



THE FALKLAND ISLANDS GAZETTE Extraordinary

PUBLISHED BY AUTHORITY

Vol. CVI

3rd January 1997

No. 1

No. 1

3rd January 1997.

IN THE SUPREME COURT OF THE FALKLAND ISLANDS

Case Number SC/CIV/15/96

In the matter of the Companies Act 1948

AND

In the matter of CD Building Services Limited

A Petition to wind up the above named Company by the Court presented on 17 December 1996 by K S Tingey Legal Practitioner of the Attorney General's Chambers Cable Cottage Cable Street Stanley for and on behalf of the Petitioner, The Commissioner for Income Tax, Secretariat, Stanley, Falkland Islands, claiming to be a creditor of the Company will be heard at the Supreme Court of the Falkland Islands Town Hall Stanley Falkland Islands on 27 January 1997 at 2 pm.

Any creditor or contributory wishing to oppose or support the making of an Order on the said Petition must ensure that written notice reaches the undersigned by 1600 hours on Friday 24 January 1997.

A copy of the Petition will be supplied by the undersigned on payment of the prescribed charge of £5.00.

Signed: K S Tingey
Crown Counsel and Legal Practitioner
Attorney General's Chambers
Cable Cottage
Cable Street
Stanley
Falkland Islands.

2nd January 1997



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CVI

31st January 1997

No. 2

Appointments

Ian Goss, Engineman, Power and Electrical Section,
Public Works Department, 1.1.97.

Ian McLeod, Engineman, Power and Electrical
Section, Public Works Department, 1.1.97.

Dr. David Langridge, Director, Education Department,
3.1.97.

Nicholas Backhouse, Quantity Surveyor/Measurement
Engineer, Public Works Department, 6.1.97.

Miss Susan Maureen Higgin, Travelling Teacher,
Education Department, 7.1.97.

Mark David Porter, Temporary Gardener, Government
House, 13.1.97.

Mrs. Nerolie Joyce Cook, Travelling Teacher,
Education Department, 15.1.97.

Miss Catherine Ellenor Winthrop, Travelling Teacher,
Education Department, 15.1.97.

Miss Judith Hope Palmer, Settlement Teacher,
Education Department, 21.1.97.

David John Higgins, Head Teacher, Falkland Islands
Community School, Education Department, 24.1.97.

Royston William Marshall, Travelling Teacher,
Education Department, 28.1.97.

Mrs. Pamela Gaye Petterson, Travelling Teacher,
Education Department, 28.1.97.

Resignation

Magnus John Alexander George, Fisheries Observer
Co-ordinator, Fisheries Department, 24.1.97.

NOTICES

No. 2

18th December 1996.

THE COLONY OF THE FALKLAND ISLANDS

Certificate of Registration as a Minister for Celebrating Marriage

In accordance with Section 5 of the Marriage
Ordinance, Cap. 43, 1949, I, **RICHARD PETER
RALPH CVO**, Governor of the Colony of the Falkland
Islands Grant to

THE REVEREND ANDREW JOLLY this
Certificate of Registration as a Minister for celebrating
marriages in the Colony.

Given under my hand and the Public Seal at Stanley
this 18th day of December 1996.

R.P. RALPH CVO,
Governor.

No. 3

9th January 1997.

ELECTIONS

It is hereby notified that His Excellency the Governor
has confirmed the election of the following to the Camp
Education and Stanley House Managers Committee
with effect from 5th December 1996:

Mrs. Jacqui Smith; Miss Diane Towsey.

REGISTRATION OF UNITED KINGDOM TRADE MARKS ORDINANCE (CAP.59)

The following list of Trade Marks registrations in the Falkland Islands during the period 1st January 1996 to 31st December 1996 is published for general information. The Trade Marks Register may be inspected at the Office of the Registrar General, Stanley.

B. Greenland
Registrar General

| <u>Registration No.</u> | <u>Renewal No.</u> | <u>Date of Renewal</u> | <u>Proprietor</u> | <u>Description of Goods</u> |
|-------------------------|--------------------|------------------------|---|---|
| 9350 | 10638 | 03-01-1996 | Optrex Ltd | Pharmaceutical preparations for human use and for veterinary use, sanitary substances, infants' and invalids' foods. Medical and surgical plasters, material prepared for bandaging, antiseptics, disinfectants; and sterile and antiseptic solutions for wetting contact lenses; all being goods for export. |
| 5379 | 10646 | 05-01-1996 | Gres Productions | Perfumes, non-medicated toilet preparations, cosmetics, eau-de-cologne, perfumed soaps, and preparations for the hair. |
| 3940 | 10654 | 24-01-1996 | Reemtsma Cigarettenfabriken GmbH | All goods in Class 34. |
| 6667 | 10656 | 31-01-1996 | THORN EMI Plc | Records and tapes, all bearing recorded sound. |
| 10200 | 10662 | 31-01-1996 | The Gillette Company | Non-electrical razors and dispensers, blades, cartridge and containers therefor, all included in Class 8. |
| 10234 | 10666 | 01-02-1996 | Blue Cross and Blue Shield Association | Healthcare: family planning; all included in Class 42. |
| 10235 | 10667 | 01-02-1996 | Blue Cross and Blue Shield Association | Healthcare service; physician, dental, hospital and nursing services; diagnostic testing and examination services; all relating to medical matters and family planning; psychiatric and psychological counselling services all included in Class 42. <u>Disclaimer</u> : Registration of this mark shall give no right to the exclusive use of the device of the Staff of Aesculapius. <u>Limitations</u> : The mark, here depicted in heraldic shading is shown in the representation on the form of application in the colour blue but the mark is not limited to colour. |
| 10236 | 10668 | 01-02-1996 | Blue Cross and Blue Shield Association | Physician services, dental services, hospital services, family planning services, mental health services, diagnostic testing and examination services, nursing services; all included in Class 42. |

Limitations : It is a condition of registration that the mark shall not be used with the cross device appearing thereon in red, or in white or silver on a red ground, or with the cross device or ground in, or of, similar respective colour or colours.

| | | | | |
|-------|-------|------------|---|--|
| 9429 | 10675 | 05-02-1996 | General Motors Corporation | Motor vehicles and parts therefor; all included in Class 12. |
| 10346 | 10684 | 12-02-1996 | Teva Pharmaceutical Industries Ltd | Pharmaceutical, veterinary and sanitary preparations; all included in Class 5. |
| 4657 | 10695 | 22-02-1996 | Riggio Tobacco Corporation Ltd | Cigarettes. |
| 4194 | 10699 | 01-03-1996 | Shell International Petroleum Company Ltd | All goods included in Class 4, non being for export to or sale in Puerto Rico. |
| 6529 | 10716 | 26-03-1996 | Lucas Industries Public Ltd Company | Containers included in Class 21 for dispensing liquids into batteries. <u>Disclaimer :</u> Registration of this mark shall give no right to the exclusive use of a letter "L". |
| 6528 | 10717 | 26-03-1996 | Lucas Industries Public Ltd Company | Synthetic materials and flexible hoses, all included in Class 17. <u>Disclaimer :</u> Registration of this mark shall give no right to the exclusive use of a letter "L". |
| 6527 | 10718 | 26-03-1996 | Lucas Industries Public Ltd Company | Books, printed publications and printed matter. <u>Disclaimer :</u> Registration of this mark shall give no right to the exclusive use of a letter "L". |
| 6526 | 10719 | 26-03-1996 | Lucas Industries Public Ltd Company | Motor horns and audible warning devices for vehicle malfunction; direction indicators windscreen washers and wipers, mirrors (retrovisors), all for vehicles; apparatus for facilitating the starting of internal combustion engines for land vehicles and starters for land vehicles; electric motors for land vehicles propulsion; padding and interior trimming, all made of foamed plastics and being shaped or fitted for use in motor land vehicles, caravans and in watercraft; hydraulic power transmission apparatus for the propulsion mechanisms of land vehicles; braking mechanisms and clutch operating mechanisms, shock absorbers, constant velocity joints, fan belts, throttle dampers, camshafts and gear selector devices, all for land vehicles; shaped windows and windcreens, all for land vehicles, watercraft or for aircraft; and parts included in Class 12 for all the aforesaid goods. <u>Disclaimer :</u> Registration of this mark shall give no right to the exclusive use of a letter |

