



BRITISH ANTARCTIC TERRITORY

THE ADMINISTRATION OF JUSTICE ORDINANCE 2020

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THE BRITISH ANTARCTIC TERRITORY
THE ADMINISTRATION OF JUSTICE ORDINANCE 2020

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BRITISH ANTARCTIC TERRITORY

Enacted by the Commissioner,
Ben Merrick,
XX XXXX 2020

Ordinance No. 2 of 2020

THE ADMINISTRATION OF JUSTICE ORDINANCE 2020

AN ORDINANCE to provide for the administration of justice and for matters incidental thereto.

PART 1

GENERAL

Citation and commencement.

1. This Ordinance may be cited as the Administration of Justice Ordinance 2020 and shall come into force on **XXXXXX**.

Definitions.

2. In this Ordinance unless the context otherwise requires –

“the Coroner” means the person appointed to be the Coroner under section 34(2) and, to the extent that a person appointed to be a Deputy Coroner under section 34(3) is authorised to discharge any of the functions of the Coroner, includes that person;

“the Court of Appeal” means the British Antarctic Territory Court of Appeal established by the British Antarctic Territory Court of Appeal Order 1965;

“indictable offence” shall have the meaning assigned to it by Schedule 1 of the Interpretation Act 1978, in the manner that schedule applies to the Territory in accordance with section 5(1)(b);

“law for the time being in force in the Territory” includes the law of England as so in force by virtue of section 5 or by virtue of any other provision of a specific law (as that term is defined by section 5(4));

“offence triable either way” shall have the meaning assigned to it by Schedule 1 of the Interpretation Act 1978, in the manner that schedule applies to the Territory in accordance with section 5(1)(b);

“qualifying offence” means –

- (a) any indictable offence or offence triable either way;
- (b) any summary offence punishable with imprisonment, not being imprisonment in default of payment of a fine, and
- (c) any summary offence which is only punishable with payment of a fine, where the maximum fine that can be imposed for that offence exceeds the statutory maximum of the Summary Court.

“statutory maximum” shall have the meaning assigned to it in section 25(2) of the Criminal Procedure Ordinance 2020;

“subordinate court” means the Magistrate’s Court, any Summary Court or the Coroner’s Court;

“Summary Court offence” means any summary offence which is not a qualifying offence, and

“summary offence” shall have the meaning assigned to it by Schedule 1 of the Interpretation Act 1978, in the manner that schedule applies to the Territory in accordance with section 5(1)(b).

“the Territory” means the British Antarctic Territory as defined by section 2 of the British Antarctic Territory Order 1989.

Courts.

3. In addition to the Court of Appeal, and subject to any Order of Her Majesty in Council conferring jurisdiction, in respect of matters arising under the law of the Territory, on any court of a country or place outside the Territory, the courts of the Territory are the Supreme Court established by Part 2, the Magistrate’s Court established by Part 3, Summary Courts established by Part 4, and the Coroner’s Court established by Part 5.

Extent of jurisdiction of courts of the Territory.

4. (1) Subject to subsections (2) and (3) and, in the case of a Summary Court and of the Coroner’s Court, subject also to sections 28(2) and 34(3) respectively, the jurisdiction of the courts of the Territory in all their functions shall extend throughout the Territory.

(2) Subsection (1) shall not be construed as diminishing any jurisdiction of a court of the Territory relating to persons outside the Territory or to matters arising outside the Territory.

(3) The jurisdiction vested in any court of the Territory by this Ordinance –

(a) is subject to section 3 of the Antarctic Treaty Order in Council 1962; and

(b) embraces the jurisdiction conferred on it by Part III of the Antarctic Act 1994, as extended to the Territory by the Antarctic Act 1994 (Overseas Territories) Order 1995.

Law to be applied.

5. (1) Subject to subsections (2) and (3) and to section 6, the law of the Territory, to be applied by the courts of the Territory, is –

(a) any specific law for the time being in force in the Territory; and

(b) subject to any such specific law (and save to the extent, with respect to any matter, that provision with respect thereto is made by such a specific law), the law of England (including the common law, the rules of equity and the rules of evidence) as for the time being in force in England.

(2) The law of England shall be in force in the Territory by virtue of subsection (1)(b) only so far as it is applicable to local circumstances and shall be read with such modifications, adaptations, qualifications and exceptions as local circumstances render necessary.

(3) (a) Without prejudice to the generality of subsection (2) and unless the context otherwise requires, in any provision of law or rule of law that is for the time being in force in the Territory by virtue of subsection (1)(b) –

(i) a reference (in whatever terms) to the Crown in right of the Government of the United Kingdom shall be construed as a reference to the Crown in right of the Government of the Territory;

(ii) a reference (in whatever terms) to any English governmental or judicial authority (that is to say, a Minister or department of government of the Government of the United Kingdom or some other officer or authority of that Government or a court or tribunal having jurisdiction under the law of England) shall, subject to paragraph (b), be construed as a reference to the Commissioner or, as the case may require, to the department of government or other officer or authority of the Government of the Territory, or to the court of the Territory, for the time being discharging functions corresponding to the relevant functions of the English governmental or judicial authority;

(iii) a reference (in whatever terms) to the United Kingdom, or to Great Britain, or to England and Wales, or to England, as a geographical entity or location shall be construed as a reference to the Territory;

(iv) a reference (in whatever terms) to trial on indictment shall be construed as a reference to trial by the Supreme Court;

(v) a reference (in whatever terms) to an indictable offence (where it is exclusively triable on indictment and not triable either way) shall be construed as a reference to an offence which is triable only by the Supreme Court;

(vi) a reference (in whatever terms) to an offence triable either way shall be construed as a reference that it shall be triable either by the Supreme Court or the Magistrate's Court;

(vii) a reference (in whatever terms) to a summary offence shall be construed as a reference to an offence which is triable only –

(aa) by the Magistrate's Court, where that summary offence is not a Summary Court offence (unless that offence may, under any law, be joined in an indictment for trial by the Supreme Court), and

(bb) by the Summary Court, where that summary offence is a Summary Court offence.

