



BRITISH ANTARCTIC TERRITORY

# THE ATTORNEY GENERAL ORDINANCE 2020

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**THE ATTORNEY GENERAL ORDINANCE 2020**

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# BRITISH ANTARCTIC TERRITORY

Enacted by the Commissioner,  
Ben Merrick,  
XX XXXX 2020

## Ordinance No. 20 of 2020

### THE ATTORNEY GENERAL ORDINANCE 2020

*AN ORDINANCE to constitute the office of Attorney General for the British Antarctic Territory, to provide the post holder with powers and duties and to make consequential savings.*

Citation and commencement.

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

Definition.

2. In this Ordinance, unless the contrary intention appears –

“the Attorney General” means the person holding the office of Attorney General to the Commissioner constituted by section 3 and includes any person for the time being discharging the functions of that office under section 4(4) and, to the extent that a person is for the time being authorised to discharge any of those functions under section 7(4), that person.

Constitution and functions of office of Attorney General.

3. There shall be an Attorney General to the Commissioner who shall have the chief responsibility for advising the Commissioner on the legal affairs of the Government of the Territory and such other powers and duties as are conferred or imposed by or under this Ordinance or any other law for the time being in force in the Territory.

Appointment of Attorney General.

4. (1) The Attorney General shall be appointed by the Commissioner and shall hold office on such terms as the Commissioner may prescribe.

(2) The Attorney General shall be a person who is entitled to practise as an advocate or a solicitor in a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or a court having jurisdiction in appeals from such a court, and who has been so entitled for not less than five years.

(3) For the purposes of subsection (2), a person shall be regarded as entitled to practise as an advocate or as a solicitor if he or she has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the role of advocates or solicitors) notwithstanding that –

(a) he or she holds, or acts in, any office the holder of which is precluded from practising in a court; or

(b) he or she does not hold a practising certificate or has not satisfied any other like condition of being permitted to practise.

(4) At any time when the office of Attorney General is vacant or the holder of that office is for any reason unable to perform the functions of that office, those functions shall be performed by such person, qualified for appointment as Attorney General, as the Commissioner may for the time being designate in that behalf.

Exercise of  
Attorney  
General's  
functions.

5. (1) Without prejudice to section 7(4), the Attorney General may exercise the functions of that office either in person (and whether within or outside the Territory) or through other persons acting under his or her authority:

Provided that, subject to subsection (2) and save as permitted by section 7(4), only the Attorney General in person may exercise the power to enter a *nolle prosequi* in criminal proceedings or to institute, or to authorise or consent to the institution of, civil or criminal proceedings which, under any law, may be instituted only by or with the authority or consent of the Attorney General, or other officer or authority of the Government of the Territory.

(2) Nothing in subsection (1) shall be construed as precluding the Attorney General from exercising his or her functions in relation to proceedings before any court through an advocate or solicitor duly qualified for that purpose and instructed by him or her or on his or her behalf.

Attorney  
General to  
represent Crown  
in civil  
proceedings.

6. Save as otherwise expressly provided by any law for the time being in force in the Territory, the Crown in right of the Government of the Territory shall be represented by the Attorney General on the record of all civil proceedings arising under the law of the Territory to which it is a party; and, accordingly and save as aforesaid, all such proceedings by the Crown in right of the Government of the Territory shall be instituted in the name of the Attorney General on behalf of the Crown in that right and all such proceedings against the Crown in that right shall name the Attorney General, on behalf of the Crown in that right, as the defendant.

Attorney  
General's  
functions in  
relation to  
criminal  
proceedings.

7. (1) The Attorney General shall have the like authority and powers, in relation to the institution, conduct and discontinuance of criminal proceedings arising under the law of the Territory, as are for the time being vested, under the law of England, in both the Attorney General and Director of Public Prosecutions of England.

(2) Without prejudice to the generality of subsection (1), the Attorney General shall have power in any case in which he or she considers it desirable so to do –

(a) to institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed by that person;

(b) to take over and continue any such proceedings that have been instituted or undertaken by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such proceedings instituted or undertaken by himself or herself or any other person or authority.

(3) The powers conferred on the Attorney General by paragraphs (b) and (c) of subsection (2) shall, subject to subsection (4), be vested in him or her to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(4) The Commissioner may, by order which shall be published in the *Gazette*, designate persons as public prosecutors, and any person for the time being so designated may, subject to any limitation expressed in the order by which he or she was designated and subject to such general or special directions as the Attorney General may from time to time give to him or her, exercise all the functions of the Attorney General in relation to the institution, conduct and discontinuance of criminal proceedings:

Provided that, except with the express authority of the Attorney General given specifically for each case in which the occasion arises, a person designated as a public prosecutor under this section may not –

(a) enter a *nolle prosequi*; or

(b) institute proceedings which, under any law for the time being in force in the Territory, may be instituted only by or with the authority or consent of the Attorney General or some department of government or other officer or authority of the Government of the Territory.

(5) For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings, to any other court (including the Judicial Committee of Her Majesty's Privy Council) shall be deemed to be part of those proceedings:

Provided that the power conferred on the Attorney General by subsection (2)(c) shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(6) In exercising his or her powers and duties in relation to the institution, conduct or discontinuance of criminal proceedings (including the power to give general or special directions to a person designated as a public prosecutor or to authorise such a person to exercise any of the functions of the Attorney General), the Attorney General shall not be subject to the direction or control of any other person or authority.

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