| | | | | |
|------|-------|------------|-------------------------------------|--|
| 6525 | 10720 | 26-03-1996 | Lucas Industries Public Ltd Company | <p>"L".</p> <p>Heat exchangers (not being part of machines); electric lamp for land vehicles, watercraft and for aircraft, air and gas purifying apparatus; ventilating installations and apparatus; installations and apparatus, all for heating and demisting the interiors of vehicles; oil burning installations and apparatus included in Class 11 all for heating; heaters included in Class 11 utilising combustible fuels; dust removing installations and apparatus; electric cooling fans included in Class 11; reflectors included in Class 11; electric lamp bulbs, emergency lighting apparatus and instruments; landing and runway light for airports; signalling lamps and signalling lanterns; apparatus for lighting instrument control panels for vehicles and for machines; lamp brackets; and parts included in Class 11 of all the aforesaid goods.</p> <p><u>Disclaimer</u> : Registration of this mark shall give no right to the exclusive use of a letter "L".</p> |
| 6524 | 10721 | 26-03-1996 | Lucas Industries Public Ltd Company | <p>Searchlights, integrated electric circuits, solenoids, solenoid valves, ammeters, voltmeters, distance recording instruments, rheostats, electric current rectifiers, voltage and electric current control regulators, and capacitors; electric communication networks, avionics and telemetry networks; electric battery charges; apparatus and instruments, all for testing fuel supply systems for gas turbine engines; connectors, junction boxes, inverters, relays, switches, switchgear, switchboards, switchpanels, switchboxes, plugs, sockets, resistances, suppressors and batteries, all being electric; seismic prospecting apparatus and instruments; semi-conductor devices included in Class 9, diodes, insulated electric wires, electric cables, printed electric circuits, hybrid electric circuits and electric wiring harnesses; control apparatus and instruments, all included in Class 9 and all for electric motors; amplifiers; photoconductive devices, photovoltaic devices, transistor devices, solar battery cells, analogue meters, selective calling apparatus and instruments, tachographs and tachogenerators; ice detecting apparatus control apparatus and instruments, all included in Class 9 and all for use with torpedos; ultrasonic flaw detectors; electrical bandpass filters; frequency analysers and frequency counters; ultrasonic hardness testers and ultrasonic leak detectors; materials testing apparatus and instruments; oscillators, phase meters, pressure transducers, sound level meters, speed probes being monitoring apparatus, stroboscopes, timing apparatus included in Class 9 and time switches; ultrasonic thickness gauges; apparatus and instruments for testing electrical equipment for testing telecommunication networks, and for vibration testing; thermostats, regulating apparatus and instruments, all for maintaining pre-selected speed of land vehicles, watercraft and of aircraft; voltage converters and electric circuit breakers; testing apparatus and instruments, test rigs and consoles therefor; all for use in the servicing of land vehicles, watercraft and of aircraft, and for testing the component parts of land vehicles, watercraft and of aircraft; apparatus and instruments, all for measuring friction and wear, control apparatus and instruments, all included in Class 9 and all for use in the operation of tailplanes, ailerons, rubbers, elevators, flaps, slats and wing sweep of aircraft; damping control apparatus and instruments, all included in Class</p> |

9 and all for use in high speed aircraft; radio receiving apparatus for use on, and in connection with, land vehicles, watercraft and with aircraft; radio receiving aerials, tape recorders, loudspeakers, magnetic tapes for recording sounds and magnetic tapes bearing pre-recorded sounds; and parts included in Class 9 of all the aforesaid goods.

Disclaimer : Registration of this mark shall give no right to the exclusive use of a letter "L".

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|------|-------|------------|-------------------------------------|---|
| 6523 | 10722 | 26-03-1996 | Lucas Industries Public Ltd Company | <p>Dynamos, electric alternators, electric generators, starters for stationery internal combustion engines, hydraulically or pneumatically actuated starters for internal combustion engines and starting devices for gas turbines engines, none being for engines of land vehicles, and combined engine starters and electric generators, other than for land vehicles; filters and filter elements, all for machines, for motors or for engines; hydraulic transmission gear and hydraulic motors (non being for land vehicle propulsion); fuel supply devices for gas turbine engines, incorporating metering and control apparatus and instruments; couplings for use in aircraft fuel and hydraulic systems; heat exchangers for machines; gas turbine engines and electric motors, none being for land vehicles; expansion turbines for the liquification or separation of gases; fuel injection apparatus and ignition apparatus, all for internal combustion engines; hoists included in Class 7; magnetos, pumps included in Class 7; burners (Fuel injectors) for gas turbine engines; speed limiters and speed governors, brakes, bearings and camshafts, all for machines or for engines; sparking plugs for explosion engines; power operated valves and power operated actuators, all included in Class 7; high energy ignition apparatus for aircraft engines; apparatus included in Class 7 for adjusting nozzle sizes in gas turbine engines; flexible couplings for machines; re-circulating ball screws; machines for use in reconditioning fuel injection apparatus; hydraulic cylinders incorporating pistons; hydraulic jacks and hydraulic accumulators; constant speed drives (not for land vehicles); filler caps for radiators for internal combustion engines; apparatus included in Class 7 for deflecting the thrust of gas turbine engines for braking purposes; and parts included in Class 7 all of the aforesaid goods.</p> <p><u>Disclaimer :</u> of this mark shall give no right to the exclusive use of a letter "L".</p> |
| 6522 | 10723 | 26-03-1996 | Lucas Industries Public Ltd Company | <p>Pipes and tubes, none being boiler tubes or part of machines, and hoses; fittings included in Class 6; number plates for vehicles; metal fabrications, tanks and containers, all included in Class 6; wire (other than insulated or fuse wire); valves and parts thereof; all included in Class 6; all made of common metal.</p> <p><u>Disclaimer :</u> Registration of this mark shall give no right to the exclusive use of a letter "L".</p> |
| 1021 | 10732 | 28-03-1996 | Tate & Lyle Industries Ltd | Golden Syrup included in Class 42. |

| | | | | |
|-------|-------|------------|-----------------------------|---|
| 6291 | 10733 | 28-03-1996 | Certina Kurth Freres S.A. | Horological and chronometric apparatus and instruments, and parts and fittings for all such goods; jewellery, imitation jewellery and articles included in Class 14 made of precious metal or coated therewith. |
| 6454 | 10736 | 18-03-1996 | Texwood Ltd | Articles of underclothing, shirts, sleeping garments, overcoats, jackets, blazers, skirts, pullovers, sweaters, boots, shoes and slippers. |
| 9548 | 10756 | 03-05-1996 | Hilton International Co | Hotel, motel, bar, restaurant, banqueting, and catering service; hotel reservation services; all included in Class 42. |
| 6416 | 10757 | 03-05-1996 | Yamaha Corporation | Musical instruments, and parts and fittings therefor included in Class 15. |
| 6330 | 10758 | 03-05-1996 | Citicorp | Advertising media included in Class 16; printed matter, newspapers, periodical publications, books instructional material (other than apparatus), cheques, stationery, brochures, and office requisites (other than furniture); but not including office machines. |
| 10277 | 10764 | 03-05-1996 | J.C. Bamford Excavators Ltd | Power operated machines and apparatus included in Class 7, all for the digging, excavating, mechanical handling, lifting, loading and transporting earth, minerals, soil, crops, and the like materials; parts and fittings included in Class 7 for all the aforesaid goods. |
| 3898 | 10766 | 03-05-1996 | Unilever PLC | Common soap, detergent, starch, blue and other preparations for laundry purposes. Specification converted under Rule 6 to Schedule IV, Class 3. "Substances for laundry use, common soap, detergents (not being polishing or abrading preparations), perfumed soap, perfumery, cosmetics, preparations for the hair and dentifrices. This Registration is amalgamated upon conversion with Registration No 35316 which ceases to have effect as a separate registration". |
| 6730 | 10767 | 03-05-1996 | Tia Maria Ltd | Liqueurs (alcoholic). ++This Trade Mark is hereby altered under Section 35 of the Trade Marks Act, 1938. Representations of the Trade Mark as altered were deposited on 20th September, 1961. |
| 5184 | 10769 | 03-05-1996 | The Coca-Cola Company | Non-alcoholic drinks and preparations for making such drinks, all included in Class 32; and fruit juices. |
| 7472 | 10780 | 13-05-1996 | Yamaha Corporation | Printed matter, periodicals, books and sheet music. |
| 7471 | 10781 | 13-05-1996 | Yamaha Corporation | Articles of sports clothing, shirts, hats and uniforms; caps, aprons and ties, all for wear. |
| 6628 | 10783 | 13-05-1996 | Mars U.K. Ltd | Non-medicated confectionery and biscuits (other than biscuits for animals). <u>Disclaimer :</u> Registration of this mark shall give no right to the exclusive use of the |

numeral "3".

