

ADMINISTRATION OF JUSTICE BILL
(No. [] of 2016)

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ADMINISTRATION OF JUSTICE BILL
(No. [] of 2016)

A BILL

for
AN ORDINANCE

To make provision for the administration of justice in the Territory.

ENACTED by the Commissioner as follows:

PART 1

PRELIMINARY

1 Title

This Ordinance may be cited as the Administration of Justice Ordinance 2016.

2 Commencement

This Ordinance comes into force when it is published in the *Gazette*.

PART 2

JUDGES

3 Chief Justice

- (1) There shall be a Chief Justice of the Territory.
- (2) The Commissioner shall appoint the Chief Justice, with the consent of the Secretary of State.
- (3) The Chief Justice—
 - (a) shall hold and relinquish appointment in accordance with terms and conditions specified by the Commissioner; and
 - (b) may combine the appointment with service as Chief Justice of the Falkland Islands or elsewhere.
- (4) The terms and conditions of appointment—
 - (a) shall include provision for remuneration and allowances;
 - (b) shall not include provision for dismissal, except on grounds of incapacity or gross misconduct.

4 Magistrates

- (1) The Commissioner shall appoint a person as Senior Magistrate of the Territory.

- (2) In appointing the Senior Magistrate the Commissioner—
 - (a) shall ensure that the person appointed has a legal qualification in a jurisdiction applying similar law to the law of the Territory, and
 - (b) shall consult the Chief Justice.
- (3) The Commissioner shall also appoint a person as Magistrate.
- (4) The Senior Magistrate and the Magistrate—
 - (a) shall hold and relinquish appointment in accordance with terms and conditions specified by the Commissioner; and
 - (b) may combine the appointment with service as a magistrate in the Falkland Islands or elsewhere.
- (5) The terms and conditions of appointment—
 - (a) shall include provision for remuneration and allowances;
 - (b) shall not include provision for dismissal, except on grounds of incapacity or gross misconduct.

5 Coroners

- (1) The Commissioner shall appoint—
 - (a) a person, who appears to the Commissioner to be suitably qualified, as Coroner of the Territory; and
 - (b) a person, who appears to the Commissioner to be suitably qualified, as Deputy Coroner of the Territory.
- (2) The Coroner and Deputy Coroner—
 - (a) shall hold and relinquish appointment in accordance with terms and conditions specified by the Commissioner; and
 - (b) may combine the appointment with service as Coroner or Deputy Coroner of the Falkland Islands or elsewhere.
- (3) The terms and conditions of appointment—
 - (a) shall include provision for remuneration and allowances;
 - (b) shall not include provision for dismissal, except on grounds of incapacity or gross misconduct.

6 Acting appointments

The Commissioner may arrange for acting appointments to any office under this Part in the case of a vacancy, on such terms as the Commissioner thinks fit.

7 Pre-commencement appointments

- (1) The person who immediately before the commencement of this Ordinance holds appointment as Judge of the Supreme Court of the Territory shall be treated as having been appointed as Chief Justice of the Territory immediately upon the commencement of this Ordinance—
 - (a) upon the same terms and conditions as those appertaining to the pre-commencement appointment;
 - (b) pending any appointment made by the Commissioner under section 3.
- (2) The person who immediately before the commencement of this Ordinance holds appointment as the senior Magistrate of the Territory shall be treated as having been appointed as Senior Magistrate of the Territory immediately upon the commencement of this Ordinance—
 - (a) upon the same terms and conditions as those appertaining to the pre-commencement appointment;
 - (b) pending any appointment made by the Commissioner under section 4(1).
- (3) The person who immediately before the commencement of this Ordinance holds appointment as a magistrate of the Territory shall be treated as having been appointed as Magistrate of the Territory immediately upon the commencement of this Ordinance—
 - (a) upon the same terms and conditions as those appertaining to the pre-commencement appointment;
 - (b) pending any appointment made by the Commissioner under section 4(3).
- (4) The person who immediately before the commencement of this Ordinance holds appointment as the Coroner for the Territory *ex officio* shall be treated as having been appointed as Coroner of the Territory immediately upon the commencement of this Ordinance—
 - (a) upon the same terms and conditions as those appertaining to the pre-commencement appointment;
 - (b) pending any appointment made by the Commissioner under section 5(1)(a).

8 Judicial oath

- (1) A person appointed under this Part shall as soon as is reasonably practicable after the appointment take the judicial oath or affirmation.
- (2) The judicial oath or affirmation is in the following form—

I [*name of person appointed*] do swear / solemnly affirm that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors, in the office of [*title of office*] and that I will do right to all manner of people after the laws of South Georgia and the South Sandwich Islands, without fear or favour, affection or ill-will.

