



**ST HELENA**

**REVISED EDITION OF THE LAWS, 2017**

**CONSTITUTIONAL & ADMINISTRATIVE LAW**

**COMMISSION FOR EQUALITY AND HUMAN RIGHTS ORDINANCE, 2015<sup>1</sup>**

*Ordinance 11 of 2015*

*In force 1 August 2015 (L.N. 21/2015)*

*No amendments to 1 November 2017*

*No subsidiary legislation to 1 November 2017*

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**COMMISSION FOR EQUALITY AND HUMAN RIGHTS ORDINANCE 2015**

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<sup>1</sup> Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

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AN ORDINANCE to make provision for the establishment of a Commission for Equality and Human Rights; and for connected or incidental purposes.

### Short title and commencement

1. (1) This Ordinance may be cited as the Commission for Equality and Human Rights Ordinance, 2015 and comes into force on a date or dates the Governor appoints by Order.

(2) An Order under subsection (1) may appoint different dates for different provisions or for different purposes of the same provision.

### Interpretation

2. In this Ordinance, unless the context otherwise requires—
- “**action plan**” means an action plan prepared in accordance with section 19;
- “**agreement**” means an agreement entered into in accordance with section 20;
- “**belief**” means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief;
- “**Chief Auditor**” means the person appointed as such under section 110 of the Constitution;
- “**PAI Code**” means the Code of Practice for Public Access to SHG Information issued by the St Helena Government dated 1<sup>st</sup> September 2014 and any amendment or replacement of it from time to time;
- “**Commission**” means the Commission for Equality and Human Rights established by section 3;
- “**Court**” means the Magistrates’ Court;
- “**criminal act**” means an act committed or omitted in violation of a law forbidding or commanding the act and for which punishment may be imposed upon conviction;
- “**disabled person**” means—
- (a) a person who has a physical or mental impairment that has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities; or
  - (b) a person who was a person referred to in paragraph (a) at any time;
- “**diversity**” means the fact that individuals are different;
- “**equality**” refers to equality between individuals;
- “**gender reassignment**” means an intended, current or past process (or part of such a process) for the purpose of reassigning a person's sex by changing physiological or other attributes of sex or the state of mind whereby a person psychologically identifies with a gender inconsistent or not culturally associated with their assigned sex at birth;
- “**group**” means a group or class of persons who share a common attribute in respect of any of the following matters:
- (a) age;
  - (b) disability;
  - (c) gender;

- (d) gender reassignment;
- (e) race;
- (f) religion or belief; ~~and~~
- (g) sexual orientation,

and a reference to a group includes a reference to a smaller group or smaller class, within a group, of persons who share a common attribute (in addition to the attribute by reference to which the group is defined) in respect of any of the matters specified in paragraphs (a) to (g);

**“human rights”** includes—

- (a) the fundamental rights and freedoms of the individual contained in Part 2 of Chapter 1 of the Constitution; and
- (b) other human rights;

**“inquiry”** means an inquiry conducted in accordance with section 15;

**“intelligence service”** means—

- (a) the Security Service;
- (b) the Secret Intelligence Service; and
- (c) the Government Communications Headquarters, of the United Kingdom;

**“investigation”** means an investigation in accordance with section 17;

**“race”** includes colour, nationality, ethnic origin and national origin;

**“relevant enactment”** means an enactment which is declared, in such enactment or by regulations made under this Ordinance, to be relevant to the Commission’s functions;

**“religion”** means any religion and a reference to religion includes a reference to a lack of religion;

**“sexual orientation”** means a person's sexual orientation towards—

- (a) persons of the same sex;
- (b) persons of the opposite sex; or
- (c) persons of either sex;

**“strategic plan”** means the plan or revised plans prepared under section 6;

**“unlawful act”** means an act or omission contrary to Part 2 of Chapter 1 of the Constitution or a provision of a relevant enactment, not being a criminal act;

**“unlawful act notice”** means a notice given under section 18.

## **Establishment**

**3.** This section established a body corporate to be known as the Commission for Equality and Human Rights.

## **Constitution, etc.**

**4.** Schedule 1 applies in respect of the constitution, proceedings, funds and status of the Commission.

## **General duty**

**5.** The Commission must exercise its functions with a view to encouraging and supporting the development of a society in which—