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|-------|-------|------------|------------------------------|--|
| 9935 | 10793 | 30-05-1996 | Amadeus Marketing S.A. | Reservation and booking services relating to land, sea, and air transportation, travel and tourism; all included in Class 39. |
| 10120 | 10794 | 30-05-1996 | Cable News Network Inc. | Printed matter: books, programme guides, programme transcripts, photographs; stationery; instructional and teaching materials; playing cards; all included in Class 16. |
| 9397 | 10795 | 30-05-1996 | The Coca-Cola Company | Non-alcoholic beverages and preparations for making such beverages; fruit juices; all included in Class 32. |
| 4070 | 10796 | 30-05-1996 | The Coca-Cola Company | Non-alcoholic beverages and preparations for making such beverages, all included in Class 32. |
| 6161 | 10797 | 30-05-1996 | United Distillers P.L.C | Wines, spirits (beverages) and liqueurs. |
| 9226 | 10814 | 18-06-1996 | DAF Trucks N.V. | Machine tools; motors; aeroplane and ship engines; operating cables and operating installations for machines and motors; couplings and beltings; transmissions; tools, instruments and apparatus, all for use in the repair of vehicles; parts and fittings for all the aforesaid goods; all included in Class 7. |
| 9227 | 10815 | 18-06-1996 | DAF Trucks N.V. | Motor land vehicles, motors, couplings and driving belts, all for vehicles; trucks, motor buses, trailers, articulated vehicles; transmissions; parts and fittings for the aforesaid goods; all included in Class 12. |
| 6629 | 10816 | 19-06-1996 | Mars U.K. Limited | Rice and prepared rice dishes, pasta, pasts dishes, flour preparations made from cereals for food for human consumption, potato flour, spices (other than poultry spice), coffee, mixtures of coffee and chicory, coffee essences, coffee extracts; chicory and chicory mixtures, all got use as substitutes for coffee, non-medicated confectionery, bread, biscuits (other than biscuits for animals), cakes and pastry. |
| 9355 | 10817 | 19-06-1996 | Davidoff & Cie SA | Manufactured tobacco, cigars; cigar boxes included in Class 34; cigar cases, cigarettes boxes and cigarette cases, none being of precious metal or coated therewith; cigar cutters, smokers pipes, and tobacco pouches. |
| 3042 | 10830 | 05-07-1996 | R.J.Reynolds Tobacco Company | Cigarettes. |

| | | | | |
|-------|-------|------------|---|---|
| 2603 | 10839 | 25-7-1996 | The Rank Organisation Plc | Cinematograph films prepared for exhibition. |
| 10641 | 10840 | 25-7-1996 | McDonald's International Property Company Limited | Hamburgers, cheeseburgers; chicken pieces (other than for animals); french fried potatoes; milk beverages the milk predominating, milk, eggs; hashed brown potatoes, sausages; fish; cheese; pickles; desserts; all included in Class 29. |
| 2552 | 10841 | 25-7-1996 | Emaco Limited | Refrigerating and cold storage chambers included in Class 18. Specification converted under Rule 6, Schedule IV, Class 11; Refrigerating and cold storage chambers and refrigerating chests and safes. This registration is amalgamated upon conversion (and striking out of goods) with Registration No. 469787, which ceases to have effect as a separate registration. |
| 1665 | 10844 | 07-08-1996 | Beecham Group p.l.c | A medicinal saline preparation for human use. This Trade Mark is hereby altered under Section 35 of the Trade Marks Act, 1938. Representations of the Mark as altered were deposited on 23rd December 1953. |
| 10006 | 10846 | 07-08-1996 | Desarrollo Y Gestion De Empresas, S.A. | Statues, Statuettes, figures and figurines; porcelain, ceramic and glassware for decorative and artistic purposes; all included in Class 21. |
| 7592 | 10847 | 07-08-1996 | Takeda Chemical Industries, Ltd | Sauces vinegar, beverages included in Class 30, sugar and honey. |
| 6480 | 10862 | 28-08-1996 | Castrol Limited | Lubricating greases. |
| 3899 | 10877 | 09-09-1996 | Unilever PLC | Preparations and substances for laundry purposes; detergents (not for use in industrial or manufacturing processes) and soaps, and cleaning, polishing, scoring and abrasive preparations. |
| 4107 | 10883 | 11-09-1996 | Carreras Limited | Tobacco whether manufactured or manufactured. <u>Disclaimer:</u> Registration of this mark shall give no right to the exclusive use of the word and numeral "Number 7". |
| 4024 | 10884 | 11-09-1996 | Carreras Limited | Cigarettes. <u>Disclaimer:</u> Registration of this mark shall give no right to the exclusive use of the words "Number One". |

| | | | | |
|------|-------|------------|---|---|
| 6208 | 10904 | 22-10-1996 | Brown & Williamson Tobacco Corp (Export) Ltd. | Tobacco, whether manufactured or unmanufactured. |
| 6160 | 10905 | 22-10-1996 | Brown & Williamson Corp (Export) Ltd. | Tobacco, whether manufactured or unmanufactured. |
| 6600 | 10906 | 22-10-1996 | Visa International Service Association | Printed cards related to banking and to credit services. |
| 3983 | 10909 | 22-10-1996 | British-American Tobacco Company Limited | <p>Tobacco whether manufactured or unmanufactured in so far as concerns the right for export other than to the Republic of Ireland, the United States of America, Puerto Rico, Cuba, the Philippine Islands, Andorra, Austria, Belgium, The Channel Islands, Denmark including the Faroe Islands, and Greenland, Finland, France including Corsica, Federal Republic of Germany, Gibraltar, Greece, Iceland, Italy, including Sardinia and the Vatican City, Liechtenstein, Luxembourg, Monaco, Netherlands, Norway, Portugal, San Marino, Spain, including the Balearic Islands, Sweden and Switzerland.</p> <p><u>Disclaimer:</u> Registration of this mark shall give no right to the exclusive use of the words "Gold Leaf"</p> <p><u>Limitations:</u> It is a condition of registration that the blank space in the mark shall, when the mark is in use be occupied only by matter of a wholly descriptive and non-trade mark character.</p> |
| 5597 | 10908 | 22-10-1996 | British-American Tobacco (Germany) GmbH | <p>Cigarettes for sale in Aden, Bahrain, Kuwait, Basutoland, Bechuanaland, British Solomon Islands, British Honduras, Falkland Islands, Friendly Islands, Gibraltar, Gilbert and Ellice Islands, Grenada, Guernsey, Jersey, St. Helena, St. Vincent, Somaliland Protectorate and Swaziland.</p> <p><u>Disclaimer:</u> Registration of this mark shall give no right to the exclusive use of the letters "HB".</p> <p><u>Limitations:</u> It is a condition of registration that the mark shall only be used in relation to filter-tipped cigarettes.</p> |
| 6289 | 10909 | 22-10-1996 | British-American Tobacco Company Limited | <p>Tobacco whether manufactured or unmanufactured.</p> <p><u>Disclaimer:</u> Registration of this mark shall give no right to the exclusive use of the word "Marvels"</p> <p><u>Limitations:</u> It is a condition of registration that the blank space in the mark shall when the mark is in use be occupied only by matter of a wholly descriptive and non-trade mark character.</p> |
| 3915 | 10910 | 22-10-1996 | Ardath Tobacco Comp Limited | Cigarettes |

REGISTRATION OF UNITED KINGDOM TRADE MARKS ORDINANCE (CAP.59)

The following list of Trade marks and Service Marks Registered in the Falkland Islands during the period 1st January 1996 to 31st December 1996 is published for general information. The Trade Marks Register may be inspected at the Office of the Registrar General, Stanley.

