

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2006

CHAPTER XIV

LAND TENURE REFORM ORDINANCE

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SCHEDULE

Form of Land Allocation Title

Ordinances:
No. 7 of 2000
No. 5 of 2006

An ordinance for the reform of land tenure on Pitcairn Island

[1st August 2000]

PART I—PRELIMINARY

Citation.

1. This ordinance may be cited as the Land Tenure Reform Ordinance.

Interpretation and purposes.

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

“Annual Land Tax” means the land tax prescribed and levied in accordance with the provisions of section 9 of this ordinance;

“Court” means the Lands Court established by section 3 of the Lands Court Ordinance;

[“commercial land” means any land which is predominantly used for or is capable of use for commercial or industrial purposes which have the approval of the Island Council and of the Governor;]

(Inserted by Ordinance No. 5 of 2006)

“extended family” means those persons immediately related or living together in the same dwellinghouse;

[“former permanent resident” means a person who, on or after the commencement of the Immigration Control Ordinance, obtained the status of permanent residence in accordance with the provisions of section 12 or section 13 of that ordinance;]

(Repealed and replaced by Ordinance No. 5 of 2006)

“forestry land” means land which is used for or is capable of being used for forestry as a principal purpose;

“garden land” means land which is used for or is capable of being used for gardens;

“house land” means land which is used for or is capable of being used for residential purposes;

“orchard land” means land which is being used for or is suitable for use as orchards and includes any banana plantation;

[“permanent resident” means the status of being exempt from the provisions of the Immigration Control Ordinance 2006 by reason of paragraphs (a), (b) or (c) of subsection (1) of section 15 thereof;]

(Repealed and replaced by Ordinance No. 5 of 2006)

“private land” means all land which is not public land;

“public land” means land which is owned by or on behalf of the Island Council or any other such public

- authority upon trust for the inhabitants of the Islands for any public use or purpose including recreation;
- “reserve land” means land which has been dedicated to a public authority in perpetuity and set aside for environmental or conservation purposes or any significant potential use of public utility;
- “transfer”, in relation to an interest in land, includes every transfer *inter vivos*, whether for consideration or not, and shall be deemed to include the sub-lease of a leasehold estate;
- “trustee” means the trustee or caretaker of any land.
- (2) The objects and purposes of this ordinance are—
- (a) to promote the greatest possible availability of land for residential, agricultural, economic, cultural and conservation purposes;
- (b) to ensure that all habitable and arable land is used to the best advantage and to discourage the undue aggregation of land by imposing an annual tax on land holdings of absentee owners or those in excess of the reasonable needs of the owner and his or her family;
- (c) to secure a fair allocation of land having due regard to the interests of permanent residents of the Islands and the wish of any former residents or children or grandchildren of former residents to return and reside there permanently.

PART II—LAND COMMISSION

3.—(1) There is hereby established a Land Commission comprising the elected members of the Island Council and such other persons appointed from among the permanent residents of the Islands by order of the Governor so that each extended family shall be represented by at least one member.

Land Commission.

(2) It shall be the function and responsibility of the Land Commission to identify and establish the boundaries of all usable land on Pitcairn Island other than house land, public land and reserve land, that is to say, all garden land, orchard land and forestry land, and to cause the same to be divided into viable blocks according to the classification of the land.

(3) The Land Commission shall compile and maintain a register of the said land and shall establish marks delineating the boundaries thereof in durable and permanent form.

(4) In the exercise of its functions under subsections (2) and (3), the Land Commission may engage the services and advice of such professional experts as may assist the accurate and speedy accomplishment of its objectives.

[(5) The Chairperson of the Land Commission shall be appointed annually by a simple majority of votes of the Commission members. If only one candidate is nominated, he or she shall be deemed to be elected. If there are two or more candidates, an election by show of hands must follow. In the event of a tied result, the senior by age shall be deemed to be elected. No member of the Lands Court shall be eligible for election as the President of the Land Commission.]

(Repealed and replaced by Ordinance No. 5 of 2006)

(6) The Land Commission shall have power in the course of its duties to make recommendations to the Governor that any area of land should be dedicated to the Island Council or any other public authority in perpetuity as reserve land for use as a public utility.

[(7) (Repealed by Ordinance No. 5 of 2006)]

[(8) Upon completion of its functions under subsections (2) and (3), the Land Commission shall cause full details of its findings to be conveyed to the Registrar of the Court. The Registrar of the Court shall thereupon ensure that these are amalgamated with the previous register of house land in Adamstown made by the Ordnance Survey in 1985. The amalgamated registers shall thereupon have the force of law and shall be, subject to the grant of any leasehold interests under this ordinance, the only true and official record of the ownership and boundaries of private and public land on Pitcairn Island. The authority of the register so created by amalgamation shall not be called into question in any court in any proceedings whatever.]

