

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

CHAPTER XV

LANDS COURT ORDINANCE

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**An ordinance to establish the Lands Court and to
provide for its constitution and procedure**

Ordinances:
No. 8 of 2000

[1st August 2000]

PART I—PRELIMINARY

1. This ordinance may be cited as the Lands Court Ordinance.

Citation.

2. In this ordinance, unless the context otherwise requires,—

Interpretation.

“agricultural land” means any land used or capable of being used primarily as forestry land, garden land or orchard land;

“Council” means the Island Council constituted under the provisions of the Local Government Ordinance;

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“Court” means the Lands Court constituted under the provisions of this ordinance;

[“General Survey Adviser” means the person appointed by the Governor to fulfil the functions referred to in subsection 4 of section 3 of the Land Tenure Reform Ordinance and in proceedings of the Lands Court under Parts III and IV of this ordinance as more particularly described in section 14A of this ordinance.]

(Inserted by Ordinance No. 4 of 2006)

“Island Secretary” means the person for the time being appointed by the Governor to hold the public office of Island Secretary;

“land” includes any estate or interest in land or things growing thereon and all buildings and other improvements permanently affixed thereto;

“Lands and Estates Court” means the Lands and Estates Court established by the Lands and Administration of Estates Ordinance No. 2 of 1967 repealed upon the commencement of this ordinance;

“Lands Register” means the register of lands on Pitcairn Island required to be kept under the provisions of this ordinance;

“Mayor” means the person for the time being holding the office of Mayor of Pitcairn under the provisions of the Local Government Ordinance;

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“President” means the Mayor or other person presiding over the Lands Court under the provisions of subsection (3) of section 3 of this ordinance;

“representative” means the person appointed by any person to represent him or her in any proceedings

before the Court under the provisions of section 9 of this ordinance and includes any person appointed by the Court to represent any party under the provisions of subsection (5) of section 7 of this ordinance;
“residential land” means any land used or capable of being used primarily as house land.

PART II—LANDS COURT

Constitution of Court.

3.—(1) There is hereby established a court with jurisdiction over land in place of the former Lands and Estates Court, to be known as the Lands Court, which shall be a court of record.

(2) The Court shall have as occasion may require a seal of such nature and pattern as the Governor may direct and all writs and other process issued out of the Court shall be sealed therewith.

(3) The Lands Court shall consist of a President who shall be the Mayor *ex officio* and who shall preside over all sittings of the Court and four other members who shall be appointed by the Council and who shall hold office for a term of two years from the date of their appointment:

Provided that—

- (a) where the Mayor is a party to or is a witness or has any personal interest in any proceedings before the Court, he or she shall not sit as a member of the Court and the Chairman of the Internal Committee or, if he or she is also a party to or is a witness or has any personal interest in such proceedings, the nominated member of the Council appointed by the Governor shall preside over the Court for the purpose of hearing such proceedings and, while so presiding, he or she shall for the purpose of those proceedings have all the powers and exercise all of the duties and functions of the President; and
- (b) where any other member of the Court is a party to or is a witness or has any personal interest in any proceedings before the Court, he or she shall not sit as a member of the Court for the purpose of the hearing of those proceedings and the Council shall appoint such other person who is neither a party to nor a witness nor has any personal interest in such proceedings as it considers appropriate and such person so appointed shall sit as a member of the Court for the purpose of hearing those proceedings and while so sitting shall for the purpose of the hearing of those proceedings have all the powers and exercise all of the duties and functions of the

member of the Court in whose place he or she is so appointed.

4.—(1) The Island Secretary shall be the Registrar of the Lands Court and shall, subject to the general directions of the Governor, be under the immediate direction and control of the President.

Registrar.

(2) The duties of the Registrar shall be—

- (a) to attend all sittings of the Court as the President shall direct;
- (b) to fill up or cause to be filled up all summonses, writs, orders and other documents and submit the same for signature by the President;
- (c) to issue all process in the Court in accordance with the provisions of this ordinance;
- (d) to make or cause to be made a record of all proceedings before the Court and of all judgments and orders of the Court;
- (e) to keep or cause to be kept and maintained the Lands Register and all other registers required to be kept by or under the provisions of this ordinance; and
- (f) to perform or cause to be performed such other duties connected with the Court and the registration of lands and otherwise as may be required by or under the provisions of this ordinance or may be assigned to him or her by the Governor or by the President.