(b) Where, in or for the purposes of any proceedings in a court of the Territory, a question arises as to who or which authority or which court for the time being discharges (or did at some material time discharge) functions corresponding to the relevant functions of a given English governmental or judicial authority, the court which is seised of the proceedings or any party to the proceedings or any person intending to initiate the proceedings may apply to the Commissioner for a certificate as to that matter; and any certificate which the Commissioner may give in response to such an application shall be conclusive as to that matter in those proceedings.

(4) In this section, "specific law" means –

(a) any provision of, or made under, a law (including this Ordinance) made in pursuance of section 13 of the British Antarctic Territory Order 1989; or

(b) any provision of, or made under, a law having effect by virtue of section 17 of the said Order; or

(c) any provision of, or made under, any other law made in exercise of a power to make laws for the peace, order and good government of the Territory; or

(d) any provision of an Act of Parliament which, of its own force or by virtue of any instrument made thereunder (or under any other such Act), applies or extends to the Territory as part of the law thereof; or

(e) any statutory instrument (as defined in the Statutory Instruments Act 1946) which applies or extends to the Territory as part of the law thereof otherwise than by virtue of subsection (1)(b) or any prerogative instrument which so applies or extends.

Commissioner may determine application of English laws.

6. (1) The Commissioner may, by order which shall be published in the *Gazette*, determine from time to time as respects any provision of an Act of Parliament, statutory instrument or prerogative instrument forming part of the law of England as for the time being in force in England that it does not form part of the law of the Territory by virtue of section 5(1)(b) or so forms part of the law of the Territory only with such modifications, adaptations, qualifications and exceptions as the order may specify.

(2) An order made under this section shall be binding on all the courts of the Territory but shall not affect any right acquired or liability incurred before the date on which the order is published in the *Gazette* or such later date as the order may specify for that purpose.

PART 2

THE SUPREME COURT

Constitution, Jurisdiction and Powers

Constitution and original jurisdiction of Supreme Court.

7. (1) There shall be a Supreme Court for the Territory which shall be held by the Judge of the Supreme Court sitting either alone or, as provided by Part 6, together with assessors or with a jury.

(2) The Supreme Court shall be a superior court of record and shall, subject to the provisions of any law for the time being in force in the Territory, have unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law for the time being in force in the Territory (and, in respect of any offence, to impose any penalty that may be prescribed in that behalf by any law) and have all the powers, privileges and authority which are for the time being vested in or capable of being exercised by the High Court of Justice in England or the Crown Court in England.

Appellate,
supervisory and
revisory
jurisdiction.

8. (1) The Supreme Court shall have power to hear and decide appeals from subordinate courts as provided by sections 24, 25 and 32 or by any other law for the time being in force in the Territory and shall exercise general powers of supervision over such courts and may at any time call for and inspect their records.

(2) The Supreme Court shall also have such power to hear and decide appeals from any other persons and bodies as may be provided by any law for the time being in force in the Territory.

(3) Without prejudice to subsection (1), the Supreme Court may at any time call for and inspect the record of any proceedings before a Summary Court in which an accused person has been sentenced to a fine exceeding £500 and, if not satisfied in any respect as to the correctness, legality or propriety of the finding, sentence or order made or passed in those proceedings or otherwise as to the regularity of those proceedings, may exercise with respect thereto all the powers (other than to substitute a more severe sentence) which are vested in the Supreme Court by section 32(4) in relation to an appeal against conviction.

Judge of
Supreme Court.

9. (1) There shall be a Judge of the Supreme Court who shall be appointed by the Commissioner in accordance with instructions given by Her Majesty through the Secretary of State and who shall hold office on such terms as the Commissioner, in accordance with such instructions, may prescribe.

(2) A person shall not be qualified for appointment as Judge of the Supreme Court unless –

(a) that person is, or has been, a judge of 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; or

(b) that person is entitled to practise as an advocate in such a court and has been entitled for not less than five years to practise as an advocate or as a solicitor in such a court.

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

(a) the person holds, or acts in, any office the holder of which is, by reason of that office, precluded from practising in a court; or

(b) the person 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 the Judge of the Supreme Court 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 Judge of the Supreme Court, as the Commissioner may designate for that purpose.

(5) A person appointed under subsection (1) or designated under subsection (4) shall, as soon as may be after appointment or designation, take the oath prescribed in the Schedule to this Ordinance.

Appeals from Supreme Court

Interpretation of "Supreme Court" and "Magistrate's Court" in relation to appeals.

10. In sections 11, 12 and 13 references to the Supreme Court include references to the Supreme Court of the Falkland Islands exercising jurisdiction under section 3(1)(a) or section 3(3) of the Falkland Islands (Overseas Jurisdiction) Order 1989 and in section 12 references to the Magistrate's Court include references to the Magistrate's Court of the Falkland Islands exercising jurisdiction under section 3(2)(a) of that Order.

Appeals in civil matters.

11. (1) (a) In civil matters other than those referred to in subsection (2) an appeal shall lie to the Court of Appeal –

(i) as of right, from any final judgment or decision of the Supreme Court where the matter in dispute on the appeal amounts to or is of the value of the specified sum or more or where the appeal involves, directly or indirectly, some claim or question respecting property, or some civil right, amounting to or of the value of the specified sum or more;

(ii) by leave of the Supreme Court, from any other judgment or decision of that Court, whether final or interlocutory, if, in the opinion of that Court, the question involved in the appeal ought, by reason of its general or public importance or otherwise, to be the subject-matter of an appeal; and

(iii) by special leave of the Court of Appeal, in any case where the Supreme Court has refused leave under subparagraph (ii).

(b) In paragraph (a) "the specified sum" means £1,000 or such other sum as the Commissioner may for the time being specify by order, which shall be published in the *Gazette*:

Provided that the Commissioner may not so specify a sum which is less than the sum which was previously the specified sum.

