

## SCHEDULE

### THE CONSTITUTION OF ST HELENA, ASCENSION AND TRISTAN DA CUNHA

## CHAPTER 3

### TRISTAN DA CUNHA

#### PART 2

#### FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

##### **Fundamental rights and freedoms of the individual**

**187.** Whereas every person in Tristan da Cunha is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, without distinction of any kind, such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, age, disability, birth or other status, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following—

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association;
- (c) protection for his or her private and family life, the privacy of his or her home and other property; and
- (d) protection from deprivation of property save in the public interest and on payment of fair compensation,

this Part shall afford protection to these rights and freedoms, and to related rights and freedoms, subject to the limitations contained in this Part, being limitations designed to ensure that the enjoyment of the protected rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

##### **Protection of right to life**

**188.**—(1) No person shall be deprived intentionally of his or her life.

(2) A person shall not be regarded as having been deprived of his or her life in breach of this section if he or she dies as a result of the use, to such extent and in such circumstances as are permitted by law, of force which is no more than absolutely necessary—

- (a) for the defence of any person from violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny,

or if he or she dies as a result of a lawful act of war.

##### **Protection from inhuman treatment**

**189.** No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

##### **Protection from slavery and forced labour**

**190.**—(1) No person shall be held in slavery or servitude.

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- (2) No person shall be required to perform forced or compulsory labour.
- (3) For the purposes of this section, “forced or compulsory labour” does not include—
  - (a) any labour required of a member of a disciplined force as part of his or her duties or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour that the law requires that person to perform in place of such service;
  - (b) labour required of any person while he or she is lawfully detained that is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he or she is detained;
  - (c) any labour required for the purpose of dealing with any situation arising during a period of public emergency or at a time when any other emergency or calamity threatens the well-being of the community, to the extent that the requiring of such labour is reasonably justifiable for that purpose; or
  - (d) any labour required in consequence of the sentence or order of a court.

### **Protection of right to personal liberty**

**191.**—(1) No person shall be deprived of his or her personal liberty save as may be authorised by law in any of the following cases—

- (a) as a result of his or her unfitness to plead to a criminal charge;
- (b) in execution of the sentence or order of a court, whether established for Tristan da Cunha or some other country, in respect of a criminal offence of which he or she has been convicted;
- (c) in execution of an order of a court punishing him or her for contempt of that court or of another court or of a tribunal;
- (d) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him or her by law; but no person shall be deprived of his or her liberty merely on the ground of inability to fulfil a contractual obligation;
- (e) in order to bring him or her before a court in execution of the order of a court;
- (f) on reasonable suspicion of his or her having committed or of being about to commit a criminal offence under any law;
- (g) in the case of a minor—
  - (i) under the order of a court or in order to bring him or her before a court; or
  - (ii) with the consent of the minor’s parent or guardian, for his or her education or welfare during any period ending not later than the date when the minor attains the age of majority or such lower age as may be provided by law;
- (h) in order to prevent the spread of an infectious or contagious disease;
- (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, in order to care for or treat him or her or for the protection of the community; or
- (j) in order to prevent the unlawful entry of that person into Tristan da Cunha, or to effect the expulsion, extradition or other lawful removal of that person from Tristan da Cunha, or to restrict that person while he or she is being conveyed through Tristan da Cunha in the course of his or her extradition or removal from one country to another as a wrongfully removed or retained child or as a convicted prisoner.

(2) Any person who is arrested or detained shall be informed promptly, orally and in writing, in a language that he or she understands, of the reason for his or her arrest or detention.

(3) Any person who is arrested or detained has the right, at any stage and at his or her own expense, to retain and instruct without delay a legal representative of his or her own choice, and to

communicate privately with him or her, and in the case of a minor he or she shall also be given a reasonable opportunity to communicate with his or her parent or guardian; but when the person who is arrested or detained is unable to retain a legal representative at his or her own expense and the interests of justice so require, he or she shall be permitted to be represented by, and communicate privately with, a legal representative at the public expense.

(4) Every person who is arrested shall be informed, as soon as he or she is brought to a police station or other place of custody, of his or her rights under subsection (3); and he or she shall also have the right, and shall be informed at the same time that he or she has the right, to remain silent and to have one person informed by the quickest practicable means of his or her arrest and whereabouts.

