



ST HELENA

REVISED EDITION OF THE LAWS 2017

SECURITY & LAW ENFORCEMENT

EMERGENCY POWERS ORDINANCE, 1978¹

Ordinance 10 of 1978

In force 21 September 1978

Corrected by Legal Notice 21 of 1978

No subsidiary legislation to 1 November 2017, but included is:

EMERGENCY POWERS ORDER IN COUNCIL 2017 (UK)

(U.K.) S.I. 2017 No. 181

EMERGENCY POWERS ORDINANCE, 1978

ARRANGEMENT OF SECTIONS

1. Short title
2. Emergency regulations
3. Penalties may be provided by the regulations
4. Effect of regulations and change of same, including expiry
5. Power to compensate
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AN ORDINANCE to make exceptional provision for the maintenance of essential supplies and services to the community in case of emergency.

Short title

1. This Ordinance may be cited as the Emergency Powers Ordinance, 1978.

Emergency regulations

2. (1) If at any time it appears to the Governor that there have occurred, or are about to occur, events of such a nature as to be calculated, by interfering with the supply and distribution of food, water, fuel or light, or with the means of locomotion to, from or within St Helena, to deprive the community, or any substantial portion of the community, of the essentials of life, the Governor in Council may make regulations for securing the essentials of

¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

life to the community.

- (1A)** Regulations made under subsection (1) may –
- (a) confer or impose on any persons such powers and duties as the Governor in Council considers necessary for the preservation of the peace, for securing and regulating the supply and distribution of food, water, fuel, light, and other necessities, for maintaining the means of transit or locomotion, and for any other purposes essential to the public safety and the life of the community; and
 - (b) make any provision incidental to the powers aforesaid that appears to the Governor in Council to be required for making the exercise of those powers effective:
- (1B)** This Ordinance does not authorise the making of any regulations –
- (a) imposing any form of compulsory military service or industrial conscription; or.
 - (b) making it an offence for any person or persons to take part in a strike, or peacefully to persuade any other person or persons to take part in a strike.

(2) Whenever any regulations have been made under subsection (1), a meeting of the Legislative Council must be forthwith called, to take place within 7 days of the making of the regulations, and the regulations must be laid before that meeting of the Legislative Council, and do not continue in force after the expiration of 7 days from the time when they are so laid unless a resolution is passed in the Legislative Council providing for the continuance of them.

Penalties may be provided by the regulations

- 3.** Regulations made under this Ordinance –
- (a) may create offences for contravention of the regulations, and prescribe maximum penalties on conviction of such offences, not exceeding a fine of £100 or imprisonment for 3 months, or both, together with the forfeiture of any goods or money in respect of which the offence has been committed; but
 - (b) may not alter any existing procedure in criminal cases, or confer any right to punish by fine or imprisonment without trial.

Effect of regulations and change of same, including expiry

4. **(1)** Regulations made under this Ordinance have effect as if enacted in this Ordinance, but may be added to, altered, or revoked by resolution of the Legislative Council, or by regulations made as provided in section 2.

(2) The expiry or revocation of any regulations so made does not affect the previous operation of the regulations, or the validity of any action taken under them, or any penalty or punishment incurred in respect of any contravention or failure to comply with them, or any proceeding or remedy in respect of any such punishment or penalty.

Power to compensate

5. Any loss suffered by any person due to action taken by the Governor in Council under this Ordinance may be compensated at the discretion of the Governor in Council and such compensation may be paid from the Consolidated Fund of St Helena or any other source decided by the Governor.

Offences

6. (1) A person who contravenes a provision of any regulations made under this Ordinance, a contravention of which is not made an offence by the regulations, commits an offence.

Penalty: A fine of £50 or one month's imprisonment, or both.

(2) A person who wilfully obstructs or prevent any person from performing his or her duties under regulations made under this Ordinance commits an offence.

Penalty: A fine of £50 or one month's imprisonment, or both.

Scope of Ordinance

7. The enactment of this Ordinance does not affect or prevent the operation in St Helena of any English law which applies by virtue of the English Law (Application) Ordinance, 2005 or of any English law applied to St Helena by the action of the Parliament of the United Kingdom or Her Majesty's Privy Council.