(2) An appeal shall lie to the Court of Appeal, as of right, from any final judgment or decision of the Supreme Court –

(a) in any matrimonial cause; or

(b) on any matter of guardianship of minors, adoption or the custody or welfare of infants.

(3) In dealing with, and otherwise in relation to, any appeal or application for leave to appeal from a judgment or decision of the Supreme Court that may be made to the Court of Appeal in any case under this section, the Court of Appeal shall have all the powers, jurisdiction and authority that are for the time being vested in the Supreme Court in respect of such a case and, without prejudice to the foregoing, all the powers, jurisdiction and authority that are for the time being vested, in comparable circumstances, in the Court of Appeal in England.

Appeals in
criminal matters.

12. Any person convicted of a criminal offence by the Supreme Court may appeal to the Court of Appeal –

(a) unless that person pleaded guilty, against that person's conviction –

(i) on any ground of appeal which involves a question of law alone; or

(ii) with the leave of the Court of Appeal, or upon the certificate of the Judge of the Supreme Court that it is a fit case for appeal, on any ground of appeal which involves a question of fact alone or a question of mixed fact and law; and

(b) with the leave of the Court of Appeal, against that person's sentence unless it is a sentence fixed by law.

(2) Any person who, having been convicted of a criminal offence by the Magistrate's Court or a Summary Court, has appealed to the Supreme Court under section 24(1) or under section 32(1) or, as the case may be, under section 3(1)(a) or section 3(3) of the Falkland Islands Courts (Overseas Jurisdiction) Order 1989 may appeal to the Court of Appeal under subsection (1) against the affirmation of that conviction by the Supreme Court or against any conviction for some other offence substituted therefor by the Supreme Court or against the sentence, order or other determination of the Supreme Court in that matter as if that person had been convicted by the Supreme Court.

(3) Where there has been a decision by the Supreme Court, in the case of an accused person, that the person is of unsound mind and consequently unfit to plead or that the person is not guilty by reason of insanity, the person may appeal to the Court of Appeal against that decision –

(a) on any ground of appeal which involves a question of law alone; or

(b) with the leave of the Court of Appeal, or upon the certificate of the Judge of the Supreme Court that it is a fit case for appeal, on any ground of appeal which involves a question of fact alone or a question of mixed fact and law.

(4) In dealing with, and otherwise in relation to, any appeal or application for leave to appeal from a decision of the Supreme Court that may be made to the Court of Appeal in any case under this section, the Court of Appeal shall have all the powers, jurisdiction and authority that are for the time being vested in the Supreme Court in respect of such a case, except that it may not convict an appellant of any offence of which the appellant could not have been convicted at the appellant's trial nor pass on that person a more severe sentence than could then have been passed on that person; and, without prejudice to the foregoing, it shall have all the powers, jurisdiction and authority that are for the time being vested, in comparable circumstances, in the Court of Appeal in England.

References by
Commissioner
in criminal
matters.

13. (1) Where a person has been convicted of a criminal offence by the Supreme Court, the Commissioner may, on application by that person or of the Commissioner's own motion, at any time –

(a) refer the whole case to the Court of Appeal; or

(b) request the opinion of the Court of Appeal on any point arising in the case.

(2) A reference to the Court of Appeal under subsection (1)(a) shall take effect as an appeal by the convicted person, for which any necessary leave has been obtained, against both that person's conviction and sentence.

Practice and Procedure

General.

14. (1) Except as regards proceedings in connection with appeals from the Supreme Court to the Court of Appeal (which are governed by rules made under Article 5(1) of the British Antarctic Territory Court of Appeal Order 1965) and subject to the following provisions of this section, the practice and procedure of the Supreme Court, whether in civil or in criminal matters, shall be as prescribed by rules of court made under section 15 and, subject to such rules or if there are no such rules governing the question, as the Judge of the Supreme Court may from time to time direct.

(2) Directions given by the Judge of the Supreme Court under subsection (1) may be general or may be with respect to particular proceedings or with respect to any particular step in particular proceedings; and any party to any proceedings before the Supreme Court (including the Crown or the accused

person in criminal proceedings) and any person seeking to institute such proceedings may at any time apply to the Judge of the Supreme Court for particular directions.

(3) Subject always to any applicable rule of court, in formulating any directions which he or she may give under subsection (2), and generally in the conduct of proceedings before the Supreme Court and of the business of that Court, the Judge of the Supreme Court shall be guided, so far as the circumstances of the Territory permit and so far as is appropriate to the circumstances of any particular proceedings in question, by the practice and procedure, in comparable circumstances, of the High Court of Justice in England or of the Crown Court in England or (where the Supreme Court is exercising an appellate or supervisory jurisdiction as provided by section 8 and if the case so requires) of the Court of Appeal in England; and in pursuing any proceedings in the Supreme Court any party thereto shall likewise (but subject always to any applicable rule of court and to any direction given under this section) be so guided.

(4) For the purposes of their application in accordance with subsection (3), the practice and procedure of the High Court of Justice in England, of the Crown Court in England and of the Court of Appeal in England shall be interpreted with such modifications, adaptations, qualifications and exceptions as local circumstances render necessary.

Rules of court.

15. (1) The Judge of the Supreme Court may make rules of court regulating and prescribing the practice and procedure of the Supreme Court in all causes and matters, whether civil or criminal, and regulating and prescribing any matters incidental or relating to that practice and procedure.

(2) Without prejudice to the generality of subsection (1), rules of court may be made for the following purposes –

(a) regulating the sittings of the Supreme Court;

(b) regulating the right of practising before the Supreme Court and the representation of persons concerned in any proceedings in the Court;

(c) prescribing the duties of, and the jurisdiction which may be exercised by, the Registrar or other officers of the Supreme Court (including provision for appeal against decisions in the exercise of such jurisdiction);

(d) prescribing the time within which any requirement of the rules is to be complied with;

(e) prescribing forms to be used in proceedings in the Supreme Court;

(f) prescribing fees in respect of proceedings in the Supreme Court and regulating the costs of and incidental to such proceedings; and

(g) regulating the practice and procedure in, and all matters incidental or relating to, appeals to the Supreme Court from a subordinate court or other proceedings in which the Supreme Court exercises the jurisdiction and powers vested in it by section 8 (appellate, supervisory or revisory jurisdiction).

