



BRITISH ANTARCTIC TERRITORY

THE INTERPRETATION AND GENERAL PROVISIONS ORDINANCE 2020

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THE INTERPRETATION AND GENERAL
PROVISIONS ORDINANCE 2020

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BRITISH ANTARCTIC TERRITORY

Enacted by the Commissioner,
Ben Merrick,
XX XXXX 2020

Ordinance No. 1 of 2020

THE INTERPRETATION AND GENERAL PROVISIONS ORDINANCE 2020

AN ORDINANCE relating to the interpretation, publication and operation of Ordinances and other instruments and the exercise of statutory powers and duties and providing for matters connected with or incidental thereto.

PART 1

PRELIMINARY

Citation and commencement.

1. This Ordinance may be cited as the Interpretation and General Provisions Ordinance 2020 and shall come into force on XXXXX.

Application.

2. (1) Unless it is otherwise provided in this or some other Ordinance or in the subsidiary legislation concerned or unless the context otherwise requires, this Ordinance applies for the interpretation of, and otherwise in relation to, all Ordinances (including this Ordinance) and all subsidiary legislation, no matter when enacted or made or coming into force.

(2) This Ordinance does not apply for the interpretation of, or otherwise in relation to, any imperial law whether or not having effect in the Territory by virtue of any Ordinance or by virtue of any subsidiary legislation.

(3) This Ordinance binds the Crown.

PART 2

GENERAL PROVISIONS AS TO ENACTMENT AND OPERATION OF LAWS

- Words of enactment.
3. Every section of an Ordinance and every corresponding provision of subsidiary legislation takes effect as a substantive enactment without introductory words.
- Judicial notice.
4. (1) Every Ordinance is a public Ordinance to be judicially noticed as such, unless the contrary is expressly provided by the Ordinance.
- (2) Subsection (1) of this section applies, *mutatis mutandis*, to every instrument constituting subsidiary legislation.
- Publication and commencement of laws.
5. (1) Ordinances shall be published and come into force in accordance with section 13(3) and (4) of the British Antarctic Territory Order 1989.
- (2) Where any Ordinance is expressed to come into force on a particular day, it shall come into force at the beginning of that day.
- (3) A provision in an Ordinance regulating the coming into force of an Ordinance or of any part of it shall have effect notwithstanding that the part of the Ordinance containing that provision has not come into force.
- (4) Every instrument constituting subsidiary legislation shall be published in the *Gazette* and shall come into force on the date when it is so published unless it is provided, either in the instrument or in some other law, that it shall come into force on some other date, in which case it shall come into force on that other date.
- (5) Subsections (2) and (3) of this section apply, *mutatis mutandis*, to every instrument constituting subsidiary legislation.
- (6) All laws, documents and information of any kind that require publication in the *Gazette* shall be so published in such manner and at such place or places in the Territory as the Commissioner may from time to time direct.
- The Crown.
6. No Ordinance and no subsidiary legislation shall be binding on the Crown unless it so provides in express terms, and no subsidiary legislation shall so provide unless an Ordinance expressly authorises it so to do.

PART 3

DEFINITIONS

Definitions.

7. (1) Unless the contrary intention appears, the following words and expressions, when used in an Ordinance or in subsidiary legislation, shall have the meanings respectively assigned to them in this section, that is to say:

“Act” means an Act of the Parliament of the United Kingdom;

“act” includes an omission and a series of acts or omissions;

“alien”, “British citizen”, “British subject”, “Commonwealth citizen” and other terms denoting the status of any person in respect of nationality or citizenship have the meanings which those terms respectively have under the British Nationality Acts 1981 and 1983;

“the Attorney General” has the meaning assigned by section 2 of the Attorney General Ordinance 2020;

“British possession” means any part of Her Majesty’s dominions outside the United Kingdom; and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature are deemed, for the purposes of this definition, to be one British possession;

“commencement”, in relation to an Ordinance or to subsidiary legislation or to an enactment, means the time when it comes into force;