5. The Court shall be charged with the following duties—

Duties and functions of Lands Court.

- (a) to exercise a supervisory jurisdiction over all lands on Pitcairn Island;
- (b) to cause the boundaries of all lands on Pitcairn Island in respect of which the ownership has been determined according to law to be demarcated on the ground;
- (c) to cause a register to be kept and maintained in respect of all lands on Pitcairn Island the ownership of which has been determined under the provisions of this ordinance and of the Land Tenure Reform Ordinance;
- (d) to hear and determine all applications for the grant of Land Allocation Titles under Part III of the Land Tenure Reform Ordinance;
- (e) to hear and determine all disputes relating to the ownership of land on Pitcairn Island;
- (f) to determine all other questions relating to lands on Pitcairn Island as may be referred to it by the

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Council or by any inhabitant of Pitcairn Island under any of the provisions of this ordinance or the Land Tenure Reform Ordinance.

Sittings of the Court.

6.—(1) The Court shall sit at such times and on such days as may from time to time be determined by resolution of the Council and publicly notified by notice affixed to the public notice board.

(2) All sittings of the Court shall be open to the public in so far as the seating arrangements of the courthouse permit:

Provided that the President may clear the Court if he or she considers that the Court should discuss any matter before it without the parties being present.

(3) The President may adjourn the Court from day to day or to any convenient day.

(4) A quorum of the Court shall be the President and three other members.

Powers and proceedings of the Court.

7.—(1) For the purpose of any proceedings before the Court, the President shall have the same power to summon and cause the attendance of and examine on oath all claimants or potential claimants to any land and any person whom he or she may think able to give relevant evidence as are vested in the Magistrate in respect of any case before the Magistrate's Court under the provisions of section 14 of the Justice Ordinance and the provisions of Part III of that ordinance shall apply *mutatis mutandis* to all applications and cases before the Court.

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(2) The Registrar shall keep or cause to be kept a record of all proceedings before the Court and all evidence given in all such proceedings, the observations of the members of the Court, the summing up by the President and the judgment of the Court.

(3) The minutes of all proceedings before the Court shall be signed by the President and by the Registrar and the record of all such proceedings, including such minutes and all documents filed with the Court or admitted in evidence, shall be preserved in the records of the Court to be kept at the office of the Registrar.

(4) If, in any proceedings before the Court, the applicant fails to appear, either personally or by a representative appointed under the provisions of section 9 of this ordinance and does not excuse such failure to the satisfaction of the Court, the Court may strike out his or her application.

(5) If a party to any proceedings before the Court does not obey any summons issued under the provisions of subsection (1) of this section and does not excuse such failure to appear to the satisfaction of the Court then, after proof of service, the

Court may appoint a suitable person who may reasonably be expected to have knowledge of the matters in issue to represent such party and may thereupon proceed to hear and determine the proceedings.

(6) In all proceedings before the Court, the parties or their representatives or, in the case of a party who has failed to appear, the representative appointed by the Court under the provisions of the last preceding subsection, shall be present throughout the proceedings except when the Court is cleared under the proviso to subsection (2) of section 6 of this ordinance.

(7) The following procedure shall be observed by the Court in the hearing and determination of all proceedings before it—

- (a) a statement of the matter in issue shall be made to the Court by the applicant, or by the Registrar if the matter arises out of the Court's own motion;
- (b) if there is an applicant, the Court shall first hear his or her evidence together with that of any witness whom the applicant wishes to call and shall then proceed to hear the evidence of all other parties together with their witnesses and, if the matter arises on the Court's own motion, it may call such witnesses in such order as it thinks fit;
- (c) after each party to the proceedings before the Court has given evidence, the opposing party shall be entitled to ask any questions relating to the matter in issue and similarly each party may ask questions of any witness called by any other party after such witness has given evidence;
- (d) any member of the Court may ask any questions relating to the matter in issue of any party or witness at any time while they are giving evidence before the Court and the President may recall and question any party or any witness at any stage in the proceedings before judgment;
- (e) during the course of the proceedings, the President may discuss with the members of the Court the law applicable to the matter in issue;
- (f) after hearing all the evidence and discussing if necessary the law applicable to the matter in issue, the President shall summarise the facts and the law for the benefit of the other members of the Court and the Court shall then consider its judgment which shall be by a majority vote of all members present: Provided that in an equal division of opinion amongst the members, the President shall have a