THE EMERGENCY POWERS (OVERSEAS TERRITORIES) ORDER 2017

(U.K.) S.I. 2017 No. 181

Made	15th February 2017
Laid before Parliament	22nd February 2017
Coming into force	16th March 2017

At the Court at Buckingham Palace, the 15th day of February 2017
Present, The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 112 of the Saint Helena Act 1833, the British Settlements Acts 1887 and 1945, section 2(1)(b) of the Cyprus Act 1960, section 5 of the West Indies Act 1962, section 1(2) of the Anguilla Act 1980 and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the Emergency Powers (Overseas Territories) Order 2017 and comes into force on 16th March 2017.

This Order extends to—

- (a) the British overseas territories specified in Schedule 1; and
- (b) Gibraltar, but only to the limited extent specified in article 3(3).

Interpretation

2.—(1) In this Order—

“Gazette”, in relation to the Territory, means the official Gazette of that Territory, and in the case of Pitcairn includes any means of publication the Governor may from time to time direct; “Governor”, in relation to the Territory, means the person holding or acting in the office of Governor of that Territory, or if there is no such office, the officer for the time being administering that Territory;

“law”, in relation to the Territory, means any law in force made by any legislature established for that Territory and includes any subordinate legislation made under any such law; and “Pitcairn” means Pitcairn, Henderson, Ducie and Oeno Islands.

(2) In the application of this Order to any territory listed in Schedule 1, the expression “the Territory” in this Order means that Territory.

Revocations and savings

3.—(1) Subject to paragraph (3), the instruments specified in Schedule 2 are revoked with effect from the date of commencement of this Order.

(2) Any Proclamations or Regulations made under the Orders revoked by paragraph (1) that are in force immediately before the date of commencement of this Order shall continue to have effect on and after that date as if they had been made under this Order.

(3) In relation to Gibraltar, the instruments specified in Schedule 2 that apply to Gibraltar are revoked with effect from the date that equivalent provision comes into force.

(4) For the purpose of paragraph (3), “equivalent provision” means provision made by the Legislature of Gibraltar conferring powers on the Governor of Gibraltar to take action during a state of public emergency, which are equivalent to the powers conferred on the Governor of a territory by this Order.

(5) Any Proclamations or Regulations made under the Orders revoked by paragraph (3) that are in force immediately before the revocation takes effect shall continue to have effect on and after that date as if they had been made under the equivalent provision.

Meaning of “state of public emergency”

4.—(1) In this Order, “state of public emergency” means—

- (a) an event or situation which threatens serious damage to human welfare in the Territory, whether in whole or in part;
- (b) an event or situation which threatens serious damage to the environment of the Territory, whether in whole or in part; or
- (c) an event or situation which threatens serious damage to the security of the Territory.

(2) For the purposes of paragraph (1)(a), an event or situation threatens damage to human welfare only if it involves, causes or may cause—

- (a) loss of human life;
- (b) human illness or injury;
- (c) homelessness;
- (d) damage to property;
- (e) disruption of a supply of money, food, water, energy or fuel;
- (f) disruption of a system of communication;
- (g) disruption of facilities for transport; or
- (h) disruption of services relating to health.

(3) For the purposes of paragraph (1)(b), an event or situation threatens damage to the environment only if it involves, causes or may cause—

- (a) contamination of land, water or air with biological, chemical or radio-active matter; or
- (b) disruption or destruction of plant life or animal life.

(4) The event or situation mentioned in paragraph (1) may occur or be inside or outside the Territory.

Proclamations of Emergency

5.—(1) If the Governor is satisfied that a state of public emergency has occurred, is occurring or is about to occur, the Governor may make a Proclamation of Emergency.

(2) A Proclamation of Emergency shall cease to have effect—

(a) after a period of 30 days, beginning with the day on which it is made; or

(b) at such earlier time as—

(i) the Proclamation of Emergency is revoked by direction made by the Governor; or

(ii) may be specified in the Proclamation of Emergency or in Regulations made under article 6(1).

(3) Paragraph (2)—

(a) does not prevent the making of a new Proclamation of Emergency; and

(b) does not affect things done or omitted to be done while the Proclamation of Emergency was in force.

(4) A Proclamation of Emergency may, if the Governor thinks fit, be made so as to apply to such part of the Territory as may be specified in that Proclamation, in which case Regulations made under article 6(1) shall, except as they otherwise expressly provide, have effect only in that part.

(5) Any Proclamation of Emergency or direction made under this article shall be published in the Gazette as soon as practicable after it is made.