(5) The exercise of the rights of communication conferred by subsections (3) and (4) may be delayed for such reasonable time as is provided by law, to the extent that the law in question is necessary in a democratic society for the prevention and detection of criminal offences.

(6) Any person who is arrested or detained—

- (a) in order to bring him or her before a court in execution of the order of a court; or
- (b) on reasonable suspicion of his or her having committed or being about to commit a criminal offence under any law,

and who is not released, shall be brought without undue delay before a court.

(7) When a person is brought before a court in accordance with subsection (6)(b), the court, without prejudice to any further proceedings which may be brought against him or her, shall, unless there is good reason for the person's continued detention, release the person either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that the person appears at a later date for trial or for proceedings preliminary to trial.

(8) Every person who is arrested or detained shall be entitled to take proceedings by which the lawfulness of his or her detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.

(9) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation for such unlawful arrest or detention from that other person, from any person or authority on whose behalf that other person was acting or from them both; but a judge or a judicial officer, or an officer of a court or a police officer acting in pursuance of the order of a judge or a judicial officer, shall not be personally liable to pay compensation under this subsection in respect of anything done by him or her in good faith in the discharge of the functions of his or her office, and any liability to pay any such compensation shall be a liability of the Crown.

(10) For the purposes of subsection (1)(b), a person charged with a criminal offence in respect of whom a special verdict has been returned that he or she committed the act or made the omission constituting the offence but was insane at the time shall be regarded as a person who has been convicted of a criminal offence, and the detention of that person in consequence of such a finding shall be regarded as detention in execution of the order of a court.

### **Provisions to secure a fair trial**

**192.**—(1) If a person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair and public hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

- (a) shall be presumed to be innocent until he or she is proved or has pleaded guilty;
- (b) shall be informed promptly, in a language that he or she understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his or her defence;

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- (d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice or, if unable to retain a legal representative at his or her own expense and the interests of justice so require, by a legal representative at the public expense;
- (e) shall be given facilities to examine in person or by his or her legal representative the witnesses called before the court by the prosecution, and to obtain the attendance before the court and carry out the examination of witnesses to testify on his or her behalf on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand the language used at his or her trial,

and, except with his or her own free consent, the trial shall not take place in his or her absence, unless he or she so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence.

(3) When a person is tried for any criminal offence, he or she or any person authorised by him or her in that behalf shall, if he or she (the accused person) so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save upon the order of a higher court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he or she shows that he or she has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at his or her trial.

(8) Every person who has been convicted by a court of a criminal offence shall have the right to appeal to a higher court against his or her conviction or his or her sentence or both; but—

- (a) nothing contained in any law shall be held to breach this subsection—
  - (i) to the extent that it precludes an appeal by a person against his or her conviction of an offence if he or she pleaded guilty to that offence at trial; or
  - (ii) to the extent that it makes reasonable provision with respect to the grounds on which any such appeal may be made or with respect to the practice and procedure to be observed in relation to the making, hearing and disposal of any such appeal; and
- (b) this subsection shall not apply in relation to the conviction of a person by a higher court, or in relation to his or her sentence upon such conviction, if he or she was convicted by that court on an appeal against his or her acquittal by a lower court.

(9) When a person has, by a final decision of a court, been convicted of a criminal offence and, subsequently, his or her conviction has been quashed, or he or she has been pardoned, on the ground that a newly-disclosed fact shows that there has been a miscarriage of justice, he or she shall be compensated out of public funds for any punishment that he or she has suffered as a result of the conviction unless it is proved that the non-disclosure in time of that fact was wholly or partly his or her fault.

(10) For the determination of the existence or extent of his or her civil rights and obligations, every person shall have the right to a fair hearing within a reasonable time before an independent and impartial court, tribunal or other authority established by law.

(11) All proceedings for the determination of the existence or extent of any person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(12) Nothing in subsection (1) or (11) shall prevent a court or other authority from excluding from criminal or civil proceedings persons other than the parties thereto and their legal representatives, or forbidding the publication of the names of the parties or other details of the evidence or of the decision to such an extent as the court or other authority—

(a) is empowered by law to do and considers necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interim proceedings, or in the interests of the welfare of minors or the protection of the private lives of persons concerned in the proceedings; or

(b) is empowered or required by law to do in the interests of defence, public safety, public order or public morality.