- (a) an individual’s ability to achieve his or her potential is not limited by prejudice or discrimination;
- (b) there is respect for and protection of each individual's human rights;

- (c) there is respect for the dignity and worth of each individual;
- (d) each individual has an equal opportunity to participate in society; and
- (e) there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

### **Strategic plan**

- 6.** (1) The Commission must prepare a plan showing—
- (a) activities or classes of activity to be undertaken by the Commission in pursuance of its functions;
  - (b) an expected timetable for each activity or class of activity; and
  - (c) priorities for different activities or classes of activity, or principles to be applied in determining priorities.
- (2) The Commission must review the plan—
- (a) at least once during the period of 3 years beginning with its completion;
  - (b) at least once during each period of 3 years beginning with the completion of a review; and
  - (c) at such other times as the Commission thinks appropriate.
- (3) If the Commission thinks it appropriate as a result of a review, the Commission must revise the plan.
- (4) The Commission must –
- (a) send the plan and each revision to the Legislative Council for their information; and
  - (b) publish the plan and each revision.

### **Consultation on strategic plan consultation**

- 7.** Before preparing or reviewing a strategic plan the Commission must —
- (a) consult such persons as the Commission thinks appropriate;
  - (b) issue a general invitation to make representations, in a manner likely in the Commission's opinion to bring the invitation to the attention of as large a class of persons who may wish to make representations as is reasonably practicable; and
  - (c) take account of any representations made.

### **Disclosure**

- 8.** (1) A person who is or was a Commissioner or an employee of the Commission must not disclose information acquired by the Commission, unless subsection (2) authorises the disclosure.
- (2) This subsection authorises a disclosure made—
- (a) for the purpose of the exercise of a function of the Commission;
  - (b) in pursuance of a lawful order of the Court, or a tribunal, commission, authority or a superior Court that has jurisdiction in St Helena; or
  - (c) with the consent of each person to whom the disclosed information relates.

(3) Subsection (2) does not authorise, nor may the Commission make, a disclosure of information provided by, or relating to, an intelligence service unless the service has authorised the disclosure.

(4) A person who fails to comply with subsection (1) commits an offence.

Penalty: A fine of £10,000, or imprisonment for 6 months, or both.

### **Equality and diversity**

**9.** (1) It is the duty of the Commission, by exercising the powers conferred by this Ordinance, to—

- (a) promote understanding of the importance of equality and diversity;
- (b) encourage good practice in relation to equality and diversity;
- (c) promote equality of opportunity;
- (d) promote awareness and understanding of rights under relevant enactments in St Helena;
- (e) enforce such relevant enactments;
- (f) work towards the elimination of unlawful discrimination; and
- (g) work towards the elimination of unlawful harassment.

(2) In promoting equality of opportunity between disabled persons and others, the Commission may, in particular, promote the favourable treatment of disabled persons.

### **Human rights**

**10.** (1) It is the duty of the Commission, by exercising the powers conferred by this Ordinance, to—

- (a) promote understanding of the importance of human rights;
- (b) encourage good practice in relation to human rights;
- (c) promote awareness, understanding and protection of human rights; and
- (d) encourage public authorities to comply with Part 2 of Chapter 1 of the Constitution.

(2) In determining what action to take in pursuance of this section, the Commission must have particular regard to the importance of exercising the powers conferred by this Ordinance in relation to the rights within Part 2 of Chapter 1 of the Constitution.

(3) In fulfilling a duty, the Commission must take account of any relevant human rights.

### **Groups**

**11.** (1) It is the duty of the Commission, by exercising the powers conferred by this Ordinance, to—

- (a) promote understanding of the importance of good relations—
  - (i) between members of different groups; and
  - (ii) between members of groups and others;
- (b) encourage good practice in relation to relations—
  - (i) between members of different groups; and
  - (ii) between members of groups and others;

- (c) work towards the elimination of prejudice against, hatred of, and hostility towards, members of groups; and
- (d) work towards enabling members of groups to participate in society.

### **Monitoring laws**

**12. (1)** The Commission must monitor the effectiveness of all relevant enactments.

- (2)** The Commission may provide an opinion to the Executive Council about—
- (a) the effectiveness of any relevant enactment;
  - (b) the amendment, repeal, consolidation (with or without amendments) or replication (with or without amendments) of any relevant enactment; and
  - (c) the likely effect of a proposed change of law.

