



TRISTAN DA CUNHA

REVISED EDITION OF THE LAWS, 2017

LAND OWNERSHIP AND USE

LAND ADJUDICATION (TRISTAN DA CUNHA) ORDINANCE, 1997¹

Ordinance T8 of 1997

In force 31 October 1997

No amendments to 1 November 2017

No subsidiary legislation to 1 November 201 (but see Note 2)

LAND ADJUDICATION (TRISTAN DA CUNHA) ORDINANCE, 1997

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¹ 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 provide for the adjudication of rights and interest in land and for connected and incidental purposes.

PART 1 PRELIMINARY AND APPLICATION

Short title

1. This Ordinance may be cited as the Land Adjudication (Tristan da Cunha) Ordinance, 1997.

Interpretation

2. (1) In this Ordinance, except where the context otherwise requires—
“adjudication area” means an area to which this Ordinance has been applied under section 3;
“Adjudication Officer” means the Adjudication Officer appointed under section 4;
“adjudication record” means the adjudication record prepared in accordance with section 18 in respect of an adjudication section;

“adjudication section” means an adjudication section declared under section 5;

“court” means the St Helena Supreme Court;

“demarcation map” means a demarcation index map prepared under section 13 in respect of an adjudication section;

“Demarcation Officer” means a Demarcation Officer appointed under section 4;

“guardian” means any person responsible for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

“interest in land” includes any right or interest in or over land which is capable of being recorded under the provisions of this Ordinance;

“land” includes land covered with water, all things growing on land, buildings and other things permanently affixed to land;

“parcel” means a piece of land separately shown on the demarcation map and given a number;

“Recording Officer” means a Recording Officer appointed under section 4;

“Survey Officer” means a Survey Officer appointed under section 4.

Application

3. (1) The Governor may by order declare that it is intended to effect the adjudication and registration of rights and interests in land within an area defined in the order².

(2) The Governor may by order amend or revoke any order made under this section.

(3) Every order made under this section must be published in the *Gazette* and copies of it must be prominently displayed on appropriate notice boards in Tristan da Cunha.

PART 2 OFFICERS

Appointment and general powers of officers

4. (1) On or after publication of an order made under section 3, the Governor must appoint an Adjudication Officer for the adjudication area, and the Adjudication Officer may appoint such Demarcation Officers, Recording Officers and Survey Officers as are necessary for performing the duties and exercising the powers imposed and conferred upon them by this Ordinance.

(2) The Adjudication Officer is in charge of the adjudication and may issue any general or special directions he or she thinks necessary to the officers appointed under subsection (1), and may himself or herself perform and exercise all or any of the duties and powers given under this Ordinance to the officers so appointed.

(3) The Adjudication Officer is competent to administer oaths and take affidavits in any enquiry made by him or her and to issue summonses, notices or orders requiring the

² By Legal Notice T1/1997, the Governor ordered that the whole Island of Tristan da Cunha was defined as an adjudication area

attendance of any persons or production of any documents that he or she considers necessary for carrying out the adjudication.

(4) A Demarcation Officer or Survey Officer may at any reasonable time enter upon any land within the adjudication area for the purposes of demarcating or surveying any parcel in it and may summon any person who can give information regarding the boundaries of any such parcel to point out the boundaries.

PART 3 CLAIMS AND DEMARCATION

Adjudication sections

5. The Adjudication Officer may divide the adjudication area into 2 or more adjudication sections or declare the whole area to be a single adjudication section, and must give each adjudication section a distinctive name.

Notice by Adjudication Officer

6. (1) The Adjudication Officer must prepare a separate notice in respect of each adjudication section, and in each such notice must—

- (a) specify as nearly as possible the situation and limits of the adjudication section;
- (b) declare that all interests in land will be ascertained and recorded in accordance with the provisions of this Ordinance;
- (c) require any person who claims any interest in land within the adjudication section to make a claim either in writing or in person or by his or her agent duly authorised according to law, within the period and at the place and in the manner specified in the notice; and
- (d) require all claimants to land within the adjudication section to mark and indicate the boundaries of the land claimed in a manner and before a date required by the Demarcation Officer.

(2) The Adjudication Officer must—

- (a) cause such notices to be published at the office of the Administrator and any other offices or places within Tristan da Cunha he or she thinks fit; and
- (b) cause the substance of such notice to be made known throughout the adjudication area and elsewhere in a manner he or she considers to be most effective for the purpose of bringing it to the attention of all persons affected by it.

