

PITCAIRN, HENDERSON

DUCIE & OENO ISLANDS

No 004 of 2014



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

#### DEFINITION OF CHILD ORDINANCE 2014

DATE MADE: 08 MAY 2014

Date Published: 26 MAY 2014

An Ordinance to amend the definition of 'child' to bring Pitcairn law into line with international conventions

#### PART I – PRELIMINARY

Short title and commencement

1. This Ordinance may be cited as the Definition of Child Ordinance 2014 and shall come into operation on the day after it is published.

Definition of child

2. The definition of "child" in—  
(a) the Interpretation and General Clauses Ordinance; and  
(b) the Children Ordinance;

is repealed and replaced with the following definition:

““child” means a person under the age of 18 years”

## LEGAL REPORT

This amendment changes the definition of child from a person under 16 to a person under 18, to comply with the definition of child given the Convention on the Abolition of the Worst Forms of Child Labour (ILO 182). This is also the age of a ‘child’ according to other key international treaties such as the Convention on the Rights of the Child (UNCROC). Therefore, rather than specifying a higher age for a child only for the laws that provide the protections required under ILO 182, this amendment more broadly raises the age of a child under all Pitcairn law. This means that *unless otherwise specified*, where a ‘child’ is referred to in Pitcairn law, it includes all persons under 18.

Because many of the existing references to children in Pitcairn law already specify the age of person they refer to, this does not affect many of the current provisions. The current references to child in the Pitcairn laws (other than those directly amended by this law) are detailed in the table below. The amendment does mean that any future laws referring to ‘child’ or ‘children’ will apply to all persons under 18, unless the law explicitly applies to a different age group.

<b>Ordinance</b>	<b>Section</b>	<b>Content</b>	<b>Effect of amendment</b>
Justice	5	Island Magistrate has jurisdiction “to hear and determine any proceedings concerning the care or protection of a child”	Not directly affected – the circumstances under which a person can bring proceedings are defined by other laws.
	13, 70B, 70C	Provide laws around when a witness can be sworn and can give evidence. Special provisions apply to children under 14.	Law prevents a child under 14 swearing an oath. The other provisions apply to persons of all ages. Not affected.
	35	Limits punishments that can be imposed on children to a fine of \$5, unless otherwise specified.	This means that this limit is also applied to 16 and 17 year olds. It may be appropriate to raise this fine for all children.
	71, 72, 77	Allows for maintenance orders to be made in relation to	Section 77 specifies that maintenance orders in respect of children cease to

		children (ss 71, 72).	have effect once the child reaches the age of 16. This is consistent with support while the child is school aged. Not affected.
Summary Offences Ordinance	15	Creates an offence for leaving a child without supervision	Specifically limited to only children under the age of 14, so not affected.
	23	Creates an offence for failing to ensure a child's attendance at school	Specifically limited to children under the age of 16, so no affected.
Prisons Ordinance	17	Provides for a female prisoner to nurse or tend her "infant child"	Only applies to "infant child" requiring nursing, so not affected.
Local Government Ordinance	7(2)(g)	Island Council can make regulations about the care of children	No direct effect.
Immigration Control Ordinance	2, 9, 12	Immigration criteria that relate to a person's 'dependants', which is defined as including "a child, step-child, adopted child...if the dependant is wholly or substantially dependant upon that person". In order to get a long term or business visa, a person must have sufficient funds to support him or herself and any dependants (s 9). Dependant children of a Pitcairn resident are also able to apply for permanent settlement (s 12)	In the context of this Ordinance, the important feature is dependency rather than age, and 'dependants' actually also includes adults such as a spouse, parent or grandparent. Thus, in this context 'child' relates to the person's relationship with the applicant, rather than the age of the person. It will only include 16 and 17 year olds if they are "wholly or substantially dependant" on their parent. Therefore not affected.
Probate and	First	Division of property on	It is clear from the context