### **Monitoring progress**

- 13. (1)** The Commission must from time to time identify—
- (a) changes in society that have occurred or are expected to occur and which are relevant to the duties of the Commission;
  - (b) results at which to aim for the purpose of encouraging and supporting changes in society that are consistent with those duties (hereinafter referred to as “outcomes”); and
  - (c) factors by reference to which progress towards those results may be measured (hereinafter referred to as “**indicators**”).

**(2)** In identifying outcomes and indicators the Commission must similarly consult, issue a general invitation and take account of representations all as prescribed in section 7 in respect of a strategic plan.

**(3)** The Commission must from time to time monitor progress towards each identified outcome by reference to any relevant identified indicator.

**(4)** The Commission must publish a report on progress towards the identified outcomes by reference to the identified indicators—

- (a) within 3 years after this section comes into force; and
- (b) every 5 years thereafter.

**(5)** The Commission must send each report to the Legislative Council.

### **Information, advice, etc.**

- 14. (1)** In pursuance of its duties the Commission may—
- (a) publish or otherwise disseminate ideas or information;
  - (b) undertake research;
  - (c) provide education or training;
  - (d) give advice or guidance (whether about the effect or operation of a relevant enactment or otherwise);
  - (e) arrange for a person to do anything within paragraphs (a) to (d);

- (f) act jointly with, co-operate with or assist a person doing anything within paragraphs (a) to (d).

## **Inquiries**

**15. (1)** The Commission may conduct an inquiry into a matter relating to any of the Commission's duties.

**(2)** If in the course of an inquiry the Commission begins to suspect that a person may have committed an unlawful act, the Commission—

- (a) in continuing the inquiry, must, so far as possible, avoid further consideration of whether or not the person has committed an unlawful act;
- (b) may commence an investigation into that question under section 17;
- (c) may use information or evidence acquired in the course of the inquiry for the purpose of the investigation; and
- (d) must, so far as possible, ensure (whether by aborting or suspending the inquiry or otherwise) that any aspects of the inquiry which concern the person investigated, or which may require his or her involvement, are not pursued while the investigation is in progress.

**(3)** If in the course of an inquiry the Commission begins to suspect that a person may have committed a criminal act, the Commission must report its suspicions to the Attorney General and cease any further consideration of whether or not the person has committed a criminal act.

**(4)** The report of an inquiry (other than a report to the Attorney General in terms of subsection (3))—

- (a) may not state (whether expressly or by necessary implication) that a specified or identifiable person has committed an unlawful act or criminal act; and
- (b) must not otherwise refer to the activities of a specified or identifiable person, unless the Commission thinks that the reference—
  - (i) will not harm the person; or
  - (ii) is necessary in order for the report adequately to reflect the results of the inquiry.

**(5)** Before settling a report of an inquiry which records findings which, in the Commission's opinion, are of an adverse nature and relate (whether expressly or by necessary implication) to a specified or identifiable person, the Commission must —

- (a) send a draft of the report to the person;
- (b) specify a period of at least 28 days during which the person may make written representations about the draft; and
- (c) consider any representations made.

**(6)** The provisions of Schedule 2 apply in respect of inquiries.

## **Co-operation**

**16.** In pursuance of its duties the Commission may co-operate with persons interested in human rights within St Helena or elsewhere.

## Investigations

- 17. (1)** The Commission may investigate whether or not a person has—
- (a) committed an unlawful act;
  - (b) complied with a requirement imposed by an unlawful act notice; or
  - (c) complied with an agreement with the Commission.

**(2)** The Commission may conduct an investigation under subsection (1)(a) only if it suspects that the person concerned may have committed an unlawful act.

**(3)** A suspicion for the purposes of subsection (2) may (but need not) be based on the results of, or a matter arising during the course of, an inquiry.

**(4)** If in the course of an investigation the Commission begins to suspect that a person may have committed a criminal act, the Commission must report its suspicions to the Attorney General and cease any further consideration of whether or not the person has committed a criminal act.

**(5)** Before settling a report of an investigation recording a finding that a person has committed an unlawful act or has failed to comply with a requirement or undertaking, the Commission must send a draft and invite and consider representations as prescribed in section 15(5) for an inquiry.