“the Commissioner” means the person holding the office of Commissioner for the Territory under section 4 of the British Antarctic Territory Order 1989 and includes any person for the time being discharging the functions of that office under section 7 of the Order and, to the extent that a person is for the time being authorised to discharge any of those functions under section 8 of the Order, that person;

“the Commonwealth” means the United Kingdom, all British possessions and all other countries mentioned in Schedule 3 to the British Nationality Act 1981;

“consular officer” has the meaning assigned by Article 1 of the Vienna Convention set out in Schedule 1 to the Consular Relations Act 1968;

“contravene”, in relation to any requirement or condition, includes a failure to comply with that requirement or condition;

“the Coroner” has the meaning assigned by section 2 of the Administration of Justice Ordinance 2020;

“the Court of Appeal” has the meaning assigned by section 2 of the Administration of Justice Ordinance 2020;

“financial year” means the twelve months ending with 30 June;

“the *Gazette*” means the Official Gazette for the Territory and includes any supplement thereto and any Special Gazette or Gazette Extraordinary; and a reference to the date on which any matter is published in the *Gazette* shall be taken to be a reference to the date which is shown in the issue of the *Gazette* in which it is so published as the date of that issue unless it is proved that that issue was published on some other date;

“the Governor”, in relation to any British possession, means the officer for the time being administering the government of that possession;

“imperial law” means –

(a) any Act;

(b) any statutory instrument (as defined in the Statutory Instruments Act 1946); or

(c) any prerogative instrument having legislative force;

“land” includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land;

“law for the time being in force in the Territory” has the meaning assigned by section 2 of the Administration of Justice Ordinance 2020;

“magistrate” means a person appointed to be a magistrate under Part 4 of the Administration of Justice Ordinance 2020;

“the Magistrate’s Court” means, subject to subsection (2), the Magistrate’s Court established by Part 3 of the Administration of Justice Ordinance 2020;

“month” means calendar month;

“oath” and “affidavit” include affirmation and declaration, and “swear” includes affirm and declare;

“person” includes a body of persons corporate or unincorporate;

“public office” means office in the public service;

“public officer” means a person holding or acting in a public office and includes a person in the service of the British Antarctic Survey;

“the public service” means the service of the Crown in a civil capacity in respect of the government of the Territory;

“the Registrar General” has the meaning assigned by section 2 of the Registration Ordinance 2020;

“rules of court”, in relation to any court, means rules made by the authority having power to make rules or orders regulating the practice and procedure of that court; and the power of the authority to make rules of court (as so defined) includes power to make such rules for the purposes of any law which directs or authorises anything to be done by rules of court;

“Secretary of State” means one of Her Majesty’s Principal Secretaries of State;

“standard time” means such time, expressed as a relationship to Greenwich mean time, as the Commissioner may, by notice which shall be published in the *Gazette*, declare to be standard time; and the Commissioner may so declare different standard times for different parts of the Territory and for the purposes of different laws;

“statutory declaration” –

(a) in relation to declarations made in the Territory, means a declaration made under the Statutory Declarations Act 1835;

(b) in relation to declarations made in any place in any part of the Commonwealth except the Territory, means a declaration made before a justice of the peace, notary public or other person having authority under any legislative instrument for the time being in force in that place to take or receive that declaration; and

(c) in relation to declarations made in any other place, means a declaration made before a British consular officer or other person upon whom authority is for the time being conferred by or under any Act to take or receive such a declaration;

“the statutory maximum”, in relation to a fine or other pecuniary penalty imposed by a Summary Court, has the meaning assigned by section 25(2) of the Criminal Procedure Ordinance 2020;

“subsidiary legislation” means any proclamation, rule, regulation, order, notice, rule of court, scheme, warrant or by-law which has legislative effect (or other instrument likewise having legislative effect) made under or by virtue of any Ordinance;

“summary conviction”, in relation to an offence, means a conviction before the Magistrate’s Court or the Summary Court.

“Summary Court” means a Summary Court established by Part 4 of the Administration of Justice Ordinance 2020;

“the Supreme Court” means, subject to subsection (2), the Supreme Court established by Part 2 of the Administration of Justice Ordinance 2020;

“the Territory” means the British Antarctic Territory as defined in section 2 of the British Antarctic Territory Order 1989;

“triable summarily”, in relation to an offence, means triable by the Magistrate’s Court or the Summary Court, and

“writing” includes typing, texting or other forms of electronic messaging, printing, photography and other modes of representing or reproducing words in a visible form.

