

PITCAIRN, HENDERSON

DUCIE & OENO ISLANDS

No 2 of 2016



*Jonathan Sinclair*

Enacted by the Governor of the Islands  
of Pitcairn, Henderson, Ducie and Oeno

**JUDICATURE (COURTS) (COURT REGISTRY) AMENDMENT  
ORDINANCE 2016**

DATE MADE: 19 August 2016

DATE PUBLISHED: 21 August 2016

An Ordinance to consolidate the laws regarding the Court Registry and Court  
Registrars and other Court officials

**PART I - PRELIMINARY**

Citation and  
commencement

1. This Ordinance may be cited as the Judicature (Courts) (Court Registry) Amendment Ordinance 2016 and shall come into operation on the day after it is published.

Principal  
Ordinance

2. This Ordinance amends the Judicature (Courts) Ordinance (the principal Ordinance).

## PART II – AMENDMENTS TO PRINCIPAL ORDINANCE

### Interpretation

3.–(1) In section 2, repeal the definitions of “Registrar” in relation to the Supreme Court and “Registrar” in relation to the Magistrate’s Court and insert the following definition in their place:

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

(2) Insert in appropriate alphabetical order:

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

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

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

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

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

### Retirement of Magistrates

4. In section 11B, repeal the words “70 years” and insert the following words in their place:

“75 years; but the Governor may permit any such person to remain in office for such fixed period, not exceeding two years, as may be agreed between that person and the Governor.”

### Protection of judicial officers

5. In section 18, insert the words “Registrar, Deputy Registrar,” after the word “Magistrate” in each place in which it occurs.

### New Part V

6. After section 20, insert a new Part V:

## PART V – OFFICERS OF THE COURT AND COURT OFFICES

### *Officers of the court*

#### Appointment of Registrars and other officers

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

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

(a) by name; or

(b) by reference to any office, in which case the person for the time being holding that office shall be appointed

to the relevant office under subsection (1).

(3) Registrars and Deputy Registrars are judicial officers, and every appointment to such an office shall be according to section 55 of the Constitution of Pitcairn.

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

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

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

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

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

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

Oaths, affirmations,  
affidavits, and  
declarations

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

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

(e) any other officer of the Pitcairn Public Service designated in that behalf by the Governor.

Powers of Registrars and Deputy Registrars

23.—(1) A Registrar has the duties and powers –  
(a) conferred by this Ordinance, any other enactment, or any rules made under section 20 of this Ordinance;  
(b) in relation to the Registrar of the Court of Appeal, conferred by any rules made under section 51 of the Constitution;  
(c) necessary or desirable to ensure the efficient and effective administration of the business of the court to which that Registrar is appointed.

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

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

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

Officers of the court subject to judicial orders

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

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

#### *Court registries*

Court registries

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

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

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

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

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

Filing and service of documents

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

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

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

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

Consequential amendments

7.–(1) The following sections and subsections are repealed:

- (a) section 7 (Officers of Supreme Court);
- (b) section 8 (Duties of Registrar);
- (c) subsection (2) of section 10 (Establishment of Magistrate’s Court);
- (d) section 17A (Court Registries).

(2) In paragraph (c) of section 20, delete the word “offices” and insert the word “registries” in its place.

Transitional and savings

8.–(1) Any person who immediately before the coming into force of this Ordinance holds an office referred to in section 21 shall continue in that office as if he or she had been appointed to hold it in accordance with that section.

(2) Any place that immediately before the coming into force of this Ordinance has been appointed as the registry of any Pitcairn court shall continue as such registry as if that place had been appointed as such in accordance with section 25 of this Ordinance.

### PART III – OTHER ENACTMENTS AFFECTED

Repeals

9. The Pitcairn Court of Appeal (Registry) Ordinance is hereby repealed.

Justice Ordinance  
(cap 3)

10. At the beginning of subsection (2) of section 4 of the Justice Ordinance, insert the words “Without prejudice to the general powers and duties conferred by section 23 of the Judicature (Courts) Ordinance,”.

Interpretation and  
General Clauses  
Ordinance (cap 1)

11. In section 2 of the Interpretation and General Clauses Ordinance, repeal the definition of “Judge” and insert the following definition in its place:  
“judge” means the Chief Justice or another judge of the Supreme Court, the President of the Court of Appeal, a Justice of Appeal, or an acting judge of the Supreme Court;”.



# JUDICATURE (COURTS) (COURT REGISTRY) AMENDMENT ORDINANCE 2016

## Explanatory note and legal report

This ordinance clarifies and consolidates provisions regarding the appointment and powers of Registrars and Deputy Registrars and other officers of Pitcairn courts. It, along with rules that may be passed under it, also provides for the location, hours and administration of court registries, and for the filing and receiving of court documents.

### Part II – Amendments to principal ordinance

#### Section 3 – Interpretation

This section amends the definition of Registrar to cross reference the new express provision that provides for appointment of Registrars. It also inserts definitions of terms not previously referred to in this Ordinance, such as Deputy Registrar, Court of Appeal, Administrator, and Pitcairn Public Service.

#### Section 4 – Retirement of magistrates

This section amends the retirement age of magistrates under s 11B to equal that of judges under s 54 of the Constitution. This brings the age to 75 which is also in keeping with the proposed retirement age for Registrars below.

