HANDLING AND
DISTRIBUTION OF WEAPONS AND AMMUNITION
AND PUBLIC SAFETY.**

Requirement of
firearm certificate

4.—(1) Subject to any exemption under these Regulations, it shall be an offence for a person—

- (a) to import, or have in his or her possession or acquire a firearm to which this regulation applies without holding a firearm certificate in force at the time, or otherwise than as authorised by such a certificate;
- (b) to import, or have in his or her possession or acquire any ammunition to which this regulation applies without holding a firearm certificate in force at the time or otherwise than as authorised by such a certificate, or in quantities in excess of those so authorised.

(2) It shall be an offence for a person to fail to comply with a condition subject to which a firearm certificate is held by him or her.

(3) This section shall apply to any ammunition for a firearm except the following articles, namely—

- (a) cartridges containing five or more shot, none of which exceeds .36 inch in diameter;
- (b) ammunition for an air gun, air rifle or air pistol; and
- (c) blank cartridges not more than one inch in diameter measured immediately in front of the rim or cannellure of the base of the cartridge.

Requirement of
certificate for
possession of shot gun

5.—(1) Subject to any exemption under these Regulations, it shall be an offence for a person to import or have in his or her possession or to acquire a shot gun without holding a certificate issued under regulation 23 of these Regulations.

A shotgun within the meaning of these Regulations is defined as being a smooth-bore gun (not being an air gun) which—

- (a) has a barrel not less than 24 inches in length and

does not have any barrel with a bore exceeding 2 inches in diameter;

- (b) either has no magazine or has a non-detachable magazine incapable of holding more than two cartridges; and
- (c) is not a revolver gun.

(2) Any person who fails to comply with any condition attached to a shot gun certificate issued to him or her shall be guilty of an offence.

6.—(1) Any person shall be guilty of an offence if he or she—

Business and other transactions with firearms and ammunition

- (a) manufactures, sells, transfers, repairs or tests any firearm or ammunition to which regulation 4 of these Regulations applies or a shot gun; or
- (b) exposes for sale or transfer or has in his or her possession for sale, transfer, repair or test any such firearm or ammunition, or a shot gun.

(2) Subject as hereinafter provided, it shall be an offence for a person to sell or transfer to any other person in the Islands any firearm or ammunition to which regulation 4 applies or of a shot gun, unless the purchaser or transferee produces a firearm certificate authorising him or her to acquire it or, as the case may be, his or her shot gun certificate or shows that he or she is by virtue of these Regulations entitled to acquire it without the necessity to hold such certificate.

(3) A person shall be guilty of an offence if, in any case with a view to acquiring, or procuring the repair or testing of any firearm or ammunition to which regulation 4 applies, or a shot gun, he or she produces a false certificate or a certificate in which any false entry has been made or represents himself or herself to be another person to whom a certificate has been granted or makes any false statement.

7.—(1) Subject to the following sub-regulations, any person who shortens the barrel of a shot gun to a length of less than 24 inches shall be guilty of an offence:

Conversion of weapons

Provided that it shall not be an offence for a person to shorten the barrel of a shot gun for the sole purpose of replacing a defective part of the barrel so as to produce a barrel not less than 24 inches in length.

(2) It shall be an offence for a person to convert into a firearm anything which, although appearing to be a firearm, is so constructed as to be incapable of discharging any missile through its barrel.

(3) A person who commits an offence under regulation 4 by importing or having in his or her possession or by acquiring a

shot gun which has been shortened contrary to sub-regulation (1) or a firearm which has been converted contrary to sub-regulation (2) without holding a firearm certificate authorising him or her to import it or have it in his or her possession, or to acquire it, shall be guilty of an offence.

Weapons subject to
general prohibition

8.—(1) Subject to the provisions of regulation 4, a person shall be guilty of an offence if, without the permission in writing of the Governor, he or she has in his or her possession or acquires, manufactures, sells or transfers—

- (a) any firearm which either has a barrel less than 30 centimetres in length or is less than 60 centimetres overall, other than an air pistol, a muzzle-loading gun or a firearm designed as signalling apparatus;
- (b) any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger;
- (c) any self-loading or pump action rifle other than one which is chambered for .22 rim-fire cartridges;
- (d) any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 24 inches in length or (excluding any detachable, folding, retractable or other movable butt-stock) is less than 40 inches in length overall;
- (e) any smooth-bore revolver gun other than one which is chambered for 9mm rim-fire cartridges or loaded at the muzzle end of each chamber;
- (f) any rocket launcher or any mortar for projecting a stabilised missile other than a launcher or mortar designed for line-throwing or pyrotechnic purposes or as a signalling apparatus;
- (g) any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing; and
- (h) any cartridge with a bullet designed to explode on or immediately before impact, any ammunition containing or designed or adapted to contain any noxious thing as is mentioned in paragraph (g) and, if capable of being used with a firearm of any description, any grenade, bomb (or other like missile), or rocket or shell designed to explode as aforesaid.

(2) The weapons and ammunition specified in sub-regulation (1) are referred to in these Regulations as “prohibited weapons” and “prohibited ammunition” respectively.

(3) Any authority given pursuant to sub-regulation (1) shall be subject to such conditions as the Governor may specify therein for the purpose of securing or ensuring that the prohibited weapon or prohibited ammunition to which the authority relates will not endanger the public safety or peace.

(4) It shall be an offence for a person to whom an authority is given pursuant to sub-regulation (1) to fail to comply with any condition specified therein.

(5) The Governor in his or her discretion may at any time revoke an authority given to a person pursuant to sub-regulation (1) by notice in writing requiring him or her to deliver up the authority by not later than the date specified in such notice.

(6) A person who fails to comply with the requirements of a notice given pursuant to sub-regulation (5) shall be guilty of an offence.

9.—(1) The Governor may by order prohibit the importation into or the removal of firearms or ammunition from one place to another in the Islands or their export therefrom.

Power to prohibit movement of arms and ammunition

(2) An order made pursuant to sub-regulation (1) may apply

- (a) either generally to all such removals, or to removals from and to particular localities specified in the order; and
- (b) either to all firearms and ammunition, or to firearms and ammunition of such classes and descriptions as may be so specified; and
- (c) either to all modes of conveyance, or to such modes of conveyance as may be so specified:

Provided that no such order shall prohibit the holder of a firearm certificate from carrying with him or her any firearm or ammunition authorised by the certificate to be so carried.

(3) Any person who contravenes any of the provisions specified in an order made pursuant to sub-regulation (1) shall be guilty of an offence.

10.—(1) A person carrying on the business of an auctioneer, carrier or warehouseman or a servant of such person may, without holding a certificate, have in his or her possession a firearm or ammunition in the ordinary course of that business.

Exemption for certain businesses

(2) It shall not be an offence under regulation 6(1) for an auctioneer, carrier or warehouseman or a servant of any of them to deliver any firearm or ammunition in the ordinary course of his or her business or employment as such.

11.—(1) A person may, without holding a certificate have in his or her possession the following—

Weapons for slaughtering or humanely destroying animals

- (a) a slaughtering instrument and ammunition therefor

for the purpose of slaughtering any animal intended to be used for human consumption; or

- (b) an humane killer for the purpose of humanely destroying any animal that is not intended to be used for human consumption.

(2) The burden of proving that a weapon has been specifically manufactured or adapted for use as a slaughtering instrument or an humane killer shall lie with the person in possession of it.

Weapons used in sporting activities

12.—(1) A person carrying a firearm or ammunition belonging to another person holding a certificate under these Regulations may, without holding such a certificate, have in his or her possession that firearm or ammunition under instructions from, and for the use of, that other person for the purpose of a sporting activity.

(2) A person may, without holding a certificate, have a firearm in his or her possession at an athletic meeting for the purpose of starting races at that meeting.

(3) A member of any rifle, pistol or shooting club approved in writing by the Police Officer may, without holding a certificate, have in his or her possession a firearm and ammunition when participating as a member in competitions held by such clubs, or in connection with instruction or target practice.

(4) A person may, without holding a shot gun certificate, use a shot gun at any time and place approved by the Police Officer for the purpose of shooting at artificial targets.

Entertainment activities

13.—(1) The Governor may authorise a person who is not the holder of a certificate to have a firearm with or without ammunition, in his or her possession for the purpose of the performance, rehearsal or production of any concert, play or other activity of entertainment:

Provided that authorisation shall not be given unless the Governor is satisfied that no person likely to attend the performance, rehearsal or production will be at risk of physical injury or other harm.

(2) Where the Governor is satisfied, on the application of a person in charge of a performance, rehearsal or production of any concert, play or other activity of entertainment that a prohibited weapon is required for any of these purposes he or she may, pursuant to regulation 8(1), additionally authorise such other person or persons as he or she may specify to have possession of it while participating in such performance, rehearsal or production.

(3) An authority granted pursuant to this regulation shall

be in writing and may be unconditional or subject to such conditions as the Governor may specify therein.

(4) A person who fails to comply with any condition specified in an authority granted pursuant to this regulation shall be guilty of an offence.

14. A person may, without holding a certificate—

Equipment for ships
and other vessels

- (a) have in his or her possession a firearm or ammunition on board a ship, boat, or other sea vessel, as part of the safety equipment thereof; or
- (b) if he or she has obtained from the Police Officer a permit for the purpose in the prescribed form, remove a firearm or ammunition from or to a ship, boat or other sea vessel for such purpose as may be specified on the permit.

15.—(1) Any person (whether or not the holder of a certificate) who has in his or her possession any firearm or ammunition with intent by means thereof to endanger life or to cause damage to property or to enable another person to do so shall be guilty of an offence.

Possession of firearm
for specific purposes

(2) For the purposes of sub-regulation (1) it shall be immaterial whether or not any life has been endangered or damage caused to any property.

(3) It is an offence for a person to have in his or her possession any firearm or imitation firearm with intent—

- (a) by means thereof to cause, or
- (b) to enable another person by means thereof to cause any person to believe that unlawful violence will be used against him or her or another person.

16.—(1) A person who makes or attempts to make any use whatsoever of a firearm or imitation firearm with intent to prevent, obstruct or resist the lawful arrest or detention of himself or herself or another person shall be guilty of an offence.

Use of firearm in
circumstances of
arrest

(2) A person who has with him or her a firearm or imitation firearm with intent to commit any offence punishable by imprisonment, or to resist arrest, or prevent the arrest of another person, in any case while he or she has the firearm or imitation firearm in his or her possession, shall be guilty of an offence.

(3) In proceedings for an offence under this regulation proof that the accused had a firearm or imitation firearm with him or her and intended to commit an offence, or to resist or prevent arrest, shall be sufficient evidence that he or she intended to have it with him or her while doing so.

Possession of firearm
when a trespasser or
in a public place

17.—(1) Any person in possession of a firearm who enters upon or is on premises as a trespasser and without reasonable excuse (the proof whereof shall lie with him or her) shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse (the proof whereof shall lie with him or her) has with him or her in a public place a loaded shot gun, or loaded air weapon, or any other firearm (whether loaded or not), together with ammunition suitable for use therewith, shall be guilty of an offence.

Possession of firearm
by previously
convicted person

18.—(1) A person who has, on previous conviction for any offence, been sentenced to imprisonment for a term of three years or more shall not at any time have a firearm or ammunition in his or her possession.

(2) A person who has been sentenced to imprisonment [or home detention] for a term of three months or more but less than three years shall not, before the expiration of five years from the date of his or her release, have any firearm or ammunition in his or her possession.

(Amended by Ordinance No. 1 of 2016)

(3) A person who is subject to a recognizance to keep the peace or be of good behaviour shall not, at any time while subject to such recognizance as aforesaid, use or possess any firearm or ammunition.

(4) Any person who contravenes any of the provisions of the previous sub-regulations shall be guilty of an offence.

Acquisition and
possession of firearms
by young persons

19.—(1) It shall be an offence for a person under the age of sixteen years to purchase or hire any firearm or ammunition.

(2) It shall be an offence for a person under the age of sixteen years to have in his or her possession any firearm or ammunition to which regulation 4 applies, except in circumstances where under regulation 12(1) or (3) he or she is entitled to have possession of it without holding a firearm certificate.

(3) It shall be an offence for a person under the age of sixteen years to have with him or her an assembled shot gun, except while under the supervision of another person of not less than twenty-one years, or while the shot gun is so covered with a securely fastened gun cover that it cannot be fired.

(4) Subject to sub-regulations (5) and (6), it shall be an offence for a person under the age of sixteen years to have with him or her an air weapon or ammunition for an air weapon in a public place, except an air gun or air rifle which is so covered with a securely fastened gun cover that it cannot be fired.

(5) It shall not be an offence under sub-regulation (4) for a person to have with him or her an air weapon or ammunition

while he or she is under the supervision of another person of not less than twenty-one years:

Provided that where a person has with him or her an air weapon on any premises in circumstances where he or she would be prohibited from having it save for the provisions of this sub-regulation, it shall be an offence—

- (a) for him or her to use it for firing any missile beyond those premises; or
- (b) for the person under whose supervision he or she is to allow him or her so to use it.

(6) It shall not be an offence under sub-regulation (4) for a person to have with him or her an air weapon or ammunition at a time when being a member of any rifle, pistol or shooting club approved pursuant to regulation 12(3), he or she is engaged as such a member in or in connection with target practice.

20.—(1) It shall be an offence to sell or let on hire any firearm or ammunition to any person under the age of sixteen years.

Supplying firearms to young persons

(2) It shall be an offence—

- (a) to transfer any firearm or ammunition to which regulation 4 applies to any person under the age of sixteen years; or
- (b) to part with the possession of an air weapon or ammunition therefor to any person under that age, except in circumstances where that person is entitled to have possession thereof, without holding a firearm certificate, pursuant to section 12(1) or (3).

(3) It shall be an offence to transfer a shot gun or ammunition therefor to any person who is under the age of sixteen years.

(4) It shall be an offence—

- (a) to transfer an air weapon or ammunition therefor to any person who is under the age of fourteen years; or
- (b) to part with the possession of an air weapon or ammunition therefor to any person under that age, except where by virtue of regulation 19(5) or (6) that person is not prohibited from having it with him or her.

(5) In proceedings for an offence under any provision of the preceding sub-regulations, it shall be a defence to prove that the person charged with the offence believed the other person to be of or more than the age specified in that provision and that reasonable grounds existed for such belief.

21. Any person who sells or otherwise transfers any

Supplying firearms to persons drunk or of unsound mind

firearm or ammunition to any other person whom he or she knows, or has reasonable cause to believe, is drunk or is of unsound mind, or delivers or causes to be delivered to such person any firearm or ammunition for the purpose of testing or repair shall be guilty of an offence.

Trading in firearms

22. It shall be an offence for any person by way of trade or business to import, make, sell, transfer, repair or test firearms in any of the Islands.

PART III—FIREARM AND SHOT GUN CERTIFICATES

Applications for certificates

23.—(1) An application for the grant of a firearm or shot gun certificate shall be made in the prescribed form to the Police Officer and shall contain all particulars required by such form.

(2) The Police Officer shall endorse the form accordingly and forward it to the [Administrator] for decision as to grant.

(3) A certificate granted by the [Administrator] shall, unless earlier revoked or cancelled, continue in force for a period of three years or such shorter period as the Governor's Representative may in his or her discretion determine, from the date when it was granted or last renewed.

(4) The [Administrator] may renew a certificate for a further period not exceeding three years as he or she shall deem appropriate and may grant as many subsequent renewals as he or she shall think fit. The provisions of this sub-regulation shall apply to all applications for and the grant of such renewal or renewals.

(5) On the grant of a certificate or upon the first or any subsequent renewal thereof, the [Administrator] may, in his or her discretion, attach any conditions which he or she shall consider appropriate.

(6) Any person aggrieved by the refusal of an application for the grant of a certificate or the renewal thereof or the attachment of any condition may appeal to a Senior Magistrate whose decision shall be final. Subject to any provisions prescribed by rules made under regulation 45, an appeal under this sub-regulation shall be in writing and shall be made within 28 days of the date of the decision complained of:

Provided that the Senior Magistrate may, in his or her discretion, extend in any case the time for making such an appeal.

(7) The [Administrator] shall not grant a firearm certificate—

- (a) to any person who he or she has reason to believe is prohibited by these Regulations from possessing a firearm to which regulation 4 applies, or to be of

intemperate habits or unsound mind, or who is, in his or her opinion, not fit to be entrusted with such a firearm; or

- (b) to any person in respect of whom he or she is not satisfied has a good reason for having in his or her possession or acquiring the firearm or ammunition to which the application relates and who can be permitted to possess or acquire the same without apprehension of danger to the public safety or peace.

(8) Any person who makes any statement, which he or she knows to be false for the purpose of procuring the grant or renewal of a certificate under this regulation whether for himself or herself or for another person shall be guilty of an offence.

(Amended by Ordinance No. 4 of 2014)

24.—(1) A firearm certificate shall be in the prescribed form and shall specify the conditions (if any) subject to which it is held, the nature and number of the firearms to which it relates, including any specific identification numbers known, and, in the case of ammunition, the quantities authorised to be possessed or acquired and to be held at any one time thereunder.

Form of firearm certificate

(2) The provisions of sub-regulation (1) shall apply to both the grant and any renewal or renewals of a firearm certificate.

25.—(1) Subject to sub-regulation (2), a shot gun certificate may be granted or, as the case may be, renewed by the Police Officer for such period as he or she may think fit, if he or she is satisfied that the applicant can be permitted to possess a shot gun without danger to the public safety or peace:

Special provisions for shot gun certificates

Provided that no such certificate shall be granted or renewed if the Police Officer—

- (a) is satisfied that the applicant does not have a good reason for possessing or acquiring a shot gun; or
 (b) has reason to believe that the applicant is prohibited by these Regulations from possessing a shot gun.

(2) For the purpose of the proviso to sub-regulation (1)(a), an applicant shall, in particular, be regarded as having a good reason if the shot gun is intended to be used for sporting or competition purposes.

26.—(1) The [Administrator] may at any time, by notice in writing, amend the conditions subject to which a firearm certificate is held and may, by such notice, require the holder to deliver up the certificate to the Police Officer within seven days from the date of receipt of the notice for the purpose of amending the conditions specified therein. A firearm certificate

Variation of firearms and shot gun certificates

may also, on the application of the holder thereof, be amended from time to time by the Police Officer acting on behalf of the [Administrator].

(Amended by Ordinance No. 4 of 2014)

(2) The Police Officer may at any time, by notice in writing, amend the conditions subject to which a shot gun certificate is held and may by such notice require the holder to deliver up the certificate to him or her within seven days from the date of the notice for the purpose of amending the conditions specified therein. A shot gun certificate may also, on the application of the holder thereof, be amended from time to time by the Police Officer.

(3) Any person aggrieved by the amendment of a certificate or the refusal of an application therefor, may appeal to the Governor and the provisions of regulation 23(6) shall apply to such appeal.

(4) Any person who makes any statement which he or she knows to be false for the procuring the amendment of a firearm or shot gun certificate under this regulation whether for himself or herself or for another person shall be guilty of an offence.

27.—(1) The Police Officer may revoke a firearm or shot gun certificate if—

- (a) he or she is satisfied that the holder is prohibited by these Regulations from possessing any firearm or shot gun, or is of intemperate habits or of unsound mind, or is otherwise not fit to be entrusted with such a firearm or shot gun; or
- (b) the holder fails to comply with a notice issued under regulation 26(1) requiring him or her to deliver up the certificate;
- (c) in the case of firearm certificates the revocation must be endorsed by the [Administrator] within seven days of the date of revocation and the holder appraised of the result.

(Amended by Ordinance No. 4 of 2014)

(2) Any person aggrieved by the revocation of a certificate under sub-regulation (1) may appeal to a Senior Magistrate and the provisions of regulation 23(6) shall apply to such appeal.

(3) Where a certificate is revoked under sub-regulation (1), the Police Officer shall, by notice in writing, require the holder to surrender the certificate within 7 days. Failure to do so shall be an offence:

Provided that if an appeal is made pursuant to sub-regulation (2), this sub-regulation shall not apply to that revocation, unless the appeal is withdrawn or dismissed, and shall then apply with the substitution for the reference to the

Revocation of
certificates

date of the notice, of a reference to the date on which the appeal was withdrawn or dismissed.

28.—(1) A person who sells or transfers any firearm or ammunition to which regulation 4 applies to another person in the Islands shall, unless that other person shows that he or she is, by virtue of these Regulations, entitled to acquire the firearm or ammunition without holding a certificate, comply with any conditions contained in the certificate produced and shall within seven days of the transaction cause notice in writing to be given to the Police Officer.

Transactions involving firearms

(2) A notice given pursuant to sub-regulation (1) shall contain a description of the firearm (with the identification number where appropriate) and shall state the nature of the transaction and the name and address of the purchaser or transferee.

(3) Any person to whom the provisions of this regulation apply who fails to comply therewith shall be guilty of an offence.

PART IV — LAW ENFORCEMENT AND PUNISHMENT FOR OFFENCES

29. Where there are reasonable grounds for suspecting that any offence under these Regulations has been, is being or is about to be committed on any premises, a police officer may—

General powers of search, seizure and examination

- (a) enter such premises at any time, if necessary by force, and search the same and every person found there;
- (b) seize and detain any firearm or ammunition which he or she may find on such premises or on any such person found there, which he or she has reasonable grounds for suspecting has been, is being or is about to be used contrary to any provision of these Regulations.

30.—(1) A police officer may require any person whom he or she has reasonable cause to suspect—

Powers to stop and search

- (a) of possessing a firearm, with or without ammunition, in a public place; or
- (b) to be committing or about to commit, elsewhere than in a public place, any offence under these Regulations,

to hand over the firearm or any ammunition for examination.

(2) Any person who is in possession of a firearm or ammunition, and fails to hand it over when required to do so pursuant to sub-regulation (1), shall be guilty of an offence.

(3) For the purposes of the discharge of the powers under sub-regulation (1), a police officer may search any person so suspected, and may detain him or her for so long as is reasonably necessary for the purpose of so doing:

Provided that no female person shall be searched other than by a female police officer and no male person shall be searched other than by a male police officer.

(4) If a police officer has reasonable cause to suspect that there is a firearm in any vehicle in a public place, or that a vehicle is being or is about to be used in the commission of an offence under these Regulations, he or she may search the vehicle and for that purpose require the person driving or in control of it to stop it.

(5) For the purpose of exercising any of the powers conferred by this regulation, a police officer may enter any premises, including any private premises, without giving prior notice to the owner or occupier thereof.

(6) Any person who fails to comply with any request, instruction or direction lawfully given by a police officer pursuant to the provisions of this regulation shall be guilty of an offence.

Production of
certificates

31.—(1) A police officer may demand from any person whom he or she believes to be in possession of a firearm or ammunition to which these Regulations apply, the production of his or her certificate therefor.

(2) If a person upon whom a demand is made under sub-regulation (1) fails to produce a valid certificate, or to permit the police officer to examine any certificate produced, or to show that he or she is entitled by virtue of these Regulations to have a firearm or ammunition in his or her possession without holding a certificate, the police officer may seize and detain any firearm or ammunition in the possession of that person and may require that person to declare to him or her immediately his or her name and address.

(3) Any person who is required to declare his or her name and address pursuant to sub-regulation (2) who refuses to declare it, or who declares a false name or a false address, shall be guilty of an offence.

Firearms about to be
exported

32.—(1) A police officer or a customs officer may search for and seize any firearm or ammunition which he or she has reason to believe is about to be unlawfully exported from the Islands and may board any ship, vessel or other conveyance for that purpose.

(2) The Master of a ship and any other person who has the control or custody of any firearm or ammunition in course of

transit for exportation shall, on demand by a police officer or a customs officer, allow him or her all reasonable facilities for the examination and inspection thereof, and shall produce all documents in his or her possession relating thereto.

(3) Any person who fails to comply with the provisions of sub-regulation (2), or who otherwise wilfully obstructs a police officer or a customs officer lawfully acting in the execution of his or her duty under this regulation, shall be guilty of an offence.

33.—(1) The Schedule to the Firearms Offences (Prosecution and Punishment) Ordinance 2003 shall have effect with respect to the manner in which offences under these Regulations may be tried and, on conviction, are punishable and for such purpose the provisions of the said ordinance shall be read, construed and applied by any court together with the provisions of these Regulations.

Prosecution and
punishment of
offences

(2) Where the Magistrate's Court or Judge of the Supreme Court is not satisfied that a defendant charged with an offence under these Regulations is guilty of that offence, but is guilty of another offence under these Regulations which has not been charged, the defendant may be convicted of that other offence and punished accordingly.