(13) Nothing contained in or done under the authority of any law shall be held to breach—

(a) subsection (2)(a), to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2)(e), to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) subsection (5), to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; but any court so trying such a member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment awarded him or her under that disciplinary law.

### **Protection of right of prisoners to humane treatment**

**193.**—(1) All persons deprived of their liberty (in this section referred to as “prisoners”) shall have the right to be treated with humanity and with respect for the inherent dignity of the human person.

(2) Every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his or her status as such.

(3) Every juvenile prisoner shall be treated in a manner appropriate to his or her age and legal status and, if he or she is an unconvicted prisoner and unless he or she is earlier released, shall have any criminal proceedings against him or her pursued with the greatest possible expedition.

(4) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, or the facilities available for the detention of prisoners do not permit, or segregation would be detrimental to the well-being of a prisoner, unconvicted prisoners shall be segregated from convicted prisoners, and juvenile prisoners shall be segregated from adult prisoners.

### **Protection of freedom of movement**

**194.**—(1) A person shall not be deprived of his or her freedom of movement, that is to say, the right to move freely throughout Tristan da Cunha, the right to reside anywhere in Tristan da Cunha,

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the right to enter Tristan da Cunha, the right to leave Tristan da Cunha and immunity from expulsion from Tristan da Cunha.

(2) Any restriction on a person's freedom of movement as a result of his or her lawful detention shall not be held to breach this section.

(3) Nothing contained in or done under the authority of any law shall be held to breach this section to the extent that the law in question provides—

- (a) for restrictions on movement or residence within Tristan da Cunha or on the right to leave Tristan da Cunha of persons generally or any class of persons that are necessary in a democratic society in the interests of defence, public safety, public morality or public health;
- (b) for the imposition of restrictions, by order of a court, on the movement or residence within Tristan da Cunha of any person or on any person's right to leave Tristan da Cunha either in consequence of his or her having been found guilty of a criminal offence or for the purpose of ensuring that he or she appears before a court at a later date for trial for a criminal offence or for proceedings relating to his or her extradition or lawful removal from Tristan da Cunha;
- (c) for the imposition of restrictions on persons who do not have the right of abode in Tristan da Cunha under any law; but—
  - (i) no restriction may be imposed by virtue only of this paragraph on the right of any such person, so long as he or she is lawfully present in Tristan da Cunha, to move freely throughout Tristan da Cunha and to reside anywhere in Tristan da Cunha;
  - (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave Tristan da Cunha; and
  - (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from Tristan da Cunha unless the requirements specified in subsection (4) are satisfied;
- (d) for the imposition of restrictions on the acquisition or use by any person of land or other property in Tristan da Cunha;
- (e) for the imposition of restrictions on the movement or residence within Tristan da Cunha or on the right to leave Tristan da Cunha of any officer of the Tristan da Cunha Public Service that are reasonably required for the proper performance of his or her functions;
- (f) for the removal of a person from Tristan da Cunha to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence of which he or she has been convicted;
- (g) for the removal from Tristan da Cunha of a wrongfully removed or retained child; or
- (h) for the imposition of restrictions on the right of any person to leave Tristan da Cunha that are necessary in a democratic society in order to secure the fulfilment of any obligations imposed on that person by law.

(4) The requirements to be satisfied for the purposes of subsection (3)(c)(iii) (that is to say, before a person who does not have the right of abode in Tristan da Cunha may be expelled from Tristan da Cunha) are as follows—

- (a) the decision to expel him or her is taken in a manner and on grounds prescribed by law;
- (b) he or she has the right, save where the interests of defence, public safety or public order otherwise require—
  - (i) to have the decision to expel him or her reviewed by a competent authority prescribed by law;

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- (ii) to know the reasons for the decision to expel him or her and to submit reasons against his or her expulsion to that authority; and
- (iii) for either of those purposes, to be represented before that authority or some other person or authority designated in that behalf by that authority.

### **Protection for private and family life and for privacy of home and other property**

**195.**—(1) Every person shall have the right to respect for his or her private and family life, his or her home and his or her correspondence or other means of communication, and, except with his or her own free consent, no person shall be subjected to the search of his or her person or property or the entry by others on his or her premises.