(Repealed and replaced by Ordinance No. 5 of 2006)

PART III—ALLOCATION OF LAND

4.—(1) On a date to be appointed by the Governor by order, after the completion of the functions of the Land Commission under the provisions of section 3 of this ordinance (hereinafter referred to as “the suspension date”), all existing freehold title to any interest in private land in the Islands shall be deemed to be suspended and the Court shall thereafter have jurisdiction to allocate title to all land, other than public land and reserves, in accordance with applications made under the following provisions of this section.

(2) Subject to the provisions of this ordinance, all permanent residents and former permanent residents of the Islands and their children and grandchildren (having reached the age of 18 years), may apply to the Court for the allocation of land in any of the classifications of house land, garden land, orchard land and forestry land, provided that the applicant is resident

Application for
allocation of land.

at the time of application and fully intends to remain as a resident:

Provided that any person formerly resident in the Islands who prior to the commencement of this ordinance left the Islands to settle elsewhere indefinitely and who immediately prior to the suspension date is registered in the Register of Land Titles as the owner of the freehold interest in any land on Pitcairn, shall be deemed to be eligible to apply to the Court under this subsection and to be an existing owner for the purposes of subsection (4) of this section:

And provided that, upon the granting of a Land Allocation Title to any such non-resident applicant, he or she shall be deemed to be a landowner who has left the Islands to settle elsewhere indefinitely with effect from the date of the said grant, for the purposes of section 8 of this ordinance.

(3) In considering any application or any competing applications, the Court shall have regard to the following factors—

- the reasonable needs for the sustenance of the applicant and his or her family;
- the capability of the applicant to hold and manage the land concerned in a profitable manner;
- the economy and export trade of the Islands;
- the historical association of the applicant and the forebears of the applicant with the land concerned.

(4) The Court shall not have power to refuse an application for the grant of a Land Allocation Title made by an existing owner of a suspended interest in that land.

(5) The grant of any application for a Land Allocation Title which in the opinion of the Court is superfluous to the reasonable needs of the applicant shall be subject to payment of Annual Land Tax.

(6) In the case of an application for the grant of a Land Allocation Title by a former resident of the Islands, or child or grandchild of a former resident, with respect to a parcel of land not claimed by the existing owner of a suspended interest therein, there shall be a presumption in favour of granting the application, subject to the requirement that for a period of three years after the date of issue of the Land Allocation Title the applicant shall personally reside, or in the case of agricultural or commercial land, work on the said land.

(7) For the purposes of this section, a person registered immediately before the suspension date as trustee of any land on behalf of the estate of a deceased person, in respect of which land there is no claim or pending claim by any person purporting to have a beneficial interest therein, shall be deemed

to be the owner of such land.

(8) Upon the granting of an application, the suspended ownership of the applicant, if any, shall be thereby extinguished and a new title, to be known as a Land Allocation Title, shall be inscribed in the appropriate register in favour of the applicant forthwith.

Nature of title.

5.—[(1) Every Land Allocation Title shall create a leasehold estate in the land affected, to be held, without consideration of rent, from the Island Council as lessor, for the following terms

- house land— for the lifetime of the applicant and the spouse and dependents of the applicant
- garden land— for terms of five years renewable as of right during the life of the applicant
- orchard land— for the life of the orchard
- forestry land— for the life of the forest
- commercial land— for a term of twenty years:

Provided that every Land Allocation Title shall be in the form of a grant of the leasehold estate in the land affected and shall so far as practicable be in the terms set out in the Schedule. The lease shall provide for such appurtenances, encumbrances and Notes as the Lands Court shall direct at the time of issue or subsequently. The lease document shall be prepared in duplicate, sealed with the seal of the Court and signed by the President and the Registrar. One copy shall be issued to the lessee owner and the other retained by the Registrar of the Court. Notes included by the Court at the time of issue or subsequently may state the substance of conditions and shall be binding upon the lessee and any third party until they are amended or terminated at the direction of the Court. Any such Note may make special provision for rights of access to and gathering produce from any tree or trees existing on the land prior to the grant of the leasehold interest to a succeeding owner.

(2) The amalgamated register of leasehold land titles shall, together with all other land titles, be recorded by the President and the Registrar of the Lands Court in three copies in electronic form. The first and principal copy shall be held in the Governor's Office in Wellington and the second and third in the offices of the Registrar of the Lands Court and the Island Commissioner respectively.

