

PITCAIRN, HENDERSON

DUCIE & OENO ISLANDS

No 1 of 2019



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

**COURT PROCEDURE (REMOTE PARTICIPATION OF JUDGES AND
MAGISTRATES) ORDINANCE**

DATE MADE: 13 March 2019

DATE PUBLISHED: 18 March 2019

An Ordinance to amend provisions of the Judicature (Courts) Ordinance and Justice
Ordinance to support hearings being held on Pitcairn

PART I – PRELIMINARY

Citation and
commencement

1. –(1) This Ordinance may be cited as the Court Procedure (Remote
Participation by Judges and Magistrates) Ordinance 2019.

(2) This Ordinance shall come into operation on the day after it is published.

PART II – AMENDMENTS TO JUDICATURE (COURTS) ORDINANCE

Section 15E
amended (Place of
sitting of Supreme
Court and

2. –(1) This section amends section 15E of the Judicature (Courts) Ordinance.

(2) In subsection (1), delete the words “of the Supreme Court”.

Magistrate's Court)

Section 15F
amended
(Participation by
live-link television)

3. –(1) This section amends section 15F of the Judicature (Courts) Ordinance.

(2) In subsection (1), delete the words “of the Supreme Court”.

(3) After subsection (1), insert:

“(1A) A judge or magistrate may, in respect of a proceeding over which that judge or magistrate has jurisdiction, elect to participate in the proceeding or any step in the proceeding by way of live-link television, where he or she is satisfied that it is in the interests of justice to do so.”

(4) Replace subsection (2) with:

“(2) For the purposes of subsections (1) and (1A), the Court shall be deemed to be sitting in the place in which the Registrar who calls the case or opens the Court hearing is located.”

(5) After subsection (2), insert:

“(2A) For the purposes of this section, a reference to the Registrar includes a reference to a Deputy Registrar, or a person acting as or performing the duties of the Registrar in accordance with section 21(8) or 21(9) of this Ordinance, section 64(3) of the Constitution, or any other law.”

PART III – AMENDMENTS TO JUSTICE ORDINANCE

Section 5 amended
(Jurisdiction of
Island Magistrate)

4. – (1) This section amends section 5 of the Justice Ordinance.

(2) Replace subsection (2) with:

“(2) The Island Magistrate shall be entitled at his or her discretion, at any time in relation to any proceedings or potential proceedings, to consult or to seek the advice of any Senior Magistrate or retired Senior Magistrate, whether within or outside the Islands, on any question or questions of law, procedure or legal principle, and may adjourn the proceedings if necessary for this purpose.”

(3) After subsection (2), insert:

“(3) For the avoidance of doubt, notwithstanding any consultation pursuant to this section, the decision making power rests solely with the Island Magistrate.

PART IV – INTERPRETATION

Interpretation and
General Clauses
Ordinance:
Definition of
Senior Magistrate

5. –(1) In section 2 of the Interpretation and General Clauses Ordinance, replace the definition of “Senior Magistrate” with:

“Senior Magistrate” means a Magistrate appointed by the Governor under sections 11(1) and 11(4) of the Judicature (Courts) Ordinance.

Court Procedure (Remote Participation by Judges and Magistrates) Ordinance 2019

Explanatory Note and Legal Report

This Draft Ordinance proposes to amend existing provisions governing Court procedure in Pitcairn to support proceedings being held on Pitcairn rather than off-shore in New Zealand or elsewhere.

The purpose of the amendments is to both facilitate greater remote participation of off-shore judges and magistrates in proceedings by way of video-link, in order to allow hearings on Pitcairn to be held more efficiently; and also to strengthen the provision allowing the Island Magistrate to seek advice from an off-shore Senior Magistrate, to ensure the Island Magistrate is sufficiently supported and to improve the local administration of justice.

Part II - Judicial participation by Video-link

Part II of the Draft Ordinance proposes to amend the Judicature (Courts) Ordinance to allow a judge or magistrate to participate in a proceeding or step in proceeding by way of video link, where it is in the interests of justice to do so.