- casting vote in addition to his or her original vote;
- (g) the judgment of the Court arrived at in accordance with paragraph (f) shall be pronounced in open court by the President and shall be entered by the Registrar in the minutes of the Court.

Review of
proceedings by
Supreme Court.

8. Every decision of the Court shall be subject to review by the Supreme Court in accordance with the provisions of section 13 of the Land Tenure Reform Ordinance.

Appointment of
representative.

9. Any person who is absent from Pitcairn Island may, by letter addressed to the President, appoint any person on Pitcairn Island on his or her behalf to make application to the Court or to oppose any application before the Court and the provisions of this ordinance shall be interpreted as if reference to applicants and parties included any representative so authorised under this section.

PART III—LANDS REGISTER

Lands Register.

10.—(1) There shall continue to be a register to be known as the Lands Register which shall be kept in the office of the Registrar.

(2) The Court shall cause entries to be made in the Lands Register of—

- (a) the description by boundaries of all lands on Pitcairn Island in respect of which the ownership has been determined or which are vested in the Council under the provisions of this ordinance;
- (b) the ownership thereof;
- (c) all appurtenances and encumbrances created over such lands, all other dealings therein and all transmissions or devolutions thereof which have been approved by the Court under this ordinance.

(3) All entries in the Lands Register shall be signed by the Registrar and by the President.

Registration.

11. Registration of any person as the owner of any estate or interest in land on Pitcairn Island shall vest in such person indefeasible title to such estate or interest, except in the case of fraud, with such rights, privileges, powers and obligations in relation to such land not inconsistent with any of the provisions of this ordinance and subject at all times to the provisions of the Land Tenure Reform Ordinance.

Inspection of Lands
Register.

12. Any person shall be entitled to inspect the Lands Register and to make copies of any of the entries contained therein and, on payment of a fee of twenty cents, to receive a certified copy of any of the entries therein duly certified under

the hand of the Registrar.

13. The Registrar, acting on the instructions of the Court, shall have power to rectify the Lands Register in the following cases—

Rectification of
Lands Register.

- (a) in formal matters and in cases of errors or omissions not materially affecting any interests in land registered therein; and
- (b) in any case at any time with the consent of all persons interested.

PART IV—GRANT OF LAND ALLOCATION TITLES

14.—(1) Any person seeking the grant of a Land Allocation Title under section 4 of the Land Tenure Reform Ordinance in respect of any land on Pitcairn Island may, on giving not less than 30 days' notice in writing to the Registrar of his intention to make such application, apply to the Court in accordance with the procedure prescribed in this section.

Application for grant
of Land Allocation
Title.

(2) On receipt of any notice given under the provisions of subsection (1), the Registrar shall cause a copy of such notice to be posted on the public notice board and to be kept so posted until such time as the application has been determined by the Court.

(3) Every notice given under the provisions of subsection (1) shall describe the boundaries of the land claimed and shall specify the name of the applicant and the entitlement claimed by him or her with respect to the land.

(4) Any other person seeking the grant of a Land Allocation Title to any land in respect of which notice is given under the provisions of subsection (1) may oppose the application by giving notice in writing to the Registrar and to the applicant at any time before the application has been determined by the Court. Every such notice shall specify the name of the person by or on whose behalf it is given and the entitlement claimed by such person with respect to the land.

(5) On the date appointed by the Court for the hearing of the application, or such extended time as the Court may in its discretion allow, the Court shall determine the application or the competing applications, as the case may be, in accordance with the procedure and principles set out in section 4 of the Land Tenure Reform Ordinance and upon granting any Land Allocation Title shall direct the Registrar to make the appropriate entry in the Lands Register.

