
COURTS (CONSTITUTION AND JURISDICTION) ORDINANCE 2007

An Ordinance to provide for the continuance of courts, for their constitution and jurisdiction, and for other purposes relating to the administration of justice

R. H. LACEY
ADMINISTRATOR

5th March 2007.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Part 1
Preliminary

1. Short title

This Ordinance may be cited as the Courts (Constitution and Jurisdiction) Ordinance 2007.

2. Interpretation

(1) In this Ordinance -

“action” means a civil proceeding commenced in such manner as may be prescribed;

“civil proceeding” means any proceeding other than a criminal proceeding;

“Court” means the Senior Judges’ Court or the Resident Judge’s Court as the case may be having jurisdiction and includes any member of that Court;

“criminal proceeding” means any proceeding instituted before a Court against a person to obtain punishment of him for an offence against any law or instrument;

“Judge”, except in the terms “Senior Judge”, “Presiding Judge” or “Acting Judge”, means a member of the Resident Judge’s Court;

“matrimonial cause” means an action for divorce, nullity of marriage, judicial separation, jactitation of marriage or any restitution of conjugal rights and includes any application for ancillary relief or under the Children Act 1989(a) in connection with such action;

“Presiding Judge” means the Senior Judge appointed as the Presiding Judge of the Senior Judges’ Court under section 4;

“proceeding” means a judicial proceeding;

“Resident Judge” means the Judge appointed as the Resident Judge of the Resident Judge’s Court under section 5;

“Senior Judge” means a member of the Senior Judges’ Court.

- (2) Wherever they appear in any Ordinance or public instrument –
“Judge’s Court” is to be read as “Resident Judge’s Court”; and
“Deputy Senior Judge” is to be read as “Senior Judge”.

Part 2

Courts, Judges and Officers

3. Courts of Justice

There continue to be established Courts of Justice for the administration of civil and criminal law in the Areas as follows –

- (a) the Senior Judges’ Court;
- (b) the Resident Judge’s Court.

4. Constitution of Senior Judges’ Court

- (1) The Senior Judges’ Court consists of such Senior Judges as may from time to time be appointed.
- (2) The Administrator must by Letters Patent under the public seal of the Areas in accordance with such instructions as he may receive from Her Majesty through a Secretary of State appoint one of the Senior Judges to be the Presiding Judge.
- (3) The disposition and distribution of the duties of the Senior Judges’ Court is regulated by the Presiding Judge.

5. Constitution of Resident Judge’s Court

- (1) The Resident Judge’s Court consists of such Judges as may from time to time be appointed.
- (2) The Administrator must appoint one of the Judges to be the Resident Judge.
- (3) The disposition and distribution of the duties of the Resident Judge’s Court is regulated by the Resident Judge, subject to the overall control of the Presiding Judge.

6. Appointment of a Senior Judge

- (1) A Senior Judge is appointed by an instrument in writing under the hand of the Administrator in accordance with such instructions as he may receive from Her Majesty through a Secretary of State.
- (2) A Senior Judge holds that office during good behaviour for such period as may be specified in the instrument of appointment (which may be renewed).
- (3) A Senior Judge may sit as a member of the Resident Judge’s Court to hear and determine any proceedings of that Court and, where he does so, his powers are limited to the powers of that Court.
- (4) Where a Senior Judge has taken part in any proceedings before the Resident Judge’s Court he must not take part in any subsequent proceedings before the Senior Judges’ Court in respect of that particular proceeding.

7. Appointment of Resident Judge

- (1) The Resident Judge is appointed by an instrument in writing under the hand of the Administrator.
- (2) The Resident Judge holds that office during good behaviour for such period as may be specified in the instrument of appointment (which may be renewed).

8. Appointment of an Associate Judge

- (1) An Associate Judge is appointed by an instrument in writing under the hand of the Administrator.
- (2) An Associate Judge holds that office during good behaviour for such period as may be specified in the instrument of appointment (which may be renewed).
- (3) An Associate Judge is a member of the Resident Judge's Court and may only exercise the jurisdiction that is conferred on him by his instrument of appointment.