B. Greenland
Registrar General

| <u>Registration No:</u> | <u>Date of Registration</u> | <u>Proprietor</u> | <u>Description of Goods</u> |
|-------------------------|-----------------------------|-------------------|---|
| 10620 | 02-01-1996 | Unilever PLC | Ice cream, and water ices; preparations for making the aforesaid goods; frozen confections; non-medicated confectionery products; all included in Class 30. BLOCK <u>Disclaimer:</u> To be associated under Section 17(2) with Nos. 815587 (4311, 516), 576216 (3113, 1393), 903385 (4641, 1207), 769280 (4143, 1290), 714614 (3937, 1042) and 633783 (3508, 312). <u>Limitations:</u> The first mark depicted in heraldic shading is limited to the colours red, white and blue as shown in the representation on the form of application. It is a condition of registration that the blank space in the mark shall, when the mark is in use in relation to the goods of the present application, either be left vacant or be occupied only by matter of a wholly descriptive and non trade mark or service mark character or be occupied only by one or more associated marks registered in respect of goods included in the specification of the present application with or without the addition of matter of a wholly descriptive and non trade mark character. |
| 10621 | 02-01-1996 | Unilever PLC | Ice cream, water ices, frozen confections and preparations for making the aforesaid goods; desserts; all included in Class 30. ALGIDA |
| 10622 | 02-01-1996 | Unilever PLC | Ice cream, water ices, preparations for making ice cream and water ices; frozen confections; all included in Class 30. BLOCK |
| 10623 | 02-01-1996 | Unilever PLC | Ice cream, water ices and frozen confections. VIENNETTA |
| 10624 | 02-01-1996 | Unilever PLC | Ice cream, water ices, frozen confections; all included in Class 30. TWISTER |
| 10625 | 02-01-1996 | Unilever PLC | Ice cream, water ices and preparations for making all the aforesaid goods; frozen confections; all included in Class 30. ROMANTICA |
| 10626 | 02-01-1996 | Unilever PLC | Ice cream, water ices and preparations for making all the aforesaid goods; frozen confections; all included in Class 30. MAGNUM |
| 10627 | 02-01-1996 | Unilever PLC | Cereal preparations, flour; bread, rolls; pastry, pastry products, flans, quiche; pasta and pasta products, snack products; prepared meals; pizza and pizza products; all included in Class 30. GINO GINELLI <u>Disclaimer:</u> Registration of this mark shall give no right to the exclusive use of the word "Ginelli". |
| 10628 | 02-01-1996 | Unilever PLC | Ice cream, water ices; frozen confections; preparations for making all the aforesaid goods; all included |

in Class 30. **ICESTELLI**

Disclaimer: Registration of this mark shall give no right to the exclusive use of the letter "T"

Limitations: The mark consists of the Italian words which mean "The Small Baskets"

| | | | |
|-------|------------|---|--|
| 10629 | 02-01-1996 | Unilever PLC | Ice cream, and water ices. FUNNY FEET |
| 10630 | 02-01-1996 | Unilever PLC | Ice cream included in Class 30. FEAST |
| 10631 | 02-01-1996 | Unilever PLC | Ice cream and ice cream confections. CORNETTO |
| 10632 | 02-01-1996 | Unilever PLC | Ice cream; water ices; preparations for making the aforesaid goods; frozen confectionery; all included in Class 30. CARTE D'OR |
| 10633 | 02-01-1996 | Unilever PLC | Water ices. CALIPPO |
| 10639 | 03-01-1996 | McDonald's International Property Company Ltd | Sandwiches containing hamburgers; bread rolls containing hamburgers; and sauces for use with the aforesaid goods. BIG MAC |
| 10640 | 03-01-1996 | McDonald's International Property Company Ltd | Coffee, mixtures of coffee and chicory, coffee essences, coffee extracts; chicory and chicory mixtures, all for use as substitutes for coffee; tea, sandwiches for food; seasonings (not being essential oils), mustard, sauces, sugar; bread, cakes, cookies, chocolate, pastries; all included in Class 30. BLOCK |
| 10641 | 03-01-1996 | McDonald's International Property Company Ltd | Hamburgers, cheeseburgers; chicken pieces (other than for animals); french fried potatoes; milk beverages the milk predominating, milk, eggs; hashed brown potatoes; sausages; fish; cheese; pickles; desserts; all included in Class 29. BLOCK |
| 10642 | 03-01-1996 | McDonald's International Property Company Ltd | Sandwiches containing fish fillet, chicken or meat; sausage patties; fruit pies, muffins, hot cakes, Danish pastries, coffee, tea; ice cream sundaes. McDONALD'S |
| 10643 | 03-01-1996 | McDonald's International Property Company Ltd | Hamburgers, cheeseburgers; chicken pieces (other than for animals); french fried potatoes; milk shakes being milk beverages; the milk predominating, milk, eggs; hashed brown potatoes; sausages. McDONALD'S |
| 10644 | 05-01-1996 | Wurzburg Holding S.A. | Soaps; perfumery, essential oils, cosmetics, hair lotions. BLOCK |
| 10663 | 01-02-1996 | Nabisco Inc | Non-medicated confectionery and candy; all included in Class 30. GUMMI SAVERS <u>Disclaimer:</u> Registration of this mark shall give no right to the exclusive use, separately, of the words "Gummi" and "Savers" |
| 10665 | 01-02-1996 | Blue Cross and Shield Association | Health insurance services, all relating to humans; all included in Class 36. BLUE CROSS |

| | | | |
|-------|------------|---|---|
| 10671 | 01-02-1996 | T. Wall & Sons Limited | Ice cream; water ices; frozen confections; preparations; preparations for making all the aforesaid goods; all included in Class 30. SICLE |
| 10682 | 12-02-1996 | Nurdin & Peacock Plc | All goods included in Class 29. HAPPY SHOPPER <u>Registrable Transaction</u> : the proprietors have undertaken that the mark shall not be used on goods for use or consumption in restaurants, cafes and bars open to the general public. |
| 10683 | 12-02-1996 | Nurdin & Peacock Plc | All goods included in Class 30. HAPPY SHOPPER <u>Registrable Transaction</u> : The proprietors have undertaken that the mark shall not be used on goods for use or consumption in restaurants, cafes and bars open to the general public. |
| 10685 | 12-02-1996 | Brown Williamson Tobacco Corporation. | Cigarettes, tobacco, tobacco products, smokers' requisites, lighters and matches; all included in Class 34. BLOCK <u>Limitations</u> : It is condition of registration that the mark shall be used in relation only to toasted tobacco. |
| 10693 | 19-02-1996 | The Wellcome Foundation Ltd | Pharmaceutical and medicinal preparations and substances; all included in Class 5; but not including preparations relating to testing for pregnancy. BLOCK |
| 10700 | 04-03-1996 | Grupo Cruzcampo S.A. | Beers and lagers: all included in Class 32. BLOCK |
| 10734 | 28-03-1996 | British-American Tobacco GmbH | Cigarettes, tobacco, tobacco products, smokers' requisites, lighters and matches. BLOCK |
| 10735 | 28-03-1996 | British-American Tobacco GmbH | Cigarettes, tobacco, tobacco products, smokers' requisites, lighters and matches. BLOCK |
| 10760 | 03-05-1996 | Colgate-Palmolive Company | Perfumed toilet soap; shaving soap in tablet, stick, powder and cream form; tooth powder, tooth paste, perfumes, talc powder for toilet use, and brushless shaving cream, ++This Trade Mark is hereby altered under Section 35 of the Trade Mark Act, 1938. Representations of the Mark as altered were deposited on the 23rd October, 1957. COLGATE |
| 10761 | 03-05-1996 | Colgate-Palmolive Company | Toothbrushes. COLGATE |
| 10763 | 03-05-1996 | Sony Music Entertainment Inc | Audio recordings; audio-visual recordings of musical performances; all included in Class 9. COLUMBIA |
| 10765 | 03-05-1996 | American-Cigarette Company (Overseas) Ltd | All goods included in Class 34; All for export from the United Kingdom and for sale in all countries of the world except the Channel Islands, the Republic of Ireland, Fiji and Malta. BLOCK |
| 10768 | 03-05-1996 | Dunhill Tobacco | Cigarettes, tobacco and tobacco products. DUNHILL SPECIAL RESERVE |

