

**PITCAIRN, HENDERSON
DUCIE & OENO ISLANDS**

No. 003 of 2013



Victoria Trendell

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

LOCAL GOVERNMENT AMENDMENT ORDINANCE 2013

DATE MADE: 06-11-2013

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An Ordinance to provide for elected officials charged with criminal offences

PART I – PRELIMINARY

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|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Short title and commencement | 1. (1) This Ordinance may be cited as the Local Government Amendment Ordinance 2013.

(2) This Ordinance shall come into operation on the first day of January 2014. |
| Principal Ordinance amended | 2. This Ordinance amends the Local Government Ordinance. |
| Island Officers | 3. Section 3(2) is repealed. |
| New section 3A | 4. A new section 3A is inserted as follows: |

Suspension
from office

“3A.– (1) If any Island Officer is charged with, or is facing charges for, an offence carrying a term of imprisonment of three months or more, he or she shall be suspended from office until:

- (a) all such charges have reached final resolution and no charge has resulted in conviction; or
- (b) the Island Officer is convicted of any such charge.

(2) If any Island Officer is subject to a recall application under s 57 of the Parole Ordinance, he or she shall be suspended from office until:

- (a) the recall order is refused under s 63(4) of that Ordinance; or
- (b) a final recall order is made under s 63(1) of that Ordinance.

(3) For the purposes of subsection (1), “final resolution” in relation to each charge means–

- (a) the withdrawal of the charge;
- (b) an acquittal;
- (c) a stay of prosecution;
- (d) a dismissal for want of prosecution; or
- (e) a conviction.

(4) An Island Officer who is suspended from office under subsection (1) or (2) is deemed to be temporarily unable to perform his or her duties, but shall be entitled to receive full payment as Island Officer for the duration of the suspension.

(5) Following suspension under subsection (1) or (2)–

- (a) if paragraph (1)(a) or (2)(a) applies, the Island Officer shall resume his or her duties as Island Officer;
- (b) if paragraph (1)(b) or (2)(b) applies, the Island Officer’s seat shall be deemed vacant unless the Governor gives a direction under subsection (6).

(6) Notwithstanding paragraph (5)(b), the Governor may, after consultation with Council, direct that an Island Officer to whom paragraph (1)(b) applies may resume his or her duties as Island Officer.

(7) For the avoidance of doubt, an appeal filed in relation to

any relevant charge does not affect the operation of this section.

LEGAL REPORT

This Ordinance amends the Local Government Ordinance in response to a Council resolution following the Child Safety Review.

Current law

Currently a person who is imprisoned or who has been sentenced to at least three months imprisonment in the last 5 years is disqualified from holding office as an Island Officer under s 14A. However, this only applies once a person has been convicted and had a sentence passed on them. A person who has charges laid against them can continue in office unless they voluntarily step down. Unlike in an employment situation, they cannot be stood down while the charges are resolved as they are elected offices and not subject to direction by an employer.

This Ordinance deals with the situation of an elected member of the Island Council facing criminal charges or an application to recall to continue serving a sentence of imprisonment.

Circumstances leading to suspension

The new section 3A(1) provides that any person facing a charge for any offence punishable by at least three months imprisonment is suspended from office, on full pay, pending the final resolution of the charge. This means he or she is unable to perform his or her duties as Island Officer during that time, and can be replaced as per the current provisions for dealing with temporary vacancies. This continues from the time charges are laid until those charges are finally resolved or the end of the Officer's elected term.

Subsection 3A(2) states that a person who is the subject of a recall application under the Parole Ordinance is similarly suspended from office on full pay, until that recall application is finally determined.

Consequences after resolution of charges

If the Island Officer is not convicted, he or she shall resume duties as normal (s 3A(5)(a)).

If he or she is convicted (regardless of the sentence imposed), his or her seat shall become vacant under subsection (5)(b). This means that the seat can be re-filled under the existing provisions of the Local Government Ordinance: if there is less than 120 days left in the term, by appointment; and if there are more than 120 days remaining, by by-election. If the person is sentenced to imprisonment for less than 3 months, or sentenced to anything other than imprisonment such as a community based sentence, they may stand again for by-election as they are not disqualified under s14A. This gives the public an opportunity to re-elect a person to the seat if their offending has been relatively minor and they maintain public confidence. Under subsection (6), the Governor also has a discretion (after consultation with Council) to direct that a person who has been convicted may continue in office despite their conviction. This allows the Governor to override the provision in situations where the offending is particularly minor and does not effect the Officer's ability to continue in office.

There are equivalent consequences for a person facing a recall application. If the application is refused, he or she shall resume duties. If a recall order is made, his or her seat shall become vacant.

Further comments

This amendment preserves the presumption of innocence by ensuring a person continues to receive full pay until the charges they are facing have been resolved. Only if they are convicted of a criminal offence punishable by at least 100 days imprisonment do they lose their seat.

Section 3(2) is repealed as it is now unnecessary due to the operation of 3A and 14A.