9. Appointment of an Acting Judge

- (1) An Acting Judge is appointed by an instrument in writing under the hand of the Administrator.
- (2) An Acting Judge holds that office during good behaviour for such period or in respect of such proceedings as may be specified in the instrument of appointment (which may be renewed).
- (3) An Acting Judge may be a member of the Senior Judges' Court or the Resident Judge's Court as specified in his instrument of appointment and, while so appointed, has the power to exercise the same jurisdiction as a member of the Court to which he is appointed.

10. First members of the Court

On commencement of this Ordinance –

- (a) The persons who immediately before the commencement are Acting Deputy Senior Judges become Senior Judges;
- (b) The person who immediately before the commencement is the Senior Judge becomes the Presiding Judge;
- (c) The person who immediately before the commencement is the Resident Judge remains the Resident Judge;
- (d) The persons who immediately before the commencement are Associate Judges remain in that office.

11. Qualification

- (1) A person is not qualified to be appointed a member of the Senior Judges' Court unless he holds a full-time judicial office in England and Wales.
- (2) A person is not qualified to be appointed a member of the Resident Judge's Court unless he is below the age of seventy and -
 - (a) at any time has held an appointment as Judge of a Court of Record in any part of Her Majesty's Dominions; or
 - (b) for not less than ten years, has been qualified to practise as a barrister-at-law, advocate or solicitor in the United Kingdom, or in an equivalent professional capacity, in a Court in a part of Her Majesty's Dominions or in the Republic of Ireland.
- (3) A person is not qualified to be appointed an Acting Judge unless he satisfies subsection (1) or (2) as relevant to the Court to which it is proposed he be appointed.
- (4) A person is not qualified to be appointed an Associate Judge unless he is below the age of seventy and for not less than seven years, has been qualified to practise as a barrister-at-law, advocate or solicitor in the United Kingdom, or in an equivalent professional capacity, in a Court in a part of Her Majesty's Dominions or in the Republic of Ireland.
- (5) Before appointing a person to be an Acting or Associate Judge the Administrator must consult the Presiding Judge.

12. Oaths

- (1) A person who is appointed a member of the Senior Judges' Court or Resident Judge's Court must, before exercising any function of that office, take and subscribe before the Administrator the oath of allegiance and judicial oath in the form prescribed in Schedule 1.
- (2) Subsection (1) does not apply to a person to whom section 10 applies.

13. Resignation

A member of the Senior Judges' Court or the Resident Judge's Court may at any time resign that office by giving the Administrator notice in writing to that effect.

14. Medical retirement

- (1) This section applies where the Administrator is satisfied by means of a medical certificate that an Associate Judge or Acting Judge appointed to the Resident Judge's Court –
 - (a) is disabled by permanent infirmity from the performance of the duties of his office, and
 - (b) is for the time being incapacitated from resigning his office.
- (2) The Administrator may by instrument in writing under his hand declare the person's office to have been vacated.
- (3) A declaration by instrument under subsection (2) has the same effect for all purposes as if the person had, on the date of the instrument, resigned his office.

15. Composition of Senior Judges' Court

- (1) The Senior Judges' Court is to be taken to be duly constituted during and notwithstanding any vacancy in the office of any member of that Court.
- (2) Subject to section 26(3), a Senior Judges' Court is duly constituted for the purpose of exercising any of its jurisdiction if it consists of an uneven number of Senior Judges.
- (3) Save where the Presiding Judge otherwise directs or where section 26 applies, subsection (2) is fulfilled where a Senior Judge sits alone.
- (4) Where more than one Senior Judge sits the judgment of the Senior Judges' Court is by majority.
- (5) The Senior Judges' Court is to be taken to be duly constituted where –
 - (a) part of a proceeding (not including proceedings to which section 26(3) applies) before a Senior Judges' Court has been heard by an uneven number of Senior Judges not less than three; and
 - (b) one or more members of the Senior Judges' Court is unable to continue.
- (6) Where any case has been heard by the Senior Judges' Court consisting of an even number of Senior Judges and the members of that Court are equally divided, the case must be reheard and determined by an uneven number of Senior Judges not less than three.
- (7) Where more than one member of the Senior Judges' Court is sitting the Presiding Judge or, in his absence, the Senior Judge who is senior by date of appointment is the presiding Judge for the purpose of those proceedings.