[14A.—(1) The General Survey Adviser may at any time provide expert opinion evidence relating to any issue arising in proceedings under Part III of the Land Tenure Reform

Advisory function
of General Survey
Adviser

Ordinance for the grant of any Land Application Title. Such advice may be in the form of a memorandum or submission in writing or an oral statement of evidence. This advice or evidence may be tendered by the General Survey Adviser at the instance of the Court, any party having a direct interest in the proceedings or on the initiative of the General Survey Adviser.

(2) In considering its decision in the case, the Court shall take into account the substance of the advice or evidence of the General Survey Adviser but shall not be bound by it. If the Court chooses not to follow the advice or evidence of the General Survey Adviser, it shall state the reasons therefor in its decision.”]

(Inserted by Ordinance No. 4 of 2006)

PART V—CARETAKERS

Appointment and registration of caretakers.

15.—(1) Any person who is registered under the provisions of this ordinance as the owner of any estate in land and who intends to leave Pitcairn Island for any indefinite period shall, before leaving the Island, make application to the Court for the appointment of some fit and proper person to be named by the applicant as the caretaker in charge of such land during his or her absence from the Island.

(2) If, upon the hearing of any application made under the provisions of subsection (1), the Court is satisfied that the proposed appointment is in conformity with the provisions of this ordinance and that the person nominated by the applicant has consented to act as caretaker of such land, it shall make an order directing that the person nominated be registered in the Lands Register as the caretaker of such land or, if not so satisfied, require the applicant to nominate some other person to act as caretaker of such land and, upon the applicant nominating a person to the satisfaction of the Court as aforesaid, the Court shall make an order directing that that person be registered in the Lands Register as the caretaker of such land.

Rights and obligations of caretakers.

16. Every caretaker registered under the provisions of this ordinance shall, while so registered, be subject to all of the liabilities and obligations in connection with the land in respect of which he or she is so registered as are imposed on the owner of such land and, subject to any conditions imposed or approved by the Court, shall have the right to the use and enjoyment of the land in respect of which he or she is so registered and to all crops, fruits and other produce standing or growing thereon to the same extent as the owner on whose

behalf he or she is so appointed.

PART VI—OFFENCES AND PENALTIES

17. Any person who—

- (a) wilfully makes any false statement or declaration in relation to any dealing in land; or
- (b) suppresses, conceals or aids and abets in the suppressing or concealing from the Court of any material document, fact or matter; or
- (c) wilfully makes any false declaration required to be made under any of the provisions of this ordinance; or
- (d) being lawfully sworn or affirmed as a witness in any cause or matter before the Court, wilfully makes any statement in evidence material to that cause or matter which he or she knows to be false or does not believe to be true, with the intention of deceiving or misleading the Court; or
- (e) fraudulently procures any documents of title to land or any instrument affecting any such title or the making of any alteration thereto or erasure therefrom; or
- (f) fraudulently alters, adds to, erases, defaces or destroys or permits to be altered, added to, erased, defaced or destroyed any entry in any record or register required to be kept under the provisions of this ordinance or any document contained in any such register,

is guilty of an offence and shall be liable to a fine not exceeding five hundred dollars or imprisonment for any period not exceeding one hundred days or to both such fine and imprisonment.

18. Any person who defaces, obliterates, moves, injures or otherwise impairs, destroys or renders useless any [survey] mark except with the authority of the Court shall be liable upon conviction to a fine not exceeding five hundred dollars or imprisonment for any period not exceeding one hundred days or to both such fine and imprisonment.