PART 3

CONSTITUTION OF THE COURTS

9 The courts

There shall be the following courts for the Territory—

- (a) the Supreme Court;
- (b) the Magistrates' Court;
- (c) the Court of Appeal; and
- (d) the Coroner's Court.

10 Supreme Court

The Supreme Court is properly constituted by the Chief Justice sitting alone.

11 Court of Appeal

- (1) The Commissioner shall arrange for the appointment of justices to the Court of Appeal of the Territory.
- (2) In particular, the Commissioner may arrange for judges of the Court of Appeal of the Falkland Islands to sit as judges of the Court of Appeal of the Territory.

12 Magistrates' Court

- (1) The Magistrates' Court shall be properly constituted for all purposes by the Senior Magistrate sitting alone.
- (2) The Magistrate may determine—
 - (a) preliminary procedural issues;

- (b) criminal proceedings for minor offences where the defendant pleads guilty; and
 - (c) other matters falling within the equivalent jurisdiction of the Senior Magistrate of the Falkland Islands, subject to any Practice Direction issued by the Chief Justice or Senior Magistrate of the Territory.
- (3) For the purposes of subsection (2)—
- (a) “preliminary procedural issues” means procedural issues specified for the purpose of this paragraph by the Chief Justice by Practice Direction; and
 - (b) “minor offences” means offences for which the penalty is limited to a fine not exceeding such amount as may be specified for the purpose of this paragraph by the Chief Justice by Practice Direction.

13 Coroner’s court

The Coroner’s court of the Territory shall be constituted, and shall proceed, in accordance with the law of the Falkland Islands from time to time relating to coroners’ courts.

PART 4

JURISDICTION AND PROCEEDINGS

14 Location

- (1) The courts of the Territory shall generally sit in Stanley in the Falkland Islands.
- (2) But a judge of the Territory shall sit in the Territory if in the judge’s opinion it is necessary to do so in the interests of justice.
- (3) The Chief Justice must by Practice Direction make provision to allow judges (including the Chief Justice) to sit in Stanley with remote participation by one or more of the parties, witnesses, legal representatives or assessors.
- (4) The Practice Direction must ensure that—
 - (a) irrespective of the location of a court the parties have access to legal advice and representation as necessary, and
 - (b) any other arrangements are made to ensure that proceedings conducted wholly or partly through the use of remote communication protect the fundamental rights of all parties and interested persons.
- (5) In this section “judge” includes magistrate and coroner.

15 Jurisdiction

- (1) The Supreme Court of the Territory shall have jurisdiction equivalent to the jurisdiction of the Supreme Court of the Falkland Islands.
- (2) The Court of Appeal of the Territory shall have jurisdiction equivalent to the jurisdiction of the Court of Appeal of the Falkland Islands.
- (3) The Magistrates' Court of the Territory shall have jurisdiction equivalent to the jurisdiction of the Magistrates' Court of the Falkland Islands; but the Chief Justice may by Practice Direction specify offences that may be tried only in the Supreme Court.
- (4) The Coroners' Court of the Territory shall have jurisdiction equivalent to the jurisdiction of the Coroners' Court of the Falkland Islands.

16 Procedure

- (1) Civil and criminal procedure in the Territory shall be conducted in accordance with the practice and procedure of the equivalent court of the Falkland Islands (subject to section 12(3) and the following provisions of this section).
- (2) No court of the Territory shall proceed through jury trial for any purpose (criminal or civil); and the Chief Justice must issue a Practice Direction adapting the procedures of the equivalent courts of the Falkland Islands to accommodate trial by judge alone.
- (3) The Chief Justice may by Practice Direction—
 - (a) provide for other modifications of the practice and procedure of the courts of the Falkland Islands to reflect the circumstances of the Territory;
 - (b) make any other procedural arrangements that appear to the Chief Justice necessary or desirable.
- (4) In relation to any matter not addressed by the practice or procedure of the relevant equivalent court of the Falkland Islands and not addressed by Practice Direction of the Chief Justice, the practice and procedure of the equivalent court of England and Wales shall apply, with any necessary modifications.

17 Registrar and Clerk

- (1) The Chief Justice shall appoint a Registrar of the Supreme Court.
- (2) The Chief Justice shall appoint a Clerk of the Magistrates' Court.
- (3) The Registrar and Clerk shall exercise functions conferred on them by the Chief Justice.
- (4) A person who immediately before the commencement of this Ordinance holds appointment as the Registrar of the Supreme Court of the Territory or as Clerk

of the Magistrates' Court shall be treated as having been appointed as Registrar or Clerk immediately upon the commencement of this Ordinance—

- (a) upon the same terms and conditions as those appertaining to the pre-commencement appointment;
- (b) pending any appointment made by the Commissioner under this section.