16. Composition of Resident Judge's Court

- (1) The Resident Judge's Court is to be taken to be duly constituted during and notwithstanding any vacancy in the office of any member of that Court.
- (2) The Resident Judge's Court normally consists of one Judge sitting alone who, subject to subsection (4), has the power to exercise the full jurisdiction of that Court.
- (3) The Presiding Judge may direct that a specified case or category of cases is to be tried by three Judges and, where he does so, must appoint one of those Judges to act as presiding Judge for the purpose of those proceedings.
- (4) An Associate Judge has power to exercise such jurisdiction as may be conferred on him by his instrument of appointment.
- (5) A direction under subsection (3) does not preclude a Judge from acting alone in order to deal with the following preliminary matters –
 - (a) in criminal proceedings, from taking pleas, ordering remands in custody or on bail, or subject to any directions of the Presiding Judge, granting legal aid and allocating and appointing Defence Counsel; or
 - (b) in civil proceedings, from exercising such interlocutory or preliminary functions

as the Presiding Judge may direct or may appear to the Judge to be essential in an emergency if it is not practical to obtain the directions of the Presiding Judge.

17. Appointment of Senior Registrar

- (1) The Administrator must appoint a person to be the Senior Registrar of both the Senior Judges' Court and Resident Judge's Court.
- (2) The person who immediately before the commencement of this Ordinance is the Senior Registrar continues to hold that office on commencement.

18. Appointment of Registrar

- (1) The Administrator may appoint a person to be the Registrar of both the Senior Judges' Court and Resident Judge's Court.
- (2) The Registrar performs such duties of the Senior Registrar as he is required to perform by the Presiding Judge or Resident Judge as the case may be.
- (3) The person who immediately before the commencement of this Ordinance is the Registrar continues to hold that office on commencement.

19. Duties of Senior Registrar

Unless otherwise provided, the duties of the Senior Registrar in respect of each Court include the –

- (a) issue of summonses, warrants, precepts and writs of execution;
- (b) keeping of a register of all orders and judgments made;
- (c) keeping of a record of proceedings;
- (d) accounting for all fees and fines payable or paid;
- (e) accounting for all other monies paid into or out of each Court;
- (f) submission of the accounts kept in accordance with this section for auditing by the Fiscal Officer as and when required;
- (g) forwarding of any monies received in accordance with directions from the Fiscal Officer.

20. Taxing Master

- (1) Unless otherwise provided, the Senior Registrar is the Taxing Master for each Court.
- (2) A Court may direct in any case that taxation of costs is to take place before the Court.
- (3) Unless a Court makes a direction under subsection (2) the Senior Registrar must tax all bills of costs and must do so in accordance with the scale of fees for the time being in force.
- (4) Where the Senior Registrar has taxed a bill of costs the Court before which the relevant proceedings were determined must, on application, review the taxation.

21. Sheriff

- (1) The Senior Registrar is the Sheriff of each Court and discharges his duties in that capacity under the direction of the Presiding Judge or Resident Judge as the case may be.
- (2) The Sheriff must by himself or his officers receive and execute any writ or process of the Court and make a return in respect of the same.
- (3) The Sheriff is not liable to be sued for any act or omission of any bailiff or other person he instructs to execute a writ or process where that act or omission has occurred through disobedience or neglect of the orders or instructions given by the Sheriff or where it may have been done or omitted without his authority.

22. Deputy Sheriff

- (1) The Registrar is the Deputy Sheriff of each Court and discharges his duties in that capacity under the direction of the Sheriff.
- (2) The Deputy Sheriff enjoys the same immunities as the Sheriff does under section 21(3).

23. Neglect of duty

- (1) Where an officer of the Court is employed to execute an order and wilfully or by neglect loses the opportunity of executing it then, on complaint of the person aggrieved and proof of the facts alleged, the Court may order the officer to pay the damage or part of the damage sustained by the person complaining.
- (2) An order made under subsection (1) is enforced as an order directing payment of money.