- (6)** Schedule 2 applies in respect of investigations.

## Unlawful act notice

- 18. (1)** The Commission may give a person a notice under this section if—
- (a) the person is or has been the subject of an investigation; and
  - (b) the Commission is satisfied that the person has committed an unlawful act.

- (2)** A notice must specify—
- (a) the unlawful act; and
  - (b) the provision of Part 2 of Chapter 1 of the Constitution or relevant enactment by virtue of which the act is unlawful.

- (3)** A notice must inform the recipient of the terms of subsection (5).

- (4)** A notice may—
- (a) require the person to whom the notice is given to prepare an action plan for the purpose of avoiding repetition or continuation of the unlawful act;
  - (b) recommend action to be taken by the person for that purpose.

**(5)** A person who is given a notice may, within 6 weeks after the notice is given, appeal to the Court on the grounds—

- (a) that the person has not committed the unlawful act specified in the notice; or
- (b) that a requirement for the preparation of an action plan imposed under subsection (4)(a) is unreasonable.

- (6)** On an appeal under subsection (5), the Court may do any of the following —

- (a) affirm a notice;
- (b) annul a notice;
- (c) vary a notice;
- (d) affirm a requirement;
- (e) annul a requirement;
- (f) vary a requirement;
- (g) make an order for costs or expenses.

### **Action plans**

**19. (1)** This section applies where a person has been given an unlawful act notice which requires the person to prepare an action plan.

**(2)** The notice must specify a time by which the person must give the Commission a first draft plan.

**(3)** After receiving a first draft plan from a person the Commission must —

- (a) approve it; or
- (b) give the person a notice which—
  - (i) states that the draft is not adequate;
  - (ii) requires the person to give the Commission a revised draft by a specified time; and
  - (iii) may make recommendations about the content of the revised draft.

**(4)** Subsection (3) applies in relation to a revised draft plan as it applies in relation to a first draft plan.

**(5)** An action plan comes into force—

- (a) if the period of 6 weeks after a first draft or revised draft is given to the Commission expires without the Commission—
  - (i) giving a notice under subsection (3)(b); or
  - (ii) applying for an order under subsection (7); or
- (b) upon the Court declining to make an order under subsection (7) in relation to a first or revised draft of the plan.

**(6)** A Court may make an order in terms of subsection (7).

**(7)** The Commission may apply to the Court—

- (a) for an order requiring a person to give the Commission a first draft action plan by a time specified in the order;
- (b) for an order requiring a person who has given the Commission a revised draft action plan to prepare and give to the Commission a further revised draft action plan—
  - (i) by a time specified in the order; and
  - (ii) in accordance with any directions about the plan's content specified in the order; or
- (c) within 5 years after the date on which an action plan prepared by a person comes into force, for an order requiring the person—
  - (i) to act in accordance with the action plan; or
  - (ii) to take specified action for a similar purpose.

**(8)** An action plan may be varied by agreement between the Commission and the person who prepared it.

**(9)** Schedule 2 applies (but omitting references to oral evidence) in relation to consideration by the Commission of the adequacy of a draft action plan as it applies in relation to the conduct of an inquiry.

**(10)** A person who, without reasonable excuse, fails to comply with an order under subsection (7) commits an offence.

Penalty: A fine of £10,000 or imprisonment for 6 months, or both.

### **Agreements**

**20. (1)** The Commission may enter into an agreement with a person under which—

- (a) the person undertakes—
  - (i) not to commit an unlawful act of a specified kind; and
  - (ii) to take, or refrain from taking, other specified action (which may include the preparation of a plan for the purpose of avoiding an unlawful act); and
- (b) the Commission undertakes not to proceed against the person under this Ordinance in respect of any previous unlawful act of the kind specified under paragraph (a)(i).

**(2)** The Commission may enter into an agreement with a person under this section only if it thinks that the person has committed an unlawful act.

**(3)** A person must not be taken to admit to the commission of an unlawful act by reason only of entering into an agreement under this section.

**(4)** An agreement under this section may—

- (a) be entered into whether or not the person is or has been the subject of an investigation;
- (b) include incidental or supplemental provision (which may include provision for termination in specified circumstances); and
- (c) be varied or terminated by agreement of the parties.

### **Applications to Court**

**21. (1)** If the Commission thinks that a person is likely to commit an unlawful act, it may apply to the Court for an injunction restraining the person from committing the act.