(2) Nothing contained in or done under the authority of any law shall be held to breach this section to the extent that the law in question is necessary in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development of mineral resources, or the development or use of any other property in such a manner as to promote the public benefit;
- (b) to protect the rights and freedoms of other persons;
- (c) to enable an officer or agent of the Government of Tristan da Cunha or any public authority to enter on the premises of any person in order to inspect those premises or anything on them for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government of Tristan da Cunha or that public authority;
- (d) to authorise, for the purpose of enforcing the judgment or order of a court, the search of any person or property by order of a court or the entry upon any premises by such order; or
- (e) for the purpose of preventing or detecting breaches of the criminal, customs or immigration law.

### **Protection of right to marry, and of spouses' and children's rights**

**196.**—(1) Every man and woman of marriageable age (as determined by or under any law) shall have the right to marry and found a family.

(2) No person shall be compelled to marry, that is to say, to do so without his or her free and full consent.

(3) Nothing contained in or done under the authority of any law shall be held to breach subsection (1) to the extent that the law in question is necessary in a democratic society—

- (a) in the interests of public order, public morality or public health;
- (b) to regulate, in the public interest, the procedures and modalities of marriage; or
- (c) for the protection of the rights and freedoms of others.

(4) Spouses shall be entitled to equal rights and shall be subject to equal responsibilities as between themselves and as regards their children both during marriage and, if the marriage is dissolved, thereon and thereafter, but this equality of rights and responsibilities shall be subject to such arrangements or measures as may be agreed, or as may be ordered by a court.

(5) Every child shall have the right to such measures of protection as are required by his or her status as a minor, on the part of his or her family, society and the Government of Tristan da Cunha, and which are appropriate and proportionate to the circumstances of Tristan da Cunha.

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### **Protection of freedom of conscience**

**197.**—(1) Except with his or her own free consent, no person shall be hindered in his or her enjoyment of his or her freedom of conscience, which includes freedom of thought and of religion, freedom to change his or her religion or belief, and freedom, either alone or in community with others and either in public or in private, to manifest and propagate his or her religion or belief in worship, teaching, practice and observance.

(2) Except with his or her own free consent (or, if he or she is a minor, the consent of his or her parent or guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his or her own.

(3) No religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of any education provided by it whether or not it is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such education.

(4) No person shall be compelled to take any oath which is contrary to his or her religion or belief or to take any oath in a manner which is contrary to his or her religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to breach this section to the extent that the law in question is necessary in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the protection of the rights and freedoms of other persons, including the right of any person to observe and practise his or her religion or belief without the unsolicited intervention of adherents of any other religion or belief.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

### **Protection of right to education**

**198.**—(1) This section is without prejudice to section 197.

(2) Every child of the appropriate age, as provided by law, shall be entitled to receive primary education which shall, subject to subsection (3), be free.

(3) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless a law otherwise provides, in a private school (that is to say, a school other than one established by the Government of Tristan da Cunha or a public authority) and, in such a school, to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(4) Nothing contained in or done under the authority of any law shall be held to breach subsection (3) to the extent that the law in question is necessary in a democratic society for the purpose of making provision requiring private schools, as a condition of their being allowed to operate and on terms no more onerous than are applicable to schools established by the Government of Tristan da Cunha or a public authority, to satisfy—

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under that or any other law; and
- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed.

### **Protection of freedom of expression**

**199.**—(1) Except with his or her own free consent, no person shall be hindered in the enjoyment of his or her freedom of expression.



(2) For the purposes of this section a person's freedom of expression includes his or her freedom to hold opinions without interference, his or her freedom to receive information and ideas without interference, his or her freedom to disseminate information and ideas without interference (whether the dissemination be to the public generally or to any person or class of persons) and his or her freedom from interference with his or her correspondence or other means of communication.

(3) Nothing contained in or done under the authority of any law shall be held to breach this section to the extent that the law in question is necessary in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the protection of the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings or proceedings before any other tribunal or authority, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, posts, telegraphy, electronic communications, broadcasting or public shows; or
- (c) to impose restrictions on an officer of the Tristan da Cunha Public Service for the proper performance of his or her functions.

#### **Protection of freedom of assembly and association**

**200.**—(1) Except with his or her own free consent, no person shall be hindered in the enjoyment of his or her freedom of peaceful assembly and association, that is to say, his or her right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the promotion and protection of his or her interests.

(2) Nothing contained in or done under the authority of any law shall be held to breach this section to the extent that the law in question is necessary in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the protection of the rights and freedoms of other persons; or
- (c) to impose on officers of the Tristan da Cunha Public Service restrictions that interfere as little as is practicable with the rights and freedoms conferred by this section, for the purposes of safeguarding the impartiality of the Public Service, the discipline of the police force or of any prison service or the provision of public services that are essential to public order, public safety or public health.