24. Misconduct of officer

- (1) This section applies where an officer of the Court is charged with –
 - (a) extortion under pretence of the process or authority of the Court, or
 - (b) not paying over any money levied, or
 - (c) any other misconduct.
- (2) The Court may inquire into the charge in a summary manner and for that purpose require the attendance of any relevant person as a witness before it.
- (3) Where the Court finds the charge proven it may –
 - (a) order the repayment of the money extorted or the payment over of any money levied,
 - (b) order the payment of such damages and costs as it thinks fit, and
 - (c) impose on the officer a fine of £250 in respect of each charge.
- (4) The powers of the Court under this section are without prejudice to any other liability or punishment which the officer would, apart from this section, be liable.

Part 3

Jurisdiction and law

25. Original jurisdiction of Senior Judges' Court

- (1) The Senior Judges' Court has exclusive original jurisdiction –
 - (a) as provided by section 3 Courts (Judicial Review) Ordinance 2004**(b)**;
 - (b) as a Court of Admiralty under any Act of the United Kingdom applicable to Admiralty jurisdiction in the Areas;
 - (c) to exercise such jurisdiction and powers in matrimonial causes as are exercisable in England by the Family Division of the High Court;
 - (d) as provided by rule 9 Human Rights Rules 2005**(c)**;
 - (e) to hear and determine any other proceeding as provided by any Ordinance.
- (2) The Senior Judges' Court does not have jurisdiction to hear and determine any matrimonial cause where –
 - (a) either party is a member of the Greek Orthodox Church and the marriage has been celebrated in accordance with the rites of the Greek Orthodox Church;
 - (b) either party is of the Moslem faith and the marriage has been contracted in accordance with the Moslem Sacred Law before 28th May 1951 or has, after that date, been solemnised in accordance with the Turkish Family (Marriage and Divorce) Ordinance**(d)** or any Law of the Republic replacing the same;
 - (c) it is a proceeding which as a result of any Ordinance is within the jurisdiction of a Turkish Family Court;
 - (d) it is a proceeding which as a result of any Ordinance is cognisable by an ecclesiastical tribunal of the religious community to which the parties belong.
- (3) The jurisdiction conferred on the Senior Judges' Court by this section does not abrogate any
 - (a) jurisdiction which an ecclesiastical tribunal of the Greek Orthodox Church

possesses in respect of matrimonial causes to which a member of the Greek Orthodox Church is a member, or

- (b) any principle contained in an Ordinance whereby matters of marriage and family status are governed by the law of the religious community to which the party belongs.

26. Appellate jurisdiction of Senior Judges' Court

- (1) Subject to any other Ordinance, the Senior Judges' Court has jurisdiction to hear and determine an appeal from the Resident Judge's Court in both criminal and civil proceedings.
- (2) Where the Senior Judges' Court has exercised its original jurisdiction then an appeal from such a determination lies to a differently constituted Senior Judges' Court comprising not less than 3 members.
- (3) A Senior Judges' Court is duly constituted for the purpose of hearing an appeal in Habeas Corpus proceedings provided it consists of at least two Senior Judges.

27. Exercising powers from outside the Areas

- (1) This section does not apply to -
 - (a) the power to conduct a trial or hear an appeal arising from a determination made at a trial, or
 - (b) the power to hear and determine a civil proceeding and appeal from such a case.
- (2) Any power exercisable by a Senior Judge as a result of this Ordinance may be exercised by him notwithstanding his absence from the Areas at the time when the decision is arrived at or considered.
- (3) Without prejudice to the generality of subsection (2), this section applies to -
 - (a) the consideration of any decision to be taken following any proceeding before the Court,
 - (b) the promulgation of any decision taken following any proceeding before the Court,
 - (c) the consideration and promulgation of any decision to be taken in respect of any application which may lawfully be made and considered without a hearing before the Court.
- (4) Where a decision is taken and promulgated under the provisions of this section following a trial, an appeal or any other criminal proceeding held in open Court, the decision must be read in open Court by such Senior Judge as the Presiding Judge directs.

28. Practice directions

- (1) The Presiding Judge may issue practice directions relating to any business of the Senior Judges' Court and the Resident Judge's Court.
- (2) A practice direction issued in accordance with this section must be published in the Gazette.