**(2)** Subsection (3) applies if the Commission thinks that a party to an agreement has failed to comply, or is likely not to comply, with the agreement.

**(3)** The Commission may apply to the Court for an order requiring the person to—

- (a) comply with the agreement; and
- (b) take any other action the Court specifies.

### **Enforcement powers: supplemental**

**22. (1)** For the purposes of this Ordinance, it is immaterial whether the Commission knows or suspects that a person has been or may be affected by the unlawful act.

**(2)** This Ordinance does not affect the entitlement of a person to bring proceedings under Part 2 of Chapter 1 of the Constitution or a relevant enactment.

### **Legal assistance**

**23. (1)** The Commission may assist an individual who is or may become party to legal proceedings if—

- (a) the proceedings relate or may relate, wholly or partly, to a provision of Part 2 of Chapter 1 of the Constitution or a relevant enactment; and
- (b) the individual alleges that he or she has been the victim of behaviour, contrary to such a provision.

**(2)** In giving assistance under this section the Commission may provide or arrange for the provision of—

- (a) legal advice;
- (b) legal representation;
- (c) facilities for the settlement of a dispute;
- (d) any other form of assistance.

**(3)** This section is without prejudice to the effect of any restriction imposed, in respect of representation—

- (a) by virtue of any enactment; or
- (b) in accordance with the practice of the Court, or of a tribunal, commission, authority or superior court that has jurisdiction in St Helena.

### **Costs of legal assistance**

**24. (1)** This section applies if —

- (a) the Commission has assisted an individual in relation to proceedings; and
- (b) the individual becomes entitled to some or all of his or her costs in the proceedings (whether by virtue of an award or of an agreement).

**(2)** The Commission's expenses in providing the assistance—

- (a) are to be charged on sums paid to the individual by way of costs; and
- (b) may be enforced as a debt due to the Commission.

**(3)** A requirement to pay money to the Commission under subsection (2) ranks after a requirement imposed to make payment from such expenses by virtue of any other enactment.

**(4)** For the purposes of subsection (2), the Commission's expenses must be calculated in accordance with what is fair and reasonable, in particular, providing for the apportionment of expenditure incurred by the Commission—

- (a) partly for one purpose and partly for another; or
- (b) for general purposes.

### **Judicial review and other legal proceedings**

**25. (1)** The Commission may institute or intervene in legal proceedings, whether for judicial review or otherwise, if it appears to the Commission that the proceedings are relevant to a matter in connection with which the Commission has a function.

**(2)** In the course of legal proceedings for judicial review which it institutes (or in which it intervenes)—

- (a)* the Commission need not be a victim or potential victim of the unlawful act to which the proceedings relate;
- (b)* the Commission may act only if there is or would be one or more victims of the unlawful act; and
- (c)* no award of damages may be made to the Commission.

**(3)** Subsections (1) and (2) are subject to any limitation or restriction imposed by virtue of any enactment or in accordance with the practice of the Court, or of a tribunal, commission, authority or superior court that has jurisdiction in St Helena.

### **Regulations**

**26. (1)** The Governor in Council may make regulations—

- (a)* prescribing anything which by this Ordinance is to be prescribed;
- (b)* generally for the better carrying into effect of the provisions of this Ordinance.

### **Crown application**

**27.** This Ordinance applies to the Crown.

## **SCHEDULE 1**

(Section 4)

### **CONSTITUTION, PROCEEDINGS, FUNDS AND STATUS OF THE COMMISSION**

#### *Constitution*

- 1.**
  - (a)* The Governor must appoint not less than 3 individuals (excluding the Chief Executive) as members of the Commission (to be known as Commissioners).
  - (b)* The Chief Executive of the Commission appointed under paragraph 7 is a Commissioner by virtue of his or her office.
- 2.** The Governor may appoint as a Commissioner an officer of the public service, if the Governor is satisfied that the appointment would be consistent with the efficiency of the public service; but any person so appointed is deemed to have resigned as a Commissioner if he or she is elected as a member of Legislative Council.
- 3.**
  - (a)* A Commissioner holds and vacate office in accordance with the terms of his or her appointment (subject to this Schedule).
  - (b)* The appointment of a Commissioner must be expressed to be for a specified period of not less than 2 years or more than 5 years.
  - (c)* A Commissioner whose period of membership has expired may be reappointed.
  - (d)* A Commissioner may resign by notice in writing to the Governor.