34.—(1) Where any person—

- (a) is convicted of an offence under these Regulations; or
- (b) has been ordered to enter into a recognizance to keep the peace or to be of good behaviour, a condition of which is that he or she shall not possess, use or carry any firearm or ammunition; or
- (c) is subject to any order containing a requirement that he or she shall not possess, use or carry any firearm or ammunition,

Court's powers to
order forfeiture
and disposal, and
cancellation of
certificates.

the Court by or before which he or she is convicted, or by which the order is made, may make such order as to the forfeiture or disposal of any firearm or ammunition found in his or her possession as the Court thinks fit and may cancel any firearm certificate held by him or her.

(2) Where the Court cancels any firearm certificate under sub-regulation (1)

- (a) it shall cause notice to be sent to the Police Officer; and
- (b) the Police Officer shall by notice in writing require the holder of any such certificate to surrender it forthwith.

(3) Any person who fails without reasonable cause (the

proof whereof shall lie with him or her) to comply with any notice given pursuant to sub-regulation (2)(b) within 7 days of the date of such notice shall be guilty of an offence.

(4) A police officer may seize and detain any firearm or ammunition which may be the subject of an order under sub-regulation (1).

PART V—MISCELLANEOUS PROVISIONS

Service of notice

35. Any notice required or authorised by these Regulations to be given to a person may either delivered personally or left for him or her at his or her last known address.

Power of the Police Officer to delegate

36. Without prejudice to the provisions of the powers and duties conferred specifically by these Regulations upon police officers, the Police Officer may informally delegate to a police officer or officers any of his or her powers and duties under these Regulations:

Provided that the powers and duties conferred upon the Police Officer under the provisions of sections 23, 25 and 27 of these regulations shall at all times be exercised and performed by him or her personally.

Mayor's power to make rules

37. The Mayor may, with the approval of the Governor, make rules for the further and better execution of these Regulations and without prejudice to the generality of this power such rules may provide for—

- (a) anything which by these Regulations is required or permitted to be prescribed;
- (b) the amount and nature of any security considered necessary, by way of cash deposit or otherwise before a certificate, registration or other permission is given, for the due performance of any conditions attached thereto;
- (c) the enforcement of any security given and the forfeiture or repayment of any cash deposit;
- (d) the forms of certificates, registrations and other permits provided for by these Regulations, the nature of any conditions which may be attached thereto, and the variation of such conditions;
- (e) the information to be supplied and documents to be produced in connection with any application which may be made under these Regulations for a certificate, registration or other permit or the variation thereof;
- (f) the fees to be charged in respect of anything required to be done under these Regulations;
- (g) the documents necessary and the procedure to be

- followed in the pursuance of any right of appeal provided for by these Regulations, including the determination and notification thereof;
- (h) the inspection by police officers or customs officers of the business premises of registered firearms dealers and the arrangements for storage and security of the firearms and ammunitions kept on such premises;
 - (i) the marking or other means of identification of firearms and ammunition authorised by these Regulations to be acquired, possessed or transferred;
 - (j) conditions which may be imposed by the Police Officer upon the holding of any sporting or entertainment activity at which a firearm or ammunition will be used, for the purpose of protecting the public safety or peace;
 - (k) without prejudice to the provisions of regulation 3, the exemption by such authority as may be specified from all or any of the requirements of these Regulations for such period and in such circumstances as may be deemed appropriate.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2014

CHAPTER XLI

CHILDREN ORDINANCE

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CHILDREN ORDINANCE

An ordinance to provide for the care and protection of children

[10 July 2003]

PART I—PRELIMINARY

1. This ordinance may be cited as the Children Ordinance.

Ordinances
No. 9 of 2003
No. 7 of 2009
No. 2 of 2014
No. 3 of 2014

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

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

guardian, in relation to a child, includes any person who, in the opinion of the Court having cognizance of any case in relation to the child or in which the child is concerned, has the indefinite charge of or control over the child;

Short title

Interpretation

intoxicating liquor means any liquor within the meaning of the [Sale and Use of Liquor Ordinance].

Cap.26

(Amended by Ordinance No. 7 of 2009)

(Amended by Ordinance No. 3 of 2014)

(2) For the purposes of this ordinance any child—

- (a) who, having no parent or guardian, or having a parent or guardian unfit to exercise care and guardianship or not exercising proper care and guardianship, is either falling into bad associations or is exposed to moral danger or beyond control; or
- (b) in respect of whom any offence mentioned in the Schedule to this ordinance has been committed or attempted to be committed; or
- (c) who is a member of the same household as a child in respect of whom such an offence has been committed; or
- (d) who is a member of the same household as a person who has been convicted of such an offence in respect of a child,

[may thereby be considered] to be in need of care or protection; and the fact the a child is found destitute or is found wandering without any settled place of abode and without visible means of subsistence or is found begging or loitering for the purpose of begging shall, without prejudice to the generality of the provisions of paragraph (a) of this subsection, be evidence that he or she is exposed to moral danger.

(Amended by Ordinance No. 1 of 2006)

3. The Governor may appoint a fit and proper person resident in the Islands to be the Children's Officer for the purposes of this ordinance.

Appointment of
Children's Officer

Places of safety and
children's homes

4. The Governor may—
- (a) designate places of safety;
 - (b) establish a children's home,
- for the reception of children in need of care or protection.

PART II—OFFENCES AGAINST CHILDREN

Interpretation for
Part II

5. For the purposes of this Part of this ordinance—
- (a) any person who is the parent or legal guardian of a child or who is legally liable to maintain the child shall be presumed to have the custody of him or her and [a parent] shall not be deemed to have ceased to have the custody of the child by reason only that he [or she] has deserted or otherwise does not reside with the child;
- (Amended by Ordinance No. 2 of 2014)**
- (b) any person to whose charge a child is committed by any person who has the custody of him or her shall be presumed to have charge of that child;
 - (c) any other person having actual possession or control of a child shall, in the absence of proof to the contrary, be presumed to have the care of him or her.

Abuse of children

- 6.—(1) Every person who, having attained the age of seventeen years and having the custody, charge or care of any child wilfully abuses, ill-treats, neglects, abandons or exposes such child or causes or procures him or her to be abused, ill-treated, neglected, abandoned or exposed in a manner likely to cause that child suffering or injury to physical or emotional health (including any psychological or psychiatric disorder) shall be guilty of an offence and shall be liable—
- (a) on conviction on information before the Supreme Court to a fine not exceeding \$1000 or to imprisonment for any term not exceeding five years or to both such fine and imprisonment.
 - (b) on conviction before the Magistrate's Court in its summary jurisdiction, to a fine not exceeding \$250 or to imprisonment for any term not exceeding two years or to both such fine and imprisonment.
- (2) For the purposes of this section—
- (a) the parent or other person legally liable to maintain a child shall be deemed to have neglected him or her in a manner likely to cause injury to his or her health if, being able to do so, such parent or other person fails to provide adequate food, clothing, rest, medical aid or lodging for him or her;
 - (b) where it is proved that the death of an infant under four years of age was caused by suffocation (not

being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of seventeen years and was at the time of going to bed under the influence of intoxicating liquor or any drug, then that other person shall be deemed to have neglected that infant in a manner likely to cause injury to the child's health;

- (c) any person having attained the age of seventeen years who gives or causes to be given, or sells or causes to be sold to any child under the age of twelve years, any intoxicating liquor except upon the order of a duly qualified medical practitioner or, in case of sickness, apprehended sickness, or other urgent cause, shall be deemed to have ill-treated that child in a manner likely to cause injury to the child's health:
- (d) any person, having attained the age of seventeen years and having the custody, charge or care of any child under the age of seven years, who allows that child to be in any place containing any substance, appliance, tool, firearm, cutting instrument, poison, explosive or other dangerous article whatever, not sufficiently protected to guard against the risk of that child being injured, without exercising reasonable supervision against the risk, and by reason thereof that child is killed or suffers serious injury, shall be deemed to have neglected that child in a manner likely to cause injury to that child's health:

Provided that neither this paragraph, nor any proceedings taken thereunder, shall affect the liability of any person to be charged with manslaughter or any offence against the Offences against the Person Act 1861 of the United Kingdom.

(Amended by Ordinance No. 7 of 2009)

(3) A person may be convicted of an offence under this section—

- (a) notwithstanding that the actual suffering or injury to health or the likelihood of actual suffering or injury to health was obviated by the action of some other person;
- (b) notwithstanding the death of the child in respect of whom the offence is committed.

(4) Upon the trial of any person who has attained the age of seventeen years for infanticide or for the manslaughter of

a child of whom he or she has the custody, charge or care, it shall be lawful for the Court, if it is satisfied that he or she is guilty of an offence under this section to find him or her guilty of that offence.

Assault on a child

7.—(1) Everyone who assaults any child is liable:

- (a) on conviction on information before the Supreme Court to imprisonment for a term not exceeding 5 years or to a maximum fine of \$1000 or to both; or
- (b) on conviction before the Magistrate's Court in its summary jurisdiction to imprisonment for a term not exceeding 2 years or to a maximum fine of \$250 or to both.

(2) The common law rules permitting the use of force for punishment of a child are abolished.]

(Repealed and replaced by Ordinance No. 7 of 2009)

Causing or encouraging the prostitution, etc. of girls

8.—(1) Any person who, having the custody, charge or care of a girl under the age of sixteen years, causes or encourages the seduction, unlawful carnal knowledge or prostitution of, or the commission of an indecent assault upon her, shall be guilty of an offence and shall be liable on conviction to imprisonment for any term not exceeding five years.

(2) For the purposes of this section a person shall be deemed to have caused or encouraged the seduction, unlawful carnal knowledge or prostitution of or commission of an indecent assault upon a girl who has been seduced, unlawfully carnally known or indecently assaulted, or who has become a prostitute, if he or she has knowingly allowed her to consort with or enter or continue in the employment of any prostitute or person of known immoral character.

Causing or allowing children to be in bars

9.—(1) The manager or other person in charge of any bar shall not allow any child at any time to be in the bar unless he or she is accompanied and adequately supervised by a person over the age of 18 years.

(2) Any person who acts in contravention of this section commits an offence punishable on summary conviction by a fine not exceeding, in respect of the first offence, \$25 and, in respect of any subsequent offence, \$100.

(3) In this section, the expression "bar" means any premises used for the sale and consumption of intoxicating liquor, whether habitually or on a specific occasion and includes any such place on a visiting ship or vessel.

Safety of children at entertainments

10.—(1) Where there is provided in any building or vessel an entertainment for children, or an entertainment at which the majority of persons attending are children, it shall be the

duty of the persons providing the entertainment to take all reasonable steps to station wherever necessary a sufficient number of attendants, being not less than eighteen years of age, to prevent more children or other persons being admitted to the building or vessel than the building or vessel can properly accommodate and to control the movement of the children and other persons admitted and to take all other reasonable precautions for the safety of the children.

(2) Any person failing to fulfil the obligations imposed on him or her by this section shall be guilty of an offence against this ordinance.

(3) Any police officer who has reason to believe that such an entertainment as aforesaid is being or is about to be provided in any building or vessel may enter therein to ascertain whether the provisions of subsection (1) are being complied with.

10A. It shall be the duty of all persons who have responsibility for the operation of workplaces:

Safety of children in workplaces

- (a) to determine whether the operation of that workplace or the nature of the work involved is likely to harm the health, safety or morals of children, and if so determined to then ensure that no children are in that workplace; and
- (b) to comply with any instructions relating to the safety of a workplace given by or under the hand of a Constable.

10B.—(1) A person who has responsibility for a workplace and who allows any child to be in that workplace in circumstances where that child is exposed to the risk of harm to his or her health and safety commits an offence punishable by summary conviction and is liable to a maximum fine of \$250 for a first offence and \$500 for any subsequent offence.

Exposing children to harm to health and safety

(2) In this Ordinance “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 the Local Government 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.]

(Inserted by Ordinance No. 7 of 2009)

PART III—PROTECTION OF CHILDREN

Warrant to search for
and remove child

11.—(1) If it appears to a Magistrate on a complaint on oath laid by any person who, in the opinion of the magistrate, is acting in the interests of a child that there is reasonable cause to suspect—

- (a) that the child has been or is being abused, assaulted, ill-treated or neglected in a manner likely to cause that child unnecessary suffering; or
- (b) that an offence mentioned in the Schedule to this ordinance has been or is being committed in respect of the child,
the Magistrate may issue a warrant authorising any police officer—
 - (i) to search for the child and, if it is found that the child has been or is being abused, assaulted, ill-treated or neglected in any such manner or that any such offence has been or is being committed in respect of the child to take him or her and detain him or her in a place of safety; or
 - (ii) to remove the child with or without search to a place of safety and detain him or her there until the child can be brought before the Magistrate's Court.

(2) A Magistrate issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child to be apprehended and brought before the Magistrate's Court in order that proceedings may be taken against him or her according to law.

(3) Any police officer authorised by warrant under this section to search for any child or to remove any child with or without search may enter (if need be by force) any house, building, vessel or other place specified in the warrant and may remove him or her therefrom.

(4) The police officer executing any warrant issued under this section may be accompanied by the person laying the complaint if that person so desires and may also, if the Magistrate by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.

Detention of child in
place of safety

12.—(1) A police officer may take to a place of safety any child in respect of whom any of the offences mentioned in the Schedule to this ordinance has been, or there is reason to believe has been, committed or who is, in accordance with the provisions of section 13, about to be brought before the Magistrate's Court.

(2) Any child taken to a place of safety under this section and also any child who seeks refuge in a place of safety may there be detained until he or she can be brought before the Magistrate's Court and every child so detained shall be brought before the Court at the earliest practicable opportunity.

[12A. Every child taken to a place of safety in accordance with any provision of this ordinance shall be deemed to be lawfully in the interim care of the Children's Officer.]

Child in place of
safety in interim care
of Children's Officer

(Inserted by Ordinance No. 1 of 2006)

13. The Children's Officer or any police officer may bring before the Magistrate's Court a child in need of care or protection.

Power to bring
children before Court

14.—(1) The Magistrate's Court before which any child is brought under section 13 or before which is brought any child in respect of whom any of the offences mentioned in the Schedule to this ordinance has been committed may, if satisfied that the welfare of the child so requires, make an order—

Powers of Court

(a)

(Revoked by Ordinance No. 1 of 2006)

- (b) committing him or her to the care of any fit person, whether a relative or not, who is willing to undertake the care of him or her; or
 - (c) requiring the parent or guardian to enter into a recognizance to exercise proper care and guardianship; or
 - (d) placing him or her, either in addition to or without making, an order under paragraphs (b) or (c) of this subsection under the supervision of the Children's Officer.
- (2) (a) If the Court before which any child is brought is not in a position to decide whether any or what order ought to be made under this section, it may make such interim order as it thinks fit for the child's detention or continued detention in a place of safety or for his or her committal to the care of a fit person, whether a relative or not, who is willing to undertake the care of him or her.
- (b) Any interim order made under this subsection shall not remain in force for more than thirty days, but at any time within such period the Court may, if it considers it expedient to do so, make a further interim order; so, however, that in no case shall any interim order or orders made under this subsection remain in force for more than sixty days after the date of the first order.

- (c) If the Court by which an interim order is made is satisfied on any occasion that, by reason of illness or accident, the child is unable to appear personally before the Court, any further interim order which the Court is empowered to make on that occasion may be made in the absence of the child.

[(3) (Revoked by Ordinance No. 1 of 2006)]

(4) Every order, other than an interim order, committing a child to the care of a fit person or placing him or her under the supervision of the Children's Officer shall, subject to the provisions of this ordinance, remain in force until the child attains the age of eighteen years.

(5) An order made under subsection (1) of this section may, on the application of the Children's Officer or any police officer, be varied or revoked by the Court and the Court may, on such application, make such order subject to the provisions of this ordinance in relation to the child as it considers necessary in the interests of the welfare of the child, which shall be paramount.

(6) The Court shall exercise its jurisdiction under this ordinance sitting in Chambers, or in Court in closed session, as may be appropriate.

Power of parent to oppose application

15.—(1) Where a child is brought before a Court under section 13 of this ordinance the Court shall allow his or her parent or guardian to be heard, if they so wish, in opposition to the application for an order.

(2) When the parent or guardian cannot be found or cannot in the opinion of the Court be reasonably required to attend, the Court may allow any relative or other responsible person to take the place of the parent or guardian for the purposes of this section.

Refractory children

16.—(1) The parent or guardian of a child may bring the child before the Court and where the parent or guardian proves to the Court that he or she is unable to control the child, the Court, if satisfied—

- (a) that it is expedient so to deal with the child; and
- (b) that the parent or guardian understands the results that will follow from and consents to the making of an order, may order the child
 - (ii) to be committed to the care of any fit person, whether a relative or not, who is willing to undertake the care of him or her; or
 - (iii) to be placed, either in addition to or without making any order under paragraphs (ii) of this subsection, under the supervision of the

Children's Officer.

(2) The provisions of subsections (4) and (5) of section 14 of this ordinance shall apply to an order made under this section as if it were an order made under subsection (1) of that section.

(Revoked by Ordinance No. 1 of 2006)

17.—(1) Where a person having the custody, charge or care of a child has been—

Disposal of child by
order of Court

- (a) convicted, in respect of that child, of any of the offences mentioned in the Schedule to this ordinance; or
- (b) committed for trial for any such offence; or
- (c) bound over to keep the peace towards that child, by any Court,

that Court may order that child to be brought before the Magistrate's Court with a view to the Court making an order under section 14 of this ordinance and shall direct that the Children's Officer shall be informed as soon as practicable of the order made.

(2) Where any Court has, under this section, made an order directing that a child be brought before a Magistrate's Court, it shall be the duty of the Children's Officer to bring the child before the Court.

18. The person to whose care a child is committed by an order made under this ordinance shall, while the order is in force, have the same rights and powers and be subject to the same liabilities in respect of the child's maintenance as if he or she were a parent of the child and the child so committed shall continue in his or her care notwithstanding any claim by a parent or other person.

Rights and powers of
fit persons

19. Where a Court makes an order under this ordinance placing a child under the supervision of the Children's Officer, the Children's Officer shall, while the order remains in force, visit, advise and befriend the child and, when necessary, endeavour to find him or her suitable employment and may, if it appears necessary to do so, at any time while the order remains in force bring him before a Court and that Court may, if it thinks it desirable and in the child's interests to do so, commit the child to the care of a fit person, whether a relative or not, who is willing to take care of him or her.

Supervision by
Children's Officer

(Amended by Ordinance No. 1 of 2006)

20. Where a child is brought before a Magistrate's Court under the provisions of this ordinance the Court may in its discretion require the attendance of his or her parent or guardian and may make such orders as are necessary for the

purpose.

PART IV—MISCELLANEOUS

Power of Court to require attendance of parent or guardian

21.—(1) Where an order has been made by a Magistrate’s Court committing a child to the care of a fit person, the Court which makes the order may at the same time or subsequently make an order (hereafter in this ordinance referred to as a “contribution order”) against the parent, guardian or other person liable to maintain the child, requiring him or her to contribute such weekly sum as the Court, having regard to his or her means, sees fit.

Contribution by parent etc. towards maintenance of child

(2) A contribution order may, if the child is committed to the care of a fit person, be made on the application of that person.

(3) Where the child has been committed to the care of a fit person, contributions under this section shall be payable to that person to be applied by him or her in or towards the maintenance, or otherwise for the benefit, of the child.

(4) A contribution order shall remain in force, in the case of a child committed to the care of a fit person, so long as the order for his or her committal is in force.

(5) A contribution order shall be enforceable as an affiliation order and the law of England for the time being in force relating to the enforcement of affiliation orders shall apply so far as it is suitable and appropriate and subject to such qualifications as local circumstances render necessary.

(Amended by Ordinance No. 1 of 2006)

Escapes from fit persons

22.—(1) A child who runs away from a person to whose care he or she has been committed under this ordinance may be apprehended by any police officer or the Children’s Officer and brought back to that person if that person is willing to receive him or her and if that person is not willing to receive him or her may be taken before a Magistrate’s Court which may make an order as if he or she had been brought before the Court as being in need of care or protection.

(2) Any person who knowingly assists or induces a child to run away from a children’s home or from a person to whose care he or she has been committed or harbours or conceals a child who has so run away or prevents him or her from returning shall be guilty of an offence against this ordinance.

(Amended by Ordinance No. 1 of 2006)

Governor may withhold passport where arrangements for care and maintenance of child inadequate

23. If any person legally liable for the care and maintenance of a child intends to leave the Islands without taking such child with him or her, the Governor may withhold the grant of a passport to such person until that person has satisfied him or her that the child is not likely, before he or

she reaches the age of sixteen years, to become a charge on public funds or to be exposed to moral danger or neglect by reason of lack of care and maintenance.

24. Any person guilty of an offence against this ordinance for which no special punishment is provided shall be liable on conviction to a fine not exceeding \$250 or to imprisonment for a term not exceeding six months and in the case of a continuing offence to a further fine not exceeding \$20 a day for each day on which the offence continues after conviction, beginning one calendar month after the date thereof.

General penalty

25. If it appears to a Court that any person having entered into a recognizance under section 14 of this ordinance has failed to comply with any of the conditions of that recognizance, the Court may adjudge the recognizance to be forfeited and the sum of money named therein to be payable by the parent, guardian or other surety and thereupon that recognizance may be enforced against such parent, guardian or other surety as if the sum of money named therein were a fine ordered to be paid by a Court of summary jurisdiction upon summary conviction of an offence.

Enforcement of recognizance

26. The Governor may make rules—

- (b) prescribing the forms to be used for any order made under this ordinance;
- (c) generally, for giving effect to the provisions of this ordinance.

(Amended by Ordinance No. 1 of 2006)

Rules

SCHEDULE

1. Any offence under sections 6, 7 or 8 of this ordinance.
2. Any offence under sections 27 or 56 of the Offences against the Person Act 1861 of the United Kingdom and any offence against a child under sections 42 or 43 of that Act.
3. Any offence against a child under sections 2 to 7, 10 to 16, 19, 20, 22 to 26 and 28 of the Sexual Offences Act 1956 of the United Kingdom and any attempt to commit an offence against a child under sections 2, 5 to 7, 10 to 12, 22 and 23 of that Act.
4. Any offence under section 1 of the Indecency with Children Act 1960 of the United Kingdom.
5. Any other offence involving physical or mental harm to a child.

**PITCAIRN, HENDERSON, DUCIE AND OENO
ISLANDS**

**NOTICE OF APPOINTMENT OF CHILDREN'S
OFFICER**

In exercise of the powers conferred by section 3 of the Children Ordinance I hereby appoint the person for the time being holding the office of Administrator resident on Pitcairn Island to be the Children's Officer for the purposes of the said Ordinance.

Dated this 28th day of November 2014 at Adamstown

Jonathan Sinclair
Governor

**PITCAIRN, HENDERSON, DUCIE AND OENO
ISLANDS**

NOTICE OF DESIGNATION OF PLACE OF SAFETY

In exercise of the powers conferred by section 4(b) of the Children Ordinance I hereby designate the following premises as a place of safety for the purposes of the said Ordinance:

the residence of the Administrator on Pitcairn Island

Dated this 28th day of November 2014 at Adamstown

Jonathan Sinclair
Governor

Children Ordinance

Cap. 41

CHILD SAFETY AND PROTECTION RULES 2006**Rules making detailed provision for implementing the care and safety of children in the Islands, made by the Governor in exercise of the powers conferred by section 26 of the Children Ordinance (cap.41)**

1. These Rules may be cited as the Child Safety and Protection Rules 2006 and shall come into force on the day after they are made.

Citation

2.—(1) In these rules, unless the context otherwise requires—

Interpretation

family, in relation to a Family Meeting, means a group of persons comprising those persons related by birth, marriage or adoption and includes anyone with a significant emotional attachment to the child:

Ordinance means the Children Ordinance (cap.41); the terms and expressions defined in section 2(1) of the Ordinance shall bear the same meaning and interpretation in these rules;

Children's Officer and **place of safety** shall bear the same meaning and effect in these rules as they have in the Ordinance;

(2) For the purpose of section 11(1) of the ordinance any duly qualified social worker present in the Islands shall be deemed to be a person acting in the interests of a child for the purposes set out therein.

(3) The forms prescribed in the schedule to these rules shall be used in proceedings concerning the care and protection of any child to which they relate in the Magistrate's Court and all matters connected therewith. Such variation may be made in any prescribed form as the circumstances of any particular case may require

(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.

(5) Nothing in this subsection shall be construed as preventing the making of any application, or the granting of any order, in oral form if the urgency of the application or order so require. In any such case written record thereof must be made as soon as circumstances permit and filed in the registry of the Magistrate's Court together with such number of copies for service as the Magistrate shall direct.

Purpose of rules

3.—(1) The purpose of these rules is to give effect to the im-plementation of the ordinance.