(3) Every lessee shall be entitled to a printed copy of his or her Land Allocation Title and other adjacent leasehold titles free of charge. Copies of the whole register may be obtained

on payment of such fee as the President of the Court may determine and the proceeds of such sale shall be paid to the Island revenue.]

(Repealed and replaced by Ordinance No. 5 of 2006)

6. The following covenants shall be implied in every leasehold estate in land arising from the grant of a Land Allocation Title—

Implied covenants in leasehold estates.

- (a) on the part of the grantee—
 - (i) not to part with the possession of, assign, transfer or otherwise alienate the land or any part thereof the subject of the leasehold estate without the consent in writing of the Council previously obtained and the approval of the Lands Court;
 - (ii) in the case of agricultural land, to farm, cultivate and manage the land in a good and husbandlike manner and to keep the same clean and free from weeds;
 - (iii) in the case of house land, to keep the land the subject of the lease and all buildings and improvements erected on it clean and in good repair, accidents from fire, storm and tempest and reasonable wear and tear excepted, and to comply with the provisions of any ordinance for the time being in force and all other lawful orders in respect of such land or buildings under the provisions of any such ordinance;
 - (iv) on the surrender or termination of the leasehold estate, to yield up the land and all buildings and improvements erected thereon in such state of cultivation, repair and management as shall be in compliance with the covenants in subparagraphs (ii) and (iii) hereof;
 - (v) to permit the Council by its duly authorised agents at all reasonable times during the continuance of the leasehold estate, upon giving to the grantee not less than two days' notice in writing, to enter upon the land and view the condition and state of maintenance thereof and in the case of agricultural land for all other reasonable purposes connected with the proper use and cultivation thereof;
 - (vi) if the Council shall serve upon the grantee notice in writing of any default by the grantee

- in the fulfilment or performance of any of the covenants therein, to remedy such default within the time stated in such notice, in any event being not less than one month after the date of service of such notice on the grantee;
- (b) on the part of the Council, upon the grantee performing and observing all of the covenants and conditions implied in the leasehold estate, to permit the grantee peaceably and quietly to hold and enjoy the land the subject of the leasehold estate without any disturbance or interruption by the Council or by any person claiming from, under, on behalf of or in trust for the Council.

Termination of leasehold estate and compensation for improvements.

7.—(1) Any leasehold estate in land arising from the grant of a Land Allocation Title may be terminated—

- (a) on the application of the grantee—
- (i) if the grantee has given not less than one month's notice in writing to the Council of the desire and intention of the grantee to yield up possession of the land and voluntarily to surrender the leasehold interest therein to the Council as reversioner;
 - (ii) if the Council commits any default not capable of being remedied in the fulfilment or performance of any covenant or condition on its part to be fulfilled or performed; or
- (b) on the application of the Council—
- (i) upon the reaching of a decision to such effect by the Court under the provisions of section 8(a)(iii) of this ordinance; or
 - (ii) if the grantee makes any default capable of being remedied in the fulfilment or performance of any of the covenants or conditions on the part of the grantee to be fulfilled or performed and such default continues for a period of six months or longer or, in the case of any default in respect of which notice has been given under the provisions of section 6(a)(vi) of this ordinance, if the default has not been remedied within the time specified in such notice;
 - (iii) if the grantee makes any default not capable of being remedied in the fulfilment or performance of any of the covenants or conditions on the part of the grantee to be

fulfilled or performed and the Council has given not less than three months' notice in writing to the grantee to apply to the Court for the termination of the leasehold interest of the grantee in the land.

PART IV—ABSENTEE LANDOWNERS

8. If any person holding an interest in land by virtue of a Land Allocation Title shall leave the Islands to settle elsewhere indefinitely, the said interest in land shall become subject to the following provisions—

Departure of owner from Islands after allocation.

- (a) house land— (i) the land shall be held in trust for the owner, provided that the dwelling is maintained in a habitable state and the land is kept clear;
 - (ii) Annual Land Tax shall be payable by the owner in accordance with the standard rate with effect from the date of departure from the Islands and shall be paid to the Registrar of the Court by 31 December in each year;
 - (iii) the Court shall review each trusteeship annually to decide whether the dwelling has been kept habitable and the land kept clear and upon the Court reaching a decision that the said condition has not been met, the estate of the owner shall revert to the Island Council pending further allocation by the Court.
- (b) garden land—the estate shall revert to the Island Council twelve months from the date of departure of the owner.
- (c) orchard land and forestry land—the estate shall be held on trust for the owner until a date 10 years after the departure of the owner, when by operation of law it shall become the property of the trustee at that time.