Officers of Supreme Court

Appointment of Registrar and other officers.

16. There shall be a Registrar of the Supreme Court, who shall be such person as may be appointed in that behalf by the Commissioner after consultation with the Judge of the Supreme Court, and such other officers of the Supreme Court, subordinate to the Registrar, as may likewise be appointed for that purpose by the Judge of the Supreme Court, with the approval of the Commissioner.

Functions of Registrar and other officers.

17. (1) Subject to any rule of court made under section 15, or any other law in that behalf for the time being in force in the Territory, the Registrar (and any person acting as deputy or assistant Registrar) shall have, in relation to any proceedings in the Supreme Court and in relation to the business of that Court, the like duties, jurisdiction, powers and authority (so far as these are applicable) as are for the time being vested, in comparable circumstances, in the Masters, Registrars, Associates and other like officers of the High Court of Justice in England and the Crown Court in England.

(2) Subject as aforesaid, the officers of the Supreme Court subordinate to the Registrar shall have such duties as may from time to time be assigned to them by the Registrar.

(3) Save (in the case of the Registrar and any person acting as deputy or assistant Registrar) when acting in a judicial capacity, the Registrar and all other officers of the Supreme Court shall be under the authority of, and shall comply with instructions and directions given by, the Judge of that Court.

(4) Save (in the case of a person acting as deputy or assistant Registrar) when acting in a judicial capacity, and subject to the superior authority of the Judge of the Supreme Court, the officers of that Court subordinate to the Registrar shall be under the authority of, and shall comply with instructions and directions given by, the Registrar.

(5) The Registrar and other officers of the Supreme Court may discharge their functions either within or outside the Territory but shall have no power, when discharging them at a place outside the Territory, to compel the attendance or testimony of witnesses or the production of documents or things and may take evidence on oath only if so permitted by the law of that place.

PART 3

THE MAGISTRATE'S COURT

Constitution of
Magistrate's
Court.

18. (1) There shall be a subordinate court for the Territory which shall be styled the Magistrate's Court and which shall be held by the Senior Magistrate sitting either alone or, as provided by Part 6, together with assessors.

(2) The Magistrate's Court shall have the jurisdiction in criminal and civil matters vested in it by sections 20 and 21 and such other jurisdiction, powers and authority as may be conferred on it by or under any other law for the time being in force in the Territory.

Senior
Magistrate.

19. (1) The Senior Magistrate shall be appointed by the Commissioner after consultation with the Judge of the Supreme Court and shall hold office on such terms as the Commissioner may prescribe.

(2) The Senior Magistrate 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) Section 9(3) (which gives an extended meaning to the term "entitled to practise") shall apply for the purposes of subsection (2) as it applies for the purposes of section 9(2).

(4) At any time when the office of Senior Magistrate 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 Senior Magistrate, as the Commissioner, after consultation with the Judge of the Supreme Court, may designate in that behalf.

(5) A person appointed under subsection (1) or designated under subsection (4) shall, as soon as may be after appointment or designation, take the oath prescribed in the Schedule to this Ordinance.

Criminal
jurisdiction.

20. (1) Subject to subsection (2), the Magistrate's Court shall be vested with the equivalent jurisdiction and powers as the Magistrates' Court in England.

(2) The Magistrate's Court has jurisdiction to try any summary offence, unless that offence is a Summary Court offence.

(3) The law of England concerning the jurisdiction and powers of the Magistrates' Court shall be in force in the Territory by virtue of section 5(1)(b) only so far as it is applicable to local circumstances and shall be read with such modifications, adaptations, qualifications and exceptions as local circumstances render necessary.

(4) For the purposes of subsection (3), any reference in the law of England to –

- (a) a justice of the peace,
- (b) a justice, where that word is used to describe a justice of the peace,
- (c) a magistrate, or
- (d) a District Judge (Magistrates' Courts)

shall be adapted to refer to the Senior Magistrate.

Civil
jurisdiction.

21. (1) Subject to subsections (2) and (3), and to any law for the time being in force in the Territory which vests jurisdiction in respect of any particular matter exclusively in the Supreme Court, the Magistrate's Court shall have the like original jurisdiction in civil matters as is vested by this Ordinance in the Supreme Court other than –

- (a) jurisdiction in matrimonial causes and causes involving the guardianship of minors, adoption or the custody or welfare of infants; and
- (b) the jurisdiction vested in the Supreme Court as a Court of Admiralty or a Prize Court.

(2) Subject to subsection (4), the Magistrate's Court shall not have jurisdiction to entertain proceedings where the matter in dispute amounts to or is of the value of more than £10,000 or which involve, directly or indirectly, some claim or question regarding property, or some civil right, amounting to or of the value of more than £10,000:

Provided that the jurisdiction of the Magistrate's Court shall not be ousted by this subsection if the relief claimed by the plaintiff consists only of liquidated damages not exceeding £10,000.

(3) Subject to subsection (4), where, in proceedings commenced in the Magistrate's Court founded on contract or tort, the plaintiff claims liquidated damages exceeding £5,000 (with or without other relief), the defendant may, within such time as may be prescribed by rules of court, apply to the Senior Magistrate for a certificate that some question of fact or law of general or public importance is likely to arise in the proceedings and for the proceedings to be transferred to the Supreme Court; and if –

- (a) the Senior Magistrate gives that certificate; and
- (b) the defendant gives security approved by the Senior Magistrate for the liquidated damages claimed and for the costs of the proceedings in the Supreme Court,

the Senior Magistrate or (if the Senior Magistrate declines to do so) the Judge of the Supreme Court may order the proceedings to be transferred to the Supreme Court.