Staying of land suits

7. (1) Except with the consent in writing of the Adjudication Officer, no action claiming an interest in land or rights to land in an adjudication section may be begun in any civil court until proceedings under this Ordinance have been completed.

(2) Upon the application of any party interested in the subject matter of an action claiming an interest in land or rights to land in an adjudication section instituted before the

publication of the notice mentioned in section 6, the court may stay the hearing of the action and refer it to the Adjudication Officer.

Claims and attendances

8. (1) Every person claiming any land or interest in land within an adjudication section must make his or her claim in the manner and within the period fixed by the notice given under section 6.

(2) Every person whose presence is required by the Adjudication Officer, Demarcation Officer or Recording Officer, as the case may be, must attend in person or by agent at the time and place specified.

(3) If any such person fails to attend in person or by agent after written notice has been given, the demarcation, recording or other proceeding may continue in the person's absence.

Safeguarding of rights of absent persons and minors

9. (1) If the Adjudication Officer, Demarcation Officer or Recording Officer is satisfied that any person who has not made a claim has any interest in land within the adjudication section the Adjudication Officer, Demarcation Officer or Recording Officer may, in his or her discretion, proceed as if a claim had been made.

(2) If the Adjudication Officer, Demarcation Officer or Recording Officer has reason to believe that a minor has a claim to any interest in land and such minor has no person to represent him or her, the Adjudication Officer, Demarcation Officer or Recording Officer, as the case may be, must appoint a person to represent the minor and must proceed as if a claim had been made.

Notice of demarcation and recording

10. (1) Not less than 7 clear days before the demarcation of land in an adjudication section is begun, the Demarcation Officer must give notice of the intended demarcation in that section, and of the time and place at which it will begin, in a manner the Adjudication Officer considers to be most likely to bring the matter to the knowledge of the persons to be affected by the demarcation.

(2) Such notice must require every claimant to mark and indicate the boundaries of the land affected by his or her claim in the manner specified in the notice.

Indication of land claimed

11. Subject to any general or particular directions issued by the Adjudication Officer, the Demarcation Officer must within each adjudication section—

- (a)** see that the boundaries of each piece of land, which is the subject of a claim, are indicated and demarcated in accordance with the requirements of the notice given under section 10; and
- (b)** indicate or cause to be indicated the boundaries of—
 - (i)** public roads, public rights of way and other Crown Land; and

- (ii) waste or unclaimed land.

Special powers of Demarcation Officer

- 12. (1)** The Demarcation Officer may—
- (a) divide the adjudication section into blocks which must be given distinctive numbers or letters or combinations of numbers and letters;
 - (b) with the consent of the owners concerned, adjust the boundaries of any land in the adjudication section or re-allot the same to ensure the more beneficial occupation of the land or to effect a more suitable sub-division of it;
 - (c) make any reservations he or she considers necessary for the purposes of defining existing roads and paths or for the better drainage of any land;
 - (d) make a declaration of such existing rights of way over any land in the adjudication section and direct the manner in which such rights of way are to be exercised; and in such case the officer must direct that such rights of way are to be recorded in the adjudication record in respect of the dominant land and the servient land;
 - (e) award such compensation as appears to the Demarcation Officer just to any person who has suffered loss of land as the result of any adjustment of boundaries or the partition or re-allotment of any land or the declaration of any rights of way; and may make an order directing by whom such compensation shall be paid:
 Provided that any award may be the subject of a petition under section 20;
 - (f) determine the proportion in which the expenses of any partition are to be borne by the persons interested in the partition and make an order accordingly; and
 - (g) make an order as to costs not exceeding £50.

(2) An order for the payment of compensation, expenses or costs made against the owner of any land creates a debt to be charged on the land which has priority over all other debts except rates and taxes relating to the land and due to the Government.

Duties of the Survey Officer

- 13.** Subject to any general or particular directions issued by the Adjudication Officer, the duties of the Survey Officer are to—
- (a) carry out any survey work required in the execution of the adjudication process; and
 - (b) prepare or cause to be prepared a demarcation index map of the adjudication section, which must be compiled from survey data or aerial photographs on which must be shown every separate parcel of land identified by a distinguishing number, except that public roads do not need to be identified by a number.

Duties of the Recording Officer

14. The Recording Officer must consider all claims to any interest in land and, after such investigation as he or she considers necessary, must prepare in accordance with section 18 a record in respect of every parcel of land shown on the demarcation map.