29. Criminal jurisdiction of Resident Judge's Court

- (1) Except where otherwise provided, the Resident Judge's Court has exclusive original jurisdiction to try all offences committed within the Areas.
- (2) The Court may, in addition to or in substitution for any punishment, order a person convicted before it to make compensation not exceeding £3000 to any person who suffers injury as a result of the commission of that offence.
- (3) The Court has a duty to ensure that -
 - (a) a person is not detained within the Areas except in accordance with the law, and
 - (b) the administration of justice is not unduly delayed.
- (4) The Court must make enquiry as to all persons detained in the Areas for the purpose of meeting its duty under subsection (3) and may, for this purpose, make such order as it deems fit for the release of any person from custody with or without bail.

30. Civil jurisdiction of Resident Judge's Court

- (1) Except where otherwise provided, the Resident Judge's Court has exclusive original jurisdiction to hear and determine an action where –
 - (a) the cause of action has arisen wholly or partly within the Areas,
 - (b) the defendant, at the time the action was commenced, resides or carries on a business within the Areas, or
 - (c) the cause of action relates to immovable property within the Areas.
- (2) Where the action is founded on contract then a cause of action is deemed to have arisen within the Areas if the contract was made within the Areas or, where the contract was made outside the Areas, the breach occurs within it.

31. Proceedings ordinarily reserved to Senior Judges' Court

A member of the Resident Judge's Court may, notwithstanding anything to the contrary contained in any other Ordinance, exercise any of the following powers in respect of a proceeding over which the Senior Judges' Court has jurisdiction –

- (a) to give judgment or a ruling in any proceeding in which –
 - (i) either party fails to appear at the time fixed for the hearing before the Court, or
 - (ii) either party fails to deliver any pleading or take any step within the time appointed by any Rules of Court; or
- (b) to make any order in an action other than disposing of the action on its merits.

32. Civil Appeals from Resident Judge's Court

Every decision of the Resident Judge's Court exercising civil jurisdiction is subject to appeal to the Senior Judges' Court.

33. Laws to be applied

- (1) Each Court in the exercise of its civil and criminal jurisdiction must apply –
 - (a) the Ordinances of the Areas,
 - (b) the Statutes of the Imperial Parliament and Orders of Her Majesty in Council, applicable either to Her Majesty's Overseas Territories generally or to the Areas, except where the same has validly been modified by, or other provision has been validly made by, an Ordinance of the Areas,
 - (c) the common law of England and the doctrines of equity except where and to the extent that other provision has been made by an Ordinance of the Areas.
- (2) The Senior Judges' Court, in exercising the jurisdiction conferred on it by section 25(1)(c) must apply the law relating to matrimonial causes for the time being administered by the Family Division of the High Court of Justice in England.

Part 4

Powers of the Courts

34. Vexatious litigants

- (1) This section applies where, on an application being made by the Attorney General and Legal Adviser, the Senior Judges' Court is satisfied that a person has habitually, persistently and without any reasonable ground instituted vexatious proceedings in either Court, whether against the same or different persons.
- (2) Where the Senior Judges' Court is satisfied of the matters in subsection (1) it may order that the litigant named in the order –
 - (a) must not institute any legal proceedings in either Court without the leave of the Court; and

- (b) any legal proceedings instituted by him in either Court before the making of the order must not be continued without the leave of the Court.
- (3) The Senior Judges' Court must not make an order under subsection (2) without first hearing from the relevant person or giving that person the opportunity of being heard.
- (4) Where an order has been made under this section a Court must not grant leave under subsection (2) unless it is satisfied that –
 - (a) the proceedings are not an abuse of the process of the Court, and
 - (b) there is a prima facie ground for the proceedings.
- (5) If the person against whom an order is sought under this section cannot afford the services of an advocate the Senior Judges' Court must assign an advocate to him.
- (6) A copy of an order made under this section must be published in the Gazette.

35. Disposal of fees and other monies

A fee, forfeiture or money penalty levied under this Ordinance is payable to the public account unless otherwise specified in the order which levied the payment of the money.