(4) The Commissioner may, by order which shall be published in the *Gazette*, vary from time to time (either upwards or downwards) the sums specified in subsections (2) and (3) by reference to which limits are set on, respectively, the jurisdiction of the Magistrate's Court to entertain proceedings and the right of a defendant to apply for proceedings to be transferred to the Supreme Court:

Provided that an order under this subsection shall not affect any proceedings instituted in the Magistrate's Court before the publication of the order in the *Gazette* or such later date as the order may specify for that purpose.

Practice and procedure and ancillary powers of Magistrate's Court.

22. (1) Subject to subsection (3) and section 18, in criminal matters the Magistrate's Court shall, as nearly as the circumstances permit observe the like practice and procedure as a Magistrates' Court in England and the relevant law of England shall apply accordingly (but with any necessary modifications, adaptations, qualifications and exceptions) in relation to the Magistrate's Court, its practice and procedure and its ancillary powers.

(2) For the purposes of subsection (1), the adaptations set out in section 20(4) shall apply.

(3) Notwithstanding subsection (1), the Judge of the Supreme Court may, under section 23 of this Ordinance, make rules of court for the Magistrate's Court.

(4) Subject to the provisions of this section, the practice and procedure of the Magistrate's Court in civil matters shall be as prescribed by rules of court made under section 23 and, subject to such rules or if there are no rules governing the question, as the Senior Magistrate may from time to time direct.

(5) Directions given by the Senior Magistrate under subsection (4) may be general or may be with respect to particular proceedings or with respect to any particular step in particular proceedings; and any party to any proceedings before the Magistrate's Court in civil matters and any person seeking to institute such proceedings may at any time apply to the Senior Magistrate for particular directions.

(6) Subject always to any applicable rule of court, in formulating any directions which the Senior Magistrate may give under subsection (4), and generally in the conduct of proceedings before the Magistrate's Court in civil matters and of the business of that Court in such matters, the Senior Magistrate shall be guided, so far as the circumstances of the Territory permit and so far as is appropriate to the circumstances of any particular proceedings in question, by the practice and procedure of a County Court in England; and

in pursuing any proceedings in the Magistrate's Court in civil matters any party thereto shall likewise (but subject always to any applicable rule of court and to any directions given under this section) be so guided.

(7) For the purposes of their application in accordance with subsection (6), the practice and procedure of a County Court in England shall be interpreted with such modifications, adaptations, qualifications and exceptions as local circumstances render necessary.

Rules of court.

23. (1) The Judge of the Supreme Court may make rules of court regulating and prescribing the practice and procedure of the Magistrate's Court in all causes and matters, whether criminal or civil, and regulating and prescribing any matters incidental or relating to that practice and procedure.

(2) Without prejudice to the generality of subsection (1), rules of court for the Magistrate's Court may be made for any of the purposes, *mutatis mutandis*, for which, under section 15(2), rules of court may be made for the Supreme Court.

Appeals to Supreme Court in criminal matters.

24. (1) A person who has been convicted of a criminal offence by the Magistrate's Court may, in such manner and within such time as may be prescribed by rules of court made under section 15 or, subject to any such rules, as may be directed by the Supreme Court, appeal to the Supreme Court –

(a) unless that person pleaded guilty, against that person's conviction; and

(b) in any case, against any sentence passed or order made by the Magistrate's Court.

(2) The Supreme Court shall have the following powers in relation to an appeal from the Magistrate's Court under this section –

(a) on an appeal against conviction (whether or not there is also an appeal against sentence or any other order), the power –

(i) to quash the conviction and acquit the appellant;

(ii) to set aside the conviction (and any sentence or other order dependent thereon) and to order the retrial of the appellant on the same charge before any court competent in that behalf;

(iii) to affirm the conviction or to substitute therefor a conviction for any other offence for which the appellant could have been convicted by the Magistrate's Court, and in either case to affirm the sentence passed or other order made or to substitute any other sentence or order, whether more or less severe and whether or not of the same nature, which the Magistrate's Court would have had power to

pass or make, or to quash or vary the order and to make any consequential or incidental order;

(b) on an appeal against sentence or any other order, the powers in relation thereto set out in paragraph (a)(iii);

(c) on any appeal, the power to substitute for the conviction and any sentence or other order dependent thereon a finding of not guilty by reason of insanity and to make the orders appropriate thereto.

(3) Proceedings under this section shall be by way of appeal and not re-hearing but this shall not preclude the Supreme Court, if it thinks fit in any case, from hearing additional evidence.

Appeals to
Supreme Court
in civil matters.

25. (1) In civil matters an appeal shall lie to the Supreme Court –

(a) as of right from any final judgment or decision of the Magistrate’s Court; and

(b) with the leave of the Senior Magistrate or, if the Senior Magistrate refuses leave, with the leave of the Supreme Court, from any interlocutory judgment or decision of the Magistrate’s Court.

(2) Proceedings under this section shall be by way of appeal and not re-hearing but this shall not preclude the Supreme Court, if it thinks fit in any case, from hearing additional evidence.

(3) Appeals under this section may be brought in such manner and within such time as may be prescribed by rules of court made under section 15 or, subject to any such rules, as may be directed by the Supreme Court.

Clerk and other
officers of
Magistrate’s
Court.

26. (1) The Judge of the Supreme Court may, with the approval of the Commissioner, designate a person to act for the time being as Clerk to the Magistrate’s Court and other persons to act for the time being as other officers of the Magistrate’s Court subordinate to the Clerk.

(2) The Clerk and other officers of the Magistrate’s Court shall, under the authority of the Senior Magistrate and in compliance with any instructions or directions that the Senior Magistrate may give them, be responsible for the conduct of the proceedings and business of the Magistrate’s Court and for the discharge of such other duties in relation thereto as the Senior Magistrate may from time to time entrust to them, and they shall have such other powers and duties as are conferred on them by or under this Ordinance or any other law for the time being in force in the Territory.