| | | | |
|-------|------------|---------------------------------------|---|
| 10782 | 13-05-1996 | MasterCard International Incorporated | Books, identity cards, pamphlets and posters, all being printed matter. BLOCK |
| 10800 | 30-05-1996 | Unilever PLC | Ice cream and water ices; preparations for making the aforesaid goods; frozen confections; all included in Class 30. WALL'S WINNER. Disclaimer: Registration of this mark shall give no right to the exclusive use of the word "Winner". |
| 10811 | 18-06-1996 | Oettinger Imex AG | Cigarettes, cigar and raw tobacco; all included in Class 34. BLOCK. Disclaimer: Registration of this mark shall give no right to the exclusive use of the word "Griffin's". |
| 10812 | 18-06-1996 | Oettinger Imex AG | Tobacco, raw or manufactured; cigars; cigarillos, cigarettes; pipe tobacco; snuff; smokers' articles; cigar cases; cigarette boxes; tobacco jars; cigar humidors; moistening boxes for cigars and for tobacco; tobacco pouches; pipes; cigar and cigarette holders; filter mouthpieces; ash-trays; cigar cutters; pipe cleaners; pipe-stoppers; pipe-racks; pipe tools; lighters for smokers and flints for use therewith; matches; scraper spoons, spikes and tampers, all being parts of pipe cleaning sets. BLOCK |
| 10813 | 18-06-1996 | Oettinger Imex AG | Tobacco, raw or manufactured; cigar; cigarillos; cigarettes; pipe tobacco; snuff; smoker's articles; cigar cases; cigarette boxes; tobacco jars; cigar humidors; moistening boxes for cigars and for tobacco; tobacco pouches; pipes; cigar and cigarette holders; filter mouthpieces; ash-trays; cigar cutters; pipe cleaners; pipe-stoppers; pipe-racks; pipe tools; lighters for smokers and flints for the use therewith; matches. DOMAINE AVO. |
| 10818 | 19-06-1996 | Minnesota Mining & Manufacturing Co. | Sheeting made of plastics embedded with light reflective substances and included in Class 17. BLOCK |
| 10831 | 05-07-1996 | Mars G.B. Limited | Agricultural horticultural and forestry products, grains and seeds; live animals, birds and fish; foodstuffs for cats, birds and for fish and preparations for use as additives to foodstuffs for cats, birds and fish; cuttlefish bone; bones for dogs; litter for animals; fresh fruit and fresh vegetables; all included in Class 31. BLOCK. |
| 10860 | 28-08-1996 | Mercury Communications Limited | Telecommunications services; all included in Class 38. BLOCK Disclaimer: Registration of this Mark shall give no right to the exclusive use of a letter "M". |
| 10861 | 28-08-1996 | Mercury Communications Limited | Electrical, telegraphic, telecommunications, sensing and detecting apparatus and instruments; testing apparatus and instruments (not in vivo use); computers; electrical apparatus for the processing, storing and transmission of data; visual display units; electrical apparatus for converting data, energy or light signals in visual information; insulated electric wires; electric cables; optical fibres being light conducting filaments; junction boxes, connections, plugs and |

sockets, all being electrical or optical apparatus; sheaths and conduits, all included in Class 9 for electrical or optical wires and cables; parts and fittings included in Class 9 for all the aforesaid goods. **BLOCK**

Disclaimer: Registration of this mark shall give no right to the exclusive use of a letter "M".



10620



10622



10640 & 10641

HIMSHE

10644



10685

AZT

10693



10700



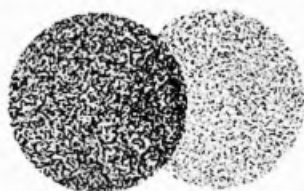
10734



10735



10765



10782



10811

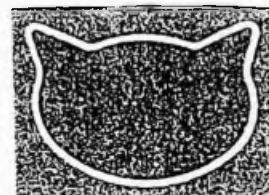


AVO UVEZIAN

10812

SCOTCHLITE

10818



10831



10860 & 10861

REGISTRATION OF UNITED KINGDOM PATENTS ORDINANCE (Cap. 58)

It is notified for general information that Letters Patent, particulars of which appear in the Schedule hereto, have been renewed in the Register of Patents on the dates shown.

B. Greenland
Registrar General

| <u>Reg No.</u> | <u>Date of Registration</u> | <u>Name of Applicant</u> | <u>No. of Grant in United Kingdom</u> | <u>Registered Address</u> |
|----------------|-----------------------------|----------------------------------|---------------------------------------|---|
| 10672 | 02-02-1996 | Ciba-Geigy AG | 236940 | Klybeckstrasse 141, CH-4002 Basel (CH) |
| 10694 | 19-02-1996 | Entaco Limited | 2 253 327 B | Royal Victoria Works, Birmingham Road, Studley, Warwickshire, B80 7AS, United Kingdom. |
| 10731 | 28-03-1996 | Merck & Co. Inc. | 0 402 152 | 126 East Lincoln Avenue, P.O. Box 2000, Rahway, New Jersey 07065-0900, United States of America. |
| 10888 | 30-09-1996 | Ciba-Geigy AG | 0335315 | Klybeckstrasse 141, CH-4002 Basel (CH) Switzerland. |
| 10953 | 20-11-1996 | Ciba-Geigy AG | 0516588 | Klybeckstrasse 141, CH-4002 Basel (CH) Switzerland |
| 10975 | 19-12-1996 | Beecham Group P.L.C. | 0511991 | Four New Horizon Courts, Harlequin Avenue, Brentford, Middlesex TW8 9EP, United Kingdom |
| 10976 | 19-12-1996 | Grampian Pharmaceuticals Ltd. | 2270261 | Marathon Place, Moss Side Industrial Estate, Leyland, Lancashire PR5 3Qn, United Kingdom. |



**THE
FALKLAND ISLANDS GAZETTE
Extraordinary**

PUBLISHED BY AUTHORITY

Vol. CVI

12th February 1997

No. 3

The following is published in this Gazette:-

Proclamation, No. 1 of 1997.

FALKLAND ISLANDS

PROCLAMATION

No. 1 of 1997

In the name of Her Majesty Elizabeth II, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith,

By Richard Peter Ralph, Commander of the Royal Victorian Order, Governor of the Falkland Islands,

Whereas it was declared in a Joint Declaration issued on 27 September 1995 by the British and Argentine Governments ("the Joint Declaration") that they would cooperate in order to encourage offshore activities in the South West Atlantic and, in particular, would coordinate activities in tranches situated within an area for special cooperation ("the Special Area"),

Whereas parts of the Special Area lie beyond the designated areas of the continental shelf around the Falkland Islands, as described in Proclamation No 1 of 1991 and Proclamation No 1 of 1994 ("the previous Proclamations"),

And whereas there is a need to make further provision for the regulation of activities in the Special Area in accordance with the terms of the Joint Declaration,

Now therefore I, Richard Peter Ralph, acting in pursuance of instructions given by Her Majesty through a Secretary of State, do hereby Proclaim as follows:-

1. For the purpose of implementing the terms of the Joint Declaration (including agreed recommendations and decisions made by the Joint Commission established thereby) relating to the Special Area, Her Majesty will, in accordance with the rules of international law, exercise jurisdiction, in addition to that specified in the previous Proclamations, over the exploration and exploitation of the non-living resources of the seabed and subsoil of the Special Area, subject to such provision as may hereafter be made by law for such matters.