#### Section 5 – Protection of judicial officers

This section amends the protection of judicial officers provided under s 18 to specifically include Registrars and Deputy Registrars. It provides that such officers are immune from being sued, but only for any act done *in the discharge of judicial duty*. This is similar to the position in comparable jurisdictions.

#### Section 6 – New Part V

This new part brings together provisions governing officers of all the courts and the Court Registries into one section, and adds new provisions where further clarity is required.

#### *Officers of the court*

The new **section 21** contains an express power of the Governor to appoint Registrars, Deputy Registrars and other officers of the court, after consultation with the Chief Justice. Officers can be appointed “for the conduct of business of any Pitcairn Court”. This is consistent with the Governor’s power to appoint judicial officers under s 52(2) of the Constitution. The requirement to consult with the Chief Justice about appointments recognises the judicial functions of the Registrar. Subsection (2) of this section recognises that a person may be appointed as a Registrar by reference to their office.

Currently under the Constitution, Registrars of the Supreme Court and Court of Appeal are ‘judicial officers’, meaning they have certain guarantees of independence from other branches of government, including protections of tenure (see ss 44, 55 and 61 of the Constitution). Subsection (3) of this section extends these protections to include all Registrars and Deputy Registrars of all courts, including the Magistrate’s Court.

Subsection (4) requires Registrars and Deputy Registrars to swear the oath of allegiance and the judicial oath. This is consistent with the requirement for judicial officers under s 52(5) of the Constitution.

Subsection (5) provides an age of retirement for Registrars and Deputy Registrars, as required by the Constitution. It provides that this age shall be 75, but allows this to be

extendable by up to 5 years by mutual agreement (longer than the equivalent extension available to judges and magistrates of 2 years).

Subsection (6) explicitly allows the same person to be appointed as Registrar (or Deputy Registrar) of more than one court, continuing the status quo as implied by the existing section 17A(2).

Subsection (7) specifically recognises that a person may be appointed as a Registrar, Deputy Registrar or court officer, even if that person is already a member of the Pitcairn Public Service, but spells out that if that is the case, that person is not answerable to the Governor, Administrator, or Island Council for the exercise of their court-related functions. This recognises that in Pitcairn's circumstances, it may be desirable for a person to carry more than one official role, while also recognising and protecting the need for this role to be independent from other government roles.

Subsection (8) continues the existing provision that a Judge or Magistrate can appoint a person to temporarily perform the function of a Registrar or Court officer as and where necessary; and subsection (9) provides that a Judge or Magistrate may him or herself act as a Registrar if there is no one appointed as such. This allows sufficient flexibility to ensure that a court can give necessary effect to Court decisions where matters are before it.

The new **section 22** continues the existing power in section 7(2) for Judges, Magistrates, Registrars and other Court officers to administer oaths and take affidavits, declarations and affirmations. It also allows the Governor, Deputy Governor, and Administrator, or other public servant authorised by the Governor, to do so.

The new **section 23** explicitly states the powers of Registrars and Deputy Registrars. In particular, it –

- allows powers to be conferred under other ordinances and rules
- contains a general empowering provision that Registrars shall have duties and powers necessary or desirable to ensure the administration of court business
- specifies that Deputy Registrars have all the powers of Registrars, unless otherwise specified
- continues the existing section 8, which gives the Registrar of the Supreme Court the powers and duties of various equivalent officers of the English High Court.

The new **section 24** provides that Registrars, Deputy Registrars and court officers are subject to orders from the judge or magistrate of the court (continuing the existing provision in section 8). It further clarifies that in exercising any *judicial* function, Registrars and Deputy Registrars must not be subject to any direction from the Governor. This preserves their independence in their judicial functions.

#### *Court registries*

The new **section 25** provides for Court registries to be established, continuing existing provisions (s 17A in relation to the Supreme Court and Magistrate's Court, and the Pitcairn Court of Appeal (Registry) Ordinance in relation to the Court of Appeal registry).

Subsections (2) and (3) allow the Governor to appoint the location of the Registry, on the advice of the Chief Justice. The Court registry may be situated outside of Pitcairn.

Subsection (4) clarifies that the same place may be the registry for two or more courts. This continues the current practice, and provides for a logical efficiency in a jurisdiction of Pitcairn's size.

Subsection (5) allows the Governor to make rules relating to the operation of the registry, including opening hours. The Governor must follow advice of the Chief Justice in doing so.

The new **section 26** provides that documents can be filed with the Court either by hand, post, fax or email. It continues the existing provisions from s 17A and from ss 4 and 5 of the Pitcairn Court of Appeal (Registry) Ordinance.

**Section 7** repeals the sections that have been replaced by the provisions of the new Part V.

**Section 8** provides that any existing Registrar, Deputy Registrar or Court Officer, and any existing registry, continue as though that person or place had been appointed under the new provisions, ensuring a seamless transition.

### **Part III – other enactments affected**

**Section 9** repeals the Pitcairn Court of Appeal (Registry) Ordinance, as this is now covered in the new Part V to the Judicature (Courts) Ordinance.

**Section 10** amends the section of the Justice Ordinance that gives powers to the Registrar, to note that this is in addition to any powers conferred under the provision above.

**Section 11** amends the definition of 'judge' in the Interpretation and General Clauses Ordinance to include Justices of the Appeal Court, in addition to the judges of the lower courts.

### **Consistency with Constitution of Pitcairn**

In my opinion this Ordinance is consistent with the Constitution of Pitcairn.

Simon Mount  
Attorney General of Pitcairn