(2) Unless the contrary intention appears, references in an Ordinance or in subsidiary legislation to the Supreme Court or the Magistrate’s Court include references to the Supreme Court or the Magistrate’s Court of the Falkland Islands exercising jurisdiction under section 3(1)(a) or section 3(3) or, as the case may be, section 3(2)(a) of the Falkland Islands Courts (Overseas Jurisdiction) Order 1989.

(3) Unless the contrary intention appears –

(a) references in any Ordinance or in any subsidiary legislation to the Commissioner include, in relation to any period or point of time before the commencement of the British Antarctic Territory Order 1989, references to the High Commissioner (which term denotes, in this paragraph, the person holding the office of the High Commissioner for the Territory under section 4 of the British Antarctic Territory Order in Council 1962 and, if the case so permits, any person for the time being discharging the functions of that office under section 7 or section 8 of that Order); and

(b) references in any Ordinance or subsidiary legislation to Ordinances enacted by the Commissioner include, in relation to any such period or point of time as aforesaid, references to Regulations enacted by the High Commissioner and to Ordinances of the Colony of the Falkland Islands or of its Dependencies (being Ordinances which, under any law for the time being in force in the Territory, then had effect as part of the law of the Territory).

(4) Where any word or expression is defined in any Ordinance or in any subsidiary legislation, the definition shall extend to its grammatical variations and to any cognate word or expression.

PART 4

INTERPRETATION AND CONSTRUCTION

Gender and number.

8. In any Ordinance or subsidiary legislation, unless the contrary intention appears –

- (a) words importing the masculine gender include the feminine;
- (b) words importing the feminine gender include the masculine;
- (c) words in the singular include the plural and words in the plural include the singular.

References to service.

9. Where an Ordinance or subsidiary legislation authorises or requires any document to be served on a person (whether the expression used is “serve” or “give” or “send” or “deliver” or any other expression), then, unless the contrary intention appears, it may be served on that person (“the recipient”) by –

- (a) being given to the recipient in person or, if the recipient is within the Territory, by being left for the recipient with some person at that person’s last-known or usual place of abode in the Territory or,
- (b) if the recipient is not within the Territory and the service is authorised to be effected on the recipient outside the Territory, by being sent to the recipient by post at that person’s official address or last-known or usual place of abode outside the Territory; and

where service of a document by post is authorised (and unless the contrary intention appears), the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

References to distance.

10. In the measurement of any distance for the purposes of an Ordinance or subsidiary legislation, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

References to time of day.

11. Whenever an expression of time occurs in any Ordinance or in subsidiary legislation, the time referred to shall, unless the contrary intention appears, be held to be standard time.

Computation of time.

12. In computing time for the purposes of any Ordinance or subsidiary legislation –

- (a) a period of days (or weeks, months or years) from the happening of any event or the doing of any act shall be deemed to be exclusive of the day on which the event happened or the thing was done;
- (b) if the last day of the period is a public holiday, the period shall include the next following day that is not a public holiday;

(c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day is a public holiday, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day that is not a public holiday; and

(d) where any act or proceeding is directed or allowed to be taken within any time not exceeding six days, no public holiday shall be reckoned in the computation of that time.

Power to extend time.

13. Where, by or under any Ordinance or subsidiary legislation, a time is prescribed for doing any act or taking any proceeding and a power is conferred on any person or authority to extend that time, the power may be exercised although the application for an extension is not made until after the expiration of the prescribed time.

Warrants, etc., operative at all times.

14. Any warrant, summons, notice or other process issued, or to be issued, under any Ordinance or subsidiary legislation may be issued, served or executed, and any arrest, search or seizure to be carried out under any Ordinance or subsidiary legislation may be carried out, at any hour of the day or night on any day, whether or not a public holiday.

References to public officers.