2. The Special Area is bounded by lines of the type described in Column 2 below, joining the points defined to the nearest minute of arc by coordinates of latitude and longitude on WGS 72 Datum specified in Column 1.

| <i>Column 1</i> | | | | <i>Column 2</i> |
|---------------------------------------|----------|---------|-------|----------------------|
| Coordinates of Latitude and Longitude | | | | Line Type |
| 1. | 52 00'S, | 63 36'W | 1-2 | meridian |
| 2. | 53 10'S, | 63 36'W | 2-3 | parallel of latitude |
| 3. | 53 10'S, | 62 48'W | 3-4 | meridian |
| 4. | 53 25'S, | 62 48'W | 4-5 | parallel of latitude |
| 5. | 53 25'S, | 61 48'W | 5-6 | meridian |
| 6. | 53 40'S, | 61 48'W | 6-7 | parallel of latitude |
| 7. | 53 40'S, | 61 00'W | 7-8 | meridian |
| 8. | 53 00'S, | 61 00'W | 8-9 | parallel of latitude |
| 9. | 53 00'S, | 62 00'W | 9-10 | meridian |
| 10. | 52 30'S, | 62 00'W | 10-11 | parallel of latitude |
| 11. | 52 30'S, | 62 36'W | 11-12 | meridian |
| 12. | 52 00'S, | 62 36'W | 12-13 | parallel of latitude |
| 13. | 52 00'S, | 63 36'W | | |

3. This Proclamation will become effective on 17th February 1997.

Given under my hand and the Public Seal of the Falkland Islands at Government House, Stanley, Falkland Islands, this twelfth day of February in the year of Our Lord One Thousand Nine Hundred and Ninety-Seven.

R P Ralph CVO
Governor

GOD SAVE THE QUEEN

THE GOVERNMENT OF THE FALKLAND ISLANDS
 DEPARTMENT OF LANDS AND SURVEY
 OFFICE OF THE LANDS AND SURVEY
 STANLEY, FALKLAND ISLANDS

| No. of the Survey | | Area in Acres | | Area in Hectares | |
|-------------------|------|---------------|------|------------------|------|
| 1 | 100 | 100 | 100 | 100 | 100 |
| 2 | 200 | 200 | 200 | 200 | 200 |
| 3 | 300 | 300 | 300 | 300 | 300 |
| 4 | 400 | 400 | 400 | 400 | 400 |
| 5 | 500 | 500 | 500 | 500 | 500 |
| 6 | 600 | 600 | 600 | 600 | 600 |
| 7 | 700 | 700 | 700 | 700 | 700 |
| 8 | 800 | 800 | 800 | 800 | 800 |
| 9 | 900 | 900 | 900 | 900 | 900 |
| 10 | 1000 | 1000 | 1000 | 1000 | 1000 |
| 11 | 1100 | 1100 | 1100 | 1100 | 1100 |
| 12 | 1200 | 1200 | 1200 | 1200 | 1200 |
| 13 | 1300 | 1300 | 1300 | 1300 | 1300 |
| 14 | 1400 | 1400 | 1400 | 1400 | 1400 |
| 15 | 1500 | 1500 | 1500 | 1500 | 1500 |
| 16 | 1600 | 1600 | 1600 | 1600 | 1600 |
| 17 | 1700 | 1700 | 1700 | 1700 | 1700 |
| 18 | 1800 | 1800 | 1800 | 1800 | 1800 |
| 19 | 1900 | 1900 | 1900 | 1900 | 1900 |
| 20 | 2000 | 2000 | 2000 | 2000 | 2000 |
| 21 | 2100 | 2100 | 2100 | 2100 | 2100 |
| 22 | 2200 | 2200 | 2200 | 2200 | 2200 |
| 23 | 2300 | 2300 | 2300 | 2300 | 2300 |
| 24 | 2400 | 2400 | 2400 | 2400 | 2400 |
| 25 | 2500 | 2500 | 2500 | 2500 | 2500 |
| 26 | 2600 | 2600 | 2600 | 2600 | 2600 |
| 27 | 2700 | 2700 | 2700 | 2700 | 2700 |
| 28 | 2800 | 2800 | 2800 | 2800 | 2800 |
| 29 | 2900 | 2900 | 2900 | 2900 | 2900 |
| 30 | 3000 | 3000 | 3000 | 3000 | 3000 |
| 31 | 3100 | 3100 | 3100 | 3100 | 3100 |
| 32 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 33 | 3300 | 3300 | 3300 | 3300 | 3300 |
| 34 | 3400 | 3400 | 3400 | 3400 | 3400 |
| 35 | 3500 | 3500 | 3500 | 3500 | 3500 |
| 36 | 3600 | 3600 | 3600 | 3600 | 3600 |
| 37 | 3700 | 3700 | 3700 | 3700 | 3700 |
| 38 | 3800 | 3800 | 3800 | 3800 | 3800 |
| 39 | 3900 | 3900 | 3900 | 3900 | 3900 |
| 40 | 4000 | 4000 | 4000 | 4000 | 4000 |
| 41 | 4100 | 4100 | 4100 | 4100 | 4100 |
| 42 | 4200 | 4200 | 4200 | 4200 | 4200 |
| 43 | 4300 | 4300 | 4300 | 4300 | 4300 |
| 44 | 4400 | 4400 | 4400 | 4400 | 4400 |
| 45 | 4500 | 4500 | 4500 | 4500 | 4500 |
| 46 | 4600 | 4600 | 4600 | 4600 | 4600 |
| 47 | 4700 | 4700 | 4700 | 4700 | 4700 |
| 48 | 4800 | 4800 | 4800 | 4800 | 4800 |
| 49 | 4900 | 4900 | 4900 | 4900 | 4900 |
| 50 | 5000 | 5000 | 5000 | 5000 | 5000 |

THE GOVERNMENT OF THE FALKLAND ISLANDS
 DEPARTMENT OF LANDS AND SURVEY
 OFFICE OF THE LANDS AND SURVEY
 STANLEY, FALKLAND ISLANDS



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CVI

28th February 1997

No. 4

Appointments

Miss Heather Norman, Travelling Teacher, Education Department, 23.1.97.

Mrs. Dorinda Roberta Rowlands, Teacher, Education Department, 28.1.97.

Mrs. Sue Wilks, Speech and Language Therapist, Medical Department, 31.1.97.

Joost Herman Willem Pompert, Scientific Fisheries Observer Co-ordinator, Fisheries Department, 17.2.97.

Sean Michael Miller, Sheep Husbandry Officer, Department of Agriculture, 18.2.97.

Transfer

Michael John Hanlon, from Permanent Staff Instructor, Falkland Islands Defence Force, to Temporary Customs/Immigration Officer, 10.2.97.

NOTICES

No. 4

16th January 1997.

THE COLONY OF THE FALKLAND ISLANDS

Appointment of Temporary Registrar

In exercise of the powers conferred upon me by Section 4 of the Marriage Ordinance I, **R.P. RALPH**, Governor of the Falkland Islands -

HEREBY APPOINT -

RODNEY WILLIAM LEE, a Registrar for the purpose of the marriage at Port Howard, West Falkland of **Brenda Margaret Edwardson** and **Ian Bell**.

Given under my hand at Stanley this 16th day of January 1997.

R.P. RALPH CVO,
Governor.