- (e) The Governor may dismiss a Commissioner who is, in the opinion of the Governor, unable, unfit or unwilling to perform his or her functions.
  - (f) This paragraph does not apply to the Chief Executive, who is an employee of the Commission.
4. (a) The Governor must appoint—
- (i) a Commissioner as Chair; and
  - (ii) a Commissioner as Deputy Chair.
- (b) The Chair must—
- (i) preside over meetings of the Commission;
  - (ii) perform such functions as may be specified in the terms of his or her appointment; and
  - (iii) perform any other functions assigned to him or her by the Commission.
- (c) A Deputy Chair—
- (i) may act for the Chair when he or she is unavailable; and
  - (ii) must perform—
    - (aa) functions specified in the terms of his or her appointment; and
    - (bb) any other functions the Chair may delegate or assign to him or her.
- (d) The Chair or the Deputy Chair—
- (i) must vacate office if he or she or she ceases to be a Commissioner;
  - (ii) may resign from office by notice in writing to the Governor; and
  - (iii) otherwise, must hold and vacate office as a Commissioner in accordance with the terms of his or her appointment (and may be reappointed).
- (e) The Chief Executive may not be appointed Chair or Deputy Chair.

*Proceedings*

5. The Commission may regulate its own proceedings (subject to this Schedule).
6. At least 3 Commissioners constitute a quorum for meetings of the Commission.
7. (a) The Commission—
- (i) must appoint a Chief Executive; and
  - (ii) may appoint other staff.
- (b) A person may be appointed under item (a)(i) only with the consent of the Governor.
- (c) An appointment may be made under item (a)(ii) only if consistent with arrangements determined by the Commission and approved by the Governor as to—
- (i) numbers; and
  - (ii) terms and conditions of appointment.
8. The Commission may delegate a function to—
- (a) a Commissioner; or
  - (b) staff members.
9. (a) The Commission must for each financial year prepare a report on the performance of its functions in that year (to be known as its annual report).
- (b) An annual report must, in particular, indicate in what manner and to what extent the Commission's performance of its functions has accorded to the strategic plan.

(c) The Commission must send each annual report to the Legislative Council within 6 months after the end of the financial year to which the report relates.

**10.** The validity of proceedings of the Commission are not affected by—

- (a) a vacancy (whether for Commissioner, Chair, Deputy Chair or Chief Executive); or
- (b) a defect in relation to an appointment.

#### *Funds*

**11.** The Commission may pay to the Chair, a deputy Chair or another Commissioner and the Chief Executive such remuneration, pensions, allowances or gratuities and such travelling and other allowances as the Commission determines.

**12.** The Commission may pay sums to or in respect of a member or former member of staff by way of or in respect of—

- (a) remuneration;
- (b) allowances;
- (c) pensions;
- (d) gratuities; or
- (e) compensation for loss of employment.

**13.** The St Helena Government must pay to the Commission such sums as appear to the Legislative Council reasonably sufficient for the purpose of enabling the Commission to perform its functions.

**14.** (a) The Commission must —

- (i) keep proper accounting records; and
- (ii) prepare a statement of accounts in respect of each financial year in such form as the Financial Secretary directs.

(b) The Commission must send a copy of a statement under item (a)(ii) to the Chief Auditor.

(c) A copy of a statement must be sent under item (b) within ~~six~~ 6 months after the end of the financial year to which the statement relates.

(d) The Chief Auditor must —

- (i) examine, certify and report on a statement received under this paragraph; and
- (ii) cause the Financial Secretary to lay a copy of the statement and the Chief Auditor's report before the Legislative Council.

**15.** (a) The financial year of the Commission is the period of 12 months ending on 31st March each year.

(b) *Omitted*

#### *Status*

**16.** (a) The Commission—

- (i) is not to be regarded as the servant or agent of the Crown; or
- (ii) does not enjoy any status, immunity or privilege of the Crown.

(b) Service as a Commissioner or employee of the Commission is not employment in the St Helena Government.

