

**THE BRITISH ANTARCTIC TERRITORY**  
**THE ATTORNEY GENERAL ORDINANCE 2016**


**Ordinance No. 3 of 2016**

An Ordinance to provide for the establishment of the post of Attorney General for the British Antarctic Territory, to provide the post holder with the powers and duties formerly held by the Principal Legal Adviser and to make consequential savings and amendments.

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ENACTED by the Commissioner for the British Antarctic Territory

14 March 2016

  
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Peter Hayes

Commissioner



# BRITISH ANTARCTIC TERRITORY

## Ordinance No. 3 of 2016

Short title and commencement.	1. This Ordinance may be cited as the Attorney General Ordinance 2016 and shall come into force forthwith.
Interpretation.	2. In this Ordinance, unless the contrary intention appears, "the Attorney General" means the person holding the office of Attorney General to the Commissioner constituted by section 3 and includes any person for the time being discharging the functions of that office under section 4(4) and, to the extent that a person is for the time being authorised to discharge any of those functions under section 7(4), that person.
Constitution and functions of office of Attorney General.	3. There shall be an Attorney General to the Commissioner who shall have the chief responsibility for advising the Commissioner on the legal affairs of the Government of the Territory and such other powers and duties as are conferred or imposed on him by or under this Ordinance or any other law for the time being in force in the Territory.
Appointment of Attorney General.	4. (1) The Attorney General shall be appointed by the Commissioner, by writing under his hand, and shall hold office on such terms as the Commissioner may prescribe.  (2) The Attorney General shall be a person who is entitled to practise as an advocate or a solicitor in a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or a court having jurisdiction in appeals from such a court, and who has been so entitled for not less than five years.  (3) For the purposes of subsection (2), a person shall be regarded as entitled to practise as an advocate or as a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the role of advocates or solicitors) notwithstanding that -  (a) he holds, or acts in, any office the holder of which is, by reason of his office, precluded from practising in a court; or (b) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practise.  (4) At any time when the office of Attorney General is vacant or the holder of that office is for any reason unable to perform the functions of that office, those functions shall be performed by such person, qualified for appointment as Attorney General, as the Commissioner may for the time being designate in that behalf.
Exercise of Attorney General's functions.	5. (1) Without prejudice to section 7(4), the Attorney General may exercise the functions of his office either in person (and whether within or outside the Territory) or through other persons acting under his authority:

Provided that, subject to subsection (2) and save as permitted by section 7(4), only the Attorney General in person may exercise his power to enter a *nolle prosequi* in criminal proceedings or to institute, or to authorise or consent to the institution of, civil or criminal proceedings which, under any law, may be instituted only by or with the authority or consent of the Attorney General or some department of government or other officer or authority of the Government of the Territory.

(2) Nothing in subsection (1) shall be construed as precluding the Attorney General from exercising his functions in relation to proceedings before any court through an advocate or solicitor duly qualified for that purpose and instructed by him or on his behalf.

Attorney General  
to represent  
Crown in civil  
proceedings.

6. Save as otherwise expressly provided by any law for the time being in force in the Territory, the Crown in right of the Government of the Territory shall be represented by the Attorney General on the record of all civil proceedings arising under the law of the Territory to which it is a party; and, accordingly and save as aforesaid, all such proceedings by the Crown in right of the Government of the Territory shall be instituted in the name of the Attorney General on behalf of the Crown in that right and all such proceedings against the Crown in that right shall name the Attorney General, on behalf of the Crown in that right, as the defendant.

Attorney  
General's  
functions in  
relation to  
criminal  
proceedings.

7. (1) The Attorney General shall have the like authority and powers, in relation to the institution, conduct and discontinuance of criminal proceedings arising under the law of the Territory, as are for the time being vested, under the law of England, in both the Attorney General and Director of Public Prosecutions of England.

(2) Without prejudice to the generality of subsection (1), the Attorney General shall have power in any case in which he considers it desirable so to do -

- (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed by that person;
- (b) to take over and continue any such proceedings that have been instituted or undertaken by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such proceedings instituted or undertaken by himself or any other person or authority.