Appointment of Temporary Customs Officer Customs Ordinance 1943

In exercise of the powers conferred by Section 4 of the Customs Ordinance 1943,

I hereby appoint:

Cpl. R. POPPER E8234048

to be a Temporary Customs Officer from 14th December 1996 until 16th April 1997.

R. J. King,
Collector of Customs.

Appointment of Temporary Customs Officer Customs Ordinance 1943

In exercise of the powers conferred by Section 4 of the Customs Ordinance 1943,

I hereby appoint:

Sgt. R. J. CARTERET OWEN A8122264

to be a Temporary Customs Officer from 14th December 1996 until 16th April 1997.

R. J. King,
Collector of Customs.



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CVI

31st March 1997

No. 5

Appointments

Miss Tracy Freeman, Dental Nurse, Medical Department, 24.2.97.

Robin Philip Thompson, Beef Specialist, Department of Agriculture, 28.2.97.

Ms. Janice Connolly, Assistant Teacher, Special Needs, Infant/Junior School, Education Department, 3.3.97.

Bruce Allan Wilks, Plumber, Water Service, Public Works Department, 3.3.97.

Marcus Lewis Morrison, Clerk, Public Section, 10.3.97.

Mrs. Caroline Jane Richards, Pharmacy Technician, Medical Department, 11.3.97.

Dr. Richard Davies, Medical Officer, Medical Department, 17.3.97.

Confirmation of Appointments

John McLeod, Aircraft Fitter, Falkland Islands Government Air Service, 1.1.97.

Jon Alan Battersby, Senior Plumber, Public Works Department, 20.1.97.

Miss Leona Lucila Vidal, Assistant Printer, Printing Office, 23.1.97.

Miss Lucinda Vikki Watts, Teacher, Education Department, 30.1.97.

Miss Valorie Marcela Berntsen, Clerk, Public Service, 1.3.97.

Miss Cara Jane Newell, Observer, Falkland Islands Government Air Service, 1.3.97.

NOTICES

No. 5

7th March 1997.

PRISON ORDINANCE 1966

APPOINTMENT OF PRISON VISITORS

IN EXERCISE of my powers under section 7(2) of the Prison Ordinance 1966, I appoint the following to be members of the Board of Visitors for a period expiring on 31st December 1997 -

Janet Linda Cheek JP
Terence George Spruce JP
Bridie Fareilly

Dated this 7th day of March 1997.

R.P. RALPH CVO,
Governor.

THE COLONY OF THE FALKLAND ISLANDS**Appointment of Temporary Registrar**

In exercise of the powers conferred upon me by Section 4 of the Marriage Ordinance I, **Richard Peter RALPH**, **Commander of the Royal Victorian Order**, Governor of the Falkland Islands -

HEREBY APPOINT -

BROOK HARDCASTLE, a Registrar for the purpose of the marriage at Scalion Island, East Falkland of **Denzil George Gustavius Clausen** and **Andrea Patricia Gray**.

Given under my hand at Stanley this 24th day of March 1997.

R.P. RALPH CVO,
Governor.



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CVI

30th April 1997

No. 6

Appointments

Miss Cherilyn Julie King, Clerk, Public Service,
24.3.97.

David Parsons, Pasture Agronomist, Department of
Agriculture, 28.3.97.

Leslie Barber, Clerk of Works, Public Works
Department, 4.4.97.

Miss Jennifer Marie Paice, Clerk, Public Service,
10.4.97.

Miss Miranda Cheek, Health Visitor, Medical
Department, 22.4.97.

Confirmation of Appointments

Mrs. Sarah Louise Allan, Senior Attendant, Education
Department, 15.3.97.

Miss Lynne Forster, Clerk, Public Service, 3.4.97.

Resignation

Miss Priscilla Violet Morrison-Betts, Clerk, Public
Service, 27.3.97.

NOTICES

No. 7 4th April 1997.

MORTGAGES AND PROPERTY ORDINANCE 1996

SECTION 1

COMMENCEMENT NOTICE

IN EXERCISE of my powers under section 1 of the
Mortgages and Property Ordinance 1996, I hereby
notify that the Ordinance shall come into force on 5th

May 1997.

Dated this 4th day of April 1997.

R.P. RALPH CVO,
Governor.

No. 8

4th April 1997.

LAND CHARGES ORDINANCE 1996

SECTION 1

COMMENCEMENT NOTICE

IN EXERCISE of my powers under section 1 of the
Land Charges Ordinance 1996, I hereby notify that the
Ordinance shall come into force on 5th May 1997.

Dated this 4th day of April 1997.

R.P. RALPH CVO,
Governor.

No. 9

14th April 1997.

APPLICATION FOR NATURALISATION

Notice is hereby given that Mrs. Isabel Minto of
Stanley, Falkland Islands, is applying to His
Excellency the Governor for naturalisation, and any
person who knows why naturalisation should not be
granted should send a written and signed statement of
the facts to the Immigration Officer at the Customs and
Immigration Department, Stanley within two weeks of
this notice.

B. ECCLES
Immigration Officer.



**THE
FALKLAND ISLANDS GAZETTE
Extraordinary**

PUBLISHED BY AUTHORITY

Vol. CVI

6 May 1997

No. 7

The following is published in this Gazette:-

The Export of Arms Proclamation 1997, No. 2 of 1997.

PROCLAMATION

CUSTOMS

The Export of Arms Proclamation 1997

(Proclamation No. 2 of 1997)

By **RICHARD PETER RALPH**, Commander of the Royal Victorian Order,
Governor of the Falkland Islands, **A PROCLAMATION—**

WHEREAS section 35 of the Customs Ordinance(a) provides that it shall be lawful for the Governor from time to time by proclamation to prohibit the importation, carriage coastwise or exportation of any goods whatsoever and that any such proclamation may prohibit importation, carriage coastwise or exportation until the revocation thereof, or during such time as may be specified therein, and may either absolutely prohibit importation, carriage coastwise or exportation except on compliance with any conditions which may be specified in the proclamation, or importation from or exportation to any particular place named in the proclamation;

AND WHEREAS it is necessary to prohibit the exportation of arms from the Falkland Islands save as is by this Proclamation provided

IN EXERCISE of my powers under section 35 of the Customs Ordinance(a) and of all other powers enabling me, **I PROCLAIM** as follows—

1. Except as provided by Article 2 of this Proclamation and save as may be authorised by, and in accordance with the conditions, if any, of a licence in writing granted by the Governor, the export from the Falkland Islands of any arms is prohibited until such time as this Proclamation is revoked.
2. Nothing in Article 1 applies to the export of any arms by or on behalf of Her Majesty's armed forces undertaken by or under the authority of the Commander British Forces Falkland Islands.
3. For the purposes of this Proclamation, "arms" means any item entered in Part III of Schedule 1 to the Export of Goods (Control) Order 1994(b), as amended from time to time.

(a) Cap. 16 Laws of the Falkland Islands 1950 Edition

(b) SI 1994/1191

4. This Proclamation has effect without prejudice to the provisions of any Order in Council (such as the United Nations Arms Embargoes (Dependent Territories) Order 1995(c)) which in the circumstances of the particular case has effect to prohibit or restrict the export of the arms concerned.

5. This Proclamation shall become effective on its first publication in the *Gazette*.

GIVEN under my hand and the Public Seal of the Falkland Islands at Government House, Stanley, Falkland Islands, this 28th day of April in the year of Our Lord One thousand Nine Hundred and Ninety-Seven

R.P. Ralph
Governor

EXPLANATORY NOTE
(not forming part of the above Proclamation)

This Proclamation has been issued in order to enable effect to be given in the Falkland Islands to various international arms embargoes which the United Kingdom Government has agreed shall be applied in relation to the Falkland Islands and all other dependent territories and which are not given effect to by an Order in Council applying in relation to the Falkland Islands.

(c) SI 1995/1032



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CVI

30th May 1997

No. 8

Appointments

Jonathan Terrance Clarke, Plant Operator, Highways Section, Public Works Department, 15.4.97.