15. Unless the contrary intention appears, a reference in any Ordinance or subsidiary legislation to a public officer by the designation of that person's office is a reference to the person for the time being holding that office or to any person for the time being discharging the functions of that office.

References to the Sovereign.

16. In any Ordinance or subsidiary legislation a reference to the Sovereign reigning at the time of the enactment of the Ordinance or the making of the legislation is to be construed, unless the contrary intention appears, as a reference to the Sovereign for the time being.

Construction of subsidiary legislation.

17. Where an Ordinance confers power to make subsidiary legislation, expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in the Ordinance.

References in enactments.

18. (1) When an Ordinance or subsidiary legislation describes or cites a portion of an enactment or of an imperial law by referring to words, sections or other parts from or to which (or from and to which) the portion extends, the portion described or cited includes the words, sections or other parts referred to unless the contrary intention appears.

(2) Where an Ordinance or subsidiary legislation refers to an enactment or an imperial law, the reference, unless the contrary intention appears, is a reference to that enactment or imperial law as amended, and includes a reference thereto as extended or applied, by or under any other enactment or imperial law, including any other provision of that Ordinance or subsidiary legislation.

(3) Where, in any Ordinance or subsidiary legislation, a reference is made, by number or letter only, to a section, Part, Chapter, Schedule or other division of an instrument having legislative effect, the reference, unless the contrary intention appears, is a reference to the division, bearing that number or letter, of the Ordinance or subsidiary legislation in which it occurs.

(4) Where, in any section, Part, Chapter, Schedule or other division of an Ordinance or subsidiary legislation, a reference is made, by number or letter only, to a subdivision of any such division, the reference, unless the contrary intention appears, is a reference to the subdivision, bearing that number or letter, of the division of the Ordinance or subsidiary legislation in which it occurs.

PART 5

REPEALING AND REVOKING ENACTMENTS

Repeal of repeal. **19.** Where an Ordinance or subsidiary legislation repeals or revokes a repealing or revoking enactment, the repeal or revocation does not revive any enactment previously repealed or revoked unless words are added reviving it.

General savings. **20.** (1) Without prejudice to section 19, where an Ordinance or subsidiary legislation repeals or revokes an enactment, the repeal or revocation does not, unless the contrary intention appears –

(a) revive anything not in force or existing at the time at which the repeal or revocation takes effect;

(b) affect the previous operation of the enactment repealed or revoked or anything duly done or suffered under that enactment;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment;

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Ordinance or revoking subsidiary legislation had not been passed or made.

(2) This section applies to the expiry of a temporary enactment as if it were repealed by an Ordinance or, as the case may be, revoked by subsidiary legislation.

Repeal and re-enactment.

21. (1) Where an Ordinance or subsidiary legislation repeals or revokes a previous enactment and substitutes provisions for the enactment repealed or revoked, that enactment remains in force until the substituted provisions come into force.

(2) Where an Ordinance or subsidiary legislation repeals and re-enacts or, as the case may be, revokes and re-enacts, with or without modification, a previous enactment, then, unless the contrary intention appears –

(a) any reference in any other enactment to the enactment so repealed or revoked shall be construed as a reference to the provision re-enacted; and

(b) in so far as any subsidiary legislation made or other thing done under the enactment so repealed or revoked, or having effect as if so made or done, could have been made or done under the provision re-enacted, it shall have effect as if made or done under that provision.

PART 6

STATUTORY POWERS AND DUTIES

Continuity of powers and duties.

22. (1) Where an Ordinance or subsidiary legislation confers a power or imposes a duty, it is implied, unless the contrary intention appears, that the power may be exercised, or the duty is to be performed, from time to time as occasion requires.

(2) Where an Ordinance or subsidiary legislation confers a power or imposes a duty on the holder of an office as such, it is implied, unless the contrary intention appears, that the power may be exercised, or the duty is to be performed, by the holder for the time being of the office or the person for the time being lawfully discharging the functions of the office.

Anticipatory exercise of powers.