(2) The principles which shall be applied at family meetings and in all proceedings under the ordinance shall be—

- i) that the welfare of a child shall be at all times regarded by the Court as the first and paramount consideration; the Court shall have regard to the conduct of any parent to the extent only that such conduct is relevant to the welfare of the child;
- ii) in the application of paragraph i) there shall be no presumption that the placing of a child in the custody of a particular person will, because of the gender of that person, best serve the welfare of the child;
- iii) for the purpose of any proceedings under the ordinance, the Court shall ascertain the wishes of the child, if the child is able to express them, and shall take account of them to such extent as the Court thinks fit having regard to the age and maturity of the child;
- iv) subject to the foregoing paragraphs of this subsection, wherever possible the views of the family of the child should be taken into account;
- v) the cultural heritage and environment of a child shall, wherever relevant to his or her welfare, be taken into account.

Proceedings to remove child to a place of safety

4.—(1) Every application for orders of the Court under section 11 of the ordinance shall be made on oath in accordance with Form A in the Schedule and in the case of urgent reasons to find or to remove any child to safety may be made orally in the first place.

(2) Any person wishing to make such an application may notify the Registrar or any Deputy-Registrar of his or her intention and the earliest possible communication shall be established for the purpose with an available Magistrate.

(3) In granting any such orders the Court shall make directions for service of the proceedings on such persons, and the time or stage of the proceedings at which such service should take place, having regard to the safety of the child in the known circumstances of the case.

Family meetings to be held in s.14 applications

5.—(1) In any proceedings before the Court under section 14 of the ordinance to secure the care or protection of a child, the Court shall enquire into the matter so far as it is possible and may call for a report or other evidence from any social worker able to assist the Court or any police officer having knowledge of the relevant facts.

(2) The Court shall make directions for service of the proceedings upon such members of the family as are available for the purpose that a Family Meeting be held in private and a further report made to the Court within 14 days or such further time as the Court may permit.

(3) The Family Meeting shall be attended by the Children's Officer, any social worker with knowledge of the case and any other professional persons specified by the Children's Officer who shall determine in every case whether or not the child the subject of the Meeting should attend. In appropriate cases the Children's Officer may seek the appointment by the Court of a legal practitioner to act as counsel for the child.

6.—(1) On the request of the Court the Governor shall appoint a duly qualified and experienced legal practitioner to represent the child in any proceedings whose fees and expenses shall be calculated in accordance with the Schedule to the Legal Aid Ordinance and submitted to the Registrar for approval and payment.

Counsel for child

(2) Counsel for the child shall attend the Family Meeting and shall appear on his or behalf at every sitting of the Court:

Provided that the Court may, on his or her application or of its own motion, excuse counsel from personal attendance and may receive his or her submissions or evidence, or evidence adduced by him or her, in whatever form or by use of live link television, as the Court may think fit.

(3) Counsel for the child may adduce evidence before the Court and may cross-examine witnesses called by any other party. At the stage of the proceedings when the Court has completed its enquiries, counsel for the child shall make his or her submissions and recommendation as to the making of any interim or permanent orders or other direction whatsoever.

(4) Upon its own motion or upon the submission of counsel for the child that it is necessary to do so, the Court shall have the same power as it would have under the laws of England to place the child under the guardianship of the Court. If made by the Island Magistrate the order shall be an interim order requiring the confirmation of a Senior Magistrate within one month and referred for that purpose by the Island Magistrate forthwith in the same manner as a request for advice or consultation under the provisions of subsection (2) of section 5 of the Justice Ordinance. If the confirmation of a Senior Magistrate is received within one month of the making of the interim order it shall continue in force until revoked but otherwise shall lapse.

7.—(1) Every Family Meeting shall be presided over by

Procedure at Family Meetings

the Children's Officer or any other person appointed by the Children's Officer.

(2) Notes of the meeting shall be kept by the chairperson and no other person.

(3) The statements and other evidence at the meeting shall be privileged and shall not be disclosed outside the meeting to any person.

Penalty: Fine of \$200.00

Procedure in
Magistrate's Court

8. All proceedings in the Court shall be held in camera. There shall be suppression orders in place as to the identity of the parties and the evidence and submissions before the Court, unless the Court otherwise orders. Any breach of this rule shall constitute contempt of Court.

(Rules 9, 10 and 11 deleted by reason of duplication with r.2 (3) and (4))

Form B

The Children Ordinance

(Sections 14 and 16)

In the Pitcairn Islands No. Ch /20

Magistrate’s Court

Held at

Order Committing Child to Care of Fit Person

To (a)

Whereas (b) a child, was brought before the Magistrate’s Court as being (c) [in need of care or protection] [beyond parental control]:

And whereas the said Court considered it expedient and in the best interests of the welfare of the said child to make an order committing him/her to the care of a fit person who is willing to undertake the care of him/her:

This, therefore, is to authorise and command you, (a), to receive the said (b)into your custody and keep him/her in accordance with the provisions of the Children Ordinance, 2003 until he/she attains the age of sixteen years or until this order is varied or revoked.

It is hereby declared that -

- (i) the age of the said child is (d) years months, having been born on
- (ii) his/her religious persuasion is

Dated thisday of, 20

Magistrate

- (a) Insert full name of fit person
- (b) Insert full name of child
- (c) Delete whichever is inapplicable
- (d) Insert age and date of birth of child

Form C

The Children Ordinance 2003

(Section 14)

In the Pitcairn Islands No. Ch /20

Magistrate’s Court

Held at

Recognizance to Exercise Proper Care and Guardianship of Child

(a) of (b)being the (c)
.....of (d), acknowledges that he/she
owes to our Sovereign Lady the Queen the sum of (e)
payment thereof to be enforced against him/her by due process of law if
he/she fails to comply with the condition endorsed hereon.

Taken before me thisday of, 20

Magistrate

Condition

The condition of this recognizance is that whereas (d)
was this day found by the Magistrate’s Court to be a child in need of care
or protection by reason of the failure of (a) to exercise
proper care and guardianship of him/her:

If, therefore, the said (a)exercises proper care
and guardianship of the said (d) and in particular
(e), then this recognizance shall be void but
otherwise shall remain in full force.

- (a) Insert full name of person entering into recognizance
- (b) Insert address of person entering into recognizance
- (c) Insert father, mother or guardian, as the case may be
- (d) Insert full name of child
- (e) Insert sum of money payable
- (f) Insert any particular conditions to be observed

Form D

The Children Ordinance 2003

(Sections 14 and 16)

In the Pitcairn Islands No. Ch /20

Magistrate’s Court

Held at

Order Placing Child under Supervision of Children’s Officer

Whereas (a) of (b), a child, was brought before the Magistrate’s Court as being (c) [in need of care or protection] [beyond parental control];

And whereas the said Court considered it expedient and in the best interests of the welfare of the said child to make an order placing him/her under the supervision of the Children’s Officer:

Now, therefore, it is hereby ordered that (a) be subject to the supervision of the Children’s Officer in accordance with the provisions of the Children Ordinance, 2003 until he/she attains the age of sixteen years or until this order is varied or revoked.

It is hereby declared that the age of the said child is (d) years months, having been born on

Dated this day of 20

Magistrate

- (a) Insert full name of child
- (b) Insert address at which child resides
- (c) Delete whichever is inapplicable
- (d) Insert age of child and date of birth

Form E

The Children Ordinance 2003

(Section 20)

In the Pitcairn Islands No. Ch /20

Magistrate’s Court

Held at

**Order Requiring Attendance of Child’s Parent or Guardian
at Magistrate’s Court**

To (a) of (b)

You are hereby required to appear on (c), the
..... day of, 20..... at the hour of,
before the Magistrate’s Court sitting at Adamstown, Pitcairn Island on
an inquiry into the circumstances of (d), who has been
brought before the Court as a child being (e) [in need of care or protection]
[beyond parental control].

Take note that if you fail to appear before the Court on the day and at
the time above-mentioned, the Court may compel your attendance.

Dated thisday of, 20

Magistrate

- (a) Insert full name of parent or guardian
- (b) Insert address
- (c) Insert the day, date and time attendance required
- (d) Insert full name of child
- (e) Delete whichever is inapplicable

Form F

The Children Ordinance 2003

(Section 21)

In the Pitcairn Islands

No. Ch /20

Magistrate’s Court

Held at

Contribution Order

Whereas an order committing (a), a child to (b) the care of a fit person was on the (c)made by the Magistrate’s Court:

And whereas [(d), the fit person to whose care the said child was committed,] has made application for a contribution order:

It is hereby ordered that (e), being the (f) of the said child, shall pay to (g)the sum of (h) each week to be applied in accordance with the provisions of the Children Ordinance, the first of such payments to be made on (i) , so long as the said child remains in the care of [such fit person], or until this order is varied or revoked.

Dated the day of, 20

Magistrate

- (a) Insert full name of child
- (c) Insert date committal order made
- (d) Insert full name of fit person
- (e) Insert full name of person by whom contribution payable
- (f) Insert status of person by whom contribution payable
- (g) Insert the name of the fit person
- (h) Insert amount to be paid each week
- (i) Insert date of first payment

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2004

CHAPTER XLII

**ENDANGERED SPECIES PROTECTION
ORDINANCE**

Arrangement of sections

Section

1. Short title
2. Interpretation
3. Restrictions on exportation or importation of protected goods
4. Management Authority
5. Scientific Authority
6. Power to make orders to protect certain species
7. Limitation on Orders made under section 6
8. Offences by company, etc.
9. Stop and search powers
10. Application to Crown
11. Revocation
12. Rules

ENDANGERED SPECIES PROTECTION ORDINANCE

An ordinance to provide for the protection of endangered, endemic and indigenous species of animals and plants and to regulate the trade in endangered species

[26 May 2004]

Short title

1. This ordinance may be cited as the Endangered Species Protection Ordinance.

Interpretation

2. In this ordinance, unless the contrary intention appears—

authorised person means a person empowered in writing by the Management Authority or the Governor to perform any specified function under this ordinance;

CITES means the Convention on International Trade in Endangered Species of Wild Fauna and Flora that was concluded in Washington on 3 March 1973; and references to any particular provision of CITES are references to that provision as it appears in the version of CITES, as is in force at the relevant time, that is published in the Treaty Series issued by Her Majesty's Stationery Office in the United Kingdom;

export means to take, or cause to be taken, out of the Islands;

import means to bring, or cause to be brought, into the Islands, including for the purpose of export;

introduction from the sea means transportation into the territory of specimens of any species which were taken in the marine environment not under the jurisdiction of the territory

Management Authority means the Management Authority for the Islands for the purpose of CITES, as provided for in section 4;

protected goods means any specimen of a species that is for the time being included in Appendix I, Appendix II or Appendix III to CITES;

re-export means export of any specimen that has previously been imported;

Scientific Authority means the Scientific Authority for the Islands for the purpose of CITES, as provided for in section 5;

species means any species, subspecies or geographically separate population thereof;

specimen means

(i) any animal or plant, whether alive or dead;

- (ii) in the case of an animal: for species included in Appendices I and II, any readily recognisable part or derivative thereof; and for species included in Appendix III, any readily recognisable part or derivative thereof specified in Appendix III in relation to the species; and
- (iii) in the case of a plant: for species included in Appendix I, any readily recognisable part or derivative thereof; and for species included in Appendices II and III, any readily recognisable part or derivative thereof specified in Appendices II and III in relation to the species;

the Islands means the Islands of Pitcairn, Henderson, Ducie and Oeno or any of them;

trade means export, re-export, import and introduction from the sea.

3.—(1) Save in accordance with a licence issued by the Management Authority under this ordinance, the exportation or the importation of any protected goods is prohibited. Any such licence may be revoked or modified by the Authority at any time.

Restrictions on
exportation or
importation of
protected goods

(2) A licence issued under this ordinance shall be in accordance with the provisions of Article VI of CITES and in the case of exportation of any protected goods may be used only within six months of the date upon which it was issued.

(3) The reference in subsection (1) to a licence issued under this ordinance is a reference to such a licence issued prior to the exportation or importation to which it relates:

Provided that the Management Authority may in any exceptional case to which subsection (4) applies and when satisfied that proper regard is being had to the relevant recommendations in that behalf issued by the competent authority under CITES, issue a licence in respect of an exportation or an importation that has already taken place.

(4) This subsection applies to any case where the failure to license prior to exportation or importation is not attributable to the exporter or the importer and the export and import of the specimens concerned are otherwise in compliance with CITES and the relevant legislation of the countries of export and import.

(5) Where any protected goods are being exported or imported or have been imported, a Police Officer or other authorised person may require any person having possession or control of those goods to furnish proof that its exportation

or importation is or was not unlawful under this section; and if such proof is not furnished to the satisfaction of the Management Authority, the goods shall be forfeited to the Crown and shall be disposed of in such manner as the Governor may direct.

(6) Any person who contravenes subsection (1) commits an offence and shall be liable—

- (a) on summary conviction in the Magistrate's Court, to a fine not exceeding \$1000 or imprisonment for a term not exceeding 18 months; or
- (b) on conviction on information by the Supreme Court, to a fine not exceeding \$1,000,000 or imprisonment for a term not exceeding 5 years.

(7) Where any person is convicted of an offence under subsection (6) the goods in respect of which the offence was committed shall, without further order, be forfeited to the Crown and shall be disposed of in such manner as the Governor may direct.

(8) Any person who, for the purpose of obtaining, whether for himself or herself, or for another, the issue of a licence under subsection (1) above—

- (a) makes any statement which he or she knows to be false in a material particular; or
- (b) furnishes a document or information which he or she knows to be false in a material particular; or
- (c) recklessly makes a statement or furnishes a document or information which is false in a material particular,

commits an offence and shall be liable, on summary conviction, to a fine not exceeding \$2000 or to imprisonment for a period not exceeding 18 months or to both such fine and such imprisonment.

Management Authority

4.—(1) The Management Authority for the Islands for the purpose of CITES shall be such person or persons as the Governor shall from time to time appoint in that behalf.

(2) Before exercising any of its powers under section 3 involving a scientific question, the Management Authority shall obtain the advice of the Scientific Authority:

Provided that the exercise of any such power involving a scientific question, shall not be invalidated by reason only of a failure to comply with this subsection.

Scientific Authority

5.—(1) The Scientific Authority for the Islands for the purpose of CITES shall be such person or persons as the Governor shall from time to time appoint in that behalf.

(2) The function of the Scientific Authority is to advise the

Management Authority or, as appropriate, the Governor—

- (a) on the exercise of the Management Authority’s powers under section 3 which involve a scientific question;
- (b) on any matter relating to the administration of this ordinance on which its advice is sought or on which it wishes to tender advice; and
- (c) generally, on matters relating to endangered species on which its advice is sought or on which it wishes to tender advice.

6.—(1) Notwithstanding the powers conferred upon the Management Authority by section 3, the Governor may by order—

Power to make orders to protect certain species

- (a) prohibit the importation or exportation of any article or substance the importation or exportation of which is liable to endanger the welfare or continued existence in the Islands of any plant or animal; or
- (b) prohibit the taking, damaging or killing of any specific plant or animal; or
- (c) prohibit the use of an article or substance the use of which is liable to damage the welfare or continued existence in the Islands of any plant or animal; or
- (d) prohibit the growing or cultivation of any plant if the growing or cultivation of the plant is liable to damage the welfare or continued existence in the Islands of any plant or animal; or
- (e) prohibit the keeping of any animal if the keeping of the animal is liable to damage the welfare or continued existence in the Islands of any plant or animal.

(2) The Governor may by Order require the owner or occupier of any land to remove within the period specified in the Order any plant or species of plant growing on the land if the growth of that plant or species of plant is liable to damage the welfare or continued existence in the Islands of any plant or animal.

(3) The Governor may by Order declare any area of land to be an endemic management zone where habitat protection measures specified in the Order are in force.

(4) An Order made under this section may be to any degree general or specific but shall in any event include any goods that are protected goods.

(5) Any person failing to comply with an order made under subsection (1) of this section commits an offence and is liable

- (a) on summary conviction in the Magistrate’s Court, to a fine not exceeding \$1000 or imprisonment for

a term not exceeding 18 months; or

- (b) on conviction on information by the Supreme Court, to a fine not exceeding \$1,000,000 or imprisonment for a term not exceeding 5 years.

(6) Any person failing to comply with an order made under subsection (2) of this section commits an offence and is liable, on summary conviction, to a fine not exceeding \$1000.

(7) Any person failing to comply with a habitat protection measure specified in an Order made under subsection (3) of this section commits an offence and is liable, on summary conviction, to a fine not exceeding \$1000.

Limitation on Orders made under section 6

7. An Order cannot be made under section 6 except to protect and encourage the continued existence of any species of plant or animal endemic or indigenous to the Islands

Offences by company, etc.

8.—(1) If an offence under this ordinance is committed by a company, firm, or other association of individuals whether incorporated or not, each—

- (a) director and officer of the company; or
- (b) partner and officer of the firm; or
- (c) member and person concerned in the management of the affairs of the association,

as the case may be, is severally liable to be prosecuted and punished for the offence as a principal offender, unless the act or omission constituting the offence took place without his or her knowledge, consent or connivance.

(2) A person may be prosecuted by virtue of subsection (1) whether or not the company, firm or other association of individuals is prosecuted.

Stop and search powers

9.—(1) The powers conferred by this section are without prejudice to the powers conferred, in any particular case, by any other law as to criminal procedure or evidence in force in the Islands.

(2) For the purposes of this ordinance, any Police Officer or other authorised person may—

- (a) stop, board and search any ship, aircraft or vehicle if he or she has reason to suspect that there is therein anything liable to seizure; and
- (b) stop and search any person and search the property of any person if he or she has reason to suspect that that person has in his or her possession anything liable to seizure; and
- (c) enter and search any premises, being premises in which he or she has reason to suspect that an imported living specimen is being held, for the purpose of ascertaining whether any condition to

which the relevant importation licence is subject and which relates to the housing or care of that specimen is being complied with:

Provided that no person shall be searched in pursuance of the powers conferred by paragraph (b) otherwise than by a person of the same gender.

(3) Where it appears to a Magistrate upon the oath of any person, that there is reasonable cause to believe that there is in any place or premises, anything liable to seizure, he or she may, by warrant directed to a Police Officer or any other authorised person, empower him or her to enter, by force if necessary, and search the place or premises named in the warrant and to seize anything therein which is liable to seizure.

(4) For the purposes of this section, any protected goods imported in contravention of this ordinance are liable to seizure.

10. This ordinance binds the Crown but nothing in this ordinance renders the Crown liable to prosecution for an offence under this ordinance.

Application to Crown

11. Part III of the Local Government Regulations entitled “PLANT AND ANIMAL QUARANTINE” is hereby revoked.

Revocation

12. The Governor shall have power, after consultation with the Management Authority, to make any rules for the efficient administration and implementation of this ordinance.

Rules

**PITCAIRN, HENDERSON, DUCIE AND OENO
ISLANDS**

**NOTICE OF APPOINTMENT OF SCIENTIFIC
AUTHORITY**

In exercise of the powers conferred by section 2 of the
Endangered Species Protection Ordinance 2004

I hereby appoint the person holding office for the time being
as Director of Bio-Security to be the Scientific Authority for
the Islands for the purpose of the Convention on International
Trade in Endangered Species of Wild Flora and Fauna
concluded in Washington on 3 March 1973.

Dated the 28th day of May 2004

Richard T. Fell
Governor

**PITCAIRN, HENDERSON, DUCIE AND OENO
ISLANDS**

**NOTICE OF APPOINTMENT OF MANAGEMENT
AUTHORITY**

In exercise of the powers conferred by section 2 of the
Endangered Species Protection Ordinance 2004

I hereby appoint the person holding office for the time being as
Deputy-Governor of the islands as management Authority for
the Islands for the purpose of the Convention on International
Trade in Endangered Species of Wild Flora and Fauna
concluded in Washington on 3 March 1973.

Dated the 28th day of May 2004

Richard T. Fell
Governor

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2010

CHAPTER XLIII

RIGHT OF ABODE ORDINANCE

Arrangement of sections

Section

1. Title and commencement
2. Right of abode defined
3. "Citizen" defined
4. Certificate of entitlement to right of abode
5. Governor may prescribe rules
6. Amendment to Immigration Control Ordinance 2006

RIGHT OF ABODE ORDINANCE 2010

DATE MADE:

Ordinances:
No. 1 of 2010
No. 2 of 2010

An Ordinance to define the category of persons who have the right of abode on Pitcairn

Title and
commencement

1. This Ordinance may be cited as the Right of Abode Ordinance 2010 and shall come into force on the day after it is published.

Right of abode
defined

2. A person has the right of abode in Pitcairn if that person is—

- (1) a person who was born in Pitcairn, who was a citizen at birth and whose father or mother was permanently resident in Pitcairn at the time of the person's birth; or
- (2) a person who was born outside Pitcairn, who was a citizen at birth and whose father or mother was permanently resident in Pitcairn at the time of the person's birth; or
- (3) a citizen who was born outside Pitcairn whose father or mother was born in Pitcairn and had the right of abode in Pitcairn at the time of the person's birth; or
- (4) a person who has attained the status of permanent residence in accordance with ss 12 and 13 of [the Immigration Control Ordinance 2006] or any previous law in force in Pitcairn and who has received from the Governor a certificate of registration or naturalisation as a citizen; or
- (5) a citizen who has attained the status of permanent residence in accordance with ss 12 and 13 of [the Immigration Control Ordinance 2006] or any previous law in force in Pitcairn and who satisfies the requirements for naturalisation as a British overseas territories citizen on the basis of Pitcairn being the relevant territory; or
- (6) a person under the age of eighteen years who is the child, stepchild, or child adopted in a manner recognised by law of a person who has the right of abode in Pitcairn.

cap. 12

cap. 12

(Amended by Ordinance No. 2 of 2010)

"Citizen" defined

3. For the purposes of this Ordinance, "citizen" means a person who is a British citizen, a British overseas territories citizen or a British overseas citizen; or who was, at the material time, a citizen of the United Kingdom and Colonies, a British dependent territories citizen or a British subject.

4. A person who is entitled to the right of abode pursuant to this Ordinance shall be entitled, upon application made to the Governor, to a certificate of entitlement of his or her right of abode on Pitcairn.

Certificate of entitlement to right of abode

5. The Governor may prescribe rules governing applications for certificates of entitlement to the right of abode on Pitcairn.

Governor may prescribe rules

6. The Immigration Control Ordinance 2006 is hereby amended by deleting subparagraph (a) of section 15(1) and replacing it with the following:

Amendment to Immigration Control Ordinance 2006

“(a) Persons who have the right of abode in Pitcairn under the Right of Abode Ordinance 2010.”

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2017

CHAPTER XLIV

**SEXUAL OFFENCES (NOTIFICATION AND
PREVENTION) ORDINANCE**

Arrangement of sections

PART I—PRELIMINARY

Section

1. Citation
2. Commencement
3. Meaning of “cautioned”

PART II—NOTIFICATION REQUIREMENTS

4. Persons becoming subject to notification requirements
5. Notification requirements for persons charged prior to the commencement of this Act
6. The notification period
7. Notification requirements: initial notification
8. Notification requirements: changes
9. Notification requirements: travel outside the Islands
10. Method of notification and related matters
11. Young offenders: parental directions
12. Parental directions: variations, renewals and discharges
13. Offences relating to notification
14. Suspension from notification obligations
15. Certificates for the purposes of this Ordinance
16. Supply of information to Governor etc. for verification
17. Supply of information by Governor etc.
18. Information about release or transfer
19. Power of entry and search of relevant offender’s home address

PART III—NOTIFICATION ORDERS

20. Notification orders: application and grounds
21. Notification orders: effect
22. Sections 20 and 21: relevant offences
23. Notification orders and interim notification orders: appeals

PART IV—SEXUAL OFFENCES PREVENTION ORDERS

24. Sexual offences prevention orders: application and grounds
25. Section 24: supplemental
26. SOPOs: effect
27. SOPOs: variations, renewals and discharges
28. Interim SOPOs
29. SOPOs and interim SOPOs: appeals
30. Offence: breach of SOPO or interim SOPO

PART V—RISK OF SEXUAL HARM ORDERS

31. Risk of sexual harm orders: applications, grounds and effect
32. Section 31: interpretation
33. RSHOs: variations, renewals and discharges
34. Interim RSHOs
35. RSHOs and interim RSHOs appeals
36. Offence: breach of RSHO or interim RSHO
37. Effect of conviction etc. of an offence under section 36

SEXUAL OFFENCES (NOTIFICATION AND PREVENTION) ORDINANCE 2010

[18 June 2010]

Ordinances:
3 of 2010
1 of 2016

PART I—PRELIMINARY

1. This Ordinance shall be cited as the Sexual Offences (Notification and Prevention) Ordinance.

Citation

2. This Ordinance shall come into force on the 28th day after it is published.

Commencement

3.—(1) For the purposes of this Ordinance, “caution” means a caution, reprimand or warning given to a person by a police officer in relation to an offence, that—

Meaning of
“cautioned”

- (a) is in writing;
- (b) forms part of that person’s criminal record; and
- (c) contains the information described in subsection (2);

and “cautioned” is to be interpreted accordingly.

