

Ordinance 46 of 2020

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**CONFERRAL OF PROTOCOL FUNCTIONS ON THE
REPUBLIC ORDINANCE 2020**

An Ordinance to make provision for the conferral on officers of the Republic of Cyprus of powers and duties relating to the implementation of the Protocol relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

R. Thomson
ADMINISTRATOR

18 December 2020

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Short title and commencement

1.—(1) This Ordinance may be cited as the Conferral of Protocol Functions on the Republic Ordinance 2020.

(2) This Ordinance comes into force on 1 January 2021 at 1:00 a.m.

General interpretation

2.—(1) In this Ordinance—

“equivalent” means similar or substantially similar to;

“function” means a power or a duty;

“officer of the Areas” means a person holding a function of a public nature under the laws of the Areas, except a conferred function or a function under the Delegation of Functions to the Republic Ordinance 2007^(a);

“officer of the Republic” means a person holding a function of a public nature under the law or custom of the Republic, but does not include a court, tribunal, judge, or member of any police force or customs department (by whatever name such a force or department may be known).

(2) For the purpose of the definition of “officer of the Republic” in subsection (1), it is irrelevant whether the person concerned is—

- (a) a member of the public service of the Republic or any other state or territory,
- (b) an official body,
- (c) an incorporated body, or
- (d) any other person.

Definition of conferred function

3.—(1) In this Ordinance, “conferred function” means a function that—

- (a) relates to the implementation of the Protocol by the Republic under Article 13(3) of the Protocol, and
- (b) is designated as such by a legislative provision in the Areas by reference to this Ordinance.

(2) In this section, “Protocol” means the Protocol relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community^(b)

Scope of the authority under a conferred function

4.—(1) Subject to the other provisions of this section and section 5, an officer of the Republic who, under the laws or customs of the Republic, has, in respect of the Republic, a function equivalent to a conferred function may exercise that conferred function in respect of the Areas.

(2) An officer of the Republic may exercise a conferred function to the same extent as an equivalent officer of the Areas would be allowed to if such an officer of the Areas had been conferred the function.

(3) In the application of subsection (2), any restriction that would have prevented an officer of the Areas equivalent to the officer of the Republic referred to in subsection (1) from exercising the conferred function outside the territory of the Areas is to be disregarded.

(4) This Ordinance applies subject to any modification of any kind expressly imposed on the conferred function by the legislative provision referred to in section 3(1)(b).

Exceptions to authority under a conferred function

5.—(1) The conferral of a function does not confer on any officer of the Republic —

- (a) the power—
 - (i) to arrest or detain a person,
 - (ii) to enter or search a dwelling, or
 - (iii) to make a legislative instrument,

(a) Ordinance 17/2007, amended by Ordinance 8/2012.

(b) OJ No. L 29, 31.01.2020, p. 7.

- (b) any function in relation to—
 - (i) any property owned or occupied by the Crown in right of its Government of the United Kingdom,
 - (ii) any act or omission committed on such property,
 - (iii) the acts or omissions of a servant or agent of the Crown, acting in that capacity, or
 - (c) any function that would require the officer to enter any property owned or occupied by the Crown in right of its Government of the United Kingdom.
- (2) In subsection (1)(b)(iii), “the Crown” means the Crown—
- (a) in right of its Administration of the Areas,
 - (b) in right of its Government of the United Kingdom, and
 - (c) in any other capacity.
- (3) Except as otherwise provided by the Chief Officer under subsection (4), the conferral of a function does not confer on any officer of the Republic a power to—
- (a) use force on a person or property,
 - (b) search a person,
 - (c) obtain samples from the body of a person,
 - (d) enter or search property,
 - (e) seize or retain property or money,
 - (f) institute any proceedings for any offence, or
 - (g) impose any fine or other penalty for any offence or other contravention of any legislative provision or rule of law.
- (4) Subject to subsection (6), the Chief Officer may, expressly and in writing, provide that the conferral of a function confers a power referred to in subsection (3) on an officer or class of officers of the Republic.
- (5) The Chief Officer may impose restrictions or conditions on a provision under subsection (4).
- (6) The Chief Officer may not, under subsection (4), confer any of the functions referred to in paragraphs (a) to (c) of subsection (1).
- (7) In this section, “conferral of a function” means the designation of a function in the circumstances set out in section 3.