23. Where an Ordinance or subsidiary legislation which (or any provision of which) does not come into force immediately on its passing or being made confers a power to make subordinate legislation, or to make appointments, give notices, prescribe forms or do any other thing for the purposes of the Ordinance or subsidiary legislation, then, unless the contrary intention appears, the power may be exercised, and any instrument made thereunder may be made so as to come into force, at any time after the passing of the Ordinance or the making of the subsidiary legislation so far as may be necessary or expedient for the purpose –

(a) of bringing the Ordinance or the subsidiary legislation, or any provision thereof, into force; or

(b) of giving full effect to the Ordinance or subsidiary legislation, or any such provision, at or after the time when it comes into force.

Implied power to amend, etc.

24. Where any Ordinance confers a power to make subsidiary legislation and where any Ordinance or subsidiary legislation confers a power to make or issue any other instrument (whether or not having legislative effect), there is also implied, unless the contrary intention appears, the power, exercisable in the same manner and subject to the same conditions or limitations, to amend, suspend, revoke or re-enact any instrument made or issued under the power.

Implied power in relation to appointments, etc.

25. Where any Ordinance or subsidiary legislation confers a power or imposes a duty upon any person to make any appointment or to constitute or establish any board, tribunal, commission, committee or similar body, it is implied, unless the contrary intention appears, that that person also has the power, exercisable in the same manner and subject to the same conditions or limitations –

(a) to remove, suspend, dismiss or revoke the appointment of, and to re-appoint or re-instate, any person so appointed;

(b) to revoke the appointment, constitution or establishment of, or to dissolve, any board, tribunal, commission, committee or similar body so appointed, constituted or established and to reappoint, re-constitute or re-establish it;

(c) to specify the period for which any person so appointed shall hold that appointment;

(d) to appoint another person to act in place of any person so appointed during any period during which the latter person is unable for any reason to discharge the functions vested in that person by virtue of that appointment.

Regulating or licensing powers, etc.

26. (1) Where any Ordinance or subsidiary legislation confers a power to provide for, prohibit, control or regulate any matter, that power may be exercised by way of licensing things to be done for the purposes of that matter and includes the power to prohibit acts whereby the prohibition, control or regulation of that matter might be evaded.

(2) Where any Ordinance or subsidiary legislation confers a power to grant a licence, Crown lease, permit, authority, approval or exemption, that power includes the power to impose reasonable conditions subject to which such licence, Crown lease, permit, authority, approval or exemption may be granted.

(3) Where any Ordinance or subsidiary legislation confers a power to approve any person or thing, there is also implied the power, exercisable in the same manner and subject to the same conditions or limitations, to withdraw such approval.

(4) Where any Ordinance or subsidiary legislation confers a power to give directions, those directions may take the form of prohibitions.

PART 7

BOARDS, TRIBUNALS AND SIMILAR BODIES

Powers to appoint chairman, etc.

27. Where any Ordinance or subsidiary legislation confers a power to appoint persons to be members of any board, tribunal, commission, committee or similar body, there is also implied, unless the contrary intention appears, the power, exercisable in the same manner and subject to the same conditions or limitations, to designate, from among the persons who have been so appointed as members, persons to act as chairperson, deputy chairperson or vice-chairperson of that body and also to designate, whether or not from among persons who have been so appointed as members, a person to act as secretary to that body.

Power to appoint public officers to boards, etc.

28. Where any Ordinance or subsidiary legislation confers a power to appoint persons to be members of any board, tribunal, commission, committee or similar body, that power includes, unless the contrary intention appears, power to appoint any public officer, by the designation of that person's office, to be such a member; and where such an appointment is made, the person for the time being holding or acting in the office so designated shall accordingly be a member of that body so long as the appointment has effect.

Appointment of alternates and temporary members.

29. Where any Ordinance or subsidiary legislation confers a power to appoint persons to be members of any board, tribunal, commission, committee or similar body, that power shall, unless the contrary intention appears, include the power to appoint –

(a) a duly qualified person to be an alternate member of that body in the place of a substantive member who is temporarily unable to attend its meetings; and

(b) a duly qualified person to be a temporary member of that body to act in the place of a substantive member who is precluded by illness, absence from the Territory or any other cause from exercising that person's functions as such;

and any such alternate member, when attending a meeting of the body in the place of a substantive member, and any such temporary member, when so acting in the place of a substantive member, shall be deemed for all purposes to be a member of that body.