Disputes

- 15. (1)** If in any case—
- (a) there is a dispute as to any boundary whether indicated to the Demarcation Officer or demarcated or readjusted by him or her, which the Demarcation Officer is unable to resolve; or
 - (b) there are 2 or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them,
- the Demarcation Officer or the Recording Officer as the case may be must refer the matter to the Adjudication Officer.

(2) The Adjudication Officer must adjudicate upon and determine any dispute referred to him or her under subsection (1), having due regard to any law which is applicable, and must make and sign a record of the proceedings.

PART 4 PRINCIPLES OF ADJUDICATION AND PREPARATION OF ADJUDICATION RECORD

Principles of adjudication, etc.

- 16. (1)** In preparing the adjudication record—
- (a) if the Recording Officer is satisfied that a person—
 - (i) is in open and peaceable possession of a parcel of land and has been in such possession, by himself or herself or his or her predecessors in title, for an interrupted period of 15 years or more; or
 - (ii) has a good documentary title to the parcel and that no other person has acquired or is in course of acquiring a title to the land under any law relating to prescription or limitation, and that the person would succeed in maintaining and defending such possession or title against any other person claiming the land or any part of it,
 the Recording Officer must record that person as the owner of the parcel and declare his or her title to be absolute;
 - (b) if the Recording Officer is satisfied that any land is entirely free from private rights, or that the rights existing in or over it do not amount to full ownership and are not such as to enable him to proceed under paragraph (c) of this subsection, the Recording Officer must record the land as Crown Land; and
 - (c) if the Recording Officer is satisfied that a person is in possession of or has a right to a parcel but is not satisfied that that person is entitled to be recorded under paragraph (a) of this subsection as the owner of the parcel with absolute title, the Recording Officer may nevertheless record that person as the owner of the parcel and declare his title to be provisional and must record—
 - (i) the date on which the possession of that person is to be considered to have begun;
 - (ii) particulars of any deed, instrument or other document by virtue of which some estate, right or interest adverse to or in derogation of the title of that person might exist; and
 - (iii) any other qualification which affects the title.

- (2) For the purpose of this section—
 - (a) a person is deemed to be in possession of land if the person does not acknowledge the title of any other person to that land and by himself or herself or his or her agent, tenant or servant, has the use of the land to the exclusion of the public;
 - (b) “good documentary title” means a title evidenced by documents which establishes that a person is entitled to land in fee simple and commencing with a grant, conveyance, assignment or mortgage which is more than 12 years old.
- (3) The Recording Officer must follow the rules laid down in section 17.

Rules to be followed in adjudication

17. (1) All waste and unoccupied land is deemed to be Crown Land until the contrary is proved.

(2) The exercise by any person of any rights in or over one or more pieces of land is not to be taken as a presumption in the person’s favour of any rights in or over any greater extent of land than that in or over which the rights are exercised.

(3) Possession or receipt of rents and profits by any person through whom a claimant derives his or her title is deemed to have been the possession or receipt of rents and profits of the claimant.

(4) If from the relationship of the parties or from other special causes it appears that the person in possession of land is or was in possession on behalf of another, that person’s possession is deemed to be or to have been the possession of that other.

(5) If 2 or more persons have rights which will entitle them to be registered as joint proprietors or proprietors in common under the Registered Land Ordinance, 1980 (SH) the Recording Officer must record such persons as joint owners or owners in common, as the case may be, and if owners in common the share of each such owner.

(6) A receipt must be given by the Recording Officer for all documents produced by a claimant and retained.

Adjudication Record

18. (1) The adjudication record consists of a form in respect of each parcel of land, which form must show—

- (a) the number and approximate area of the parcel as shown on the Demarcation Map;
- (b) either the name and description of the person entitled to be registered as the owner of the parcel with particulars of the manner in which that person acquired that parcel and of any restriction on the person’s power of dealing with it, or the fact that the parcel is Crown Land;
- (c) such particulars of any right registrable under the Registered Land Ordinance, 1980 (SH) as will enable it to be registered as a lease, mortgage, charge, easement, profit or restrictive agreement, as the case may be, affecting the parcel together with the name and description of the person entitled to the

benefit of the right and particulars of any restriction on that person's power of dealing with it;

- (d) if any person shown in the adjudication record is under a disability, whether by reason of age, unsoundness of mind or otherwise, the name of his or her guardian;
- (e) a list of the documents, if any, produced to the Recording Officer and retained by him or her for the purpose of adjudication; and
- (f) the date on which the form is completed.