36. Effect of judgment

- (1) A judgment of either Court is, unless otherwise specified in the judgment, binding on all parties to the action immediately on being made.
- (2) The binding nature of a judgment is not affected by –
 - (a) the absence of any party to the proceeding;
 - (b) the judgment being made in default of pleading;
 - (c) an appeal against the judgment.
- (3) Where an appeal against a judgment has been lodged, the Court which issued the judgment or the Court before which the appeal is to be heard, may direct that execution of the judgment is to be suspended for such time and on such terms as the Court sees fit.

Part 5

Miscellaneous

37. Place of sittings

A Court may sit at any place in the Areas as deemed expedient by that Court.

38. Public sittings

The sittings of each Court must ordinarily be public but a Court may, for reasons which it enters in the minutes of the proceedings, hear any proceeding in the presence only of the parties with their advocates or representatives and the officers of the Court.

39. Books of record

Each Court must keep a book in which is recorded the orders, sentences and such other proceedings of the Court as may be required by Rules of Court or, in default of such Rules, as may be directed by the Presiding Judge or Resident Judge.

40. Seals

- (1) Each Court must use as required a seal in the form approved by the Administrator and may have as many duplicates of the seal as it requires.
- (2) Each Court must direct in whose custody each duplicate of the seal is to be kept.
- (3) The Administrator may direct that a single seal is to be used in both Courts and, where he does so direct, it must be in the form "Her Majesty's Court of the Sovereign Base Areas of Akrotiri and Dhekelia" or any other form of wording to like effect.
- (4) A writ, order or other instrument issued by a Court must be sealed with the seal of the Court which has issued it.

41. Rules

The Administrator may make Rules of Court to be published in the Gazette for the better carrying of this Ordinance into effect and in particular for all or any of the following matters –

- (a) for regulating the sittings of the Courts;
- (b) for regulating the pleading, practice and procedure of either of the Courts and for prescribing the forms to be used;
- (c) for regulating any matter relating to the duties of the officers of the Courts;
- (d) for prescribing the costs of any proceeding to be allowed to a party or to be allowed to the advocates and others lawfully representing a party;
- (e) for prescribing the fees to be taken in respect of any proceeding before a Court or officer of the Court.

42. Repeal

The Ordinances listed in Schedule 2 are repealed to the extent specified in that Schedule.

43. Commencement

This Ordinance comes into force on the day it is published in the Gazette.

Schedule 1

(section 12)

Oaths

OATH OF ALLEGIANCE

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

JUDICIAL OATH

I.....do swear that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second in the office of.....and will do right to all manner of people after the law of the Sovereign Base Areas without fear or favour, affection or ill will, so help me God.

Schedule 2

(section 42)

Repeals

1. The following provisions of the Courts Ordinance 1960 – (a) Part I and Part II. (b) In Part III, section 39, 44 and 45. (c) In Part VI, section 56, 57, 60, 61 and 62. (d) The Schedule.	Ordinance 3/60
2. Courts (Amendment) Ordinance 1961	Ordinance 7/61
3. Courts (Amendment) Ordinance 1962	Ordinance 19/62
4. Courts (Amendment) Ordinance 1963	Ordinance 5/63
5. Courts (Amendment) Ordinance 1965	Ordinance 3/65
6. Courts (Amendment) Ordinance 1977	Ordinance 9/77
7. Courts (Amendment) Ordinance 1984	Ordinance 12/84
8. Section 2 Courts (Amendment) Ordinance 1988	Ordinance 6/88
9. Courts (Amendment) Ordinance 2003	Ordinance 16/03
10. Courts and Criminal Procedure Ordinance 2003	Ordinance 39/03
11. Courts (Amendment) (No. 2) Ordinance 2004	Ordinance 31/04
12. Courts (Amendment) Ordinance 2005	Ordinance 12/05

Notes

(a) 1989 c 41, United Kingdom.

(b) Ordinance 10/04.

(c) Public Instrument No. 25/05.

(d) Cap 330, Statute Laws of Cyprus, revised edition, 1959 as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom) and the Laws (Adaptation and Interpretation) (Consolidation and Extension) Ordinance 1968 (5/68).