In many cases the fact that a judge is not present on Pitcairn is the primary barrier to holding a hearing on Pitcairn in a timely fashion. In most cases, most other participants (parties, registrar or deputy registrar, police officer, assessors, as well as public) will be on Pitcairn. This provision recognises changes in technology that allow better and more stable video-link between New Zealand and Pitcairn, and will allow more hearings to be held on Pitcairn, more efficiently.

Importantly, it allows the Court to be more immediately responsive to disputes or offences on Pitcairn that require a Senior Magistrate or higher Court judge, and simpler management of initial or interim steps in proceedings. It also avoids delays that may result from a need to obtain any required permission from New Zealand ministers to hold a court hearing in New Zealand under the Pitcairn Trials Act 2002 (NZ).

The existing power for the judge to order other participants to participate in a hearing by way of video-link remains, and remains available where, for example, counsel or expert witnesses are not on-Island.

The proposed amendment also clarifies the operation of sections 15E and 15F by removing the qualifier “[judge] of the Supreme Court”, to recognise that the powers may also be exercised by Court of Appeal judges.

In relation to section 15F, this reflects the law as determined by the Court of Appeal in *Warren v R CA 1/2012*, 12 April 2013. In that case the Court of Appeal held it can invoke section 15F in exercise of the powers conferred by s 50(2) of the Constitution. The amended section 15E, enables any Justice of Appeal to make an order for the Court of Appeal to sit outside of Pitcairn. In accordance with section 50(3) of the Constitution, any exercise of the power by a Court of Appeal judge must be in accordance with any direction of the President of the Court of Appeal.

Part III - Advice from Senior Magistrates

Part III deals with procedure in cases in which the Island Magistrate sits. The Island Magistrate is a lay magistrate, resident on Island, but without formal legal qualifications; while Senior Magistrates are legally qualified, and all currently resident in New Zealand.

Under the Justice Ordinance, the Island Magistrate may seek advice from a Senior Magistrate, on or off Pitcairn. Due to the infrequency of Magistrate Court proceedings on Pitcairn, there have been only a handful of court proceedings before either the Island Magistrate or a Senior Magistrate over the last two decades.

The proposed amendment slightly expands the pool of persons from whom the Island Magistrate can seek advice, to include also retired Senior Magistrates. This means there is a larger number of people who may be available to provide advice and support to the Island Magistrate should a case arise, and makes it more likely to include Magistrates who can draw on personal experience of the environment on Pitcairn in giving that advice.

The proposed amendment also makes the following changes to remove some of the restrictions on the process of seeking advice:

- The limitation that advice may be sought only ‘before or during the hearing of any proceedings’ is amended to be ‘at any time in relation to any proceedings or potential proceedings’ to expand the times when advice may be sought;
- The requirements that an enquiry to a Senior Magistrate must, if possible, be by email or facsimile and that parties be notified prior to seeking advice and provided with copies of exchanges, are removed to recognise the greater range of communication technology now available, and to facilitate advice being more readily sought.

This empowers the local Island Magistrate to seek advice at any stage throughout the process, including informally, ensuring better support for the Island Magistrate and promoting better decision-making. It recognises that the role of the Senior Magistrate is one of technical support and advice to the Island Magistrate, who is the decision-maker, which is stated for the avoidance of doubt in the new subsection (3) of section 5 of the Justice Ordinance. The fairness of the process will be maintained by the usual natural justice requirements as they apply to the decision maker, the Island Magistrate, by virtue of the common law, including natural justice requirement to ensure a party is sufficiently informed of and has a sufficient opportunity to answer the case against them.

Consistency with the Constitution

In my opinion, this Ordinance is consistent with the Constitution. It supports the entitlement of a fair and public hearing within a reasonable time, by allowing more efficient disposal of court business, and allowing more court sittings on Pitcairn.

In my opinion, the effect of amendments in Part III are neutral. They remove an express entitlement for parties to receive copies of the exchanges between the Island Magistrate and any advising Senior Magistrate, but as noted above, the Island Magistrate is required to uphold natural justice, which will include an obligation to ensure a party has a fair

opportunity to respond to any case against them. Moreover, a decision of the Island Magistrate can be appealed to or reviewed by Supreme Court, which as a court of full jurisdiction, provides an additional layer of protection should any unfairness arise before the Island Magistrate.

Simon Mount QC
Attorney General of Pitcairn
11 March 2019