(2) The information referred to in subsection (1) is—

- (a) a clear and reliable admission of the offence by the person concerned;
- (b) full and clear details of the offence;
- (c) an explanation of the consequences of receiving a caution, reprimand or warning;
- (c) the signature of the person concerned; and
- (d) the signature of the police officer administering the caution.

PART II—NOTIFICATION REQUIREMENTS

4.—(1) A person is subject to the notification requirements of this Part for the period set out in section 6 (“the notification period”) if—

Persons becoming
subject to notification
requirements

- (a) he or she is convicted of an offence listed in Schedule 1;
- (b) he or she is found not guilty of such an offence by reason of insanity;
- (c) he or she is found to be under a disability and to have done the act charged against him or her in respect of such an offence; or
- (d) he or she is cautioned in respect of such an offence.

(2) A person for the time being subject to the notification requirements of this Ordinance is referred to in this Ordinance as a “relevant offender”.

5.—(1) A person is, from the commencement of this Ordinance until the end of the notification period, subject to

Notification
requirements for
persons charged prior
to the commencement
of this Act

the notification requirements of this Ordinance if, before the commencement of this Ordinance, he or she was convicted of an offence listed in Schedule 1.

(2) Subsection (1) does not apply if the notification period ended before the commencement of this Ordinance.

(3) Subsection (1) does not apply to a conviction before the day this Ordinance commences unless, at the beginning of that day, the person—

- (a) had not been dealt with in respect of the offence;
- (b) was serving a sentence of imprisonment or a term of service detention, or was subject to a community order, in respect of the offence;
- (c) was subject to supervision, having been released from prison after serving the whole or part of a sentence of imprisonment or a period of home detention in respect of the offence; or
- (d) was detained in a hospital or was subject to a guardianship order, following the conviction.

6.—(1) The notification period for a person within section 4(1) or 5(1) is the period in the second column of the following Table opposite the description that applies to him or her.

The notification period

TABLE	
<i>Description of relevant offender</i>	<i>Notification Period</i>
A person who, in respect of the offence, is or has been sentenced to imprisonment for life or to imprisonment for a term of 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months	10 years beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	7 years beginning with that date
A person within section 4(1)(d)	2 years beginning with that date

A person who has been ordered to come up for sentence in respect of the offence if called upon	The period specified in the order
A person of any other description	5 years beginning with the relevant date

(2) Where a person is under 18 on the relevant date, subsection (1) has effect as if for any reference to a period of 10 years, 7 years, 5 years or 2 years there were substituted a reference to one-half of that period.

(3) Subsection (4) applies where a relevant offender within section 4 (1)(a) or 5(1) is or has been sentenced, in respect of two or more offences listed in Schedule 1—

- (a) to consecutive terms of imprisonment; or
- (b) to terms of imprisonment which are partly concurrent.

(4) Where this subsection applies, subsection (1) has effect as if the relevant offender were or had been sentenced, in respect of each of the offences, to a term of imprisonment which—

- (a) in the case of consecutive terms, is equal to the aggregate of those terms;
- (b) in the case of partly concurrent terms (X and Y, which overlap for a period Z), is equal to X plus Y minus Z.

(5) Where a relevant offender the subject of a finding within section 4(1)(c) is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.

(6) In this Part, “relevant date” means—

- (a) in the case of a person within section 4(1)(a) or 5(1), the date of the conviction;
- (b) in the case of a person within section 4(1)(b) or (c), the date of the finding; and
- (c) in the case of a person within section 4(1)(d), the date of the caution.

[(7) In this section, a reference to a sentence of imprisonment includes a sentence of home detention.]

(Inserted by Ordinance No. 1 of 2016)

7.—(1) A relevant offender must, within the period of 3 days beginning with the relevant date (or, if later, the commencement of this Ordinance), notify to the police the information set out in subsection (2).

(2) The information is—

- (a) the relevant offender’s date of birth;
- (b) his or her name on the relevant date and, where he or she used one or more other names on that date,

Notification requirements: initial notification

each of those names;

- (c) his or her home address on the relevant date;
- (d) his or her name on the date on which notification is given and, where he or she uses one or more other names on that date, each of those names;
- (e) his or her home address on the date on which notification is given;
- (f) the address of any other premises in the Islands at which, at the time the notification is given, he or she regularly resides or stays;
- (g) any prescribed information.

(3) In subsection (2)(g) “prescribed” means prescribed by regulations made by the Governor.

(4) When determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is —

- (a) remanded in or committed to custody by an order of a court;
- (b) serving a sentence of imprisonment;
- (c) detained in a hospital; or
- (d) outside the Islands.

(5) In this Ordinance, “home address” means, in relation to any person —

- (a) the address of his or her sole or main residence in the Islands, or
- (b) where he or she has no such residence, the address or location of a place in the Islands where he or she can regularly be found and, if there is more than one such place, such one of those places as the person may select.

Notification requirements: changes

8.—(1) A relevant offender must, within the period of 3 days beginning with —

- (a) his or her using a name which has not been notified to the police under section 7(1) or this subsection,
- (b) any change of his or her home address,
- (c) his or her having resided or stayed, for a qualifying period, at any premises in the Islands the address of which has not been notified to the police under section 7(1) or this subsection,
- (d) any prescribed change of circumstances, or
- (e) his or her release from custody pursuant to an order of a court or from imprisonment[, home detention,] or detention in a hospital,

notify to the police that name, the new home address, the address of those premises, the prescribed details or (as the case may be) the fact that he or she has been released.

(Amended by Ordinance No. 1 of 2016)

(2) In this section—

- (a) “prescribed change of circumstances” means any change—
 - (i) occurring in relation to any matter in respect of which information is required to be notified by virtue of section 7(2)(g), and
 - (ii) of a description prescribed by regulations made by the Governor;
- (b) “the prescribed details”, in relation to a prescribed change of circumstances, means such details of the change as may be so prescribed.

(3) In this section, “qualifying period” means—

- (a) a period of 7 days, or
- (b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

9.—(1) A relevant offender who leaves the Islands—

- (a) must, before he or she leaves, give a notification under subsection (2); and
- (b) if he or she subsequently returns to the Islands, must give a notification under subsection (4).

Notification requirements: travel outside the Islands

(2) A notification under this subsection must be given as soon as reasonably practicable but not less than 24 hours before the date that the relevant offender intends to leave the Islands and must disclose—

- (a) the date on which the offender will leave the Islands;
- (b) the country (or, if there is more than one, the first country) to which he or she will travel and the point of arrival in that country;
- (c) where he or she intends to travel to more than one country outside the Island, the intended point of arrival in each such additional country;
- (d) the identity of any carrier or carriers he or she intends to use for the purposes of departure from and return to the Islands and of travelling to any other point of arrival;
- (e) details of accommodation arrangements for his or her first night outside the Islands;
- (f) in a case in which he or she intends to return to the Islands on a particular date, that date; and

(3) Where—

- (a) a relevant offender has given a notification under subsection (2), and
- (b) at any time prior to his or her intended departure from the Islands, the information disclosed in that notification becomes inaccurate or incomplete as a statement of all the information mentioned in that

subsection which he or she currently holds.

the relevant offender must give a further notification under this section.

(4) A notification under this subsection must be given within 3 days of a relevant offender's return to the Islands and must disclose the date of the relevant offender's return to the Islands.

Method of notification
and related matters

10.—(1) A person gives a notification under this Ordinance by—

- (a) attending at the police station, or
- (b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.

(2) Any notification under this section must be acknowledged; and an acknowledgment under this subsection must be in writing, and in such form as the Governor may direct.

Young offenders:
parental directions

11.—(1) Where a person within the first column of the following Table (“the young offender”) is under 18 when he or she is before the court referred to in the second column of the Table opposite the description that applies to him or her, that court may direct that subsection (2) applies in respect of an individual (“the parent”) having parental responsibility for the young offender.

TABLE	
<i>Description of person</i>	<i>Court which may make the direction</i>
A relevant offender within section 4(1) (a) to (c) or 5(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A relevant offender within section 38(1) (a) to (c)	The court which deals with the offender in respect of the offence or finding
A person who is the subject of a notification order, interim notification order, sexual offences prevention order or interim sexual offences prevention order	The court which makes the order
A relevant offender who is the defendant to an application under subsection (4)	The court which hears the application

(2) Where this subsection applies—

- (a) the obligations that would (apart from this subsection) be imposed by this Ordinance on the young offender are to be treated instead as obligations on the parent, and
- (b) the parent must ensure that the young offender attends at the police station with him, when a notification is being given.

(3) A direction under subsection (1) takes immediate effect and applies—

- (a) until the young offender attains the age of 18 ; or
- (b) for such shorter period as the court may, at the time the direction is given, direct.

(4) A police officer may, by complaint to the Magistrate's Court, apply for a direction under subsection (1) in respect of a relevant offender ("the defendant") who the officer believes is under 18.

12.—(1) A person within subsection (2) may apply to the Magistrate's Court for an order varying, renewing or discharging a direction under section 11(1).

Parental directions:
variations, renewals
and discharges

(2) The persons are—

- (a) the young offender;
- (b) the parent;
- (c) a police officer.

(3) On the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the direction, that the court considers appropriate.

13.—(1) Subject to section 14, a person commits an offence if he or she—

Offences relating to
notification

- (a) fails, without reasonable excuse, to comply with section 7(1), 8(1), 9(1) or 11(2)(b); or
- (b) notifies to the police, in purported compliance with section 7(1), 8(1) or 9(1), any information which he or she knows to be false.

(2) A person guilty of an offence under this section is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$500 or both.

(3) A person commits an offence under paragraph (a) of subsection (1) on the day on which he or she first fails, without reasonable excuse, to comply with section 7(1), 8(1) or 9(1), and continues to commit it throughout any period during which the failure continues; but a person must not be prosecuted under subsection (1) more than once in respect of the same failure.

14.—(1) A relevant offender to whom subsection (2) applies may apply to the Supreme Court for an order suspending his or her obligation to comply with any notification requirements under this Ordinance.

Suspension
from notification
obligations

(2) This subsection applies to a relevant offender if—

- (a) a period of 15 years has passed (ignoring any period during which the relevant offender was

serving a sentence of imprisonment, remanded in or committed to custody by an order of a court, or detained in a hospital) since the relevant date;

- (b) he or she did not become the subject of a life-long reporting period under a corresponding Act whilst in a foreign jurisdiction before becoming the subject of such a period in the Islands; and
- (c) he or she is not on parole in respect of a relevant offence.

(3) In this section “relevant date” has meaning given by section 6(6).

(4) On an application made under subsection (1), the Supreme Court may make an order suspending the relevant offender’s obligation to comply with his or her notification requirements under this Part, provided that—

- (a) the Court is satisfied that the relevant offender does not pose a risk to the sexual safety of one or more persons or of the community; and
- (b) in deciding whether to make the order, the Court takes into account—
 - (i) the seriousness of the relevant offence
 - (ii) the period of time since the relevant offence was committed
 - (iii) the age of relevant offender, the age of the victims of that offence, and the difference in age between the relevant offender and the victims of that offence, as at the time the relevant offence was committed;
 - (iv) the relevant offender’s present age;
 - (v) the relevant offender’s total criminal record;
 - (vi) any other matter the Court considers appropriate.

(5) A police officer is to be a party to any proceedings under this section. The police officer may make submissions in opposition to, or in support of, the making of an order under this section.

(6) The Court may not award costs in respect of proceedings under this section.

(7) An applicant in respect of whom the Court refuses to make an order under this section is not entitled to make a further application under subsection (1) until 5 years have elapsed from the date of the refusal, unless the Court orders otherwise at the time of the refusal.

(8) An order made under this section ceases to have effect if, at any time after the making of the order, the relevant offender again becomes subject to notification requirements

under section 4(1).

15.—(1) Subsection (2) applies where on any date a person is—

Certificates for purposes of this Ordinance

- (a) convicted of an offence listed in Schedule 1;
- (b) found not guilty of such an offence by reason of insanity; or
- (c) found to be under a disability and to have done the act charged against him or her in respect of such an offence.

(2) If the court by or before which the person is so convicted or found—

- (a) states in open court—
 - (i) that on that date he or she has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged against him or her, and
 - (ii) that the offence in question is an offence listed in Schedule 1, and
- (b) certifies those facts, whether at the time or subsequently,

the certificate is, for the purposes of this Part, evidence of those facts.

(3) Subsection (4) applies where on any date a person is cautioned in respect of an offence listed in Schedule 1.

(4) If the police officer—

- (a) informs the person that he or she has been cautioned on that date and that the offence in question is an offence listed in Schedule 1, and
- (b) certifies those facts, whether at the time or subsequently, in writing sworn or affirmed before a Registrar of the Supreme Court,

the certificate is, for the purposes of this Part, evidence of those facts.

16.—(1) This section applies to information notified to the police under section 7 or 8.

Supply of information to Governor etc. for verification

(2) A police officer may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to—

- (a) the Governor,
- (b) a person providing services to the Governor in connection with a relevant function, for use for the purpose of verifying the information.

(3) In relation to information supplied under subsection (2) to any person, the reference to verifying the information is a reference to—

- (a) checking its accuracy by comparing it with information held—
 - (i) where the person is the Governor, by him or her in connection with the exercise of a relevant function, or
 - (ii) where the person is within subsection (2)(b), by that person in connection with the provision of services referred to there, and
- (b) compiling a report of that comparison.

(4) The supply of information under this section is to be taken not to breach any restriction on the disclosure of information (however arising or imposed).

(5) This section does not affect any power existing apart from this section to supply information.

(6) In this section—

“relevant function” means—

- (a) a function relating to social security, child support, employment or training,
- (b) a function relating to passports.

Supply of information
by Governor etc.

17.—(1) A report compiled under section 16 may be supplied by—

- (a) the Governor, or
- (b) a person within section 16(2)(b),

to a police officer.

(2) Such a report may contain any information held—

- (a) by the Governor, in connection with the exercise of a relevant function, or
- (b) by a person within section 16(2)(b) in connection with the provision of services referred to there.

(3) Where such a report contains information within subsection (2), the police officer to whom it is supplied—

- (a) may retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of an offence under this Ordinance, and
- (b) may use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Ordinance), but for no other purpose.

(4) Subsections (4) to (6) of section 16 apply in relation to this section as they apply in relation to section 17.

Information about
release or transfer

18.—(1) This section applies to a relevant offender who is serving a sentence of imprisonment or is detained in a hospital.

(2) The Superintendent of Her Majesty’s Prison Pitcairn must give notice to a Police officer of any occasion when an

offender is released or a different person becomes responsible for the offender.

(3) The regulations may make provision for determining who is to be treated for the purposes of this section as responsible for an offender.

19.—(1) If on an application made by a police officer a Magistrate is satisfied that the requirements in subsection (2) are met in relation to any premises, the Magistrate may issue a warrant authorising a police officer—

Power of entry and search of relevant offender's home address

- (a) to enter the premises for the purpose of assessing the risks posed by the relevant offender to which the warrant relates; and
 - (b) to search the premises for that purpose.
- (2) The requirements are—
- (a) that the address of each set of premises specified in the application is an address falling within subsection (3);
 - (b) that the relevant offender is not one to whom subsection (4) applies;
 - (c) that it is necessary for a police officer to enter and search the premises for the purpose mentioned in subsection (1)(a); and
 - (d) that on at least two occasions a police officer has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose.
- (3) An address falls within this subsection if—
- (a) it is the address which was last notified in accordance with this Part by a relevant offender to the police as his or her home address; or
 - (b) there are reasonable grounds to believe that a relevant offender resides there or may regularly be found there.
- (4) This subsection applies to a relevant offender if he or she is—
- (a) remanded in or committed to custody by order of a court;
 - (b) serving a sentence of imprisonment;
 - (c) detained in a hospital; or
 - (d) outside the Islands.
- (5) A warrant issued under this section must specify the one or more sets of premises to which it relates.
- (6) The warrant may authorise the police officer executing it to use reasonable force if necessary to enter and search the premises.

(7) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the Magistrate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose mentioned in subsection (1)(a).

(8) Where a warrant issued under this section authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum.

(9) In this section a reference to the relevant offender to whom the warrant relates is a reference to the relevant offender—

- (a) who has in accordance with this Ordinance notified the police that the premises specified in the warrant are his or her home address; or
- (b) in respect of whom there are reasonable grounds to believe that he or she resides there or may regularly be found there.

(10) Any police officer exercising a power of entry and search under this section must—

- (a) identify themselves to any occupant of the relevant premises; and
- (b) show and explain the warrant under which he or she is acting.

PART III—NOTIFICATION ORDERS

Notification orders:
applications and
grounds

20.—(1) A police officer may, by complaint to the Magistrate’s Court, apply for an order under this section (a “notification order”) in respect of a person (“the defendant”) if it appears to him or her that the following two conditions are met with respect to the defendant.

(2) The first condition is that under the law in force in a country outside the Islands—

- (a) the defendant has been convicted of a relevant offence (whether or not he or she has been punished for it),
- (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the defendant is not guilty by reason of insanity,
- (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that the defendant is under a disability and did the act charged against him or her in respect of the offence, or
- (d) the defendant has been cautioned in respect of a relevant offence.

(3) The second condition is that the period set out in section

6 (as modified by subsections (2) and (3) of section 21) in respect of the relevant offence has not expired.

(4) If on the application it is proved that the conditions in subsections (2) and (3) are met, the court must make a notification order.

(5) In this section and section 21, “relevant offence” has the meaning given by section 22.

21.—(1) Where a notification order is made—

Notification orders:
effect

- (a) the application of this Part to the defendant in respect of the conviction, finding or caution to which the order relates is subject to the modifications set out below, and
 - (b) subject to those modifications, the defendant becomes or (as the case may be) remains subject to the notification requirements of this Part for the notification period set out in section 6.
- (2) The “relevant date” means—
- (a) in the case of a person within section 20(2)(a), the date of the conviction;
 - (b) in the case of a person within section 20(2)(b) or (c), the date of the finding;
 - (c) in the case of a person within section 20(2)(d), the date of the caution.
- (3) In section 6—
- (a) references, except in the Table, to a person (or relevant offender) within any provision of section 4 are to be read as references to the defendant;
 - (b) the reference in the Table to section 4(1)(d) is to be read as a reference to section 20(2)(d);
 - (c) references to an order of any description are to be read as references to any corresponding disposal made in relation to the defendant in respect of an offence or finding by reference to which the notification order was made;
 - (d) the reference to offences listed in Schedule 1 is to be read as a reference to relevant offences.
- (4) In section 7 references to the commencement of this Ordinance are to be read as references to the date of service of the notification order.
- (5) In section 14, the reference to the “relevant date” is to be read as a reference to the “relevant date” under subsection (2) of this section.

22.—(1) “Relevant offence” in sections 20 and 21 means an act which—

Sections 20 and 21:
relevant offences

- (a) constituted an offence under the law in force in the

country concerned, and

- (b) would have constituted an offence listed in Schedule 1 if it had been done in any part of the Islands.

(2) An act punishable under the law in force in a country outside the Islands constitutes an offence under that law for the purposes of subsection (1) however it is described in that law.

(3) Subject to subsection (4), on an application for a notification order the condition in subsection (1)(b) is to be taken as met unless, not later than 10 days from the date of service of the application, the defendant serves on the applicant a notice—

- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his or her opinion met,
- (b) showing his or her grounds for that opinion, and
- (c) requiring the applicant to prove that the condition is met.

(4) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (3).

23. A defendant may appeal to the Supreme Court against the making of a notification order.

PART IV—SEXUAL OFFENCES PREVENTION ORDERS

24.—(1) A court may make an order under this section in respect of a person (“the defendant”) where any of subsections (2) to (4) applies to the defendant and—

- (a) where subsection (4) applies, it is satisfied that the defendant’s behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant;
- (b) in any other case, it is satisfied that it is necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.

(2) This subsection applies to the defendant where the court deals with him or her in respect of an offence listed in Schedule 1.

(3) This subsection applies to the defendant where the court deals with him or her in respect of a finding—

- (a) that the defendant is not guilty of an offence listed in Schedule 1 by reason of insanity, or

Sexual offences
prevention orders:
applications and
grounds

- (b) that the defendant is under a disability and has done the act charged against him or her in respect of such an offence.
- (4) This subsection applies to the defendant where—
 - (a) an application under subsection (5) has been made to the court in respect of him or her, and
 - (b) on the application, it is proved that he or she is a qualifying offender.
- (5) A police officer may by complaint to the Magistrate’s Court apply for an order under this section in respect of a person if it appears to the officer that—
 - (a) the person is a qualifying offender, and
 - (b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

25.—(1) In this Ordinance, “sexual offences prevention order” means an order under section 24.

Section 24:
supplemental

(2) Subsections (3) to (8) apply for the purposes of section 24.

(3) “Protecting the public or any particular members of the public from serious sexual harm from the defendant” means protecting the public in the Islands or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 1.

(4) Acts, behaviour, convictions and findings include those occurring before the commencement of this Ordinance.

(5) “Qualifying offender” means a person within subsection (6) or (7).

(6) A person is within this subsection if, whether before or after the commencement of this Ordinance, he or she—

- (a) has been convicted of an offence listed in Schedule 1,
- (b) has been found not guilty of such an offence by reason of insanity,
- (c) has been found to be under a disability and to have done the act charged against him or her in respect of such an offence, or
- (d) has been cautioned in respect of such an offence.

(7) A person is within this subsection if, under the law in force in a country outside the Islands and whether before or after the commencement of this Ordinance—

- (a) he or she has been convicted of a relevant offence (whether or not he or she has been punished for it),
- (b) a court exercising jurisdiction under that law has

made in respect of a relevant offence a finding equivalent to a finding that he or she is not guilty by reason of insanity,

- (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he or she is under a disability and did the act charged against him or her in respect of the offence, or
- (d) he or she has been cautioned in respect of a relevant offence.

(8) “Appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which he or she was convicted, found or cautioned as mentioned in subsection (6) or (7).

(9) In subsection (7), “relevant offence” means an act which—

- (a) constituted an offence under the law in force in the country concerned, and
- (b) would have constituted an offence listed in Schedule 1 if it had been done in any part of the Islands.

(10) An act punishable under the law in force in a country outside the Islands constitutes an offence under that law for the purposes of subsection (9), however it is described in that law.

(11) Subject to subsection (12), on an application under section 24(5) the condition in subsection (9)(b) (where relevant) is to be taken as met unless, not later than 10 days after being served with the application, the defendant serves on the applicant a notice—

- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his or her opinion met,
- (b) showing his or her grounds for that opinion, and
- (c) requiring the applicant prove that the condition is met.

(12) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (11).

SOPOs: effect

26.—(1) A sexual offences prevention order—

- (a) prohibits the defendant from doing anything described in the order, and
- (b) has effect for a fixed period (not less than 5 years) specified in the order or until further order.

(2) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.

(3) Where—

(a) an order is made in respect of a defendant who was a relevant offender immediately before the making of the order, and

(b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Ordinance while the order (as renewed from time to time) has effect,

the defendant remains subject to the notification requirements.

(4) Where an order is made in respect of a defendant who was not a relevant offender immediately before the making of the order—

- (a) the order causes the defendant to become subject to the notification requirements of this Ordinance from the making of the order until the order (as renewed from time to time) ceases to have effect, and
- (b) this Ordinance applies to the defendant, subject to the modification set out in subsection (5).

(5) The “relevant date” is the date of service of the order.

(6) Where a court makes a sexual offences prevention order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

(7) Section 25(3) applies for the purposes of this section and section 27.

27.—(1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a sexual offences prevention order.

SOPOs: variations,
renewals and
discharges

(2) The persons are—

- (a) the defendant;
- (b) a police officer

(3) An application under subsection (1) may be made—

- (a) where the appropriate court is the Supreme Court, in accordance with rules of court;
- (b) in any other case, by complaint.

(4) Subject to subsections (5) and (6), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the sexual offences prevention order, that the court considers appropriate.

(5) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant (and any renewed or varied order

may contain only such prohibitions as are necessary for this purpose).

(6) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and a police officer.

(7) In this section “the appropriate court” means—

- (a) where the Supreme Court or the Court of Appeal made the sexual offences prevention order, the Supreme Court;
- (b) where a Magistrate’s court made the order, that court.