(Amended by Ordinance No. 4 of 2006)

19.—(1) Any person who—

- (a) within or in the vicinity of any room in which the Court is sitting or in the presence or hearing of the Court when engaged extramurally in the determination of boundaries or the inspection of any land is insulting towards or shows disrespect

- in speech or manner to the President, any member of the Court or the Registrar; or
- (b) wilfully refuses or neglects to appear before the Court when summoned to do so; or
 - (c) having appeared before the Court and being called upon to give evidence, wilfully refuses to take the oath or affirmation or, having taken the oath or affirmation, wilfully refuses without lawful excuse to answer any question put to him or her or to produce any document; or
 - (d) having attended the Court for the purposes of giving evidence in any cause before it, remains in the room or in the vicinity of the Court after having been asked to leave such room or vicinity; or
 - (e) causes any obstruction or disturbance in the course of the hearing of any cause before the Court; or
 - (f) attempts wrongfully to interfere with or influence any witness in any cause before the Court either before or after such witness has given evidence in connection with such cause; or
 - (g) commits any other act of intentional disrespect to any cause before the Court or to any officer of the Court,

is guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred dollars or imprisonment for any period not exceeding one hundred days or to both such fine and imprisonment.

(2) Any person who enters the room or place in which the Court is sitting or approaches the vicinity of the Court when engaged extramurally in the determination of boundaries or the inspection of any land with firearms on his or her person shall be guilty of an offence and on conviction shall be liable to a fine not exceeding sixty dollars or to imprisonment for any period not exceeding thirty days or to both such fine and imprisonment.

PART VII—GENERAL

20.—(1) Any attempt to assume ownership or control of or to possess, occupy, transfer, transmit or otherwise deal with land on the islands of Henderson, Ducie or Oeno shall be null and void without the prior approval of the Governor.

(2) On any request for approval made under the provisions of subsection (1), the Governor may by order authorise extension of the jurisdiction of the Court to include the islands of Henderson, Ducie and Oeno or any one of such islands.

21.—(1) The Council may make, amend or revoke regulations—

Regulations.

- (a) regulating the practice and procedure of the Court in matters not specifically provided for in this ordinance;
- (b) prescribing the forms and registers to be used and for regulating all matters connected therewith;
- (c) regulating the receipt of moneys paid to the Court and the payment out of the Court of all moneys to the persons entitled thereto;
- (d) prescribing fees and costs which may be demanded and received in connection with any matter within the jurisdiction of the Court;
- (e) for the better carrying into effect of the provisions, objects and intentions of this ordinance.

(2) All regulations made under the provisions of this ordinance shall be signed by the Mayor and by the Island Secretary, publicly notified by affixing copies thereof to the public notice board and shall come into force on the day of such notification.

(3) Copies of all regulations made under the provisions of this ordinance shall be sent forthwith to the Governor who may by order to be publicly notified by affixing a copy of the same to the public notice board, alter, vary or revoke any such regulations.

22. Nothing in this ordinance contained shall be deemed to affect any right, title or interest of the Crown in, upon or over any land on Pitcairn, Henderson, Ducie or Oeno Islands nor is the Crown in any way subject to any of the provisions of this ordinance.

Rights of Crown preserved.

23. The transitional provisions consequent upon the repeal of the Lands and Administration of Estates Ordinance with respect to any claim or proceeding before the former Lands and Estates Court and not completed or disposed of at the time of that repeal are set out in the schedule to this ordinance.

Transitional provisions.

Section 23

SCHEDULE

Transitional Provisions

1. Where immediately prior to the repeal of the Lands and Administration of Estates Ordinance any application, enquiry, claim, dispute, proceeding or other legal process affecting or concerning any right or interest in land was partially completed or pending the same may, subject to the provisions of this schedule, be completed or undertaken in accordance with the repealed ordinance as if it had not been repealed.

2. Any such intention to institute the continuation or completion of any such application, enquiry, claim, dispute, proceeding or process under the repealed ordinance must be notified in writing to the Registrar of the Lands Court not later than six months after the commencement of this ordinance and thereafter no such right of continuation or completion shall lie.

3. Where the nature or circumstances of the application, enquiry, claim, dispute, proceeding or other legal process, sought to be instituted or continued under paragraphs 1 and 2 is inconsistent with or repugnant to the provisions of the Land Tenure Reform Ordinance, no such right of continuation or completion shall lie and any right or interest in land thereby affected shall be deemed to have abated or become extinguished by operation of law.

4. For the avoidance of doubt, the abatement or extinguishment of any actual or contingent right or interest in land pursuant to paragraph 3 shall not be the subject of any claim for compensation.