**SCHEDULE 2**  
(Section 71(2))

**INQUIRIES AND INVESTIGATIONS BY THE COMMISSION**

*Introduction*

1. This Schedule applies to—
  - (a) inquiries; and
  - (b) investigations.
  
2. Before conducting an inquiry the Commission must —
  - (a) publish the terms of reference of the inquiry in a manner that the Commission thinks is likely to bring the inquiry to the attention of persons whom it concerns or who are likely to be interested in it; and
  - (b) in particular, give notice of the terms of reference to any persons specified in them.
  
3. Before conducting an investigation the Commission must —
  - (a) prepare terms of reference specifying the person to be investigated and the nature of the unlawful act which the Commission suspects;
  - (b) give the person to be investigated notice of the proposed terms of reference;
  - (c) give the person to be investigated an opportunity to make representations about the proposed terms of reference;
  - (d) consider any representations made; and
  - (e) publish the terms of reference once settled.
  
4. Paragraphs 2 and 3 apply in relation to revised terms of reference as they apply in relation to original terms of reference.

*Representations*

5.
  - (a) The Commission must make arrangements for giving persons an opportunity to make representations in relation to inquiries and investigations.
  - (b) In particular, in the course of an investigation or inquiry the Commission must give any person specified in the terms of reference an opportunity to make representations.
  
6. Arrangements under paragraph 5 may (but need not) include arrangements for oral representations.
  
7. The Commission must consider representations made in relation to an inquiry or investigation.

*Evidence*

8. In the course of an inquiry or investigation the Commission may give a notice under this paragraph to any person.
  
9.
  - (a) A notice given to a person under paragraph 8 may require the person —
    - (i) to provide information in the person's possession;

- (ii) to produce documents in the person's possession; or
  - (iii) to give oral evidence.
- (b) A notice under paragraph 8 must include provision about—
- (i) the form of information, documents or evidence;
  - (ii) timing;
  - (iii) applying to the Court under paragraph 10.
- (c) A notice under paragraph 8 may not require a person to—
- (i) provide information that is—
    - (aa) held by the St Helena Government and not required to be provided under the PAI Code;
    - (bb) prohibited from disclosure by virtue of any enactment;
    - (cc) prejudicial to national security;
    - (dd) unnecessary having regard to the purpose of the inquiry or investigation to which the notice relates; or
    - (ee) unreasonable;
  - (ii) do anything that the person could not be compelled to do in proceedings before the Court;
  - (iii) attend at a place unless the Commission undertakes to pay the expenses of the person's journey.
- 10.** (a) The recipient of a notice under paragraph 8 may apply to the Court to have the notice cancelled on the grounds that the requirement imposed by the notice is not required by virtue of paragraph 9(c).
- (b) If a notice under paragraph 8 is not cancelled in its entirety by the Court in terms of item (a) the Court may make an order under paragraph 11(b).
- 11.** (a) Item (b) applies where the Commission thinks that a person—
- (i) has failed without reasonable excuse to comply with a notice under paragraph 8; or
  - (ii) is likely to fail without reasonable excuse to comply with a notice under paragraph 8.
- (b) The Commission may apply to the Court for an order requiring a person to take any steps specified in the order to comply with the notice.
- 12.** It is an offence for a person, without reasonable excuse, to—
- (i) fail to comply with an order under paragraph 11(b);
  - (ii) falsify anything provided or produced in accordance with a notice under paragraph 8 or an order under paragraph 11(b); or
  - (iii) make a false statement in giving oral evidence in accordance with a notice under paragraph 8.

Penalty: A fine of £10,000 or imprisonment for 6 months, or both.

### *Reports*

- 13.** The Commission must publish a report of its findings on an inquiry or investigation.

### *Recommendations*

- 14.** (a) The Commission may make recommendations to any class of person—
- (i) as part of a report of an inquiry or investigation under paragraph 13; or

- (ii) in respect of a matter arising in the course of an inquiry or investigation.

*Effect of report*

**15.** A Court may have regard to a finding of the report of an inquiry or investigation, but must not treat it as conclusive.

*Courts*

**16.** An inquiry or investigation may not question (whether expressly or by necessary implication) the findings of a Court.

*Intelligence services*

- 17.** An inquiry may not consider—
- (i) whether an intelligence service has acted (or is acting) in a way which is incompatible with a relevant enactment; or
  - (ii) other matters concerning a relevant enactment in relation to an intelligence service.
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