#### **Protection from deprivation of property**

**201.**—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except in accordance with a law and where the following conditions are satisfied—

- (a) the taking of possession or acquisition is in the public interest; and
- (b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right to or over the property; and
- (c) provision is made by a law—
  - (i) for the prompt payment of adequate compensation; and
  - (ii) securing to any person having an interest in or right to or over the property a right of access to the Supreme Court, whether direct or on appeal from another tribunal or authority, for the determination of his or her interest or right, the legality of the taking of possession or acquisition and the amount of any compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation.

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(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he or she has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax imposed by public authority in respect of its remission) to any country of his or her choice outside Tristan da Cunha.

(3) Without prejudice to the generality of the expression “in the public interest” in subsection (1), nothing contained in or done under the authority of any law shall be held to breach this section to the extent that the law in question makes provision—

- (a) for controlling the use of any property, interest or right in accordance with the general interest; or
- (b) for taking possession of or acquiring any property, interest or right—
  - (i) as a consequence of a breach of the law;
  - (ii) to secure the payment of taxes or other like impositions; or
  - (iii) for the administration or enforcement of the law regulating the private civil rights and obligations of persons in respect of property.

#### **Protection from arbitrary deprivation of right of abode in Tristan da Cunha or of British citizenship**

**202.**—(1) No person with the right of abode in Tristan da Cunha under any law shall be arbitrarily deprived of that right, whether by legislation or otherwise.

(2) As everyone has the right to a nationality, no person shall be arbitrarily deprived of his or her British citizenship, whether by legislation or otherwise.

#### **Protection from discrimination**

**203.**—(1) Subject to subsection (4), no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsections (4) and (6), no person shall be treated in a discriminatory manner by any organ or officer of the executive or judicial branches of government or any person acting in the performance of the functions of the Tristan da Cunha Public Service or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons on any ground such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, age, disability, birth or other status.

(4) Nothing contained in or done under the authority of any law shall be held to breach this section to the extent that it has an objective and reasonable justification and there is a reasonable proportion between the provision of law in question or, as the case may be, the thing done under it and the aim which that provision or the thing done under it seeks to realise.

(5) No person shall be treated in a discriminatory manner in respect of access to any of the following places to which the general public have access, namely, shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of resort; but the proprietor of such a place has a duty to provide amenities and equipment facilitating the access of disabled persons only to the extent provided by a law.

(6) For the purposes of subsection (2), the exercise, in relation to a person, of any discretion to institute, conduct or discontinue criminal or civil proceedings in any court shall not in itself be held to breach this section.

### **Derogations from fundamental rights and freedoms under emergency powers**

**204.** Nothing contained in or done under the authority of any law shall be held to breach any of the provisions of this Part other than sections 188, 189, 190(1), 192(2)(a), 192(4), 192(5), 192(6) and 192(7) to the extent that the law in question authorises the taking during any period of public emergency of measures that are strictly required for dealing with the situation that exists in Tristan da Cunha during that period.

### **Protection of persons detained under emergency laws**

**205.**—(1) When a person is detained by virtue of a law referred to in section 204, the following provisions shall apply—

- (a) he or she shall, as soon as reasonably possible, and in any case not more than seven days after the start of his or her detention, be informed in detail, in a language that he or she understands, of the grounds upon which he or she is detained and furnished with a written statement, in a language that he or she understands or, if this is not reasonably practicable, in English, specifying those grounds in detail;
- (b) not more than fourteen days after the start of his or her detention a notification shall be published in a public place (and as soon as possible thereafter in the *Gazette*) stating that he or she has been detained and setting out the provision of law by virtue of which his or her detention is authorised;
- (c) not more than one month after the start of his or her detention and thereafter during the detention at intervals of not more than six months, his or her case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;
- (d) he or she shall be given reasonable facilities to consult a legal representative of his or her own choice (or, if he or she is unable to retain a legal representative, such person as the tribunal may approve) who shall be permitted to make representations to the tribunal appointed for the review of his or her case; and
- (e) at the hearing of his or her case by the tribunal appointed for its review he or she shall be permitted to appear in person or by a legal representative of his or her own choice or, if he or she is unable to retain a legal representative, by such person as the tribunal may approve.