Power to make Regulations

6.—(1) Where the Governor has made a Proclamation of Emergency under article 5(1) and the Governor is satisfied that the conditions in article 7 are met, the Governor may make Regulations for the purpose of preventing, controlling or mitigating an aspect or effect of the state of that public emergency.

(2) In particular, Regulations may make any provision which the Governor is satisfied is necessary for the purpose of—

(a) protecting human life, health or safety;

(b) treating human illness or injury;

(c) protecting or restoring property;

(d) protecting or restoring a supply of money, food, water, energy or fuel;

(e) protecting or restoring a system of communication;

(f) protecting or restoring facilities for transport;

(g) protecting or restoring the provision of services relating to health;

(h) protecting or restoring the activities of banks or other financial institutions;

(i) preventing, containing or reducing the contamination of land, water or air;

(j) preventing, reducing or mitigating the effects of disruption or destruction of plant life or animal life;

(k) protecting or restoring the activities of the government of the Territory; or protecting or restoring the performance of public functions.

- (3) Regulations made under paragraph (1) may, so far as necessary for any of the purposes mentioned in paragraph (2), in particular—
- (a) confer any function on the Governor or on any other specified person, including—
 - (i) a power, or duty, to exercise a discretion;
 - (ii) a power to give directions or orders, whether written or oral;
 - (b) provide for or enable the detention of persons and the deportation or exclusion of persons from the Territory;
 - (c) provide for or enable, on behalf of Her Majesty, in relation to any property and with or without compensation—
 - (i) the taking of possession or control of that property; or
 - (ii) the acquisition of that property;
 - (d) provide for or enable the destruction of property, animal life or plant life (with or without compensation);
 - (e) prohibit, or enable the prohibition of, movement to or from a specified place;
 - (f) require, or enable the requirement of, movement to or from a specified place;
 - (g) prohibit, or enable the prohibition of, assemblies of specified kinds, at specified places or at specified times;
 - (h) prohibit, or enable the prohibition of, travel at specified times;
 - (i) prohibit, or enable the prohibition of, other specified activities;
 - (j) provide for any law to be amended, suspended in its operation or applied with or without modification;
 - (k) make provision (which may include conferring powers in relation to property) for facilitating any deployment of the Territory's armed forces or police services;
 - (l) confer jurisdiction on a court or tribunal (which may include a tribunal established by the Regulations);
 - (m) make provision which has effect in relation to, or to anything done in, an area of the territorial sea of the Territory;
 - (n) provide for charging, in respect of the grant or issue of any licence, (n)permit, certificate or other document for the purposes of the Regulations, such fee as may be prescribed by or under those Regulations; and
 - (o) provide for the payment of compensation and remuneration to persons affected by the Regulations.
- (4) In paragraph (3) “specified” means specified by, or to be specified in accordance with, the Regulations.
- (5) Any Regulations made under paragraph (1) may contain such incidental and supplementary provision as appear to the Governor to be necessary for the purposes mentioned in that paragraph.
- (6) Any Regulations made under paragraph (1) shall be published in the Gazette as soon as practicable after they are made.

Conditions for making Regulations

The conditions referred to in Article 6(1) are—

- (a) that the provision is necessary for the purpose of preventing, controlling or mitigating an aspect or effect of the state of public emergency in respect of which the Regulations are made;

- (b) that the effect of the provision is proportionate to that aspect or effect of the state of public emergency; and
- (c) that the need for the provision is urgent.

Limitations of Regulations

8.—(1) Regulations must specify the part of the Territory to which they apply.

- (2) Regulations may not require a person, or enable a person to be required, to provide military service.
- (3) Regulations may not amend—
 - (a) this Order;
 - (b) any other Order in Council that applies to the Territory, including the Constitution; or
 - (c) in its application to the Sovereign Base Areas of Akrotiri and Dhekelia, the Human Rights Ordinance 2004.
- (4) Regulations shall cease to have effect upon the expiration of the Proclamation of Emergency in relation to which they have been made, unless the Governor otherwise directs that for a specified period the continued application of the Regulations, whether in whole or in part, remains necessary for the purpose of preventing, controlling or mitigating an aspect or effect of the state of public emergency to which those Regulations relate.