Interim SOPOs

28.—(1) This section applies where an application under section 24(5) (“the main application”) has not been determined.

(2) An application for an order under this section (“an interim sexual offences prevention order”)—

- (a) may be made by the complaint by which the main application is made, or
- (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

(3) The court may, if it considers it just to do so, make an interim sexual offences prevention order, prohibiting the defendant from doing anything described in the order.

(4) Such an order—

- (a) has effect only for a fixed period, specified in the order;
- (b) ceases to have effect, if it has not already done so, on the determination of the main application.

(5) Section 26(3) to (5) apply to an interim sexual offences prevention order as if references to an order were references to such an order, and with the omission of “as renewed from time to time” in both places.

(6) The applicant or the defendant may by complaint apply to the court that made the interim sexual offences prevention order for the order to be varied, renewed or discharged.

SOPOs and interim
SOPOs: appeals

29.—(1) A defendant may appeal against the making of a sexual offences prevention order—

- (a) where section 24(2) applied to him or her, as if the order were a sentence passed on him or her for the offence;
- (b) where section 24(3) (but not section 24(2)) applied to him or her, as if he or she had been convicted of the offence and the order were a sentence passed

on him or her for that offence;

- (c) where the order was made on an application under section 24(5), to the Supreme Court.
- (2) A defendant may appeal to the Supreme Court against the making of an interim sexual offences prevention order.
- (3) A defendant may appeal against the making of an order under section 27, or the refusal to make such an order—
 - (a) where the application for such an order was made to the Supreme Court, to the Court of Appeal;
 - (b) in any other case, to the Supreme Court.
- (4) On an appeal under subsection (1)(c), (2) or (3)(b), the Supreme Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

(5) Any order made by the Supreme Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be re-heard by the Magistrate’s Court) is for the purpose of section 27(7) or 28(6) (respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Supreme Court).

30.—(1) A person commits an offence if, without reasonable excuse, he or she does anything which he or she is prohibited from doing by—

Offence: breach of SOPO or interim SOPO

- (a) a sexual offences prevention order;
- (b) an interim sexual offences prevention order;
- (2) A person guilty of an offence under this section is liable to imprisonment for a term not exceeding 5 years or a fine not exceeding \$5,000 or both.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he or she is convicted to give, in respect of the offence, an order to come up for sentence if called upon.

PART V—RISK OF SEXUAL HARM ORDERS

31.—(1) A police officer may by complaint to the Magistrate’s Court apply for an order under this section (a “risk of sexual harm order”) in respect of a person aged 18 or over (“the defendant”) if it appears to the officer that—

Risk of sexual harm orders: applications, grounds and effect

- (a) the defendant has on at least two occasions, whether before or after the commencement of this Part, done an act within subsection (2), and
- (b) as a result of those acts, there is reasonable cause to believe that it is necessary for such an order to be made.

- (2) The acts are—
- (a) engaging in sexual activity involving a child or in the presence of a child;
 - (b) causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;
 - (c) giving a child anything that relates to sexual activity or contains a reference to such activity;
 - (d) communicating with a child, where any part of the communication is sexual.
- (3) On the application, the court may make a risk of sexual harm order if it is satisfied that—
- (a) the defendant has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (2); and
 - (b) it is necessary to make such an order, for the purpose of protecting children generally or any child from harm from the defendant.
- (4) Such an order—
- (a) prohibits the defendant from doing anything described in the order;
 - (b) has effect for a fixed period (not less than 2 years) specified in the order or until further order.
- (5) The only prohibitions that may be imposed are those necessary for the purpose of protecting children generally or any child from harm from the defendant.
- (6) Where a court makes a risk of sexual harm order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

Section 31:
interpretation

32.—(1) Subsections (2) to (7) apply for the purposes of section 31.

(2) “Protecting children generally or any child from harm from the defendant” means protecting children generally or any child from physical or psychological harm, caused by the defendant doing acts within section 31(2).

(3) “Child” means a person under 16.

(4) “Image” means an image produced by any means, whether of a real or imaginary subject.

(5) “Sexual activity” means an activity that a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider to be sexual.

(6) A communication is sexual if—

- (a) any part of it relates to sexual activity, or
- (b) a reasonable person would, in all the circumstances

but regardless of any person's purpose, consider that any part of the communication is sexual.

- (7) An image is sexual if—
- (a) any part of it relates to sexual activity, or
 - (b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the image is sexual.

33.—(1) A person within subsection (2) may by complaint to the Magistrate's Court apply for an order varying, renewing or discharging a risk of sexual harm order.

RSHOs: variations, renewals and discharges

(2) The persons are—

- (a) the defendant;
- (b) a police officer.

(3) Subject to subsections (4) and (5), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the risk of sexual harm order, that the court considers appropriate.

(4) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or any child from harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).

(5) The court must not discharge an order before the end of 2 years beginning with the day on which the order was made, without the consent of the defendant and a police officer.

(6) Section 32(2) applies for the purposes of this section.

34.—(1) This section applies where an application for a risk of sexual harm order ("the main application") has not been determined.

Interim RSHOs

(2) An application for an order under this section ("an interim risk of sexual harm order")—

- (a) may be made by the complaint by which the main application is made, or
- (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

(3) The court may, if it considers it just to do so, make an interim risk of sexual harm order, prohibiting the defendant from doing anything described in the order.

(4) Such an order—

- (a) has effect only for a fixed period, specified in the

order;

- (b) ceases to have effect, if it has not already done so, on the determination of the main application.

(5) The applicant or the defendant may by complaint apply to the court that made the interim risk of sexual harm order for the order to be varied, renewed or discharged.

RSHOs and interim RSHOs: appeals

35.—(1) A defendant may appeal to the Supreme Court—

- (a) against the making of a risk of sexual harm order;
 (b) against the making of an interim risk of sexual harm order; or
 (c) against the making of an order under section 34, or the refusal to make such an order.

(2) On any such appeal, the Supreme Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

(3) Any order made by the Supreme Court on an appeal under subsection (1)(a) or (b) (other than an order directing that an application be re-heard by the Magistrate's Court) is for the purpose of section 34(5) to be treated as if it were an order of the Magistrate's Court (and not an order of the Supreme Court).

Offence: breach of RSHO or interim RSHO

36.—(1) A person commits an offence if, without reasonable excuse, he or she does anything which he or she is prohibited from doing by—

- (a) a risk of sexual harm order; or
 (b) an interim risk of sexual harm order.

(2) A person guilty of an offence under this section is liable to imprisonment for a term not exceeding 5 years or a fine not exceeding \$5,000 or both.

(3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he or she is convicted to give, in respect of the offence, an order to come up for sentence if called upon.

Effect of conviction etc. of an offence under section 36

37.—(1) This section applies to a person (“the defendant”) who—

- (a) is convicted of an offence under section 36 of this Ordinance;
 (b) is found not guilty of such an offence by reason of insanity;
 (c) is found to be under a disability and to have done the act charged against him or her in respect of such an offence; or
 (d) is cautioned in respect of such an offence.

(2) Where—

- (a) a defendant was a relevant offender immediately before this section applied to him or her, and
 - (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Ordinance while the relevant order (as renewed from time to time) has effect,
- the defendant remains subject to the notification requirements.
- (3) Where the defendant was not a relevant offender immediately before this section applied to him or her—
- (a) this section causes the defendant to become subject to the notification requirements of this Ordinance from the time the section first applies to him or her until the relevant order (as renewed from time to time) ceases to have effect, and
 - (b) this Ordinance applies to the defendant, subject to the modification set out in subsection (4).
- (4) The “relevant date” is the date on which this section first applies to the defendant.
- (5) In this section “relevant order” means—
- (a) where the conviction, finding or caution within subsection (1) is in respect of a breach of a risk of sexual harm order, that order;
 - (b) where the conviction, finding or caution within subsection (1) is in respect of a breach of an interim risk of sexual harm order, any risk of sexual harm order made on the hearing of the application to which the interim risk of sexual harm order relates or, if no such order is made, the interim risk of sexual harm order.

SCHEDULE 1**SEXUAL OFFENCES FOR PURPOSES OF NOTIFICATION
REQUIREMENTS****Section 4**

1. An offence under section 1 of the Sexual Offences Act 1956 (rape).
2. An offence under section 5 of that Act (intercourse with girl under 13).
3. An offence under section 6 of that Act (intercourse with girl under 16), if the offender was 20 or over.
4. An offence under section 10 of that Act (incest by a man), if the victim or (as the case may be) other party was under 18.
5. An offence under section 12 of that Act (buggery) if—
 - (a) the offender was 20 or over, and
 - (b) the victim or (as the case may be) other party was under 18.
6. An offence under section 13 of that Act (indecenty between men) if—
 - (a) the offender was 20 or over, and
 - (b) the victim or (as the case may be) other party was under 18.
7. An offence under section 14 of that Act (indecent assault on a woman) if—
 - (a) the victim or (as the case may be) other party was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.
8. An offence under section 15 of that Act (indecent assault on a man) if—
 - (a) the victim or (as the case may be) other party was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.
9. An offence under section 16 of that Act (assault with intent to commit buggery), if the victim or (as the case may be) other party was under 18.
10. An offence under section 28 of that Act (causing or encouraging the prostitution of, intercourse with or indecent assault on girl under 16).
11. An offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child).
12. An offence under section 54 of the Criminal Law Act 1977 (inciting girl under 16 to have incestuous sexual intercourse).
13. An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children), if the indecent photographs or pseudo-photographs showed persons under 16 and—
 - (a) the conviction, finding or caution was before the commencement of this Ordinance, or
 - (b) the offender—
 - (i) was 18 or over, or

- (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 14. (1) An offence under section 170 of the Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (indecent or obscene articles), if the prohibited goods included indecent photographs of persons under 16 and—
 - (a) the conviction, finding or caution was before the commencement of this Part, or
 - (b) the offender—
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- (2) For the purposes of this section—
 - (a) a person is to be taken to have been under 16 at any time if it appears from the evidence as a whole that he or she was under that age at that time;
 - (b) section 7 of the Protection of Children Act 1978 (interpretation) applies.
- 15. An offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child), if the indecent photographs or pseudo-photographs showed persons under 16 and—
 - (a) the conviction, finding or caution was before the commencement of this Part, or
 - (b) the offender—
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 16. An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust), if the offender was 20 or over.
- 17. An offence under section 1 or 2 of the Sexual Offences Act 2003 (rape, assault by penetration).
- 18. An offence under section 3 of that Act (sexual assault) if—
 - (a) where the offender was under 18, he or she is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;
 - (b) in any other case—
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community-based sentence of at least 12 months.
- 19. An offence under any of sections 4 to 6 of that Act (causing sexual activity without consent, rape of a child under 13, assault of a child under 13 by penetration).
- 20. An offence under section 7 of that Act (sexual assault of a child under 13) if the offender—
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 21. An offence under any of sections 8 to 12 of that Act (causing or inciting a child under 13 to engage in sexual activity, child sex

- offences committed by adults).
22. An offence under section 13 of that Act (child sex offences committed by children or young persons), if the offender is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
 23. An offence under section 14 of that Act (arranging or facilitating the commission of a child sex offence) if the offender—
 - (a) was 18 or over, or
 - (b) is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
 24. An offence under section 15 of that Act (meeting a child following sexual grooming etc).
 25. An offence under any of sections 16 to 19 of that Act (abuse of a position of trust) if the offender, in respect of the offence, is or has been—
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community-based sentence of at least 12 months.
 26. An offence under section 25 or 26 of that Act (familial child sex offences) if the offender—
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
 27. An offence under any of sections 30 to 37 of that Act (offences against persons with a mental disorder impeding choice).
 28. An offence under any of sections 38 to 41 of that Act (care workers for persons with mental disorder) if—
 - (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case, the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to a term of imprisonment,
 - (ii) detained in a hospital, or
 - (iii) made the subject of a community-based sentence of at least 12 months.
 29. An offence under section 47 of that Act (paying for sexual services of a child) if the victim or (as the case may be) other party was under 16, and the offender—
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
 30. An offence under section 48 of that Act (causing or inciting child prostitution or pornography) if the offender—
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
 31. An offence under section 49 of that Act (controlling a child prostitute or a child involved in pornography) if the offender—
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
 32. An offence under section 50 of that Act (arranging or facilitating child prostitution or pornography) if the offender—

- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
33. An offence under section 61 of that Act (administering a substance with intent).
34. An offence under section 62 or 63 of that Act (committing an offence or trespassing, with intent to commit a sexual offence) if—
- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case—
 - (i) the intended offence was an offence against a person under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community-based sentence of at least 12 months.
35. An offence under section 64 or 65 of that Act (sex with an adult relative) if—
- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case, the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.
36. An offence under section 66 of that Act (exposure) if—
- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case—
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community-based sentence of at least 12 months.
37. An offence under section 67 of that Act (voyeurism) if—
- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case—
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community-based sentence of at least 12 months.
38. An offence under section 69 or 70 of that Act (intercourse with an animal, sexual penetration of a corpse) if—
- (a) where the offender was under 18, he or she is or has been

- sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been—
- (i) sentenced to a term of imprisonment, or
- (ii) detained in a hospital.
39. An offence under section 63 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images) if the offender—
- (a) was 18 or over, and
- (b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.
40. A reference in a preceding paragraph to an offence includes—
- (a) a reference to an attempt, conspiracy or incitement to commit that offence, and
- (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.
41. A reference in a preceding paragraph to an offence (“offence A”) includes a reference to an offence under Part 2 of the Serious Crime Act 2007 in relation to which offence A is the offence (or one of the offences) which the person intended or believed would be committed.
42. A reference in a preceding paragraph to a person’s age is—
- (a) in the case of an indecent photograph, a reference to the person’s age when the photograph was taken;
- (b) in any other case, a reference to his or her age at the time of the offence.
43. In this Schedule “community-based sentence” has the same meaning as in the Sentencing Ordinance.
- [44. In this Schedule, a reference to a sentence of imprisonment includes a sentence of home detention.]

(Inserted by Ordinance No. 1 of 2016)

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2012

CHAPTER XLV

CORONERS ORDINANCE 2011

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CORONERS ORDINANCE

No. 3 of 2011.

An Ordinance to make provisions for the occurrence of sudden or accidental deaths and to establish a process for coronial proceedings

Title and Commencement

1. This Ordinance may be cited as the Coroners Ordinance 2011 and shall come into force on the day after it is published.

Interpretation

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

bodily sample, in relation to a body,—

- (a) means a sample or specimen (whether of a body part, or of any other thing that is in or on the body, or of both) taken from the body by a pathologist after the death of the person concerned; and so
- (b) includes a sample or specimen so taken of blood or tissue, urine or other bodily fluids, or contents of the stomach or bowel, and a sample or specimen so taken that is, or is part of, the following:
 - (i) any thing that is, or is in or on, an item of clothing on the body;
 - (ii) a weapon, or other foreign item or substance (for example, a surgical implant, including a cardiac pacemaker or other biomechanical aid), that is in or on the body

body means a dead person, but—

- (a) includes a part of a person (whether or not the person's identity is known when the part is discovered or is later determined)
 - (i) without which no person can live; or
 - (ii) discovered in such circumstances or such a state that it is probable that the person is dead; and
- (b) does not include a dead foetus or a still-born child; and
- (c) for the purposes of an authorisation for release under section 14, does not include any body part or bodily sample retained in accordance with section 15

body part, in relation to a body,—

- (a) means any part of the body (whether separated from the body before, on, or after the death concerned); and so
- (b) includes a part so received or removed that is an organ, limb, hand, foot, or digit

craft includes any aircraft, ship, boat, or other machine or vessel, used or capable of being used for the carriage or transportation of persons or goods, or both, by

air or water or over or under water

death, in relation to reporting to a member of the police or a coroner, includes the finding of a body

designated coroner means the coroner designated by the Governor under section 6(2) to receive reports of and perform every other part of the coroner's role in relation to that death, and includes any replacement designated coroner designated by the Governor under section 6(3)

doctor means a health practitioner who is, or is deemed to be, licensed in accordance with the Dental and Medical Practitioners Ordinance 1984

immediate family, in relation to a dead person,—

- (a) means members of the dead person's family or other culturally recognised family group, who—
 - (i) were in a close relationship with the person; or
 - (ii) had, in accordance with customs or traditions of the community of which the person was part, responsibility for, or an interest in, the person's welfare and best interests; and
- (b) to avoid doubt, includes persons whose relationship to the dead person is, or is through 1 or more relationships that are, that or those of—
 - (i) spouse or de facto partner of the dead person;
 - (ii) child, parent, guardian, grandparent, brother, or sister of the dead person;
 - (iii) stepchild, stepparent, stepbrother, or stepsister of the dead person

inquest means a hearing held by a coroner in connection with an inquiry

inquiry means an inquiry into a death opened and conducted by a coroner under sections 17 and 18.

investigation means every function, power, or duty the coroner may or must perform or exercise in relation to the death, including those relating to a post-mortem of the body concerned and an inquiry into the death

pathologist means a doctor who is competent to perform post-mortems because his or her scope of practice includes the branch of medicine of pathology

Pitcairn Islands group territory means the land and the waters enclosed by the outer limits of the territorial sea of the Pitcairn, Henderson, Ducie and Oeno Islands.

Police means a police officer appointed under section 2

of the Justice Ordinance

Coroner's role

- 3.—**(1) A coroner's role in relation to a death is—
- (a) to receive a report of the death from the police; and
 - (b) to decide whether to direct a post-mortem and, if one is directed, to determine whether to authorise certain people (other than the pathologist) to attend; and
 - (c) to authorise the release of the body (including determining, if a post-mortem has been directed, whether the pathologist wishes and is permitted, on the release of the body, to retain body parts or bodily samples); and
 - (d) to decide whether to open an inquiry (and, if one is to be conducted, whether an inquest should be held); and
 - (e) if an inquiry is to be opened and conducted,—
 - (i) to open and conduct it for the 3 purposes stated in section 17, and not to determine civil, criminal, or disciplinary liability; and
 - (ii) to determine related matters such as whether to prohibit the making public of evidence and whether to authorise the making public of certain particulars of deaths suspected or found to be self-inflicted deaths; and
 - (iii) on completing it, to complete and sign a certificate of findings in relation to the death; and
 - (f) to give members and representatives of the immediate family of the person who is, or of a person who is suspected to be, the dead person concerned, and certain others, notice of significant matters in the carrying out of the duties and processes required by law to be performed or followed in relation to the death.

(2) This section is only a general guide to a coroner's role.

Deaths that must be reported under section 5(2)

- 4.—**(1) This section applies to the following deaths if and only if they are deaths to which subsection (2) applies:
- (a) Every death that appears to have been without known cause, or suicide, or unnatural or violent.
 - (b) Every death?
 - (i) That occurred while the person concerned was undergoing a medical, surgical, dental or similar treatment or procedure; or
 - (ii) appears to have been the result of such a procedure; or

- (iii) that occurred while the woman concerned was giving birth, or that appears to have been a result of that woman being pregnant or giving birth.
 - (c) The death of a person in the custody of the Police.
 - (d) The death of a prisoner as defined in section 7 of the Prisons Ordinance 2001.
 - (e) Subsections (c) and (d) apply to a death whether or not it occurred in the institution, residence, hospital, facility, or prison concerned.
- (2) This section applies only to deaths that occur in the Pitcairn Islands group territory.

5.—(1) A person who finds a body in the Pitcairn Island group territory must report that finding to a member of the police as soon as practicable unless excused from doing so by subsection (3).

Reporting of deaths to police

(2) A person who learns of a death to which section 4 applies must report that death to a member of the police as soon as practicable unless excused from doing so by subsection (3).

(3) A person is not required by subsections (1) or (2) to report a death if he or she believes that the death?

- (a) is already known to the Pitcairn Island Police; or
- (b) will be reported to a member of the police.

6.—(1) This section applies to a member of the police?

Reporting of deaths by police

- (a) who finds a body in the Pitcairn Island group territory; or
- (b) to whom a report of a death is made under section 5.

(2) A member of the police to whom this section applies must, unless excused from doing so by subsection (4), cause the death concerned to be reported as soon as practicable to the Governor who must then designate a coroner for the death and report to that coroner.

(3) In the event the coroner designated under subsection (2) becomes unavailable the Governor may designate a replacement coroner to continue the role of designated coroner in relation to that death.

(4) A member of the police is not required by subsection (2) to report a death to the Governor if he or she believes that the death is already known to, or will be reported by another member of the police to the Governor.

7. If a death has been reported to a coroner under section 6, the police must cause to be made all investigations?

Police investigations

- (a) necessary to help to identify the causes and circumstances of the death, to prevent deaths and

promote justice; or

(b) as directed by the designated coroner.

Right of police to
custody of body

8.—(1) The police have an exclusive right to custody of the body concerned?

(a) from the time when a member of the police first suspects on reasonable grounds that a death which must be reported under section 4 may have occurred; and

(b) Until the death has been reported to the designated coroner and the designated coroner therefore has an exclusive right to the body under section 9.

(2) Nothing in this section affects when that exclusive right can be and is exercised by the Police, or prevents the Police from exercising on behalf of the designated coroner his or her right under section 9.

9.—(1) The designated coroner has an exclusive right to custody of the body concerned from the time when a death has been reported to him or her under section 6, until he or she authorises the release of the body under section 14.

(2) Nothing in this section affects when that exclusive right can be and is exercised by or on behalf of the designated coroner.

Directions about
removal of body

10. For the purposes of a post-mortem of a body under section 13, a coroner may give any directions they see fit about removal of the body.

11.—(1) On request by or on behalf of the immediate family, the coroner may recognise, and after recognition, liaise with a representative of the immediate family.

(2) A coroner to whom a death has been reported under section 6 must take all reasonable steps to give notice, as soon as practicable, of significant matters in the carrying out of the duties and processes required by law to be performed or followed in relation to the death, to a representative recognised under subsection (1), and to the immediate family of the person, or person who is suspected to be, the dead person concerned.

12.—(1) If a death has been reported to a coroner under section 6 and the coroner's exclusive right to custody of the body under section 9 is being exercised by, or on behalf of the coroner, one or more people to whom subsection (2) applies may, if they wish, view, touch or remain with or near the body, but only:

(a) If authorised to do so by the coroner; and

(b) In accordance with any conditions the coroner

imposes.

- (2) This section applies only to the following people:
- (a) Members of the immediate family of the person who is, or of a person who is suspected to be, the dead person concerned;
 - (b) Representatives of that immediate family;
 - (c) People chosen by that immediate family who are performing or providing religious or spiritual functions, advice, benefit, or comfort.

13.—(1) A coroner may direct a pathologist to perform a post-mortem of a body for the purpose of enabling the coroner to decide whether to open an inquiry into the death concerned; or where the coroner is to open, or has opened but not completed, an inquiry into the death concerned.

Coroner may direct post-mortem

(2) The pathologist must not be a doctor who, to the coroner's knowledge, was a doctor who attended the person concerned immediately before death.

(3) As soon as practicable after completing the post-mortem, the pathologist must give the coroner a written report on the results of the post-mortem.

(4) In deciding whether to direct a post-mortem under subsection (1), a coroner must have regard to the following matters?

- (a) Whether the death appears to have been unnatural or violent; and
- (b) The existence and extent of any allegations, rumours, suspicions, or public concern about the cause of the death; and
- (c) The desire of any member of the immediate family of the person concerned that a post-mortem should be performed; and
- (d) Any other matters the coroner thinks relevant.

14.—(1) A coroner to whom a death has been reported under section 6 must authorise the release of the body concerned as soon as he or she is satisfied that it is no longer necessary to withhold it from family members.

Release of bodies

(2) Authorisation by the coroner must be?

- (a) Given by written notice in the prescribed form; and
- (b) Signed by the coroner.

15.—(1) A pathologist may, with no further authority than this section, receive or remove a body part, or take a bodily sample, or both, if the pathologist believes on reasonable grounds that the receipt, removal, or taking concerned is necessary for the purposes of a post-mortem.

Receipt, removal, taking, and retention of parts and samples

(2) The body part removed or sample taken by a pathologist

for the purposes of a post-mortem must be as small as possible for the analysis or examination for which the part is removed or sample taken.

(3) The number of body parts received or removed, bodily samples taken, or both, must be no greater than is necessary for the purposes of the post-mortem.

(4) Nothing in this section prevents any other receipt, removal, or taking of a part or sample authorised by law.

(5) The pathologist is, when the body is released, permitted to retain the body part or bodily sample, but only if?