PART 4

THE SUMMARY COURTS

Constitution of
Summary
Courts.

27. There shall be subordinate courts for the Territory which shall be styled Summary Courts and each of which shall be held by a magistrate.

Magistrates.

28. (1) The Commissioner may from time to time appoint persons to be magistrates and any person so appointed shall hold office for the period specified in the instrument by which he or she was appointed or, if no period is so specified, until the Commissioner revokes his or her appointment.

(2) A magistrate may exercise the jurisdiction, powers, authority and duties conferred or imposed on him or her by or under this Ordinance or any other law for the time being in force in the Territory within the area specified in the instrument by which that person was appointed or, if no such area is so specified, throughout the Territory.

(3) A person appointed to be a magistrate shall, as soon as may be after appointment, take the oath prescribed in the Schedule to this Ordinance.

Jurisdiction, etc.,
of magistrates
and of Summary
Courts.

29. (1) In criminal matters, a Summary Court has jurisdiction and power –

(a) to try any Summary Court offence, and

(b) to make determinations and orders in respect of qualifying offences,

in accordance with the Criminal Procedure Ordinance 2020.

(2) (a) In civil matters a Summary Court shall have no jurisdiction in matrimonial causes or causes involving the guardianship of minors, adoption or the custody or welfare of infants but shall have jurisdiction to hear and determine all other cases where the matter in dispute amounts to or is of the value of less than the specified sum or which involve, directly or indirectly, some claim or question regarding property, or some civil right, amounting to or of the value of less than the specified sum:

Provided that the jurisdiction of a Summary Court shall not be ousted by this subsection if the relief claimed by the plaintiff consists only of liquidated damages not exceeding the specified sum.

(b) In paragraph (a) “the specified sum” means £1,000 or such other sum, whether larger or smaller, as the Commissioner may for the time being specify by order, which shall be published in the *Gazette*:

Provided that an order under this paragraph shall not affect any proceedings instituted in a Summary Court before the publication of the order in the *Gazette* or such later date as the order may specify for that purpose.

(3) A magistrate, whether or not sitting in a Summary Court, shall have the powers and shall perform the duties, so far as applicable to local circumstances, of a justice of the peace in England.

Practice and procedure of Summary Courts.

30. (1) In criminal matters the practice and procedure of Summary Courts shall be as provided by or under the Criminal Procedure Ordinance 2020.

(2) Subject to the provisions of this section, the practice and procedure of Summary Courts in civil matters shall be as prescribed by rules of court made under section 31 and, subject to such rules or if there are no rules governing the question, as may be directed with respect to any particular proceedings by the Summary Court in which those proceedings are being pursued or are sought to be pursued; and any party to any such proceedings and any person seeking to institute such proceedings may at any time apply to the court for such directions.

(3) Subject always to any applicable rule of court, in formulating any directions which it may give under subsection (2), and generally in the conduct of proceedings before it in civil matters and of the business of the court in such matters, each Summary Court shall be guided, so far as the circumstances of the Territory permit and so far as is appropriate to the circumstances of any particular proceedings, by the practice and procedure of a County Court in England and in pursuing any civil proceedings in a Summary Court any party thereto shall likewise (but subject always to any applicable rule of court and to any direction given under this section) be so guided.

(4) For the purposes of their application in accordance with subsection (3), the practice and procedure of a County Court in England shall be interpreted with such modifications, adaptations, qualifications and exceptions as local circumstances render necessary.

Rules of court.

31. (1) The Judge of the Supreme Court may make rules of court regulating and prescribing the practice and procedure of Summary Courts in all civil causes and matters and regulating and prescribing any matters incidental or relating to that practice and procedure.

(2) Without prejudice to the generality of subsection (1), rules of court made for Summary Courts under that subsection may be made for any of the purposes, *mutatis mutandis*, for which, under section 15(2), rules of court may be made for the Supreme Court.

Appeals from Summary Courts.

32. (1) A person who has been convicted of a criminal offence by a Summary Court may appeal to the Supreme Court –

(a) unless that person pleaded guilty, against that person's conviction; and

(b) in any case, against any sentence passed or order made by the Summary Court.

(2) In civil matters an appeal shall lie to the Supreme Court –

(a) as of right from any final judgment or decision of a Summary Court; or

(b) with the leave of the Supreme Court, from any interlocutory judgment or decision of a Summary Court.

(3) Appeals under this section may be brought in such manner and within such time as may be prescribed by rules of court made under section 15 or, subject to any such rules, as may be directed by the Supreme Court.

(4) The Supreme Court shall have the like powers in relation to an appeal from a Summary Court under subsection (1) as are conferred on the Supreme Court by section 24(2) in relation to appeals to it from the Magistrate's Court.

(5) Proceedings under this section shall be by way of appeal and not re-hearing, but this shall not preclude the Supreme Court from hearing additional evidence.

Officers of
Summary
Courts.

33. A Summary Court may designate a person to act, in relation to any particular proceedings before it or in relation to any particular stage of such proceedings, as Clerk to the Court and may likewise designate other persons so to act as other officers of the court; and persons designated under this section shall, in the respective capacities assigned to them by such designation, serve the court and perform such functions in aid of the court and its proceedings as the court may request, and they shall have such other powers and duties as are conferred on them by or under this Ordinance or any other law for the time being in force in the Territory.

PART 5

THE CORONER'S COURT

Establishment of
Coroner's Court;
Coroner and
Deputy
Coroners.

34. (1) There shall be a Coroner's Court for the Territory which shall be held by the Coroner or, to the extent authorised by subsection (3), by a Deputy Coroner.

(2) The Commissioner may, by notice which shall be published in the *Gazette*, appoint a person to be the Coroner.

(3) The Commissioner may, by notice which shall be published in the *Gazette*, appoint one or more persons to be Deputy Coroners, and may so designate any person for a specified period or within a specified district or for a specified purpose or without any such restriction.