PART V—ANNUAL LAND TAX

9.—(1) There shall be for the purposes of this ordinance a tax to be known as the Annual Land Tax of which the standard rate shall be prescribed by the President of the Court with the approval of the Governor and which shall be reviewed and may be confirmed or varied in like manner thereafter at intervals of twelve months.

Annual Land Tax.

[Provided that for the first period of twelve months after the suspension date the following rates will apply

Land owned by resident grantee—30c per square metre
 Land owned by absentee grantee—50c per square metre]
(Amended by Ordinance No. 5 of 2006)

(2) If any Annual Land Tax has not been paid by 31 December of the year for which it is due, a notice in writing shall be thereupon sent to the owner at his or her last known address warning that in default of payment of the tax within 6 months from the date of such notice, the ownership of the land will be forfeited to the Island Council in accordance with the following provisions of this section.

(3) Upon the expiry of the period of 6 months prescribed in subsection (2), the outstanding tax not having been received, the estate of the owner in the land shall without further act or assurance revert to the Island Council and the Register of Land Titles shall be inscribed accordingly.

(4) In any case in which the estate of an owner in any land has been forfeited to the Island Council as provided in subsection (3), the owner shall be then entitled to remove any building or buildings or to harvest any garden crop or fruit, or to remove any bush or tree planted by the owner, from the said land within a further period of 6 months from the date of forfeiture, any other rule or provision of law notwithstanding, and to enter upon the land for that purpose and, failing such removal or harvest within that period, to receive a payment from the next succeeding owner as compensation for the value thereof as the same shall be assessed by the Court.

(5) Immediately upon the forfeiture of any land under the provisions of subsection (3), the Registrar of the Court shall send to the former owner at his or her last known address a notice in writing setting out clearly his or her rights of removal of any building or harvest of any crop or of receiving compensation therefor as provided by subsection (4).

(6) The quantum of compensation assessed by the Court may be reviewed by the Supreme Court of its own motion or on the application of the former owner or the next succeeding owner of the land in question.

PART VI—MISCELLANEOUS PROVISIONS

10. For the avoidance of doubt, no compensation shall be payable to any person for the extinguishment of a freehold estate in land held immediately before the suspension date and its replacement by a leasehold estate.

11.—(1) It shall be unlawful to enter into an agreement for, and the Court shall have no jurisdiction to approve, the transfer *inter vivos* of any interest in land to a person who is

No compensation payable for loss of freehold estate.

Prohibition of acquisition of land by non-residents.

not a permanent resident of the Islands.

(2) Nothing in subsection (1) shall be so construed as to prevent the transmission of an interest in land, whether by will or intestate succession, to any descendant of the owner or any other person entitled under the provisions of this ordinance to own land in the Islands, whether permanently resident in the Islands or not.

12. It shall be unlawful to enter into an agreement for the mortgage, charge or sublease of any leasehold estate in land.

Prohibition of mortgage, charge or sublease.

13.—(1) Every decision of the Court under the provisions of this ordinance shall be subject to review by the Supreme Court in its civil jurisdiction on the application of any person having an interest therein made in writing within three calendar months after the date of such decision, or of its own motion.

Review of decisions by Supreme Court.

(2) The Registrar of the Court shall send written particulars of every such decision to the Registrar of the Supreme Court as soon as practicable after the making thereof.

(3) The Supreme Court shall review the said decision in accordance with procedure prescribed by rules of Court.

(4) The Supreme Court shall have power to make such further enquiries or to hear such additional evidence or submissions as it may think fit and may confirm or quash such decision or remit the same to the Lands Court for reconsideration.

SCHEDULE

Pitcairn, Henderson, Ducie and Oeno Islands

Land Allocation Title

Pursuant to Section 4(8) of the Land Tenure Reform Ordinance 2001, **Allotment** , being square metres more or less, situated at, , is hereby leased to

This Land Allocation Title is for the purpose of land. The term of this Land Allocation Title is as set out in Section 5(1) of the Land Tenure Reform Ordinance 2001.

Appurtenances:

Encumbrances:

Notes:

Date of grant:

Signed: Registrar, Lands Court President, Lands Court

(See plan of land annexed hereto)]

(Schedule added by Ordinance No. 5 of 2006)

**PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS**

LAND TENURE REFORM ORDINANCE

NOTICE OF APPOINTMENT OF SUSPENSION DATE

In exercise of the power conferred by subsection (1) of section 4 of the Land Tenure Reform Ordinance 2000 (cap.14)

I hereby appoint the 1st day of December 2006 as “the suspension date” being the date on which all existing freehold title to any interest in private land in the Islands shall be deemed to be suspended for the purposes of that ordinance.

Dated the 31st day of October 2006

Governor