- (a) The part or sample is a minute one and is, in the pathologist's opinion, necessary for the purposes of the post-mortem; or
- (b) The retention is, in the pathologist's opinion, necessary for the purposes of the post-mortem, and is authorised in writing by the coroner ; or
- (c) The pathologist explained to the family members or other people to whom the body is to be released that the pathologist proposed to retain the part or sample for a specified purpose and none of those people objected to the pathologist's proposal.

16.—(1) Where a body has been transported to another location in accordance with a coroner's direction, or for the purposes of a post-mortem, the Governor is responsible for the costs of transporting the body back to its location when the direction was made or the post-mortem was directed, or provided that costs do not exceed the costs of transportation to the original location, the costs of transporting the body to another location.

17.—(1) A coroner opens and conducts an inquiry for the purposes of?

- (a) Establishing, so far as is possible?
 - (i) That a person has died; and
 - (ii) That person's identity; and
 - (iii) When and where a person died; and
 - (iv) The causes of death; and
 - (v) The circumstances of death:
- (b) making specified recommendations or comments that, in the coroner's opinion, may, if drawn to public attention, reduce the chances of the occurrence of other deaths in circumstances similar to those in which the death occurred:
- (c) determining whether the public interest would be served by the death being investigated by other investigating authorities in the performance or

exercise of their functions, powers, or duties, and to refer the death to them if satisfied that the public interest would be served by their investigating it in the performance or exercise of their functions, powers, or duties.

(2) The purpose of an inquiry is not to determine civil, criminal, or disciplinary liability.

18.—(1) In deciding whether to open and conduct an inquiry, a coroner must have regard to the following matters:

Opening inquiries

- (a) whether or not the causes of the death concerned appear to have been natural; and
- (b) in the case of a death that appears to have been unnatural or violent, whether or not it appears to have been due to the actions or inaction of any other person; and
- (c) the existence and extent of any allegations, rumours, suspicions, or public concern, about the death; and
- (d) the extent to which the drawing of attention to the circumstances of the death may be likely to reduce the chances of the occurrence of other deaths in similar circumstances; and
- (e) the desire of any members of the immediate family of the person who is or appears to be the person concerned that an inquiry should be conducted; and
- (f) any other matters the coroner thinks fit.

(2) A coroner to whom a death is reported under section 6 must open and conduct an inquiry into it?

- (a) If it appears to have been?
 - (i) self-inflicted; or
 - (ii) a death in official custody or care; or
- (b) If the coroner is not satisfied that the matters required by this Ordinance to be established by an inquiry are already adequately disclosed in respect of the death by information arising from investigations or examinations the coroner has made or caused to be made.

19.—(1) A coroner may decide to hold an inquest for the purposes of the inquiry.

Decision to hold inquest

(2) A coroner who decides to hold an inquest for the purposes of the inquiry must fix a date, time and place for the inquest, and must?

- (a) give the family representative, immediate family, and certain others (in accordance with section 11) notice in relation to the date, time, and place fixed for the inquest and at least 10 working days before

the date fixed

- (b) give notice, at least 10 working days before the date fixed, of the date, time, and place fixed for the inquest to every person who has a sufficient interest in the subject or outcome of the inquiry concerned.

Procedure for inquest

20.—(1) Every inquest must be held before a coroner.

(2) If satisfied that it is desirable to do so, the coroner may appoint a cultural, legal, medical, or other specialist adviser to sit with and help the coroner at an inquest by giving advice.

(3) The specialist adviser must give advice on any questions referred to the specialist adviser and in any matter the coroner may direct, and this advice may be given any weight the coroner sees fit.

(4) Every inquest must be held in a place that is open to the public.

(5) A coroner may exclude any person or people from all or a part of an inquest.

(6) A coroner may direct any witness whose evidence has not yet been heard at an inquest to remain, or go and remain, outside the place where the inquest is being held until required to give evidence.

(7) A person giving evidence at an inquest must do so orally on oath or affirmation and may be cross-examined by either the coroner or a person notified by the coroner in section 19(2).

(8) A witness at an inquest may give any evidence by tendering a previously prepared formal written statement if the coroner is satisfied that there is no reason making it desirable for the witness to give the evidence orally, and no person attending the inquest who is entitled to cross-examine the witness objects.

(9) No witness at an inquiry shall be obliged to answer any question if doing so would result in self-incrimination, and if it appears to the coroner that a witness has been asked such a question, the coroner shall inform the witness that he may refuse to answer.

21.—(1) The coroner conducting and completing an inquiry must consider all the evidence admitted for the purposes of the inquiry and, in the light of the purposes stated in section 17, complete and sign a certificate of findings in relation to the death concerned.

(2) The certificate of findings must be in the prescribed form, which must require the coroner to state in writing the reasons for his or her findings.

(3) The coroner must send the completed and signed certificate of findings to the Governor, together with—

- (a) all depositions of evidence admitted for the purposes of the inquiry; and
- (b) a certificate of the registration of the death (if applicable); and
- (c) any specified recommendations or comments made under section 17(1)(b).

22.—(1) The Governor may from time to time, by warrant, appoint fit and proper people to be coroners. Appointment of coroners

(2) Each one of those people must have held a practising certificate as a barrister or solicitor for at least 5 years in any Commonwealth country.

(3) Every coroner vacates that office, if he or she has not earlier done so in another way, on attaining the age of 70 years.

(4) A person appointed as coroner may also hold the office of Magistrate.

23.—(1) Police must help coroners' investigations under this Ordinance. Police to help coroners' investigations

24.—(1) For the purpose of performing or exercising a function, power, or duty under this Ordinance, a coroner has the same powers, privileges, authorities, and immunities as a Magistrate exercising jurisdiction under the Judicature (Courts) Ordinance. Powers of coroners

(2) In relation to an inquest held by a coroner for the purposes of an inquiry, the coroner has power to—

- (a) issue summonses for the attendance of witnesses:
- (b) issue warrants to enforce such summonses:
- (c) maintain order:
- (d) administer oaths or affirmations to witnesses:
- (e) punish for contempt:
- (f) adjourn proceedings from time to time and place to place:
- (g) suppress evidence where the coroner considers it necessary, having regard to the interests of the family, the public, and justice.

(3) A coroner may cause to be made by other persons any investigations or examinations, or commission from them any reports, medical or otherwise, the coroner thinks proper—

- (a) for the purpose of deciding whether to open an inquiry; or
- (b) if the coroner is to open an inquiry, or has opened and not completed one.

(4) A coroner who considers it necessary for the purposes of an inquiry the coroner has opened under this Ordinance may, by written notice served on a person, require that person, within a time specified in the notice,—

- (a) to give the coroner any information or class of information specified in the notice; or
- (b) to produce to the coroner, or to a person specified in the notice acting on the coroner's behalf in accordance with the notice, any document or class of documents or other thing specified in the notice.

Warrant for removal
of body

25.—(1) An Island Magistrate may issue a warrant for the removal of a body from a specified place including, without limitation, a house, craft, or vehicle if satisfied on an application in writing made on oath by a member of the police that—

- (a) the police have the exclusive right to custody of the body under section 8; and
- (b) there are reasonable grounds to believe that the body is being held in or on that place, craft, or vehicle contrary to this exclusive right to custody of the body; and
- (c) the police have, despite having already used negotiation and all other means that are reasonable in the circumstances, failed to secure the release of the body from that place, craft, or vehicle in accordance with the directions.

(2) The warrant must be in the prescribed form, and must be—

- (a) directed to and executed by specified members of the police; or
- (b) directed to the police and executed by any member or members of the police.

(3) The warrant may be issued subject to any reasonable conditions the Island Magistrate specifies in it.

Offences and
penalties

26.—(1) Every person commits an offence against this section, and is liable on summary conviction to a fine not exceeding \$1,000, who, without reasonable excuse, fails to comply with a notice under section 24 to the extent that the person is capable of complying with it.

(2) Every person commits an offence against this section, and is liable on summary conviction to a fine not exceeding \$2,000, who—

- (a) fails or refuses to comply with a direction about the removal of a body under section 10; or
- (b) hinders or prevents any person from complying with a direction about the removal of a body under section 10.

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2013

CHAPTER XLVI

OMBUDSMEN ORDINANCE

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OMBUDSMEN ORDINANCE 2012

Ordinances:
No.1 of 2012

An Ordinance to prescribe the functions, powers and jurisdiction of ombudsmen in Pitcairn

[17 May 2012]

PART I—PRELIMINARY

Title and
commencement

1. This Ordinance may be cited as the Ombudsmen Ordinance 2012 and shall come into force on the day after it is published.

Definitions

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

“action” includes an omission;

“aggrieved person” means a member of the public who claims to have suffered injustice in consequence of maladministration in the Government of Pitcairn or in a body mentioned in Schedule 1;

“Ombudsman”, in relation to any function, power, or duty under this Ordinance, means the Ombudsman for the time being investigating the complaint in respect of which the function, power, or duty is being exercised;

Ombudsmen

3.—(1) There shall be appointed one or more Ombudsmen.

(2) Each Ombudsman shall be appointed by the Governor.

(3) If more than one, then one of the Ombudsmen shall be appointed as Chief Ombudsman, and shall be responsible for the administration of the office, and the co-ordination and allocation of the work between the Ombudsmen.

(4) An Ombudsman shall not, without the approval of the Governor in each particular case, hold any office of trust or profit, other than his or her office as an Ombudsman, or engage in any occupation for reward in Pitcairn outside the duties of his or her office.

(5) Except as otherwise provided in this Ordinance, every Ombudsman shall hold office for a term of 5 years.

(6) Any Ombudsman may at any time resign his or her office by writing addressed to the Governor of Pitcairn, and shall so resign his or her office on attaining the age of 72 years.

(7) Any Ombudsman may at any time be removed or suspended from his or her office by the Governor for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct.

(8) No Ombudsman shall be removed under subsection (7) except in accordance with subsection (9).

(9) If the Governor considers that the question of removal under subsection (7) arises, then—

- (a) the Governor shall appoint a tribunal, which shall consist of a convenor and two other members, selected by the Governor from amongst those who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in one of more Commonwealth jurisdictions 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 to the Governor and advise the Governor whether the Ombudsman should be removed from office under subsection (7).

(10) An Ombudsman is entitled to a daily attendance allowance for each day on which the Ombudsman is engaged in the performance of his or her functions, and to reimbursement of expenses for such travel as is required for the performance of his or her functions.

(11) Before entering upon the exercise of the duties of his or her office, an Ombudsman shall take an oath, administered by the Governor, that he or she will faithfully and impartially perform the duties of his or her office, and that he or she will not, except in accordance with this Ordinance, divulge any information received under this Ordinance.

PART II—FUNCTIONS AND LIMITS

4.—(1) Subject to section 5, it shall be a function of an Ombudsman to investigate any decision, recommendation or action relating to a matter of administration and affecting any person or body of persons in his or her or its personal capacity, made in or by any of the divisions or organisations named or specified in Schedule 1 of this Ordinance, or by any officer, employee, or member of any such division or organisation in his or her capacity as such officer, employee or member.

Functions of
Ombudsmen

(2) A matter referred to in subsection (1) includes any matter relating to the appointment, remuneration, pension, discipline, redundancy of office, suspension or dismissal or terms of service of an employee of the Government or of any body mentioned in Schedule 1.

(3) Subsection (1) shall apply whether the recommendation, decision or action occurred before or after the passing of this Ordinance provided that the time limit set out in section 11(1) is observed or is extended pursuant to s 11(2).

(4) The powers conferred on Ombudsmen by this Ordinance may be exercised notwithstanding any provision in any enactment to the effect that any such decision, recommendation, or action shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision of the person or organisation whose decision, recommendation, or action it is shall be challenged, reviewed, quashed, or called in question.

(5) An investigation under this section may be made at the instigation of an Ombudsman or in respect of a complaint made under s 7(1) by a person who is aggrieved.

(6) The Ombudsmen shall each have the further powers and exercise the functions set out in Part III of the Freedom of Information Ordinance 2012.

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Limits of jurisdiction

5.—(1) An Ombudsman does not have jurisdiction to inquire into the following matters:

- (a) the conduct of the Governor;
- (b) a matter that is mentioned in Schedule 2;
- (c) any decision, recommendation, or action of the Attorney General, or any person acting as legal adviser to the Governor, or acting as counsel for the Governor in relation to any proceedings;
- (d) any decision, recommendation, or action of any member of the Police, other than any matter relating to the terms and conditions of service of any person as a member of the Police;

(2) An Ombudsman may in his or her discretion refuse to inquire into any decision, recommendation, or action in respect of which there is, under the provisions of any Ordinance, a right of appeal or objection, or a right to apply for a review, available to the complainant, on the merits of the case, to any Court, or to any tribunal constituted by or under any enactment, whether or not that right of appeal or objection or application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired.

Personal interest

6.—(1) If the Ombudsman has a personal interest in a complaint, or considers that he or she may have or may reasonably be perceived as having such an interest, the Ombudsman is to inform the Governor.

(2) The Ombudsman may recuse himself or herself from considering a complaint in which he or she has, or may reasonably be perceived as having, a personal interest.

PART III—MAKING AND INVESTIGATING COMPLAINTS

7.—(1) A complaint can only be made by or on behalf of a person who is aggrieved. Who may complain

(2) A complaint may be made only if the aggrieved person is resident in Pitcairn (or, if dead, was resident in Pitcairn at the time of death).

8.—(1) If an internal procedure is available, an aggrieved person or the person acting on his or her behalf must take reasonable steps to obtain a remedy under the procedure before making a complaint under this Ordinance. Internal remedies

(2) An internal procedure is available for the purposes of this section if—

- (a) the body against which the complaint has been made has an internal complaints procedure for complaints;
- (b) the body has taken reasonable steps to make the availability of the procedure known to the public; and
- (c) the complainant has access to that procedure.

(3) An Ombudsman may refuse or defer an investigation of a matter while an internal review of the same matter is being carried out.

9.—(1) A complaint must be in writing.

(2) A complaint must be lodged with the Office of the Ombudsmen. How a complaint is made

(3) The Governor shall ensure that the address and mode of contacting the Office of the Ombudsmen is published in Pitcairn.

(4) If a complainant is an individual that individual must make the complaint personally. If the aggrieved individual has died or is unable to act, the complaint may be taken by a personal representative, guardian, attorney, family member, or other suitable individual.

10. The Governor may refer to the Ombudsmen any question of maladministration in the government of Pitcairn. Governor may refer matter to Ombudsmen

11.—(1) A complaint is only to be dealt with if it is offered within twelve months from the date that— Time limit for complaint

- (a) the aggrieved person has notice of the matters alleged in it; or
 - (b) any court proceeding or internal procedure regarding the matter is concluded;
- whichever is the later.

(2) Subsection (1) does not apply if the Chief Ombudsman considers there are special circumstances that make it proper that the complaint should be entertained.

Ombudsman to
consider complaint

12.—(1) Subject to section 13, the Ombudsman who is to investigate a complaint must proceed to consider it.

(2) The Ombudsman may conduct such preliminary inquiries as he or she considers appropriate.

(3) The investigation of a complaint is to be conducted in private.

Ombudsman may
refuse to investigate
complaint

13.—(1) The Ombudsman may in his or her discretion decide not to investigate any complaint if in his or her opinion—

- (a) the subject-matter of the complaint is trivial; or
- (b) the complaint is vexatious or is not made in good faith; or
- (c) the complainant has not a sufficient personal interest in the subject-matter of the complaint.

(2) In any case where an Ombudsman decides not to investigate or make further investigation of a complaint he or she shall inform the complainant of that decision, and shall state his or her reasons therefor.

Procedure

14.—(1) Before investigation, an Ombudsman shall—

- (a) inform the body or person against which a complaint has been made of the complaint and details of the complaint; and
- (b) inform the body or person against which a complaint has been made of the Ombudsman's intention to conduct the investigation; and
- (c) offer principal officers and the people against whom the complaint is made an opportunity to comment on the allegations.

(2) The Ombudsman may establish his or her own procedure in conducting an investigation.

(3) The Ombudsman need not hold a hearing, and may gather information as he or she thinks fit.

(4) If there are any comments that adversely affect a division of the Government of Pitcairn or other body or person, the Ombudsman is to give that division or body or person an opportunity to be heard.

Determining a
complaint

15.—(1) On completing investigation of a complaint, the Ombudsman is to prepare a report setting out—

- (a) the Ombudsman's findings of fact;

- (b) his or her opinion as to whether the aggrieved person has suffered injustice in consequence of maladministration; and
 - (c) the Ombudsman's reasons for that opinion.
- (2) A report under this section shall not include material for which a public interest certificate has been issued under section 23, but shall include a summary of the general nature of any such material.
- (3) For the purposes of section 15(1), injustice has been suffered where the decision, recommendation or action that is the subject matter of the investigation—
- (a) appears to have been contrary to law; or
 - (b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act, regulation, or bylaw or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or
 - (c) was based wholly or partly on a mistake of law or fact; or
 - (d) was plainly wrong.
- (4) If the aggrieved person has in the opinion of the Ombudsman suffered an injustice—
- (a) the report is to set out the Ombudsman's recommendations for the prevention of a recurrence of the injustice; and
 - (b) it may include a recommendation that a payment be made for any financial loss or inconvenience that the aggrieved person has suffered due to the injustice.
- (5) A recommendation does not bind any body.

16.—(1) The Ombudsman is to send copies of the report to the following persons—

Disclosure of report

- (a) the complainant;
 - (b) the Governor;
 - (c) the principal officer of the division or other body concerned;
 - (d) each person against whom the complaint was made; and
 - (e) each person who is criticized in the report, or may be adversely affected by it.
- (2) The Ombudsman may publish the report or an adequate summary of it.

Response to report

17.—(1) If a report contains recommendations that a body to which the report relates should or should not take a course of action, a written response must be submitted to the reporting Ombudsman within three months after the report is received by the body.

(2) The response must state—

- (a) which recommendations are accepted; and
- (b) which recommendations are not accepted; and
- (c) if a recommendation to take a course of action is accepted, how it is intended to take that course of action.

PART IV—MISCELLANEOUS

Summons and evidence

18.—(1) An Ombudsman may summon a person to appear before the Ombudsman and to provide information. The summons is to be in writing in the form prescribed in Schedule 3.

(2) When summoning a person under subsection (1), an Ombudsman may at his or her discretion, require that person to appear before the Ombudsman in person, by telephone conference, or by video-link or in any other manner.

(3) Subject to subsection (4), any person who is bound by the provisions of any enactment to maintain secrecy in relation to, or not to disclose, any matter may be required to supply any information to or answer any question put by an Ombudsman in relation to that matter, or to produce to an Ombudsman any document or paper or thing relating to it, notwithstanding that compliance with that requirement would otherwise be in breach of the obligation of secrecy or non-disclosure.

(4) An Ombudsman shall not require the provision of any information for which a public interest certificate has been issued under s 23(1).

(5) Every person shall have the same privileges in relation to the giving of information and the answering of questions as witnesses have in any court.

Duty of non-disclosure

19.—(1) Information obtained by an Ombudsman in the course of an investigation is not to be disclosed except for the purposes of investigation and any report made.

(2) An Ombudsman or member of the staff of the Ombudsmen cannot be called to give evidence in any court of matters coming to his or her knowledge in the course of an investigation under this Ordinance.

20.—(1) For the purposes of any civil or criminal proceedings, publication in any of the following circumstances is absolutely privileged—

- (a) the publication by an Ombudsman of a report under this Ordinance, or of any other matter by the Ombudsmen in making a report under this Ordinance;
- (b) the publication for the purposes of this Ordinance of any matter by the Governor or his or her officials in communication with the Ombudsmen or any member of staff of the Ombudsmen;
- (c) the publication for the purposes of this Ordinance of any matter by an Ombudsman or any member of the staff of the Ombudsmen, in communicating with the Governor or his or her officials.

(2) Except on the trial of any person for perjury in respect of his sworn testimony, or in any proceedings in respect of an offence under section 21 of this Ordinance, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before an Ombudsman shall be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before an Ombudsman shall be given against any person.

21.—(1) If a person, in giving evidence to an Ombudsman (whether or not on oath) knowingly or recklessly makes a statement that is false in a material particular, he or she commits an offence.

(2) If a person without lawful excuse obstructs an Ombudsman or a member of the Ombudsmen's staff in the performance of his or her functions under this Ordinance, he or she commits an offence.

(3) If without reasonable excuse a person on whom a summons is served under this Ordinance fails to appear before the Ombudsman at the time and place specified on the summons, or fails to produce a document or publication that the summons requires, that person commits an offence.

(4) If a person, without reasonable excuse, on being required by an Ombudsman to take an oath or to make an affirmation, refuses to take an oath or make an affirmation, or refuses to answer any lawful and relevant question put by an Ombudsman, that person commits an offence.

Penalties

22.—(1) Any person who commits an offence under section 21 is liable to a fine not exceeding \$500.

Public interest
certificates

23.—(1) The Governor, acting in his or her discretion, may certify in writing for the purposes of this Ordinance that the production of a specified document or publication to the Ombudsmen, or the provision of any specified information to the Ombudsmen might:

- (a) prejudice the security, defence or international relations of Pitcairn or the United Kingdom or the investigation and detection of offences; or
- (b) involve the disclosure of the deliberations of a Minister of the Crown in the United Kingdom.

(2) The Governor, acting in his or her discretion, may certify in writing for the purposes of this Ordinance that the public disclosure of any specified evidence is likely to damage or cause prejudice to the security of Pitcairn.

SCHEDULE 1**BODIES IN RESPECT OF WHICH COMPLAINTS MAY BE
INVESTIGATED**

1. The Office of the Governor.
2. The Island Council.
3. Any division of the Government of Pitcairn Islands.

SCHEDULE 2**MATTERS OVER WHICH THE OMBUDSMEN DO NOT HAVE
JURISDICTION**

1. Any complaint in respect of which the Governor, acting in his or her discretion, certifies under s 23 that it is not in the public interest that an Ombudsman investigate the matter.
2. The content of legislation.
3. The conduct of a member of the judiciary.
4. The investigation of crime.
5. Action relating to extradition or to fugitive offenders.
6. The conduct of an employee of the Foreign and Commonwealth Office who is a member of the Governor's staff.
7. Rights of persons or bodies arising under contracts made between such persons or bodies, on the one hand, and persons or bodies in Schedule 1, on the other.

SCHEDULE 3

**SUMMONS TO APPEAR AND PROVIDE INFORMATION IN
THE MATTER OF THE OMBUDSMEN ORDINANCE 2012**

Pursuant to s18(1) of the Ombudsmen Ordinance 2012

To:

Address:

You are hereby summoned to appear before the Ombudsman
on day the day of 20__

You must appear at.....

.....
.....

(describe place)

and you must provide the following information:

.....
.....
.....
.....
.....
.....

Signed Dated

[Ombudsman]

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2013

CHAPTER XLVII

FREEDOM OF INFORMATION ORDINANCE 2012

Arrangement of sections

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6. Form of application for information
7. Reformulating application for information
8. Duties of assistance on public authorities and transfer of requests
9. Presumption in favour of disclosure of information: general right of access
10. Exempt information
11. Good reason for withholding information
12. Refusal of request on administrative grounds
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22. Requirements of Ombudsman to be complied with within certain period
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FREEDOM OF INFORMATION ORDINANCE 2012

An Ordinance to give to members of the public rights of access to information held by public authorities

Ordinances:
No.3 of 2012

[03 August 2012]

PART I—PRELIMINARY

1.—(1) This Ordinance may be cited as the Freedom of Information Ordinance 2012.

Short title and
commencement

(2) This Ordinance shall come into operation on the day after it is published.

2. In this Ordinance—

Definitions

“information”

- (a) means any information held by a public authority; and
- (b) includes any information held outside Pitcairn by any branch or post of any public authority; and
- (c) does not include evidence given or submissions made to—
 - (i) a Royal Commission; or
 - (ii) a commission of inquiry or board of inquiry or court of inquiry or committee of inquiry appointed, pursuant to or by any provision of any Ordinance, to inquire into a specified matter; and
- (d) does not include information contained in any correspondence or communication which has taken place between the office of the Ombudsman and any public authority and which relates to an investigation conducted by an Ombudsman under this Act or under the Ombudsmen Ordinance, other than information that came into existence before the commencement of that investigation;

cap.46

“Ombudsman” means the Ombudsman holding office under the Ombudsmen Ordinance.

cap.46

“personal information” means any information held about an identifiable person.

“public authority” means—

- (a) the Governor of Pitcairn;
- (b) the Government of Pitcairn and its divisions;
- (c) a body or authority created by an Ordinance, whether incorporated or not, including the Island Council.

Application

- 3.—**(1) This Ordinance applies to public authorities.
 (2) This Ordinance does not apply to—
- (a) the judicial functions of:
 - (i) a court including the Lands Court;
 - (ii) the holder of a judicial office or other office connected with a court;
 - (b) the security or intelligence services in relation to their strategic or operational intelligence-gathering activities;
 - (c) the Office of the Ombudsman;
 - (d) the Office of the Attorney-General.