(4) A person appointed to be a Deputy Coroner may, subject to any restriction specified by the notice by which he or she is so appointed, act as Coroner and in that capacity may hold the Coroner's Court and discharge any of the other functions of the Coroner.

(5) The Coroner, or a Deputy Coroner, may discharge his or her functions either within or outside the Territory, but when that person holds the Coroner's Court at a place outside the Territory he or she may only –

(a) compel the attendance or testimony of witnesses or the production of documents or things, or

(b) take evidence on oath,

if so permitted by the law of that place.

(6) A person appointed to be the Coroner or a Deputy Coroner shall, as soon as may be after he or she has been so appointed, take the oath prescribed in the Schedule to this Ordinance.

Deaths to be reported to Coroner.

35. When the body of a dead person is found within the Territory, any person who has knowledge of that fact shall, unless that person knows or has reason to believe that some other person has reported it or is about to report it in accordance with this section, report it promptly, together with all relevant circumstances known to him or her, to the Coroner:

Provided that where it is not possible for the person making the report to make it promptly to the Coroner, that person shall instead make it promptly to the nearest magistrate who shall transmit it to the Coroner as soon as practicable.

Inquests into deaths.

36. If, on receipt of a report that has been made in accordance with section 35, it appears to the Coroner, after such further inquiry, if any, as the Coroner considers it necessary to make, that there is reason to suspect that –

(a) the deceased died a violent or unnatural death;

(b) the deceased died in custody, or

(c) the cause of death is unknown,

the Coroner shall, subject to the provisions of this Ordinance and any other law for the time being in force in the Territory, hold the Coroner's Court and, in that Court, hold an inquest into the death.

Jurisdiction, etc., and procedure of Coroner and Coroner's Court.

37. (1) Subject to the provisions of this Ordinance and any other law for the time being in force in the Territory, the jurisdiction, powers and duties of the Coroner and the Coroner's Court shall be the like jurisdiction, powers and duties, as nearly as local circumstances permit, as are vested under the law of England as for the time being in force in England in, respectively, a Coroner and a Coroner's Court in England.

(2) Without prejudice to the generality of section 5(1)(b) or of subsection (1) of this section, the law of England as for the time being in force in England shall, with such modifications, adaptations, qualifications and exceptions as local circumstances render necessary, regulate the powers and duties of the Coroner and the Coroner's Court with respect to beginning, adjourning or resuming an inquest into a death when criminal proceedings arising out of that death have been or are to be instituted or have been concluded or withdrawn.

(3) Subject to the provisions of this Ordinance and any other law for the time being in force in the Territory, the practice and procedure to be observed by the Coroner and the Coroner's Court may be regulated by rules of court made by the Judge of the Supreme Court but shall otherwise conform, as closely as the circumstances of the Territory permit, to the practice and procedure which are for the time being observed by a Coroner and a Coroner's Court in England.

(4) The Coroner shall in all cases hold the Coroner's Court, and discharge all his or her functions therein or relating thereto, sitting alone and without a jury.

Transmission of
verdicts and
certificates.

38. Upon –

- (a) the completion of an inquest into a death that has been held by the Coroner's Court in accordance with section 36; or
- (b) the Coroner's deciding that the circumstances of a death do not require him or her, under section 36, to hold an inquest into it; or
- (c) the Coroner's deciding, pursuant to section 37(2), that in the light of the outcome of criminal proceedings arising out of a death he or she should not hold or resume an inquest into it,

the Coroner shall transmit to the Commissioner and to the Registrar General (with a view to that person registering the death) –

- (i) in relation to a case falling under paragraph (a), a copy, certified by him or her, of the verdict of the Coroner's Court;
- (ii) in relation to a case falling under paragraph (b), his or her certificate that an inquest is not required and of the cause of death; and
- (iii) in relation to a case falling under paragraph (c), his or her certificate stating the outcome of the criminal proceedings and, if appropriate, the cause of death.

Supervisory
jurisdiction of
Supreme Court.

39. (1) Where the Supreme Court, on application by or with the authority of the Attorney General, is satisfied in respect of an inquest held by the Coroner's Court that, by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or for any other reason, it is necessary or desirable, in the interests of justice, that another inquest should be held, it may quash the proceedings and order a fresh inquest to be held.

(2) The power conferred on the Supreme Court by this section is without prejudice to the jurisdiction and powers that are vested in it by or under any other provision of this Ordinance or any other law for the time being in force in the Territory.

PART 6

ASSESSORS AND JURIES

Assessors.

40. (1) The Judge of the Supreme Court, when holding the Supreme Court, or the Senior Magistrate, when holding the Magistrate's Court, may summon any two or more persons to sit as assessors in the trial of any cause or matter before such court, whether civil or criminal.

(2) Persons sitting as assessors in accordance with subsection (1) shall, under the authority of the Judge or, as the case may be, the Senior Magistrate and subject to the court's direction, assist the court, as the court may request, in the examination, elucidation and evaluation of the evidence adduced in the proceedings and shall have a deliberative but not a determinative voice in the court's conclusions on any question of fact but shall take no part in the court's deliberations or conclusions on questions of law.

(3) The opinion of the assessors on questions of fact and the advice which they may tender to the Judge or, as the case may be, to the Senior Magistrate shall be communicated to the Judge or Senior Magistrate alone and shall not be disclosed in the proceedings or otherwise to any other person.

(4) Assessors shall not sit in the trial of any cause or matter in which a jury sits in accordance with section 41.

Juries.

41. (1) Without prejudice to any law for the time being in force in the Territory which authorises jurisdiction in any cause or matter in the Supreme Court to be exercised by the Registrar or a deputy or assistant Registrar, all causes or matters to be tried in the Supreme Court shall, unless it is otherwise directed in accordance with subsection (2), be tried by the Judge of the Supreme Court sitting with or without assessors but without a jury.

(2) The Judge of the Supreme Court may direct that a jury be constituted to sit with the Judge for the trial of any cause or matter in that court which, under the law for the time being in force in the Territory, may be tried by a judge and jury.