(2) When completed the form must be signed by the Recording Officer and, in the case of privately owned land, must, where possible, include an acknowledgement signed by the owner of the parcel and by any person recorded under subsection (1)(c) as having an interest in the parcel that the owner and every such person accepts the record.

Notice of completion of Adjudication Record

19. When the adjudication record in respect of any adjudication section has been completed, the Adjudication Officer must sign and date a certificate to that effect and must forthwith give notice of the completion of the record and of the place or places at which it can be inspected together with the demarcation map.

PART 5 OBJECTIONS AND FINALITY

Petition against the Adjudication Record

20. The Administrator, or any person named in or affected by the adjudication record or demarcation map who considers such record or map to be inaccurate or incomplete in any respect or who is aggrieved by any act or decision of the Demarcation Officer or Survey Officer or by any entry in or omission from the adjudication record by the Recording Officer, may, within 90 days of the day upon which notice of completion of the adjudication record is published, petition the Adjudication Officer in respect of the act, decision, entry or omission concerned, and the petition must be determined by the Adjudication Officer.

Procedure in hearing petitions and disputes

21. In determining a petition under section 20 or a dispute under section 15, the Adjudication Officer must, so far as practicable, follow the procedure directed to be observed in the hearing of civil suits except that in his or her absolute discretion the Adjudication Officer may admit evidence which would not be admissible in a court of law and may use evidence adduced in any other claim or contained in any official record and may call evidence on his or her own initiative.

Correction of Adjudication Record

22. At any time before the adjudication record becomes final, the Adjudication Officer—
- (a) may correct in the record any error or omission not materially affecting the interests of any person; and

- (b) after taking such steps as he or she thinks fit to bring to the notice of every person whose interest is affected the intention to make any material alteration in the record which the Adjudication Officer considers necessary, and after giving such persons an opportunity to be heard, may make such alteration.

Finality of Adjudication Record

23. After the expiry of 90 days from the date of publication of the notice of completion of the adjudication record or on determination of all petitions presented in accordance with section 20, whichever is the later, the adjudication record, subject to the Registered Land Ordinance, 1980 (SH), 1997, becomes final. The Adjudication Officer must sign a certificate to that effect and deliver the adjudication record and the demarcation map to the Administrator³ together with all documents received by the Adjudication Officer in the process of adjudication.

Appeal

24. (1) Any person, including the Administrator, who is aggrieved by any act or decision of the Adjudication Officer and desires to question it or any part of it may within 90 days from the date of the certificate of the Adjudication Officer under section 23 or within any extended time the court, in the interests of justice, allows, may appeal to the court in the prescribed form.

(2) On an appeal under subsection (1) the court may make any order or substitute for the decision of the Adjudication Officer any decision it considers just and may under the provisions of the Registered Land Ordinance, 1980 (SH) order rectification of the register.

(3) A decision of the court on appeal under subsection (1) must be in writing and copies of it must be provided by the court to the Administrator⁴, to the appellant and to all other parties who, in the Administrator's opinion, might be affected by the appeal.

(4) Any person, including the Administrator appealing under subsection (1) must give notice to the Registrar of his or her intention to appeal and the Registrar must enter a restriction under the provisions of the Registered Land Ordinance, 1980 (SH) in every register affected by the appeal.

PART 6 MISCELLANEOUS

Fees

25. Every person who is a party to any proceedings before the Court must pay any fees in respect of the proceedings that are prescribed.

Offences

³ The Ordinance as enacted refers to the Registrar but there was no Registrar appointed for Tristan da Cunha as at 1 November 2017.

⁴ Same comment

26. A person who—
- (a) having been served with a summons issued under this Ordinance, wilfully neglects or refuses to attend pursuant to the summons, or to produce any document which the person is required to produce;
 - (b) wilfully neglects or refuses to answer upon oath or otherwise any question lawfully be put to the person by any officer; or
 - (c) without reasonable cause, wilfully neglects or refuses to mark and indicate his or her land or to assist in the demarcation of his or her land when required to do so by a Demarcation Officer,

commits an offence.

Penalty: A fine of £500.

Indemnity of officers

27. No officer referred to in this Ordinance is liable to any action or proceedings for or in respect of any act or matter in good faith done or omitted to be done in exercise or supposed exercise of the powers conferred by this Ordinance or any regulations made under it.

Regulations

28. The Governor may make regulations for the purpose of carrying into effect the provisions and purposes of this Ordinance.

Application to Crown

29. This Ordinance is binding on the Crown.
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