Purposes

- 4.** The purposes of this Ordinance are—
- (a) to improve access to information, in order to strengthen governmental accountability and encourage public participation in decision-making in Pitcairn;
 - (b) to protect information consistently with public interest and personal privacy.

PART II—PRINCIPLES TO GOVERN REQUESTS FOR INFORMATION

Persons eligible to apply for access to information

- 5.** Any person may request that a public authority make available to him or her any specified information.

Form of application for information

- 6.—**(1) A person who wishes to obtain access to information shall make an application to the public authority that holds that information.

- (2) An application under subsection (1) –
- (a) may be made in writing or transmitted by email;
 - (b) shall provide such information concerning the information as is sufficient to enable the public authority to identify it.

Reformulating application for information

- 7.** Where the information provided by the applicant in relation to the information is not sufficient to enable the public authority to identify it, the authority shall afford the applicant a reasonable opportunity to consult the authority with a view to reformulating the application so that the information can be identified.

Duties of assistance on public authorities and transfer of requests

- 8.** It is the duty of every public authority to give reasonable assistance to a person to make a request or to direct his or her request to the appropriate person or public authority.

9. Subject to the provisions of this Ordinance, every person shall have a right to obtain access to information unless:

- (a) it is exempt information under section 10; or
- (b) there is a good reason for withholding it in terms of section 11; or
- (c) one or more of the reasons in section 12 apply.

Presumption in favour of disclosure of information: general right of access

10.—(1) Information is exempt information if either of subsections (2) or (3) apply.

Exempt information

(2) Information is exempt information if the making available of that information would be likely—

- (a) to prejudice the security or defence of Pitcairn or the international relations of the Government of Pitcairn or the Government of the United Kingdom; or
- (b) to prejudice the entrusting of information to the Government of Pitcairn or the Government of the United Kingdom on a basis of confidence by—
 - (i) the Government of any other country or any agency of such a Government; or
 - (ii) any international organisation; or
- (c) to prejudice the prevention, investigation, and detection of offences, and the right to a fair trial; or
- (d) to endanger the safety of any person.

(3) Information is exempt information if it is information that, were it requested under the Freedom of Information Act 2000 (UK) (c. 36), would be exempt information by reason of Part II of that Act.

11.—(1) Where this section applies, good reason for withholding information exists unless, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations that render it desirable, in the public interest, to make that information available.

Good reason for withholding information

(2) This section applies if, and only if, the withholding of the information is necessary to—

- (a) protect the privacy of natural persons, including that of deceased natural persons; or
- (b) protect information where the making available of the information—
 - (i) would disclose a trade secret; or
 - (ii) would be likely to prejudice unreasonably the commercial position of the person who supplied or who is the subject of the information; or
- (c) protect information that is subject to an obligation of confidence or that any person has been or could be compelled to provide under the authority of

any enactment, where the making available of the information—

- (i) would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied; or
- (ii) would be likely otherwise to damage the public interest; or
- (d) avoid prejudice to measures protecting the health or safety of members of the public; or
- (e) avoid prejudice to measures that prevent or mitigate material loss to members of the public; or
- (f) maintain the constitutional conventions for the time being that protect—
 - (i) the confidentiality of communications by or with the Sovereign or his or her representative;
 - (ii) collective and individual ministerial responsibility;
 - (iii) the political neutrality of officials;
 - (iv) the confidentiality of advice tendered to the Governor, and the Governor's officials and employees; or
- (g) maintain the effective conduct of Pitcairn affairs through—
 - (i) the free and frank expression of opinions by or between or to the Governor, the Governor's officials and employees in the course of their duties; or
 - (ii) the protection of such officers and employees from improper pressure or harassment; or
- (h) maintain legal professional privilege; or
- (i) enable any public authority holding the information to carry out, without prejudice or disadvantage, commercial activities; or
- (j) enable any public authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or
- (k) prevent the disclosure or use of information for improper gain or improper advantage.

- 12.—(1)** A public authority may refuse to grant a request if—
- (a) the information requested does not exist or cannot be found after all reasonable steps have been taken to find it;

- (b) the request does not contain sufficient information to enable the authority to identify the record by taking reasonable steps;
 - (c) granting the request would, by reason of the number or nature of the records requested, require the retrieval and examination of such number of records or an examination of records of such kind as to cause a substantial and unreasonable interference with or disruption of the other work of the public authority;
 - (d) publication of the information is required by law and is intended to be effected not later than three months after the receipt of the request by the authority;
 - (e) the request is frivolous or vexatious;
 - (f) the information is in the public domain, is reasonably accessible to the public or is reasonably available to the public on request under any other statutory provision, whether free of charge or on payment; or
 - (g) the fee payable under section 18 has not been paid.
- (2) A public authority shall not refuse to grant a request under subsection (1)(b) or (c), unless the authority has assisted, or offered to assist, the requester to amend the request in a manner such that it no longer falls under those provisions.

13. Where a request is refused, the public authority shall give to the applicant—

Reasons for refusal to be given

- (a) the reason for its refusal; and
- (b) if the applicant so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 10 or section 11 and there is no countervailing public interest; and
- (c) information concerning the applicant's right, by way of complaint under section 23 to an Ombudsman, to seek an investigation and review of the refusal.

14.—(1) A public authority shall respond to an application as soon as practicable but not later than:

Decisions on information requests

- (a) thirty calendar days after the date of receipt of the application; or
 - (b) in the case of an application transferred to it by another authority pursuant to section 8, thirty calendar days after the date of the receipt by that authority;
- (2) The public authority to whom a request is made in accordance with section 6 or is transferred shall—
- (a) decide whether the request is to be granted and, if it is to be granted, in what manner and for what

charge, subject to section 18; and

- (b) give, post, or send by electronic means notice of the decision to the person who made the request.

Extension of time
limits

15. The public authority may extend the period of thirty calendar days for a further period, not exceeding thirty calendar days, in any case where there is reasonable cause for such extension.

Manner of access to
records

16.—(1) A public authority shall give access to a record under this Act by providing the requester with the information in the record in any of the following forms or manners that it considers appropriate—

- (a) a reasonable opportunity to inspect the record;
- (b) a copy of the record;
- (c) a transcript of the information;
- (d) an electronic machine-readable device or other electronic device that contains the information;
- (e) a reasonable opportunity to hear or view the record, where the record is of sound or visual images;
- (f) a decoded copy of the information, where the information is in shorthand or another code;
- (g) such other means as may be determined by the public authority.

(2) Where a public authority decides to grant a request and the request is for access to a record in a particular form or manner, access shall be given in that form or manner unless the authority is satisfied that—

- (a) access in another form or manner specified in subsection (1) would be significantly more efficient; or
- (b) the giving of access in the form or manner requested would—
 - (i) be physically detrimental to the record,
 - (ii) involve an infringement of copyright (other than copyright owned by the Crown, the Government or the public authority concerned),
 - (iii) conflict with a legal duty or obligation of the public authority concerned, or
 - (iv) affect the protection of an exempt record from disclosure.

(3) Where a public authority decides to grant a request but, for reasons set out in subsection (2), does not give access to the record requested in the form or manner specified in the request, the authority shall give access in such form or manner as the authority considers appropriate.

17.—(1) Where an application is made to a public authority for access to information which contains matter to which this Ordinance does not apply by reason of section 3(2), the authority shall grant access to a copy of the information with the exempt matter deleted.

Partial access

(2) A public authority that grants access to a copy of the information in accordance with this section shall inform the applicant—

- (a) that it is such a copy; and
- (b) of the legal provision by virtue of which such deleted matter is exempt matter.

18. The communication of information may be made conditional upon the payment by the person making the request of a reasonable fee which shall not exceed the actual cost of searching for, reproducing, preparing and communicating the information.

Reasonable fees to be charged

PART III—REVIEW OF DECISIONS

19.—(1) It shall be a function of the Ombudsman to investigate and review any decision in which a public authority—

Functions of Ombudsman

- (a) refuses to make information available to any person in response to a request made by that person in accordance with section 6; or
- (b) decides, in accordance with this Ordinance, in what manner or, in accordance with section 18, for what charge a request made in accordance with section 6 is to be granted; or
- (c) imposes conditions on the use, communication, or publication of information made available pursuant to a request made in accordance with section 6.

(2) An investigation and review under subsection (1) may be made by an Ombudsman only on complaint being made to an Ombudsman in writing.

(3) If, in relation to any request made in accordance with section 6, any public authority fails to comply with section 14 within the time limit fixed by that section (or, where that time limit has been extended under this Ordinance, within that time limit as so extended), that failure shall be deemed, for the purposes of subsection (1), to be a refusal to make available the information to which the request relates.

(4) Undue delay in making information available in response to a request for that information, shall be deemed, for the purposes of subsection (1), to be a refusal to make that information available.

Mediation

20.—(1) The Ombudsman may at any time attempt to have the matter that is the subject of an application for review resolved by negotiation, conciliation, mediation or otherwise.

(2) Participation in the mediation is voluntary and any party to it may withdraw at any time.

(3) The mediator appointed by the Ombudsman may decide to terminate the mediation at any time, in which case the mediator shall provide reasons for so deciding.

(4) Anything said or admitted during the mediation and any document prepared for the purposes of the mediation shall not be admissible in evidence against any person in any subsequent proceedings concerning a matter that is the subject of the mediation and no evidence in respect of the mediation may be given.

Application of
Ombudsmen
Ordinance
cap.46

21. Except as otherwise provided by this Act, the provisions of the Ombudsmen Ordinance shall apply in respect of investigations and other proceedings carried out under this Part in respect of decisions under Part II as if they were investigations carried out under the Ombudsmen Ordinance.

Requirements of
Ombudsman to be
complied with within
certain period

cap.46

22.—(1) Where, during the course of an investigation of any public authority under section 19, an Ombudsman, pursuant to any power conferred on that Ombudsman by the Ombudsmen Ordinance, requires that public authority to furnish or produce to that Ombudsman any information or document or paper or thing which relates to that investigation, that public authority shall, as soon as reasonably practicable, and in no case later than 20 working days after the day on which that requirement is received by that public authority, comply with that requirement.

(2) Where any requirement to which subsection (1) applies is made to any public authority, the chief executive (by whatever name) of that department or an officer or employee of that department authorised by that chief executive or that public authority may extend the time limit set out in subsection (1) in respect of that requirement if—

- (a) the requirement relates to, or necessitates a search through, a large quantity of information or a large number of documents or papers or things, and meeting the original time limit would unreasonably interfere with the operations of the department or the public authority; or
- (b) consultations necessary before the requirement can be complied with are such that the requirement cannot reasonably be complied with within the original time limit; or

- (c) the complexity of the issues raised by the requirement are such that that requirement cannot reasonably be complied with within the original time limit.
- (3) Any extension under subsection (2) shall be for a reasonable period of time having regard to the circumstances.
- (4) The extension shall be effected by giving or posting notice of the extension to the Ombudsman within 20 working days after the day on which the requirement is received.
- (5) The notice effecting the extension shall—
 - (a) specify the period of the extension; and
 - (b) give the reasons for the extension; and
 - (c) contain such other information as is necessary.
- (6) If any public authority fails to comply with any requirement to which subsection (1) applies within the time limit fixed by that subsection (or, where that time limit has been extended under subsection (2), within that time limit as so extended), the Ombudsman may report such failure to the Governor, and may thereafter make such report to the Island Council on the matter as the Ombudsman thinks fit.
- (7) Notwithstanding anything in this section, an Ombudsman shall not, in any report made under subsection (6), make any comment that is adverse to any person unless the person has first been given an opportunity to be heard.

23. Where, after making an investigation of a complaint made under section 19, an Ombudsman is of the opinion—

Recommendations
made by the
Ombudsman

- (a) that the request made in accordance with section 6 should not have been refused; or
- (b) that the decision complained of is unreasonable or wrong—

the Ombudsman shall—

- (c) report his opinion and his reasons to the appropriate public authority; and
- (d) make such recommendations as he or she thinks fit; and
- (e) give to the complainant—
 - (i) a copy of his or her recommendations (if any); and
 - (ii) such other information as he or she thinks proper.

24.—(1) Where a recommendation is made under section 23, the public authority in relation to which it is made shall be under a public duty to observe that recommendation as from the commencement of the 21st working day after the day on which that recommendation is made to it unless, before that day, the Governor by Order otherwise directs.

Recommendations
made to public
authority

(2) An Order under this section may be made for all or any of the reasons that were before the Ombudsman by whom the recommendation was made but for no other reasons.

(3) As soon as practicable after an Order is made under this section, a copy of that Order must be given to the Ombudsman who made the recommendation and to the person who requested the information.

Right of review

25.—(1) Where—

- (a) a recommendation is made under section 23 in respect of a request made under section 6; and
- (b) an Order is made under section 24 in respect of that recommendation;

the person who made that request may apply to the Supreme Court for a review of the making of that Order.

(2) An application under subsection (1) may be made on the ground that the Order was beyond the powers conferred by section 24 or was otherwise wrong in law.

(3) On an application under subsection (1), the Supreme Court may—

- (a) make an order confirming that the Order was validly made; or
- (b) make an order declaring that the making of the Order was beyond the powers conferred by section 24 or was otherwise wrong in law.

(4) Unless the Supreme Court is satisfied that an application brought under subsection (1) has not been reasonably or properly brought, it shall, in determining the application and irrespective of the result of the application, order that the costs of the applicant on a solicitor and client basis shall be paid by the Governor, and such costs shall be paid out of money appropriated by the Governor for the purpose.

PART IV—MISCELLANEOUS

Protections against
certain actions

26.—(1) Nothing in this Ordinance shall be construed as authorising the disclosure of any information containing any defamatory matter or certain actions disclosure of which would be in breach of confidence or intellectual property rights.

(2) Where access to information referred to in subsection (1) is granted in the bona fide belief that the grant of such access is required by this Ordinance, no action for defamation or breach of confidence or breach of intellectual property rights shall lie against—

- (a) the public authority or any person involved in the grant of such access, by reason of the grant of access or of any re-publication of that information; or

- (b) the author of the information or any other person who supplied the information to the Government or the public authority, in respect of the publication involved in or resulting from the grant of access, by reason of having so supplied the information.
- (3) The grant of access to information in accordance with this Ordinance shall not be construed as authorisation or approval—
- (a) for the purpose of the law relating to defamation or breach of confidence, of the publication of the information or its contents by the person to whom access is granted;
 - (b) for the purposes of any law relating to intellectual property rights, of the doing by that person of any act comprised within the intellectual property rights in any work contained in the information.

27.—(1) A person commits an offence if, in relation to information to which a right of access is conferred under this Ordinance, he or she—

- (a) alters or defaces;
- (b) blocks or erases;
- (c) destroys; or
- (d) conceals,

the information with the intention of preventing its disclosure.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of one thousand dollars.

28. The Governor may make regulations—

- (a) generally for giving effect to the provisions and purposes of this Ordinance;
- (b) prescribing the period of time for the doing of any act under this Ordinance;
- (c) for anything that is required or permitted to be prescribed under this Ordinance.

Offences

Power to make regulations

PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2017

CHAPTER XLVIII

**PITCAIRN ISLANDS MARINE PROTECTED
AREA ORDINANCE 2016**

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PITCAIRN ISLANDS MARINE PROTECTED AREA ORDINANCE 2016

An Ordinance to provide for the conservation and protection of the marine environment of the Pitcairn Islands

Ordinances: 3 of 2016

[12 September 2016]

PART I – PRELIMINARY

1. This Ordinance is the Pitcairn Islands Marine Protected Area Ordinance 2016.

Short title

2.—(1) This Ordinance shall be brought into force by Order by the Governor, except as provided in subsection (2).

Commencement

(2) Section 10 comes into force on a date appointed by the Governor by Order following the passing of Marine Conservation Regulations.

3. In this Ordinance—

Interpretation

Coastal Conservation Area means an area described in section 11.

discharge offence—

- (a) means an offence under this Ordinance or any Marine Conservation Regulations that is committed by discharging any substance into the marine environment; and
- (b) includes an offence under section 20 (failure to comply with duty), where that offence results in the discharge of any substance into the marine environment in breach of this Ordinance or any Marine Conservation Regulations.

diving means water-based activity involving the use of diving equipment, and includes scuba diving, surface-supply diving, submersible diving and remote operated vehicle diving.

dumping—

- (a) means:
 - (i) any deliberate disposal into the sea of waste or other matter from vessels and structures at sea; and
 - (ii) any deliberate disposal into the sea of vessels and structures at sea; and
 - (iii) any storage of waste or other matter in the seabed and the subsoil of the seabed from vessels and structures at sea; and
 - (iv) any abandonment or toppling at the site of structures at sea for the sole purpose of deliberate disposal; but

- (b) does not include:
- (i) the disposal into the sea of waste or other matter where that disposal is incidental to, or derived from, the normal operations of vessels and structures at sea and their equipment, other than waste or other matter transported by or to vessels and structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such waste or other matter on such vessels and structures; or
 - (ii) placement of matter for a purpose other than the mere disposal of it; but only if the placement is not contrary to the aims of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972); or
 - (iii) abandonment in the sea of matter (for example, cables, pipelines, and marine research devices) placed for a purpose other than the mere disposal of it.

dumping offence–

- (a) means an offence under this Ordinance or any Marine Conservation Regulations that is committed by dumping; and
- (b) includes an offence under section 20 (failure to comply with duty) where that offence results in dumping in breach of this Ordinance or any Marine Conservation Regulations.

Exclusive Economic Zone means the exclusive economic zone of Pitcairn Islands as defined in the Proclamation Establishing an Exclusive Economic Zone (Proclamation No 1 of 1977).

Fisheries Management Plan means a plan adopted in accordance with section 15.

fishing–

- (a) means the catching, taking, or harvesting of fish or other marine life; and
- (b) includes:
 - (i) any activity that may reasonably be expected to result in the catching, taking, or harvesting of fish or other marine life; and
 - (ii) any operation in support of or in preparation for any activities described in this definition.

fishing offence means an offence under this Ordinance or any Marine Conservation Regulations that is committed by fishing.

fishing vessel means any vessel of any size designed, equipped, or used for the purposes of fishing, including support ships, fish processing vessels, vessels engaged in transshipment and carrier vessels equipped for the transportation of products of fishing, except container vessels.

foreign vessel means any vessel other than a vessel that is the property of the Government of Pitcairn Islands, or is wholly owned by, or under exclusive charter to, any resident of Pitcairn Island.

lawful resident of Pitcairn means any person who:

- (a) has the right of abode on Pitcairn as defined in the Right of Abode Ordinance; or
- (b) is a permanent resident of Pitcairn or has been granted entry clearance for settlement under the Immigration Ordinance; or
- (c) intends to reside in Pitcairn for 3 months or more and has a valid entry clearance permitting such residency, or is exempt from the requirement to have entry clearance, under the Immigration Ordinance.

Marine Conservation Regulations mean regulations made under section 14.

marine environment–

- (a) means the natural and biological resources comprising any marine ecosystem; and
- (b) includes all marine life and the oceans, seas, lagoons, coastal areas, and other places where marine life exists.

marine life–

- (a) means any species of plant or animal life or other organism that, at any stage in its life history, must inhabit the sea, whether living or dead; and
- (b) includes seabirds; and
- (c) includes all kinds of algae and sea-grasses that grow in the Pitcairn Islands Marine Protected Area.

marine scientific research–

- (a) means research (whether fundamental or applied) carried out for the purpose of increasing knowledge about the marine environment; and
- (b) includes any related scientific activity; but
- (c) excludes any research carried out in relation to a mining activity (unless that research relates to a mining activity undertaken outside the Pitcairn Islands Marine Protected Area).

mining activity means any of the following activities carried out for, or in connection with, the identification of areas of the seabed likely to contain mineral deposits, the

identification of mineral deposits, or the taking or extraction of minerals from the sea or seabed and associated processing of those minerals:

- (a) the construction, mooring or anchoring long-term, placement, alteration, extension, removal, or demolition of a structure, part of a structure, or a vessel used in connection with a structure;
- (b) the depositing of any thing or organism in, on or under the seabed or subsoil;
- (c) the destruction, damaging, or disturbance of the seabed or subsoil;
- (d) the discharging of a harmful substance.

owner includes:

- (a) in relation to a company, any person occupying the position of a director of the company by whatever name called;
- (b) in relation to a partnership (other than a limited partnership), any partner;
- (c) in relation to a limited partnership, any general partner; and
- (d) in relation to a body corporate or an unincorporated body, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company.

Pitcairn Islands means the islands of Pitcairn, Henderson, Ducie and Oeno.

Pitcairn Islands Marine Protected Area means the area described in section 4.

precautionary principle means the principle that there is a need for caution in managing adverse effects where there is scientific and technical uncertainty about those effects.

prohibited activity means an activity listed as a prohibited activity in section 8.

regulated activity means an activity listed as a regulated activity in section 10.

Specially Protected Area means an area declared by the Governor as a Specially Protected Area in accordance with section 7.

territorial sea means:

- (a) in relation to Pitcairn and Henderson Islands, any part of the sea within 12 nautical miles measured from the nearest point of the low-water line along the coast; and
- (b) in relation to Ducie and Oeno Islands, any part of the sea within 12 nautical miles measured from the

nearest point of the seaward low-water line of the reef, together with the lagoons of those islands.

UNCLOS means the United Nations Convention on the Law of the Sea, 10 December 1982.

vessel means any description of vessel, hovercraft, submersible vessel, or other vessel of whatever size, and includes a seaplane while travelling on water.

PART II – PITCAIRN ISLANDS MARINE PROTECTED AREA

4. The area comprising the Exclusive Economic Zone and the territorial seas of Pitcairn, Henderson, Ducie and Oeno Islands is established as the Pitcairn Islands Marine Protected Area.

Pitcairn Islands
Marine Protected
Area established

5. The principles of the Pitcairn Islands Marine Protected Area are:

Principles of Pitcairn
Islands Marine
Protected Area

- (a) conservation and protection of the marine environment for present and future generations;
- (b) maintenance of biodiversity;
- (c) minimisation of human impact;
- (d) maintenance of the Pitcairn Islands Marine Protected Area as a global reference site against which other marine areas can be benchmarked;
- (e) preservation of customary fishing practices of Pitcairn residents.

6.—(1) Any person within the Pitcairn Islands Marine Protected Area must comply with this Ordinance and any Marine Conservation Regulations.

Duty to comply
with Ordinance and
Marine Conservation
Regulations

(2) The following persons have a duty to exercise due diligence to prevent a breach of this Ordinance or any Marine Conservation Regulations:

- (a) in relation to any breach or potential breach that may be carried out from a vessel, the owner, master and charterer (if any) of the vessel;
- (b) in relation to any breach or potential breach that involves a mining activity, any person able to make decisions affecting the whole or a substantial part of the operations connected with the activity.

(3) However, nothing in this section restricts or prevents the lawful exercise of internationally recognised rights of passage or freedom of navigation through the Pitcairn Islands Marine Protected Area, and any activities internationally recognised as appurtenant thereto.

7.—(1) The Governor may by order declare any specified area within the Pitcairn Islands Marine Protected Area to be

Specially Protected
Areas

a Specially Protected Area.

(2) No vessel may enter a Specially Protected Area without express permission of the Governor or a person designated for that purpose by the Governor.

(3) The Governor may make an order under subsection (1) only if:

- (a) the Governor considers the order necessary for the protection of the marine environment; and
- (b) the order is consistent with international law, including UNCLOS.

(4) An order under this section must specify:

- (a) the boundaries of the area;
- (b) the reasons for the designation;
- (c) the conditions with which permission may be granted to enter the area; and
- (d) when the order will expire, or, if it is to operate indefinitely, that it remains in force until further order.

(5) An order under this section must be published:

- (a) on the Public Notice Board; and
- (b) in any other manner and place directed by the Governor, including on any official website.

PART III – PROHIBITED AND REGULATED ACTIVITIES

Prohibited activities

8. Subject to section 9, no person may undertake any of the following activities in the Pitcairn Islands Marine Protected Area:

- (a) fishing;
- (b) any mining activity;
- (c) the disturbance of, or the removal of non-living natural material from, the seabed or subsoil;
- (d) the dumping of waste or other matter (including from vessels or structures);
- (e) the causing of vibrations (other than vibrations caused by the propulsion of a ship) in a manner that is likely to have an adverse effect on marine life;
- (f) any other activity specified as a prohibited activity under any Marine Conservation Regulations.

Activities to which prohibition does not apply

9.—(1) Section 8 does not apply to activities to which subsections (2) to (4) apply.

