



ST. HELENA

## CHAPTER 25

# CRIMINAL DAMAGE ORDINANCE

### Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown [Telephone (+290) 2270; Fax (+290) 2454; email [pa.lawofficers@legalandlands.gov.sh](mailto:pa.lawofficers@legalandlands.gov.sh)]<sup>1</sup>

Visit our [LAWS page](#) to understand the St. Helena legal system and the legal status of this version of the Ordinance.

This version contains a consolidation of the following laws—

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Ordinance 8 of 1979 .. in force 16 November 1979

Amended by Ord. 8 of 2007

No Subsidiary Legislation has been made under this Ordinance

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<sup>1</sup> These contact details may change during 2011 or early in 2012. In case of difficulty, email [shgwebsite@sainthelena.gov.sh](mailto:shgwebsite@sainthelena.gov.sh) or telephone (+290) 2470.

**CHAPTER 25**  
**CRIMINAL DAMAGE ORDINANCE**

ARRANGEMENT OF SECTIONS

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**CHAPTER 25**  
**CRIMINAL DAMAGE ORDINANCE**

*(Ordinances 8 of 1979 and 8 of 2007)*

AN ORDINANCE TO MAKE PROVISION IN THE LAW OF ST. HELENA AS TO OFFENCES OF DAMAGE TO PROPERTY, AND FOR CONNECTED PURPOSES.

**Commencement**

*[16 November 1979]*

**Short title**

1. This Ordinance may be cited as the Criminal Damage Ordinance.

**Interpretation**

2. (1) In this Ordinance—  
“**mushroom**” includes any fungus;  
“**plant**” includes any shrub or tree;  
“**property**” means property of a tangible nature, whether real or personal, including money and—
  - (a) including wild creatures which have been tamed or are ordinarily kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but
  - (b) not including mushrooms growing wild on any land or flowers or fruit of a plant growing wild on any land.

This e-version of the text is not authoritative for use in court.

(2) Property shall be treated for the purposes of this Ordinance as belonging to any person—

- (a) having the custody or control of it;
- (b) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or
- (c) having a charge on it.

(3) Where property is subject to a trust, the persons to whom it belongs shall be so treated as including any person having a right to enforce the trust.

(4) Property of a corporation sole shall be so treated as belonging to the corporation notwithstanding a vacancy in the corporation.

### **Destroying or damaging property**

3. (1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

(2) A person who without lawful excuse destroys or damages any property, whether belonging to himself or another—

- (a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and
- (b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered,

shall be guilty of an offence.

(3) An offence committed under this section by destroying or damaging property by fire shall be charged as arson.

### **Threats to destroy or damage property**

4. A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out—

- (a) to destroy or damage any property belonging to that other or a third person; or
- (b) to destroy or damage his own property in a way which he knows is likely to endanger the life of that other or a third person,

shall be guilty of an offence.

### **Possessing anything with intent to destroy or damage property**

5. A person who has anything in his custody or under his control intending without lawful excuse to use it or cause or permit another to use it—

- (a) to destroy or damage any property belonging to some other person; or
- (b) to destroy or damage his own or the user's property in a way which he knows is likely to endanger the life of some other person,

shall be guilty of an offence.

### **Punishment of offences**

6. (1) A person guilty of arson under section 3 or of an offence under section 3(2) (whether arson or not) shall on conviction on indictment be liable to imprisonment for life.

(2) A person guilty of any other offence under this Ordinance shall on conviction be liable to imprisonment for a term not exceeding seven years.

(3)<sup>2</sup> Notwithstanding anything in section 16(1) of the Magistrates' Court Ordinance, Cap 10, the Magistrates' Court has jurisdiction to try an offence of arson unless it is charged under section 3(2).

**“Without lawful excuse”**

7. (1) This section applies to any offence under section 3(1) and any offence under section 4 or 5 other than one involving a threat by the person charged to destroy or damage property in a way which he knows is likely to endanger the life of another or involving an intent by the person charged to use or cause or permit the use of something in his custody or under his control so to destroy or damage property.

(2) A person charged with an offence to which this section applies shall, whether or not he would be treated for the purposes of this Ordinance as having a lawful excuse apart from this subsection, be treated for those purposes as having a lawful excuse—

- (a) if at the time of the act or acts alleged to constitute the offence he believed that the person or persons whom he believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented to it if he or they had known of the destruction or damage and its circumstances; or
- (b) if he destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section 5, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property belonging to himself or another or a right or interest in property which was or which he believed to be vested in himself or another, and at the time of the act or acts alleged to constitute the offence he believed—
  - (i) that the property, right or interest was in immediate need of protection; and
  - (ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

(3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of subsection (2) a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

(5) This section shall not be construed as casting doubt on any defence recognised by law as a defence to criminal charges.

**Search for things intended for use in committing offences of criminal damage**

8. (1) If it is made to appear by information on oath before a justice of the peace that there is reasonable cause to believe that any person has in custody or under his control or on his premises anything which there is reasonable cause to believe has been used or is intended for use without lawful excuse—

- (a) to destroy or damage property belonging to another; or
  - (b) to destroy or damage any property in a way likely to endanger the life of another,
- the justice may grant a warrant authorising any police officer to search for and seize that thing.

(2) A police officer who is authorised under this section to search premises for anything, may enter (if need be by force) and search the premises accordingly and may seize anything which he believes to have been used or to be intended to be used as aforesaid.

<sup>2</sup> Section 6(3) added by Ord. 8 of 2007

(3) The Police Force Ordinance<sup>3</sup> (Part V—Disposal of stolen or unclaimed property in custody of police) shall apply to property which has come into the possession of the police under this section as it applies to property which is in the custody of the police in the circumstances mentioned in that Ordinance.

### **Award of compensation on conviction of an offence under s. 3**

9. (1) On conviction of any person of an offence under section 3 of this Ordinance of destroying or damaging property belonging to another the court may, on application or otherwise, and on being satisfied as to the approximate cost of making good the loss of or damage to the property order him to pay to the person or any of the persons to whom the property belongs or belonged immediately before its destruction or damage such sum by way of compensation in respect of the whole or part of the loss of or damage to the property (not exceeding £2,000 in the case of the Magistrates' Court) as the court thinks fit.

(2) Any order under this section for the payment of compensation made on conviction on indictment shall be treated for the purposes of sections 128(4) and 128(5) of the Criminal Procedure Ordinance,<sup>4</sup> as an order for the restitution of property; and where by reason of the quashing by the Supreme Court of a person's conviction any such order under this section does not take effect, and on an appeal to the Court of Appeal the conviction is restored by that Court, the Court of Appeal may make any order under this section which could be made on his conviction by the court which convicted him.

(3) Any order under this section for the payment of compensation made by the Magistrates' Court shall be suspended—

- (a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against a decision of the Magistrates' Court;
- (b) where notice of appeal is given within the period so prescribed, until the determination of the appeal.

### **Evidence in connection with offences under this Ordinance**

10. A person shall not be excused, by reason that to do so may incriminate that person or the wife or husband of that person of an offence under this Ordinance—

- (a) from answering any question put to that person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or
- (b) from complying with any order made in any such proceedings,

but no statement or admission made by a person in answering a question put or complying with an order made as aforesaid shall, in proceedings for an offence under this Ordinance, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person.

### **Abolition of common law offence of arson**

11. The common law offence of arson is hereby abolished.

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<sup>3</sup> Cap 132

<sup>4</sup> Cap 23