(2) On any review by a tribunal of the case of a detained person in pursuance of this section, the tribunal may make recommendations concerning the necessity or expediency of continuing the detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing in subsection (1)(d) or subsection (1)(e) shall be construed as entitling a person to legal representation at the public expense, except when the interests of justice so require.

### **Enforcement of protective provisions**

**206.**—(1) If any person alleges that any of the provisions of this Part has been, is being or is likely to be breached in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a breach in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (7),

and may make such declarations and orders, issue such writs and give such directions as it considers appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Part.

(3) The Supreme Court may decline to exercise its powers under subsection (2) if it is satisfied that adequate means of redress for the breach alleged are or have been available to the person concerned under any other law.

(4) Without prejudice to the generality of subsection (2), where, in exercise of its powers under that subsection, the Supreme Court determines that one of the provisions of this Part has been breached in relation to any person, it—

- (a) may order the award to that person of such damages as the Supreme Court considers just and appropriate; or
- (b) may direct the court which made the reference to it under subsection (7) (“the referring court”) to order the award to that person of such damages as that court considers just and appropriate, within such limits (if any) as the Supreme Court declares.

(5) An award of damages may not be made in pursuance of subsection (4) in respect of the making of any law but such an award may be made in respect of anything done by any organ or officer of the executive or judicial branches of government or any person acting in the performance of the functions of the Tristan da Cunha Public Service or any public authority.

(6) Subsection (4) is without prejudice to section 191(9).

(7) If in any proceedings in a subordinate court any question arises as to the breach of any of the provisions of this Part, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless, in the opinion of the court in which the question arose, the raising of the question is merely frivolous or vexatious.

(8) If the effect of a provision of this Part is in issue in proceedings before the Supreme Court, the Court of Appeal or Her Majesty in Council, to which the Crown is not a party—

- (a) the Attorney General may intervene; and
- (b) the presiding judge must not hear and determine the proceedings until satisfied that the Attorney General has received notice of the proceedings and has had sufficient time to decide whether or not to intervene.

(9) Where any question is referred to the Supreme Court in pursuance of subsection (7), the Supreme Court shall give its decision upon the question and the referring court shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(10) An appeal shall lie as of right to the Court of Appeal from any final determination of any application or question by the Supreme Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case; but no appeal shall lie from a determination by the Supreme Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(11) The Governor may by Ordinance confer on the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred on it by this section.

(12) The Chief Justice or the President of the Court of Appeal, as the case requires, may make Rules of Court with respect to the practice and procedure—

- (a) of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this section;
  - (b) of the Supreme Court or the Court of Appeal in relation to appeals under this section from determinations of the Supreme Court or the Court of Appeal; and
  - (c) of subordinate courts in relation to references to the Supreme Court under subsection (7),
- including provisions with respect to the time within which any application, reference or appeal shall or may be made or brought.

### **Application of this Part to the members of a disciplined force**

**207.**—(1) A member of—

- (a) any police force of Tristan da Cunha;
- (b) any prison service of Tristan de Cunha;
- (c) any fire service of Tristan da Cunha; and
- (d) any naval, military or air force raised in Tristan da Cunha under the law of Tristan da Cunha,

who is charged with having committed an offence against the law of Tristan da Cunha, other than a disciplinary offence, is entitled to the full protection of this Part.

(2) A member of a force referred to in subsection (1) who is charged with having committed a disciplinary offence is entitled to the protection of sections 188, 189 and 190.

(3) If a member of a force referred to in subsection (1) has been convicted of an offence against the law of Tristan da Cunha other than a disciplinary offence, and is also convicted of a disciplinary offence arising out of the same conduct, the punishment for the first-mentioned offence must be taken into account in determining the punishment for the disciplinary offence.

(4) A member of a visiting force who is charged with having committed an offence against the law of Tristan da Cunha is entitled to the full protection of this Part.

(5) A member of a visiting force who is charged in Tristan da Cunha with having committed a disciplinary offence, including an offence against any criminal law of the sending State which, by virtue of a provision of the disciplinary law of that force, applies to that member while in Tristan da Cunha, is entitled to the protection of sections 188, 189 and 190.

(6) In this section, “sending State”, in relation to a member of a visiting force, means the country, other than Tristan da Cunha, in or under the law of which that force was raised.