(3) The powers conferred on the Attorney General by paragraphs (b) and (c) of subsection (2) shall, subject to subsection (4), be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(4) The Commissioner may, by order which shall be published in the *Gazette*, designate persons as public prosecutors, and any person for the time being so designated may, subject to any limitation expressed in the order by which he was designated and subject to such general or special directions as the Attorney General may from time to time give to him, exercise all the functions of the Attorney General in relation to the institution, conduct and discontinuance of criminal proceedings:

Provided that, except with the express authority of the Attorney General given specifically for each case in which the occasion arises, a person designated as a public prosecutor under this section may not -

- (a) enter a *nolle prosequi*; or
- (b) institute proceedings which, under any law for the time being in force in the Territory, may be instituted only by or with the authority or consent of the Attorney General or some department of government or other officer or authority of the Government of the Territory.

(5) For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings, to any other court (including the Judicial Committee of Her Majesty's Privy Council) shall be deemed to be part of those proceedings:

Provided that the power conferred on the Attorney General by subsection (2)(c) shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(6) In exercising his powers and duties in relation to the institution, conduct or discontinuance of criminal proceedings (including his power to give general or special directions to a person designated as a public prosecutor or to authorise such a person to exercise any of the functions of the Attorney General), the Attorney General shall not be subject to the direction or control of any other person or authority.

Consequential  
savings and  
amendments.

8. (1) A person who, immediately before the commencement of this Ordinance, holds the office of Principal Legal Adviser shall, as from the commencement of this Ordinance, be deemed to have been appointed to hold the office of Attorney General by the Commissioner pursuant to section 4(1) of this Ordinance, on the same terms and conditions as applied to his original appointment.

(2) The words "Attorney General" shall be substituted for the words "Principal Legal Adviser" in the sections, paragraphs and regulations of the ordinances and subsidiary legislation set out in Schedule 1 and wherever else in any ordinance or subsidiary legislation the words "Principal Legal Adviser" occur.

(3) The words "Attorney General Ordinance 2016" shall be substituted for the words "Principal Legal Adviser Ordinance 1990" in the sections, paragraphs and regulations of the ordinances and subsidiary legislation set out in Schedule 2 and wherever else in any ordinance or subsidiary legislation the words "Principal Legal Adviser Ordinance 1990" occur.

(4) The word and brackets "*(repealed)*" shall be inserted after the words "The Principal Legal Adviser Ordinance 1990 (No.8 of 1990)" at line 5, Schedule to the Existing Laws (Repeal) Ordinance 1990.

Repeal.

9. The Principal Legal Adviser Ordinance 1990 is repealed.

SCHEDULE 1	
Legislation	Section, paragraph or regulation number
The Interpretation and General Provisions Ordinance 1990	7.
The Administration of Justice Ordinance 1990	39, 42 and 42(b).
The Summary Courts (Criminal Proceedings) Ordinance 1990	28(2), Schedule paragraph 1, paragraph 2(b), (d), (f), (g), (h), (i), (j), (k) and (l).
The Crown Proceedings Ordinance 1990	2(3), 11, 12, 15(2) and 17(2).
The Postal Services Ordinance 1990	12(3).
The Imports and Exports (Control) Ordinance 1990	5.
The Customs Ordinance 1990	19(5) and 20(1).
The Firearms Ordinance 1990	8 and 9.
The Misuse of Drugs Ordinance 1990	17(5).
The Civil Aviation (Investigation of Air Accidents) Regulations 1996	Regulations 2(1), 2(2), 2(3), 14(2), 14(6), 14(8), 18(3), 18(4), 18(5), 19(1), 19(2), 19(3) and 19(8).
The Environmental Protection Ordinance 1997	19(2).

SCHEDULE 2	
Legislation	Section, paragraph or regulation number
The Interpretation and General Provisions Ordinance 1990	7.
The Crown Proceedings Ordinance 1990	11.
The Customs Ordinance 1990	19(5).
The Civil Aviation (Investigation of Air Accidents) Regulations 1996	Regulation 2(1).