Jurisdiction of the courts and tribunals

6. The courts and tribunals of the Areas have the same jurisdiction and powers in relation to an act done in the exercise, or purported exercise, of a conferred function as they would have had if the function had been conferred on an officer of the Areas equivalent to the officer of the Republic having done the act.

Prescribed forms

7.—(1) This section applies where a conferring provision prescribes the use of a form in relation to a conferred function.

(2) The prescription referred to in subsection (1) is to be treated for all purposes as fulfilled if the form to which it relates is made—

- (a) in the form prescribed by or under the conferring provision;
- (b) in such form as may be prescribed by an equivalent Republican provision; or
- (c) if no such form is prescribed in an equivalent Republican provision, in the form customarily in use in the Republic for the purpose in question.

(3) In this section, “conferring provision” means the legislative provision referred to in section 3(1)(b).

Amendment of the Interpretation Ordinance 2012

8. In section 31 of the Interpretation Ordinance 2012(a)—

- (a) in the title, after “delegated functions”, insert “or conferred functions”, and
- (b) in subsection (1)(a), after “the Delegation of Functions to the Republic Ordinance 2007”, insert “or as a conferred function under the Conferral of Protocol Functions on the Republic Ordinance 2020”.

Legal proceedings

9.—(1) Where legislation of the Republic or a document issued under that legislation is relevant to the carrying out of a conferred function, a court may take judicial notice of it.

(2) For the purposes of subsection (1), the production of a copy of any legislation of the Republic—

- (a) contained in a printed collection of legislation printed and published by an authority of the Republic;
- (b) contained in an issue of the official Gazette of the Republic; or
- (c) printed by the Government Printer of the Republic,

may be held by a court to be conclusive evidence, for all purposes, of the due and lawful making of that legislation.

(3) For the purposes of subsection (1), a version of legislation of the Republic translated into English and—

- (a) produced by an authority of the Republic,
- (b) certified in writing as being accurate by an officer of the Administration who is considered by the court to be a competent translator into English from the language in which the legislation of the Republic was published,
- (c) given or produced in the course of oral evidence of a person whom the court considers to be a competent translator for the purpose, or
- (d) stated orally in court or produced in writing by a Registrar or official court interpreter,

may be held by a court to be conclusive evidence, for all purposes, that the version is an accurate English translation of the legislation in question.

(4) For the purposes of subsection (1), the production of—

- (a) a document, the accuracy of which is certified in writing by a senior officer of the Government Department of the Republic responsible for the legislation under which the document was issued, or
- (b) an English translation of a document, the accuracy of which is certified in writing by a person considered by the court to be a competent translator for the purpose,

may be held by the court to be conclusive evidence, for all purposes, of the contents of the document.

(a) Ordinance 8/2012, to which there are amendments not relevant to this Ordinance.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the Conferral of Protocol Functions on the Republic Ordinance 2020 (“the Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The Ordinance relates to the implementation of article 13 of the Protocol relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (“the Protocol”). Under it, the Republic of Cyprus is responsible for the implementation of a number of provisions of the Protocol, subject to certain limitations.

3. Under sections 3 and 4, where an Ordinance designates a function relating to the implementation of the Protocol as a “conferred function”, it can be exercised by the officers of the Republic who have, under its laws and customs, an equivalent function in respect of the Republic.

4. There are exceptions to the scope of the power of such officers of the Republic, as set out in section 5. Those exceptions give effect to those in article 13 of the Protocol. Some of these can be waived by the Chief Officer.

5. Section 6 provides that the courts and tribunals of the areas have the same jurisdiction over the acts of officers of the Republic as they would have over those of an equivalent officer of the Areas.

6. Section 7 provides for the use of forms prescribed in the Republic in the exercise of conferred functions.

7. Section 8 amends the Interpretation Ordinance 2012, to provide for an implied power to create conferred functions in secondary legislation.

8. Section 9 provides for a power of the Courts to take judicial notice of Republican legislation and documents issued under it.

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