Acts of boards, etc., not affected by vacancies etc.

30. The validity of anything done, or purported to be done, by any board, tribunal, commission, committee or similar body established by or under any Ordinance or subsidiary legislation shall not, unless the contrary intention appears, be affected by –

(a) any vacancy in the membership of that body at the time when that thing was done or purported to be done; or

(b) any defect, discovered after that thing was done or purported to be done, in the appointment or qualification of a person purporting to be a member of the body.

PART 8

FEEES

Power to impose or remit fees and charges.

31. (1) Where any Ordinance or subsidiary legislation confers on the Commissioner the power to prescribe fees or other charges, the instrument prescribing such fees or charges may provide for any or all of the following matters –

(a) the imposition, either generally or on specified conditions or in specified circumstances, of –

(i) specific fees or charges;

(ii) maximum fees or charges;

(iii) minimum fees or charges;

(iv) no fee or charge; and

(b) exemption from liability to pay any such fee or charge or the reduction, waiver or refund in whole or in part of any such fee or charge.

(2) Where provision is made for exemption from the liability to pay any fee or charge or for the reduction, waiver or refund of any fee or charge, that provision may be general or may apply specifically –

(a) in respect of certain matters or transactions or classes of matters or transactions;

(b) in respect of certain documents or classes of documents;

(c) in respect of certain persons or classes of persons;

(d) on the happening of any event or during the continuation of any situation;

(e) in respect of any combination of all or any of the above, and may be expressed to apply subject to such other conditions as it may specify or to the discretion of a specified person.

PART 9

FORMS

Deviation from prescribed forms.

32. Where any Ordinance or subsidiary legislation prescribes the form of any instrument or other document, then, unless the contrary intention appears, the validity or efficacy of any instrument or document that purports to be in such form shall not be questioned by reason only of any deviation from it, or any technical defect therein, which does not affect its substance and which is not calculated to mislead.

PART 10

EVIDENCE

Publication in the *Gazette* to be evidence of making.

33. Where an Ordinance or subsidiary legislation authorises the making of any proclamation, notice, order, direction or other similar instrument and requires that instrument to be published in the *Gazette*, a copy of the issue of the *Gazette* in which there is published what purports to be the text of that instrument shall be evidence that the instrument was made in the terms and in the circumstances stated in the *Gazette*.

Proof of authorisation of proceedings.

34. Where any Ordinance or subsidiary legislation requires the authorisation or consent or certification (however designated) of the Commissioner, or the Attorney General, or any public officer, or public authority, to be given before any civil or criminal proceedings may be instituted or for any other purpose connected with such proceedings –

(a) the requirement shall not prevent the arrest without warrant, or the issue and execution of a warrant for the arrest, of a person for any offence or the remand in custody or on bail of a person accused of any offence; and

(b) any document which purports to give such authorisation or consent or certification and to be signed by the Commissioner (or by any person to whom the Commissioner's power in that behalf has been lawfully delegated or who may lawfully signify the exercise of that power) or the Attorney General, or the public officer, or to be signed by or duly authenticated on behalf of the public authority, as the case may require, shall, until credible evidence to the contrary is adduced, be accepted in any proceedings, without proof of the signature or authentication, as establishing that the authorisation or consent or certification has been properly given.

PART 11

PROVISIONS AS TO PENALTIES

Provisions as to penalties.

35. (1) Whenever in any law a penalty is provided for an offence against that law, such provision shall, unless the contrary intention appears, be construed as fixing the maximum penalty for that offence, and the offender, on being found guilty, shall be liable to any penalty not exceeding the prescribed penalty, and it shall not be necessary in the law prescribing the penalty to use the expressions “not exceeding”, “a term not exceeding”, “on conviction thereof” or any similar expressions.

(2) Whenever in any law a penalty is set out at the foot or end of any section, the same shall indicate that any contravention of the section whether by act or omission shall be an offence against that law and shall, unless the contrary intention appears, be punishable by a penalty not exceeding the penalty stated.
