

SCHEDULE 2

THE CONSTITUTION OF PITCAIRN

PART 2

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Right to life

2.—(1) Everyone’s right to life shall be protected by law.

(2) Deprivation of life shall not be regarded as inflicted in contravention of this section when it results from the use of force which is no more than absolutely necessary—

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Physical and mental integrity

3.—(1) Everyone has the right to respect for his or her physical and mental integrity.

(2) In the fields of medicine and biology, the free and informed consent of the person concerned must be respected, according to the procedures prescribed by law.

Human dignity

4. Everyone has inherent dignity and the right to have his or her dignity respected and protected.

Prohibition of torture

5. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Prohibition of slavery and forced labour

6.—(1) No one shall be held in slavery or servitude.

(2) No one shall be required to perform forced or compulsory labour.

(3) For the purpose of this section the term “forced or compulsory labour” shall not include—

- (a) any work required to be done in the ordinary course of detention imposed according to section 7 or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.

Right to liberty and security

7.—(1) Everyone has the right to liberty and security of person. No one shall be deprived of his or her liberty save in the following cases and in accordance with a procedure prescribed by law—

- (a) the lawful detention of a person after conviction by a competent court;

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- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him or her before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his or her committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his or her lawful detention for the purpose of bringing him or her before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his or her effecting an unauthorised entry into Pitcairn or of a person against whom action is being taken with a view to deportation or extradition.

(2) Everyone who is arrested shall be informed promptly, in a language which he or she understands, of the reasons for his or her arrest and of any charge against him or her.

(3) Everyone arrested or detained in accordance with subsection (1)(c) shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

(4) Everyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his or her detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.

(5) Everyone who has been the victim of arrest or detention in contravention of this section shall have an enforceable right to compensation.

Right to a fair trial

8.—(1) In the determination of his or her civil rights and obligations or of any criminal charge against him or her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

(3) Everyone charged with a criminal offence has the following minimum rights—

- (a) to be informed promptly, in a language which he or she understands and in detail, of the nature and cause of the accusation against him or her;
- (b) to have adequate time and facilities for the preparation of his or her defence;
- (c) to defend himself or herself in person or through legal assistance of his or her own choosing or, if he or she has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

- (e) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court.

Right of prisoners to humane treatment

9.—(1) All persons deprived of their liberty (in this section referred to as “prisoners”) shall have the right to be treated with humanity and with respect for the inherent dignity of the human person.

(2) Every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his or her status as such.

(3) Every juvenile prisoner shall be treated in a manner appropriate to his or her age and legal status and, if he or she is an unconvicted prisoner and unless he or she is earlier released, shall have any criminal proceedings against him or her pursued with the greatest possible expedition.

(4) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, or the facilities available for the detention of prisoners do not permit, or segregation would be detrimental to the well-being of a prisoner, unconvicted prisoners shall be segregated from convicted prisoners, and juvenile prisoners shall be segregated from adult prisoners.

No punishment without law

10.—(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This section shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Right to respect for private and family life

11.—(1) Everyone has the right to respect for his or her private and family life, his or her home and his or her correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of Pitcairn, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Freedom of thought, conscience and religion

12.—(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his or her religion or belief and freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief, in worship, teaching, practice and observance.

(2) Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Freedom of expression

13.—(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

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(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

(3) This section shall not prevent the Government of Pitcairn from requiring the licensing of broadcasting, television or cinema enterprises.

(4) Freedom of information in Pitcairn shall be provided by Ordinance, which shall reflect the freedom of information legislation of the United Kingdom adapted to the circumstances of Pitcairn.

Freedom of assembly and association

14.—(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his or her interests.

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

(3) This section shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of Pitcairn.

Right to marry

15. Men and women of marriageable age have the right to marry and found a family, according to the national laws governing the exercise of this right.

Children's rights

16. Every child has the right to such measures of protection as are required by his or her status as a minor, on the part of his or her family, society and the Government of Pitcairn, and which are appropriate and proportionate to the circumstances of Pitcairn.

Right to education

17.—(1) Every child of the appropriate age, as provided by law, shall be entitled to receive primary education which shall, subject to subsection (2), be free.