(3) When occasion arises for a jury to be constituted in accordance with subsection (2) for the trial of any cause or matter, it shall be the responsibility of the Registrar of the Supreme Court, acting in accordance with such directions as may be given to him or her by the Judge of the Supreme Court but subject to subsection (4), to summon the requisite number of persons, qualified to serve as jurors, to be the panel from among whom the jury is to be selected and then to supervise the selection of the jury in that case.

(4) Without prejudice to the generality of section 5(1)(b) but subject to such modifications, adaptations, qualifications and exceptions as local circumstances render necessary, the law of England as for the time being in force in England relating to trial by a judge and jury in civil or criminal proceedings and all matters incidental thereto or consequential thereon (including, without prejudice to the generality of the foregoing, the qualifications and disqualifications of persons for service as jurors, the exemption of persons from such service, the procedure for constituting a jury, the rights, duties and liabilities of persons in relation to their own service, or to the service of others, as jurors, the functioning of a jury and the conduct of a trial by a judge and jury) shall regulate the corresponding matters arising in connection with the trial of any cause or matter by a judge and jury in the Supreme Court.

PART 7

LEGAL PRACTITIONERS

Licensing of
counsel and
solicitors.

42. (1) The Judge of the Supreme Court may licence any qualified person to appear as counsel in the Supreme Court, in the Magistrate's Court or in the Summary Court, either generally or for the purposes of any particular cause or matter, or to practise as a solicitor in the Territory.

(2) The Senior Magistrate may licence any qualified person to appear as counsel in the court over which he or she presides for the purposes of any particular cause or matter.

(3) Every person holding the office of Attorney General shall, so long as he or she continues to hold that office, enjoy all the rights and privileges in the Territory of counsel or a solicitor licensed under subsections (1) and (2) of this section.

(4) For the purposes of this section, "qualified person" means a legal practitioner admitted to practice law in any part of the United Kingdom or in the Republic of Ireland or in any part of the Commonwealth or in the United States of America or in any other country approved by the Commissioner for the purposes of this section.

(5) The Judge of the Supreme Court may make rules of court prescribing the manner of application for a licence, the forms of licences and the fees to be paid for licences issued under this section.

Suspension and revocation of licences.

43. The Judge of the Supreme Court may at any time suspend or revoke any licence issued under section 42.

Appeal.

44. Any person whose licence is suspended or revoked under section 43 may appeal to the Court of Appeal.

PART 8

MISCELLANEOUS

Proof of authorisation of proceedings.

45. Where, under any law, the authorisation or consent or certification (however designated) of the Commissioner or the Attorney General or any public officer or public authority is required to be given before any civil or criminal proceedings may be instituted or for any other purpose connected with any such proceedings, then –

(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 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.

Duplicated offences.

46. Where an act constitutes an offence under two or more laws, then, irrespective of whether both or all of those laws are Ordinances or are instruments constituting subsidiary legislation or are other provisions or rules of law for the time being in force in the Territory by virtue of, or as declared by, section 5 or are any combination of such categories of law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those laws, but shall not be liable to be punished more than once for the same act.

Authorisation of custody, etc.

47. (1) In any case where, under any law for the time being in force in the Territory, a person may be held temporarily in custody or under restraint in any of the following circumstances or on any of the following grounds, that is to say –

- (a) to effect that person's arrest on suspicion of having committed a criminal offence; or
- (b) to secure that person's attendance before a court; or
- (c) in the interests of the safe or orderly conduct of judicial proceedings or otherwise in the interests of the administration of justice; or
- (d) with a view to that person's deportation from the Territory; or
- (e) to effect or facilitate the carrying out of an order or sentence of a court; or
- (f) to prevent the commission of an offence; or
- (g) to protect that person or other persons,

the Judge of the Supreme Court or the Senior Magistrate or any magistrate may, if satisfied that such action is necessary but that, in the circumstances of the Territory, other lawful arrangements for that purpose do not exist or cannot practicably be implemented as soon as required by the circumstances of the case, make a custody order under this subsection.

(2) A person to whom a custody order is directed ("the custodian"), who need not be an officer of a court of the Territory or a public officer, is thereby authorised to take the person referred to in subsection (1) ("the prisoner") into custody or to subject the prisoner to restraint and may, for that purpose, use such force as is reasonable in the circumstances; and any person who assaults the custodian, or resists or wilfully obstructs that person, when he or she is acting in pursuance of that authorisation commits the offence of assaulting or, as the case may be, resisting or wilfully obstructing a constable in the execution of his or her duty and may be prosecuted and punished accordingly.

(3) Where a custody order has been made under subsection (1) and it appears to the Judge of the Supreme Court or, as the case may be, the Senior Magistrate or the magistrate that the necessity to hold the prisoner in custody or under restraint may be of more than short duration, the Judge, Senior Magistrate or magistrate shall promptly communicate the facts of the case to the Commissioner, and the Commissioner shall then cause appropriate arrangements to be made as soon as practicable for the continued lawful custody or restraint of the prisoner.

(4) A custody order made under subsection (1) shall be revoked when it appears to the Judge of the Supreme Court or, as the case may be, the Senior Magistrate or the magistrate that the circumstances in which or the ground upon which it was made no longer obtains, and it shall in any event cease to have effect when the prisoner is taken into custody or subjected to restraint under such arrangements as are referred to in subsection (3) or otherwise under any law for the time being in force in the Territory.

SCHEDULE

JUDICIAL OATH (*or* AFFIRMATION)

“I,....., do swear (*or* solemnly affirm) that I shall well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors, in (*or* while performing the functions of) the office of Judge of the Supreme Court (*or* Senior Magistrate, *or* Magistrate, *or* Coroner, *or* Deputy Coroner) and that I shall do right to all manner of people after the laws of The British Antarctic Territory, without fear or favour, affection or ill-will. So help me God (*or omit these last four words if affirmation is taken*).”