Administration Ordinance	Schedule	an intestacy, defines when a child will receive property of a deceased parent	that the use of 'child' in this Ordinance clearly relates to the relationship with the deceased, rather than the age of the person, so not affected.
Adoption of infants	2, 3	Defines 'adopted child', and outlines the rules around adoption	Section 3(2) states that an 'adopted child' is an infant authorized to be adopted, and an infant must be a person under the age of 18. This uses 'infant' rather than 'child' to limit the age groups, but is already in line with the amendment.
Births and Deaths	8, 10, 12, 13	Provides rules around registering the birth of a child.	Registration of birth must be done within 2 months of the birth, so this is not affected by the change in the upper age of child.
Marriage Ordinance	1, 50(3), 56, 57	On determining an application for an occupation order (s 50), or on granting an order dissolving a marriage (s 57), the Court must have regard to the interests of any children of the marriage. The Court also has the power to "make such orders as are required by the circumstances for the maintenance of any spouse and the maintenance, care and custody of any children of the marriage.	The amendment will mean that a Court must consider the interests and the arrangements in place for children up to the age of 18, rather than up to the age of 16. The Court must look at the arrangements that are in place in the particular context, and the age of the child would be taken into account.
Post Office	40	States that while mail may be delivered to a	Specifies that it applies to "young children", so will

Ordinance		family member of the addressee, this does not include “young children”	not be affected by a change to the upper age of child.
Social Welfare Ordinance	5	A widow is eligible for the grant of a widow’s benefit regardless of her age if she has any “dependant child residing with and supported by her”	As a result of the amendment this will be able to include a widow who has a dependant child up to the age of 18, but still only if they are residing with the mother and supported by her.
	6	The parents or guardians of a child may be eligible to receive a child benefit.	Specifically only applies to a child under the age of 16, or up to 18 years if they are still at school. Therefore not affected.
Evidence Ordinance	8	Special protections available for a ‘child witness’ in a criminal case	Sections 8 and 3(1)(a) defines a ‘child witness’ as a person under the age of 17. There is also the ability in s 4 to take into account the age of the witness (whether or not a child) in determining whether a witness is eligible for assistance. Not affected.
Parole Ordinance	38	A person can be given compassionate release on the grounds that they have given birth to a child	Not affected by a change to the upper age of child
Bail	5, 26, 32	These sections refer to the offence of ‘assault against a child’ but do not affect the definition of that offence.	Not directly affected as refer to an offence existing elsewhere in law.
	13	Provides rules for the granting of bail for	Specifies which age group is referred to for each rule,

		persons of certain ages.	so not affected.
Children Ordinance	all	<p>The amendment has the most effect on this Ordinance. In sections 10A and 10B it extends the protection related to labour to 16 and 17 year olds, which brings the legislation into line with ILO 182. However, it also extends the other protective provisions in the Ordinance to include 16 and 17 year olds, so that, for example, a person with the care or custody of a 17 year old could be held liable for ill-treating or neglecting them (s 6), and a Magistrate can issue a warrant for the removal of a 16 or 17 year old if they have cause to suspect that person is being neglected or abused (s 11), or make an order placing that person under the supervision of the Children's Officer (s 14). This result in the slight anomaly that s 6 specifies that any person 17 years or older can be liable for abuse of a child, even though the definition of child has been extended to include 17 year olds. However, a 17 year old can only be liable under that section if they have the custody, charge or care of the relevant child, and this would usually only be the case if the child was substantially younger. Alternatively this could be changed so that only adults (18 years or older) can be liable under this section.</p>	
Right of Abode Ordinance	2(6)	Guarantees the right of abode to a child, stepchild or adopted child of a person who has the right of abode in Pitcairn	Specifically applies to all children under 18, so already in line with amendment.
Sexual Offences (Notification and Prevention) Ordinance	31(2), 32	A police officer may apply for a Risk of Sexual Harm Order in respect of a person who has done certain acts, including various sexual activities in the presence of a child or involving a child.	Section 32 specifies that a child in the context of section 31 means a person under 16, so not affected.
Coroners	2	Immediate family in relation to Coroner's	It is clear from the context that this use of 'child'

		investigations includes a child or step child of the dead person	refers to the relationship to the dead person, and not the age of the person. Not affected.
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