(2) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless a law otherwise provides, in a private school (that is to say, a school other than one established by the Government of Pitcairn or a public authority) and, in such a school, to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(3) Nothing contained in or done under the authority of any law shall be held to breach subsection (2) to the extent that the law in question is necessary in a democratic society for the purpose of making provision requiring private schools, as a condition of their being allowed to operate and on terms no more onerous than are applicable to schools established by the Government of Pitcairn or a public authority, to satisfy—

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under that or any other law; and

- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed.

Freedom of movement

18.—(1) Everyone lawfully within Pitcairn shall, within Pitcairn, have the right to liberty of movement and freedom to choose his or her residence.

(2) Everyone shall be free to leave Pitcairn.

(3) The rights mentioned in subsections (1) and (2) shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in this Constitution.

(4) No one who has the right of abode shall be arbitrarily deprived of the right to enter Pitcairn.

(5) Subsections (1) to (4) are subject to the provisions of Pitcairn immigration legislation governing the entry into, stay in and departure from Pitcairn as regards persons who do not have the right of abode.

(6) A person who does not have the right of abode may be expelled from Pitcairn only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit reasons against his or her expulsion and to have his or her case reviewed by, and be represented for the purpose before, the competent authority or a person or persons designated by the competent authority.

(7) In this section, “the right of abode” means the right of abode in Pitcairn under any law.

Protection of the environment

19. Everyone has the right to an environment that is generally not harmful to his or her health or well-being and to have the environment protected, for the benefit of present and future generations, through such laws as may be made under this Constitution including laws to—

- (a) prevent pollution and ecological degradation;
- (b) promote conservation; and
- (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Just administrative action

20.—(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

Protection of property

21.—(1) Every natural or legal person is entitled to the peaceful enjoyment of his or her possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

(2) Subsection (1) shall not, however, in any way impair the right of the Government of Pitcairn to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

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Protection from arbitrary deprivation of right of abode and of British citizenship

22.—(1) No person with the right of abode in Pitcairn under any law shall be arbitrarily deprived of that right, whether by legislation or otherwise.

(2) As everyone has the right to a nationality, no person shall be arbitrarily deprived of his or her British citizenship, whether by legislation or otherwise.

Prohibition of discrimination

23.—(1) Subject to subsection (4), no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsections (4) and (6), no person shall be treated in a discriminatory manner by any organ or officer of the executive or judicial branches of government or any person acting in the performance of the functions of the Pitcairn Public Service or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons on any ground such as sex, sexual orientation, race, colour, language, religion, age, disability, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(4) Nothing contained in or done under the authority of any law shall be held to breach this section to the extent that it has an objective and reasonable justification and there is a reasonable proportion between the provision of law in question or, as the case may be, the thing done under it and the aim which that provision or the thing done under it seeks to realise.

(5) No person shall be treated in a discriminatory manner in respect of access to any of the following places to which the general public have access, namely, shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of resort; but the proprietor of such a place has a duty to provide amenities and equipment facilitating the access of disabled persons only to the extent provided by a law.

(6) For the purposes of subsection (2), the exercise, in relation to a person, of any discretion to institute, conduct or discontinue criminal or civil proceedings in any court shall not in itself be held to breach this section.

Derogation in time of emergency

24.—(1) Nothing contained in or done under the authority of any law shall be held to breach any of the provisions of this Part other than sections 2, 3, 4, 5, 6(1), 8(2) and 10 to the extent that the law in question authorises the taking during a period of public emergency of measures that are strictly required by the exigencies of the situation that exists in Pitcairn during that period, provided that such measures are not inconsistent with the obligations of the United Kingdom in respect of Pitcairn under international law.

(2) Where any person who is lawfully detained in pursuance only of a law referred to in subsection (1) so requests at any time during the period of that detention (but if he or she has already made such a request during that period, not earlier than six months after he or she last made such a request during that period), his or her case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice.

(3) On any review by a tribunal under subsection (2) of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his or her detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with such recommendations.

Enforcement of protective provisions

25.—(1) If any person alleges that any of the provisions of this Part has been, is being or is likely to be breached in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a breach in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and
- (b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (7),

and may make such declarations and orders, issue such writs and give such directions as it considers appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Part.