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. These explanatory notes relate to the Courts (Constitution and Jurisdiction) Ordinance 2007. They have been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. They do not form part of the Ordinance.

2. The notes need to be read together with the Ordinance. They are not, and are not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

The Ordinance

3. In summary, the Ordinance takes account of previous amendments to those parts of the Courts Ordinance 1960 which dealt with the constitution and jurisdiction of the Courts of the Areas and makes further amendments of which the most significant are detailed below.

Part 2

4. Section 3 continues the establishment of the Courts of the Areas but re-names the Judge's Court the "Resident Judge's Court". Section 4 removes the previous limit on the number of Judges who could be appointed to the Senior Judge's Court. It also re-names the Senior Judge the "Presiding Judge of the Senior Judges' Court" and provides for all other members (previously known as Deputy Senior Judges) to be Senior Judges.

5. Sections 6-9 set out the tenure of appointment for all judicial office holders appointed to the SBA Courts. Those sections expressly provide for each appointment to be for the period specified in the instrument of appointment rather than it being an open-ended appointment. The existing four categories of Judges are retained (namely Senior Judges, the Resident Judge, Acting Judges and Associate Judges). The basis on which such judicial office holders may be removed from office and on which a decision whether to renew an appointment will be taken are contained in the terms and conditions of service for each office holder and these standard terms will be published on the SBA website.

6. Section 10 provides for persons holding judicial office in the Areas immediately before commencement of this Ordinance to hold the equivalent position under the new Ordinance.

7. Section 11 sets out the qualification requirements for all judicial office holders. In order to hold office as a Senior Judge, a new requirement is added that the person must hold full-time judicial office in England and Wales. Subsection (5) requires the Administrator to consult the Presiding Judge before appointing any person as an Associate or Acting Judge.

8. Sections 13 and 14 add new provisions relating to retirement and medical retirement of certain judicial office holders. Any decision regarding the medical retirement of a Resident or Senior Judge will be taken via the Department for Constitutional Affairs acting in accordance with the procedures in place in England and Wales.

9. Section 15 deals with the composition of the Senior Judges' Court. It amends the existing system by establishing a general requirement for the Court to consist of an uneven number of Senior Judges whenever it exercises its jurisdiction and, subject to the exceptions referred to in that section, for this requirement to be fulfilled where a Senior Judge sits alone. Section 16 then deals with the constitution of the Resident Judge's Court. It provides that, except where the Presiding Judge otherwise directs, it will normally consist of one Judge sitting alone who has the power to exercise the full jurisdiction of that Court. This does not override the terms of appointment for an Associate Judge – such person may only exercise the jurisdiction conferred on him by his instrument of appointment.

10. Sections 17 – 24 largely replicate existing provisions in the Courts Ordinance but are drafted in more modern language.

Part 3

11. Section 26 sets out the appellate jurisdiction of the Senior Judge's Court. A new provision is added (subsection (2)) to make clear that where the Court has exercised its original jurisdiction, an appeal lies to a differently constituted panel of that Court rather than to the Judicial Committee of the Privy Council. Subsection (3) allows the Court to hear an appeal in habeas corpus proceedings provided it consists of at least two Senior Judges.

12. Section 28 adds a new statutory power for the Presiding Judge to issue practice directions in respect of both Courts and for such directions to be published in the SBA Gazette.

13. Section 29 deals with the criminal jurisdiction of the Resident Judge's Court. It puts beyond doubt that this Court has exclusive original jurisdiction to try all offences committed within the Areas.

14. The remainder of Part 3 largely replicates equivalent provisions in the Courts Ordinance 1960 but are drafted in more modern language.

Parts 4 and 5

15. Parts 4 and 5 largely replicate equivalent provisions in the Courts Ordinance 1960 but are drafted in more modern language.

16. Section 42 inserts Schedule 2. This sets out the provisions of the Courts Ordinance 1960 which are repealed on the commencement of this Ordinance. The provisions that remain in force are related to the exercise of the civil jurisdiction of both Courts.

17. Section 43 provides for the Ordinance to come into force on the day of publication in the Gazette. It will therefore apply to any proceedings which are before either Court at that time.



