PITCAIRN, HENDERSON

DUCIE & OENO ISLANDS **No 2 of 2025**

Enacted by the Governor of the Islands

of Pitcairn, Henderson, Ducie and Oeno

JUSTICE (PERSONS OF UNSOUND MIND) AMENDMENT ORDINANCE

Ian T

DATE MADE: 9 Sept. 2025

DATE PUBLISHED: 9 Sept 2025 (Pitcairn)

An Ordinance to repeal the provisions of the Justice Ordinance relating to persons of unsound mind

Short title and commencement

1. This Ordinance may be cited as the Justice (Persons of Unsound Mind) Amendment Ordinance and shall come into force on the day after it is published.

Repeal of s 5(1)(a)(v) and s 75

2. Sections 5(1)(a)(v) and 75 of the Justice Ordinance are repealed.

Justice (Persons of Unsound Mind) Amendment Ordinance 2025

Explanatory Note and Legal Report

This Ordinance repeals provisions of the Justice Ordinance which give the Island Magistrate powers to make certain orders in relation to persons of "unsound mind".

Section 75 of the Justice Ordinance currently provides for the Island Magistrate to hold an inquiry to determine whether a person "is or is not of unsound mind and incapable of managing his or her personal welfare and property". If the Island Magistrate determines that the person is of unsound mind, they can order the detention of the person in any place, and/or appoint a welfare guardian or guardian of the estate of that person. It is not specified what powers a welfare guardian would have in relation to the person. The court can, on application, hold another inquiry to determine if "such unsoundness of mind has ceased", and if so, set aside all previous orders.

These provisions, which have remained essentially unchanged in Pitcairn for over 50 years, are no longer fit for purpose. They conflate concepts of mental capacity and mental disorder, and provide for a binary concept of either being "unsound" or not, in a way that is now outdated. Knowledge and understanding of mental capacity, mental disorders, and the rights of those with impairments on mental capacity for any reason, have evolved significantly over recent decades. In addition, the current provisions have not been reviewed or updated since the introduction of the Pitcairn Constitution, with its explicit protections for human rights.[1] There is a risk that the current provisions could be overturned as being inconsistent with the Pitcairn Constitution.

In contrast, the UK now has sophisticated modern legislation that provide for courts to make specific orders in cases involving mental capacity or mental disorder, including protection of vulnerable adults. This legislation - the Mental Capacity Act 2005 and Mental Health Act 1983 (as amended by the 2007 Act), is also supplemented by the inherent jurisdiction of the High Court. The rights of affected individuals under each jurisdiction are safeguarded. For example, the Mental Capacity Act creates a Court of Protection which can, among other things, make orders relating to a person's welfare or property, and appoint a "deputy" to make decisions on a person's behalf in relation to specific matters. It recognises that a person may have capacity to make some decisions and not others, and that capacity can come and go over time. The UK also recognises the ongoing inherent jurisdiction of the High Court to make orders for the protection of vulnerable adults to whom the Mental Capacity Act does not apply.[2] The UK legislation and the High Court's inherent jurisdiction have been applied in the modern human rights framework. However the applicability of this law in Pitcairn would be subject to the existing provision under the Justice Ordinance.

---

1 Including, for example, the rights to human dignity, physical and mental integrity, (including respect for free and informed choice for medical treatment), liberty and security of the person, respect for private and family life, along with the prohibitions on inhuman or degrading treatment, and discrimination on the ground of disability.

2 See for example *DL v A Local Authority and others* [2012] EWCA Civ 253, [2012] 3 All ER 1064.

Powers under the current Pitcairn legislation have not been exercised for at least the last 20 years. However, there is an increasing likelihood that families may need to consider making application to the court for appropriate orders to aid in decision-making on behalf of people without capacity, either because of age or intellectual disability.

This Ordinance repeals the existing Pitcairn law on this subject, but does not attempt to replace it with full local legislation. Rather, in the absence of local legislation, Pitcairn can rely on the operation of s 42 of the Constitution to allow the relevant UK statutes and common law to be applied – construed with necessary modifications, including as to the relevant court – in Pitcairn. This will allow relevant applications to be made to the Pitcairn Supreme Court for determination, either in accordance with the applied UK legislation or the inherent jurisdiction of that court.

Consistency with the Constitution

In my opinion this Ordinance is consistent with the Constitution. The repeal of this section removes a provision that, in my opinion, is at risk of being or being applied in a way that is contrary to the Constitution, and particularly the recognition of rights including the right to physical and mental integrity (including respect for free and informed consent to medical treatment), right to human dignity, and right to respect for private and family life.

The UK statutory and common law framework, in contrast, has been developed and applied against the backdrop of rights materially identical to those that are protected in the Pitcairn Constitution and to which Pitcairn courts must have regard. Repealing this provision clears the way for the application of that UK law of general application in Pitcairn under s 42 of the Constitution.

Danielle Kelly
Attorney General of Pitcairn
5 August 2025