(3) The Supreme Court may decline to exercise its powers under subsection (2) if it is satisfied that adequate means of redress for the breach alleged are or have been available to the person concerned under any other law.

(4) Without prejudice to the generality of subsection (2), where, in exercise of its powers under that subsection, the Supreme Court determines that one of the provisions of this Part has been breached in relation to any person, it—

- (a) may order the award to that person of such damages as the Supreme Court considers just and appropriate; or
- (b) may direct the court which made the reference to it under subsection (7) (“the referring court”) to order the award to that person of such damages as that court considers just and appropriate, within such limits (if any) as the Supreme Court declares.

(5) An award of damages may not be made in pursuance of subsection (4) in respect of the making of any law but such an award may be made in respect of anything done by any organ or officer of the executive or judicial branches of government or any person acting in the performance of the functions of the Pitcairn Public Service or any public authority.

(6) Subsection (4) is without prejudice to section 7(5).

(7) If in any proceedings in a subordinate court any question arises as to the breach of any of the provisions of this Part, the person presiding in that court may refer the question to the Supreme Court unless, in his or her opinion, the raising of the question is merely frivolous or vexatious.

(8) If the effect of a provision of this Part is in issue in proceedings before the Supreme Court, the Court of Appeal or Her Majesty in Council, to which the Crown is not a party—

- (a) the Attorney General may intervene; and
- (b) the presiding judge must not hear and determine the proceedings until satisfied that the Attorney General has received notice of the proceedings and has had sufficient time to decide whether or not to intervene.

(9) Where any question is referred to the Supreme Court in pursuance of subsection (7), the Supreme Court shall give its decision on the question and the referring court shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(10) An appeal shall lie as of right to the Court of Appeal from any final determination of any application or question by the Supreme Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any

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such case; but no appeal shall lie from a determination by the Supreme Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(11) The Governor may by Ordinance confer on the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred on it by this section.

(12) The Chief Justice or the President of the Court of Appeal, as the case requires, may make Rules of Court with respect to the practice and procedure—

- (a) of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this section;
- (b) of the Supreme Court or the Court of Appeal in relation to appeals under this section from determinations of the Supreme Court or the Court of Appeal; and
- (c) of subordinate courts in relation to references to the Supreme Court under subsection (7),

including provisions with respect to the time within which any application, reference or appeal shall or may be made or brought.

(13) In determining any question which has arisen in connection with the interpretation or application of any of the foregoing provisions of this Part, every court shall take into account any—

- (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights;
- (b) decision of the European Commission of Human Rights (“the Commission”) given in a report adopted under Article 31 of the Convention;
- (c) decision of the Commission in connection with Article 26 or 27(2) of the Convention;
- (d) decision of the Committee of Ministers of the Council of Europe (“the Committee of Ministers”) taken under Article 46 of the Convention;
- (e) judgment, decision or declaration of a superior court in the United Kingdom on the interpretation or application of the Convention,

whenever made or given, so far as, in the opinion of the court, it is relevant to the proceedings in which that question has arisen.

(14) In subsection (13), references to the Convention are references to it as it has effect for the time being, except that—

- (a) the references in subsection (13)(b) and (c) to Articles 31, 26 and 27(2) are references to those Articles as they respectively had effect immediately before the coming into force of the Eleventh Protocol;
- (b) the reference in subsection (13)(d) to Article 46 includes a reference to Articles 32 and 54 as they had effect immediately before the coming into force of the Eleventh Protocol; and
- (c) the references in subsection (13) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).

(15) In subsections (13) and (14)—

“the Convention” means the European Convention on Human Rights;

“the Eleventh Protocol” means the protocol to the Convention (restructuring the control machinery established by it) agreed at Strasbourg on 11 May 1994; and

“a superior court in the United Kingdom” means any of the following—

- (a) the High Court or the Court of Appeal in England;
- (b) the High Court of Justiciary or the Court of Session in Scotland;

- (c) the High Court or the Court of Appeal in Northern Ireland;
- (d) the House of Lords or the Supreme Court; and
- (e) the Judicial Committee of the Privy Council.

Interpretation of legislation

26. So far as it is possible to do so, legislation of Pitcairn must be read and given effect in a way which is compatible with the rights and freedoms set forth in this Part.