(2) This subsection applies to fishing by lawful residents of Pitcairn, provided that fishing is:

- (a) conducted while in transit to or from other islands in or outside the Pitcairn Islands Marine Protected Area, for consumption during that trip;

- (b) by an attended line (whether or not with a rod); and
- (c) conducted in accordance with any Marine Conservation Regulations and Fisheries Management Plan.

(3) This subsection applies to any activity carried out under a permit granted under this Ordinance and Marine Conservation Regulations for the purpose of marine scientific research.

(4) This subsection applies to any activity carried out in a Coastal Conservation Area in accordance with section 13.

(5) The Governor may in Marine Conservation Regulations specify further activities that:

- (a) are not prohibited under section 8;
- (b) are not prohibited under section 8 only insofar as they are conducted in accordance with a permit granted under the Regulations; or
- (c) are not prohibited under section 8 only insofar as they are conducted in accordance with conditions specified in the Regulations.

10. No person may undertake any of the following activities in the Pitcairn Islands Marine Protected Area, except in accordance with and to the extent permitted by Marine Conservation Regulations:

Regulated activities

- (a) diving;
- (b) anchoring;
- (c) discharging of ballast water;
- (d) any other activity specified as a regulated activity in Marine Conservation Regulations.

PART IV – COASTAL CONSERVATION AREAS

11. The following areas are established as Coastal Conservation Areas in the Pitcairn Islands Marine Protected Area:

Coastal Conservation Areas established

- (a) the territorial seas around Pitcairn, Henderson, Ducie and Oeno Islands;
- (b) the area within 2 nautical miles of 40 mile reef; and
- (c) a transit zone between Pitcairn Island and 40 mile reef as described in Marine Conservation Regulations.

12. The principles of the Coastal Conservation Areas are:

Principles of Coastal Conservation Areas

- (a) conservation of the unique marine environments and biodiversity in the coastal areas, reefs and lagoons;
- (b) sustenance and sustainable development of the Pitcairn community;
- (c) sustainable management of marine resources.

Restriction on
activity in Coastal
Conservation Areas

13. A person may undertake a prohibited activity in a Coastal Conservation Area if that activity is permitted by and conducted in accordance with:

- (a) any applicable Marine Conservation Regulations, including any requirement to obtain a permit that is specified in those regulations; and
- (b) any applicable Fisheries Management Plan.

PART V – REGULATIONS AND PLANS

Marine Conservation
Regulations

14.—(1) The Governor may, in consultation with the Island Council and the community of Pitcairn Island, pass regulations, to be known as Marine Conservation Regulations.

(2) Marine Conservation Regulations may apply in relation to all or any specified part of the Pitcairn Islands Marine Protected Area, and may:

- (a) prescribe requirements of entry to or exit from that area or both;
- (b) prohibit specified activities in that area;
- (c) specify activities that may only be undertaken in certain conditions, and the conditions in which such activities can be undertaken;
- (d) specify activities that may only be undertaken in accordance with a permit;
- (e) prescribe a framework for applying for and granting permits, including regulations that, in relation to all or any specified type of permit:
 - (i) specify the authority that may grant permits;
 - (ii) prescribe a process for applying for permits and for varying permits, including prescribing any information to be included and any forms to be used in an application;
 - (iii) prescribe fees to be paid upon application or upon the grant of a permit or both;
 - (iv) prescribe information, reports or records that must be provided by applicants, permit holders or both;
 - (v) specify criteria for granting permits;
 - (vi) specify conditions that must attach to a permit;
 - (vii) specify consequences for breaching conditions of a permit;
 - (viii) specify when a permit may be suspended or cancelled;
- (f) exempt persons or categories of person from specified provisions of this Ordinance;
- (g) create offences and prescribe penalties for breach of any regulation;

- (h) otherwise give effect to any of the purposes of this Ordinance.
- (3) In passing Marine Conservation Regulations, the Governor shall have particular regard to:
 - (a) the principles of the Pitcairn Islands Marine Protected Area as described in section 5, and in relation to regulations that apply in the Coastal Conservation Areas, the principles of that area as described in section 12;
 - (b) applicable principles of international law, including UNCLOS;
 - (c) the precautionary principle;
 - (d) Part 2 of the Pitcairn Constitution, and in particular section 19 (the right to protection of the environment); and
 - (e) the views of the Pitcairn community.
- (4) Marine Conservation Regulations must be published:
 - (a) on the Public Notice Board; and
 - (b) in any other manner and place directed by the Governor, including on any official website.

15.—(1) The Island Council may, with approval of the Governor, adopt a Fisheries Management Plan to apply to any fishing permitted under this Ordinance, for the purpose of ensuring the sustainable management of fish and other marine life and protection of the marine environment.

Fisheries
Management Plan

(2) Without prejudice to the generality of subsection (1), a Fisheries Management Plan may include rules that limit or prohibit fishing:

- (a) in a particular area;
 - (b) of a particular species;
 - (c) during a particular season or for a specified period of time;
 - (d) carried out by particular methods.
- (3) A Fisheries Management Plan adopted under this section must be consistent with this Ordinance and any applicable Marine Conservation Regulations, and to the extent there is any conflict, the Ordinance and Regulations prevail.

PART VI – OFFENCES AND PENALTIES

Offences not involving commercial gain

16.—(1) A person commits an offence if the person, otherwise than in the course of producing a commercial gain:

Offences not
involving commercial
gain

- (a) undertakes a prohibited activity in the Pitcairn Islands Marine Protected Area in breach of section 8; or

(b) undertakes a regulated activity in the Pitcairn Islands Marine Protected Area in breach of section 10.

(2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.

(3) It is a defence to a prosecution for an offence against this section if the defendant proves one or more of the defences described in section 22.

Penalty for offence
against section 16

17.—(1) A person convicted of an offence against section 16 is liable:

(a) in the case of a natural person, to imprisonment for a maximum term of 12 months or a fine not exceeding \$50,000 or both; or

(b) in the case of a person other than a natural person, to a fine not exceeding \$500,000.

(2) A person convicted of an offence against section 16 is also liable, if the offence is a continuing one, to a fine not exceeding \$2,000 for every day or part of a day during which the offence continues.

(3) The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Ordinance or Marine Conservation Regulations is a continuing offence.

Offences involving commercial gain

Offences involving
commercial gain

18.—(1) A person commits an offence if the person, in the course of producing a commercial gain:

(a) undertakes a prohibited activity in the Pitcairn Islands Marine Protected Area in breach of section 8; or

(b) undertakes a regulated activity in the Pitcairn Islands Marine Protected Area in breach of section 10.

(2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.

(3) It is a defence to a prosecution for an offence against this section if the defendant proves one or more of the defences described in section 22.

Penalty for offence
against section 18

19.—(1) A person convicted of an offence against section 18 is liable:

(a) in the case of a natural person, to imprisonment for a maximum term of 3 years or a fine not exceeding \$150,000 or both; or

(b) in the case of a person other than a natural person, to a fine not exceeding \$1,500,000.

(2) A person convicted of an offence against section 18 is also liable, if the offence is a continuing one, to a fine not exceeding \$6,000 for every day or part of a day during which the offence continues.

(3) The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Ordinance or Marine Conservation Regulations is a continuing offence.

(4) A court may, in addition to any penalty described above, order a person convicted of an offence under section 18 to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of the offence.

(5) The court must assess the value of any gain for the purpose of subsection (4).

(6) The amount of any additional penalty imposed under subsection (4) is recoverable in the same manner as a fine.

20.—(1) A person commits an offence against this section if the person:

Offence for failure to comply with duty

- (a) has a duty under section 6(2); and
- (b) in the course of producing a commercial gain, fails to comply with that duty.

(2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.

21.—(1) A person convicted of an offence against section 20 is liable:

Penalty for offence against section 20

- (a) in the case of a natural person, to imprisonment for a maximum term of 3 years or a fine not exceeding \$150,000 or both;
- (b) in the case of a person other than a natural person, to a fine not exceeding \$1,500,000.

(2) A person convicted of an offence against section 20 is also liable, if the offence is a continuing one, to a fine not exceeding \$6,000 for every day or part of a day during which the offence continues.

(3) The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Ordinance or Marine Conservation Regulations is a continuing offence.

General provisions regarding offences and penalties

22.—(1) It is a defence to a prosecution for an offence against section 16 or 18 if the defendant proves that:

Defences

- (a) the commission of the offence was due to:
 - (i) an act or omission of another person; or

- (ii) an accident; or
 - (iii) some other cause outside the defendant's control; and
 - (b) the defendant took all reasonable steps to avoid the commission of the offence or offences of the same kind.
- (2) It is a defence to a prosecution for an offence under section 16 or 18 if the defendant proves that the act or omission that is alleged to constitute the offence:
- (a) was necessary to save or prevent danger to human health or safety, or the marine environment, to avert a serious threat to the vessel or structure, or (in the case of force majeure caused by stress of weather) to secure the safety of the vessel or structure; and
 - (b) was a reasonable step to take in all the circumstances; and
 - (c) was likely to result in less damage than would otherwise have occurred; and
 - (d) was done in such a way that the likelihood of damage to human life or the marine environment was minimised.

Exercise of rights of foreign vessels

23. No prosecution shall be brought against a foreign vessel for any action that is a lawful exercise of rights at international law, including UNCLOS.

Burden of proof for fishing offences

24.—(1) For the purposes of any prosecution under this Ordinance or Marine Protection Regulations, the following presumptions apply in the absence of proof to the contrary:

- (a) any fishing vessel found or observed by any means stationary, moored, drifting, or sailing in a fishing pattern within the Pitcairn Islands Marine Protected Area shall be deemed to be engaged in fishing;
- (b) any fish or other marine life found on a vessel that is in the Pitcairn Islands Marine Protected Area shall be deemed to have been caught or taken within the Pitcairn Islands Marine Protected Area;
- (c) any vessel found in the Pitcairn Islands Marine Protected Area in possession of fishing equipment shall be deemed to be engaged in fishing unless that equipment is stowed so that it is not readily available for use for fishing.

(2) The onus of proof to rebut the presumptions described in subsection (1) shall lie upon the person charged.

(3) For the purposes of paragraph (1)(a), the means by which a fishing vessel may found or observed to fall within that paragraph include, but are not limited to:

- (a) remote satellite technology;
- (b) electronic monitoring by a Vessel Monitoring System (VMS);
- (c) an Automated Information System (AIS);
- (d) unmanned aerial, surface or underwater vehicle observations;
- (e) video, radar, acoustical and visual observations;
- (f) any other means that can reasonably be used to determine vessel activity historically or in real time.

25.—(1) In addition to any other penalty imposed under this Ordinance or any Marine Conservation Regulations, the court may order a person convicted of a dumping offence or a discharge offence to pay such amounts as the court may assess in respect of the costs incurred in respect of or associated with removing, containing, rendering harmless, or dispersing any waste or other matter to which the offence relates.

Additional penalties
for dumping and
discharge offences

(2) A court that convicts a person of a dumping offence or a discharge offence may order that the whole or part of the fine or other monetary penalty imposed on the person under this Ordinance or any Marine Conservation Regulations be paid to another person specified by the court.

(3) The specified person must apply the money towards meeting the costs of either or both:

- (a) removing, containing, rendering harmless, or dispersing the harmful substance or waste or other matter;
- (b) repairing the damage resulting from the harmful substance or waste or other matter.

26. Upon conviction of a person for an offence under this Ordinance or any Marine Conservation Regulations, the court may order the forfeiture to the Crown of:

Forfeiture

- (a) where the person convicted is the master, owner or charterer of a vessel used in the commission of the offence, that vessel;
- (b) any fish or other marine life obtained in contravention of this Ordinance or Marine Conservation Regulations and any proceeds from the sale of that fish or other marine life;
- (c) any fishing gear, apparatus, cargo, stores or other equipment found on a vessel used in the commission of the offence;
- (d) any other property used in the commission of the offence.

Other offences

Knowingly making
false statement

27.—(1) A person commits an offence if the person knowingly, for the purpose of obtaining a benefit or avoiding a penalty:

- (a) makes a false or misleading statement; or
- (b) omits any information—

in any communication, application, record, or document prescribed by or in accordance with Marine Conservation Regulations, or required for their administration.

(2) A person commits an offence if the person knowingly, for the purpose of obtaining a benefit or avoiding a penalty:

- (a) uses, deals with, or acts upon; or
- (b) causes any other person to use, deal with, or act upon—

any false communication, application, record or other document prescribed by or in accordance with Marine Conservation Regulations, or required for their administration.

(3) A person commits an offence if the person knowingly, for the purpose of obtaining a benefit or avoiding a penalty, destroys or partially destroys any communication, application, record or other document prescribed by or in accordance with Marine Conservation Regulations or required for their administration.

(4) A person convicted of an offence against this section is liable to imprisonment for a maximum term of 12 months, or a fine not exceeding \$10,000 or both.

Engaging with IUU
fishing

28.—(1) A person commits an offence if the person has knowingly or recklessly conducted business directly related to illegal, unreported and unregulated fishing, including the trade in, or the importation, exportation, or re-exportation of, fishery products.

(2) In this section:

- (a) “illegal fishing” means fishing:
 - (i) conducted by a fishing vessel in the Pitcairn Islands Marine Protected Area in breach of this Ordinance;
 - (ii) conducted by a fishing vessel flying the flag of a State which is a party to a regional fisheries management organisation, but which is operating in contravention of the conservation and management measures of that organisation; or
 - (iii) conducted in contravention of international law applicable to Pitcairn;
- (b) “unreported fishing” means:
 - (i) where an obligation to report is in place

- under Marine Conservation Regulations or a Fisheries Management Plan, fishing that has not been reported in accordance with that obligation, or has been misreported; and
- (ii) in any case, fishing which has been undertaken in the area of application of a regional fisheries management organisation but which has not been reported, or has been misreported, in contravention of the reporting procedures of that organisation;
- (c) “unregulated fishing” means fishing:
- (i) conducted in the area of application of a regional fisheries management organisation by a fishing vessel of a State that is not a contracting party to that organisation, or by a fishing vessel that does not fly the flag of any State or of any other fishing entity, in a manner that contravenes the conservation and management measures of the regional fisheries management organisation; or
 - (ii) conducted in an area, or for fish stocks, in relation to which there are no conservation or management measures, but in a manner that is not consistent with the responsibilities of the flag State for the conservation of marine living resources under international law;
- (d) “regional fisheries management organisation” means a regional, sub-regional or a similar organisation with competence to establish conservation and management measures for marine living resources that the members of that organisation have placed under its responsibility.
- (4) A person convicted of an offence against this section is liable to a fine not exceeding \$10,000.

PART VII – ENFORCEMENT

29.—(1) The Governor may appoint enforcement officers to ensure compliance with this Ordinance, Marine Conservation Regulations, or permits granted under this Ordinance and Marine Conservation Regulations.

Enforcement orders

(2) An enforcement officer may be appointed to exercise some or all of the powers conferred on enforcement officers under this Ordinance.

(3) The Governor must supply each enforcement officer with a warrant that:

- (a) states the full name of the person; and
- (b) includes a summary of the powers conferred on the person.

(4) An enforcement officer who holds a warrant issued under this section must, on the termination of his or her appointment, surrender the warrant to the Governor.

(5) For the purposes of this Ordinance, every police officer shall be deemed to be an enforcement officer and may, without warrant, exercise the powers conferred on enforcement officers under this Ordinance.

(6) Subsection (5) shall not be taken to limit the powers of search and seizure or other powers held by a police officer under any other law.

Production of warrant

30. An enforcement officer exercising a power under this Ordinance must have with him or her, and must produce if required to do so, his or her warrant and evidence of his or her identity.

Power to question and require certain information and production of documents

31.—(1) This section applies if an enforcement officer believes on reasonable grounds that a person is committing or has committed an offence against this Ordinance or Marine Conservation Regulations.

- (2) The enforcement officer may at any reasonable time:
 - (a) question that person or any other person;
 - (b) require that person to produce any permit, authority, approval or other document issued in respect of any vessel or person;
 - (c) require that person to give the officer his or her full name, address and, if that person is a natural person, date of birth.

Power of entry for inspection

32.—(1) An enforcement officer may at all reasonable times, enter and inspect a place, vehicle, vessel, or structure in Pitcairn Islands or the Pitcairn Islands Marine Protected Area except a dwellinghouse, for the purpose of determining whether this Ordinance, Marine Conservation Regulations, or any permit granted under this Ordinance and Marine Conservation Regulations are being complied with.

(2) An enforcement officer may, for the purpose of determining whether this Ordinance, Marine Conservation Regulations, or any permit granted under this Ordinance and Marine Conservation Regulations are being complied with:

- (a) inspect any item found in a place, vehicle, vessel, or structure entered in accordance with subsection (1) including, but not limited to:
 - (i) any fish or other marine life; and

- (ii) any article, gear, container, apparatus, device, or thing relating to the taking, sale, purchase, farming or possession of any fish or other marine life;
 - (b) take a sample of any substance;
 - (c) conduct examinations, tests, inquiries, and demonstrations;
 - (d) require the production of, and copy, any document or part of a document, including any accounts, records, returns, authority, approval, permit or other documents that may be relevant to monitoring such compliance.
- (3) In this section, **enter**, in relation to a vessel, means board.

33.—(1) An enforcement officer may seize:

Powers of seizure

- (a) any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment, or thing which he or she believes on reasonable grounds is being or has been or is intended to be used in the commission of an offence against this Ordinance or Marine Conservation Regulations;
 - (b) any fish or other marine life which he or she believes on reasonable grounds are being or have been, taken, killed, bought, sold or found in the possession of any person in contravention of this Ordinance or Marine Conservation Regulations, or any fish or other marine life with which such fish or marine life have been intermixed;
 - (c) any article, record, document, or thing which he or she believes on reasonable grounds is evidence of the commission of an offence against this Ordinance or Marine Conservation Regulations.
- (2) Where any foreign vessel is seized under this section, the master, owner or charterer of the boat may at any time before the determination of any proceedings or charge in respect of the offence for which the vessel was seized, apply to the Magistrate's Court for the release of the vessel on the provision of security in accordance with subsection (3).
- (3) On hearing the application, the Magistrate's Court shall order the release of the foreign vessel on the execution by any suitable person or persons approved by the Court for the purpose of a bond in favour of the Crown of an amount not less than the aggregate of the value of the vessel and the maximum fine to which the defendant will be liable if he or she is convicted of the offence.

Other powers of
enforcement officers

34.—(1) For the purposes of enforcement of this Ordinance or any Marine Conservation Regulations, an enforcement officer may:

- (a) if he or she believes on reasonable grounds that any person is offending against this Ordinance or any Marine Conservation Regulations, order that person to forthwith desist from offending;
- (b) if a person continues to offend after being ordered to desist under paragraph (a), arrest that person without a warrant;
- (c) if he or she believes that a vessel is being or has been used in contravention of the provisions of this Ordinance or any Marine Conservation Regulations, or of the conditions of any permit granted under this Ordinance and Marine Conservation Regulations, require the master to take the vessel, as soon as reasonably practicable, to the nearest available port, or such other port or place as is agreed between the master and the enforcement officer, and give the master any reasonable directions while the vessel is proceeding to port;
- (d) use such reasonable force as is necessary to enable the exercise of his or her powers under this Ordinance.

(2) If an enforcement officer arrests a person under subsection (1)(b), the enforcement officer shall cause the person to be delivered into the custody of a police officer as soon as practicable.

Powers may be
exercised outside
of Pitcairn Islands
Marine Protected
Area

35.—(1) Powers of enforcement officers may be exercised at a port or in waters under the jurisdiction of another State, where:

- (a) the enforcement officer believes on reasonable grounds that any person on board the vessel has committed an offence in the Pitcairn Islands Marine Protected Area; and
- (b) the powers are exercised in accordance with:
 - (i) any international agreement made on behalf of the Government of Pitcairn with the State with jurisdiction in that place; and
 - (ii) the laws in force at that place.

(2) The Governor may pass regulations to further provide for the enforcement of this Ordinance outside of the Pitcairn Islands Marine Protected Area in accordance with international agreements allowing for such enforcement.

36.—(1) A person commits an offence if the person:

- (a) resists or obstructs any enforcement officer in the exercise of any powers or duties; or
- (b) uses any threatening language or behaves in a threatening manner towards any enforcement officer executing his or her powers or duties; or
- (c) fails to comply with any request by any enforcement officer to give that officer particulars of a type listed under section 31(2)(b) or (c); or
- (d) being on board any vessel being pursued or about to be boarded by any enforcement officer throws overboard or destroys any fish, fishing equipment, or any other thing; or
- (e) personates or falsely claims to be an enforcement officer.

Obstruction of enforcement officers

(2) A person who refuses to allow any enforcement officer to exercise any of the powers conferred on that officer by this Ordinance shall be deemed to be obstructing that enforcement officer.

(3) A person convicted of an offence against this section is liable to a fine not exceeding \$2,000.

37. No enforcement officer shall be personally liable in respect of any act done or omitted to be done by him or her in good faith in the execution or purported execution of any powers and duties under this Ordinance.

Non-liability of enforcement officers

PART VIII – CONSEQUENTIAL AMENDMENTS

38. The definition of “territorial waters” in section 2(1) of the Interpretation and General Clauses Ordinance is repealed and replaced by the following definition:

Interpretation and General Clauses Ordinance amended

“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.

39. The Fisheries Zone Ordinance and all Regulations made under it are repealed.

Fisheries Zone Ordinance and Regulations repealed

PART IX – TRANSITIONAL PROVISIONS

40. Until such time as Marine Conservation Regulations are passed section 8 does not apply to anything done or omitted within the territorial waters of Pitcairn Island.

Transitional provisions

Pitcairn, Henderson, Ducie
and Oeno Islands

**ORDER BRINGING PITCAIRN ISLANDS MARINE
PROTECTED AREA ORDINANCE INTO FORCE**

I order that the Pitcairn Islands Marine Protected Area Ordinance 2016 be brought into force on Thursday 15 September 2016 (Pitcairn Standard Time), except as provided by section 2(2) of that Ordinance.

Made at Wellington this 14th day of September 2016 (NZST)

Jonathan Sinclair
Governor

Proclamation No. 1 of 1977

Robert Alston
Governor

PROCLAMATION ESTABLISHING AN EXCLUSIVE ECONOMIC ZONE

In the Name of Her Majesty Elizabeth II, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith,

By His Excellency Robert John Alston Esquire, Companion of the Order of Saint Michael and Saint George, Governor of Pitcairn, Henderson, Ducie and Oeno Islands,

Whereas there is a need to establish and to regulate activity in an exclusive economic zone around Pitcairn, Henderson, Ducie and Oeno Islands, in accordance with the rules of international law,

Now Therefore I, Robert John Alston, acting in pursuance of instructions given by Her Majesty through a Secretary of State, do **Hereby Proclaim** as follows:

1.—(1) There is established for Pitcairn, Henderson, Ducie and Oeno Islands an exclusive economic zone (hereinafter referred to as “the zone”) beyond and adjacent to the territorial seas around those Islands;

(2) The zone has as its outer limits the lines defined in the schedule to this Proclamation.

2. Any rights exercisable over the waters of the zone, its seabed and subsoil and their natural resources are hereby vested in Her Majesty.

3. In regard to the zone, Her Majesty will exercise jurisdiction in accordance with the rules of international law over the exploration and exploitation of the natural resources, the protection and preservation of the marine environment, marine scientific research and other economic exploitation, subject to such provision as is in force or may hereafter be made by law.

4. This Proclamation has force with effect from the ninth day of November 1992.

Given under my hand and the Public Seal of Pitcairn, Henderson, Ducie and Oeno Islands at the British High Commission, Wellington, New Zealand, this 25th day of

November in the year of Our Lord One Thousand Nine Hundred and Ninety-seven.

SCHEDULE

The zone is bounded by lines of the type described in Column 2 joining the points defined to the nearest second of arc by coordinates of latitude and longitude on WGS 72 Datum specified in Column 1

Column 1		Column 2
Co-ordinates of latitude and longitude		Line type
1. 26° 34' 05"	133° 25' 29"	1-2 Loxodrome
2. 25° 40' 40"	132° 59' 32"	2-3 Loxodrome
3. 24° 04' 08"	132° 41' 11"	3-4 Loxodrome
4. 22° 22' 55"	132° 23' 23"	4-5 Loxodrome
5. 21° 03' 05"	132° 08' 37"	5-6 Loxodrome
6. 20° 45' 54"	131° 58' 43"	6-7 a line drawn
7. 26° 34' 05"	133° 25' 29"	clockwise 200 nautical miles from the nearest points on the baseline of the territorial sea of Oeno, Henderson, Ducie and Pitcairn Islands