Offences

9.—(1) It shall be an offence for any person, without reasonable excuse, to—

- (a) fail to comply with, or to contravene, any provision of any Regulations made under article 6(1);
 - (b) fail to comply with a direction or order given or made under any Regulations made under article 6(1);
 - (c) obstruct a person in the performance of a function under or by virtue of any Regulations made under article 6(1).
- (2) A person guilty of an offence under this article is liable on conviction to imprisonment for a term not exceeding three months' or a fine not exceeding £5000 or its equivalent in the currency of the Territory.

Effect of Regulations on law of the Territory

10.—(1) Subject to paragraph (2), Regulations made under article 6(1) shall have effect despite any inconsistent provision in the law of the Territory, and any inconsistent provision shall have no effect for the period that the Regulations are in force.

- (2) In their application to the Sovereign Base Areas of Akrotiri and Dhekelia, Regulations made under article 6(1) may not contain provision that is inconsistent with the Human Rights Ordinance 2004 and, to the extent of any such inconsistency, the Regulations shall have no effect.

Exercise of powers by the Governor

11.—(1) Subject to paragraph (2), in the exercise of any power conferred on the Governor by this Order, the Governor shall act in his or her discretion.

- (2) So far as it is practicable to do so—

- (a) the Governor of the Turks and Caicos Islands shall consult the Cabinet of the Turks and Caicos Islands;
- (b) the Governors of Anguilla and the Falkland Islands shall consult the Executive Councils of Anguilla and the Falkland Islands respectively;
- (c) the Governor of Pitcairn shall consult the Island Council of Pitcairn;
- (d) the Governor of St Helena, Ascension and Tristan da Cunha shall, in respect of—
 - (i) St Helena, consult the Executive Council of St Helena;
 - (ii) Ascension, consult the Island Council of Ascension;
 - (iii) Tristan da Cunha, consult the Island Council of Tristan da Cunha.

Consequential amendments

12.—(1) The Constitution of the Falkland Islands, set out in the Schedule to the Falkland Islands Constitution Order 2008(**a**), is amended in section 22(4)(b) by substituting the words “Regulations made under the Emergency Powers (Overseas Territories) Order 2017” for the words “the provisions of Part II of the Emergency Powers Order in Council 1939”.

(2) The Constitution of the Turks and Caicos Islands, set out in Schedule 2 to the Turks and Caicos Islands Constitution Order 2011(**b**), is amended in sections 20(1) and 22(1) by substituting the words “the Emergency Powers (Overseas Territories) Order 2017” for the words “the Emergency Powers Orders in Council 1939 to 1973”.

(3) The Constitution of Anguilla, set out in the Schedule to the Anguilla Constitution Order 1982(**c**), is amended—

- (a) by omitting section 17; and
- (b) in section 18(2), by substituting for paragraph (b)—

“(b) a Proclamation of Emergency is in force under the Emergency Powers (Overseas Territories) Order 2017.”.

Richard Tilbrook

Clerk of the Privy Council

SCHEDULE 1 **Territories to which the order extends**

Article 1(2)

Anguilla
 British Antarctic Territory
 British Indian Ocean Territory
 Falkland Islands
 Pitcairn
 St Helena, Ascension and Tristan da Cunha
 South Georgia and the South Sandwich Islands
 Sovereign Base Areas of Akrotiri and Dhekelia
 Turks and Caicos Islands

SCHEDULE 2 **Revocations**

Article 3(1)

The Emergency Powers Order in Council 1939
 The Emergency Powers (Amendment) Order in Council 1956
 The Emergency Powers (Amendment) Order in Council 1963

The Emergency Powers (Amendment) (No. 2) Order in Council 1963
The Emergency Powers (Amendment) Order in Council 1964
The Emergency Powers (Amendment) (No. 2) Order in Council 1964
The Emergency Powers (Amendment) Order 1965
The Emergency Powers (Amendment) Order 1968
The Emergency Powers (Amendment) Order 1973
The Leeward Islands (Emergency Powers) Order in Council 1959

EXPLANATORY NOTE

(This note is not part of the Order)

This Order enables the Governor of any British overseas territory listed in Schedule 1 to proclaim a public emergency and to make regulations for specified purposes during that emergency. The Order revokes and replaces the Emergency Powers Order in Council 1939 and its amending Orders, as well as the Leeward Islands (Emergency Powers) Order in Council 1959, the provisions of which this Order consolidates and updates.