Mrs. Sheila Fenton, Clerk, Post Office, Mount Pleasant, 17.4.97.

Miss Therese-Anne Van Basel, Special Needs Teacher, Education Department, 29.4.97.

Miss Shona Mary Fiddes, Houseparent, Education Department, 1.5.97.

Graham Cyril Middleton, Fireman, Fire & Rescue Service, 5.5.97.

Jonathan Jeffers Butler, Police Constable, Royal Falkland Islands Police, 14.5.97.

Dennis Summers, Night Security Officer, Medical Department, 15.5.97.

Andrew Nigel Miller, Plant Operator, Highways Section, Public Works Department, 19.5.97.

Jeffrey Laurence McInnis, Physiotherapist, Medical Department, 27.5.97.

Promotions

Mrs. Valerie Anne Morrison, from Clerk, Treasury, to Senior Clerk, Treasury, 22.4.97.

Miss Glynis Margaret King, from Senior Clerk, Treasury, to Licensing Officer, Fisheries Department, 5.5.97.

Completion of Contract

Hugh Marsden, Farm Management Specialist, Department of Agriculture, 25.4.97.

Resignations

Neil George Hewitt, Police Constable, Royal Falkland Islands Police Force, 27.3.97.

Jonathan Roy May, Fireman, Fire and Rescue Department, 30.4.97.

Mrs. Myrian Beatris Horne-MacDonald, Auxiliary Nurse, Medical Department, 1.5.97.

Miss Sheena Margaret Ross, Licensing Officer, Fisheries Department, 8.5.97.

NOTICES

No. 10

1st May 1997.

**THE BANKING ORDINANCE 1987 Section 19(1).
THE BANKING (AMENDMENT) ORDINANCE 1996.**

NOTICE IS HEREBY GIVEN pursuant to section 19(1) of the Banking Ordinance 1987, as amended, that the audited accounts of Standard Chartered Bank for the year ended 31st December 1996 are available for inspection at the bank branch office, Ross Road, or a copy will be supplied on application to the Manager.

K.R. Biles.

*Manager, Standard Chartered Bank,
P.O. Box 166, Stanley, Falkland Islands.*

No. 11

1st May 1997.

THE COLONY OF THE FALKLAND ISLANDS**Certificate of Registration as a Minister for
Celebrating Marriage**

In accordance with Section 5 of the Marriage Ordinance, Cap. 43, 1949 I, **RICHARD PETER RALPH**, Commander of the Royal Victorian Order, Governor of the Falkland Islands Grant to

The Reverend **MARTIN FRANK LOVELESS** this Certificate of Registration as a Minister for celebrating marriages in the Colony.

Given under my hand and the Public Seal at Stanley this 1st day of May 1997.

R.P. RALPH CVO,
Governor.

No. 12

30th May 1997.

**SECTION 11A OF THE LAND ORDINANCE
Cap. 36**

TAKE NOTICE THAT Stuart Alfred Booth of Racecourse Cottage, Stanley, East Falkland has applied in accordance with section 11A (1) of the Land Ordinance on behalf of Port Louis Limited to have executed in favour of Port Louis Limited a Vesting Deed of certain land on East Falkland comprising approximately 24,000 acres and known as Port Louis Farm.

The applicant's statutory declaration may be inspected by any person at the Registrar General's Office during normal business hours.

NOTICE IS HEREBY GIVEN that unless any objection has been received within 30 days following the publication of this notice the Acting Registrar General under the terms of section 11A of the Land Ordinance will execute in favour of Port Louis Limited a vesting deed of the said land.

V.J. BONNER
Ag. Registrar General.

**Appointment of Temporary Customs Officer
Customs Ordinance 1943**

In exercise of the powers conferred by Section 4 of the Customs Ordinance 1943,

I hereby appoint:

Cpl. B. JACKSON R8186986

to be a Temporary Customs Officer from 24th March 1997 until 19th July 1997.

R. J. King,
Collector of Customs.

**Appointment of Temporary Customs Officer
Customs Ordinance 1943**

In exercise of the powers conferred by Section 4 of the

Customs Ordinance 1943,

I hereby appoint:

Flt. Lt. J. P. PENELHUM 5206436S

to be a Temporary Customs Officer from 28th March 1997 until 28th September 1997.

R. J. King,
Collector of Customs.

**Appointment of Temporary Customs Officer
Customs Ordinance 1943**

In exercise of the powers conferred by Section 4 of the Customs Ordinance 1943,

I hereby appoint:

W02 M. D. COTTON 24620399

to be a Temporary Customs Officer from 28th March 1997 until 28th September 1997.

R. J. King,
Collector of Customs.

**Appointment of Temporary Customs Officer
Customs Ordinance 1943**

In exercise of the powers conferred by Section 4 of the Customs Ordinance 1943,

I hereby appoint:

Sgt. P. R. MILNE E8117656

to be a Temporary Customs Officer from 4th April 1997 until 2nd August 1997.

R. J. King,
Collector of Customs.

**Appointment of Temporary Customs Officer
Customs Ordinance 1943**

In exercise of the powers conferred by Section 4 of the Customs Ordinance 1943,

I hereby appoint:

Cpl. K. LEEMING T8253590

to be a Temporary Customs Officer from 4th April 1997 until 3rd August 1997.

R. J. King,
Collector of Customs.

Obituary

It is with deep regret that His Excellency the Governor announces the death on 6th May 1997 of Danuta Cecelia Krysyna Valler, Accounting Officer (Debtors), Treasury.

PROCLAMATION

CUSTOMS

Export of Anti-Personnel Landmines Proclamation 1997

(Proclamation No. 3 of 1997)

By **RICHARD PETER RALPH**, Commander of the Royal Victorian Order,
Governor of the Falkland Islands, **A PROCLAMATION—**

WHEREAS section 35 of the Customs Ordinance(a) provides that it shall be lawful for the Governor from time to time by proclamation to prohibit the importation, carriage coastwise or exportation of any goods whatsoever and that any such proclamation may prohibit importation, carriage coastwise or exportation until the revocation thereof, or during such time as may be specified therein, and may either absolutely prohibit importation, carriage coastwise or exportation except on compliance with any conditions which may be specified in the proclamation, or importation from or exportation to any particular place named in the proclamation;

AND WHEREAS it is necessary to prohibit the exportation of anti-personnel landmines from the Falkland Islands save as is by this Proclamation provided

IN EXERCISE of my powers under section 35 of the Customs Ordinance(a) and of all other powers enabling me, **I PROCLAIM—**

1. The export from the Falkland Islands of any anti-personnel landmines is prohibited until such time as this Proclamation is revoked.
2. This Proclamation shall become effective on its first publication in the *Gazette*.

GIVEN under my hand and the Public Seal of the Falkland Islands at Government House, Stanley, Falkland Islands, this ninth day of May in the year of Our Lord One thousand Nine Hundred and Ninety-Seven.

R. P. Ralph
Governor

EXPLANATORY NOTE (not forming part of the above Proclamation)

This Proclamation has been issued in order to enable effect to be given in the Falkland Islands, as a Dependent Territory of the United Kingdom, to the United Kingdom's policy of prohibiting the export of anti-personnel mines to all countries as part of its commitment to work actively towards a total global ban on the use of such mines.

(a) Cap. 16 Laws of the Falkland Islands 1950 Edition



**THE
FALKLAND ISLANDS GAZETTE
Extraordinary**

PUBLISHED BY AUTHORITY

Vol. CVI

12th June 1997

No. 9

The following is published in this Gazette -

The Register of Electors - Preliminary List 1997.

15th May 1997

REGISTER OF ELECTORS - PRELIMINARY LIST

The Registration Officer has prepared the preliminary list of all persons who, on the qualifying date (15 May 1997), appear to be entitled to be registered as electors for the purposes of the Electoral Ordinance 1988. In accordance with Section 12 of the Ordinance, the Registration Officer has caused the preliminary list to be published in this edition of the Gazette.

Any person who claims that the name of a person entitled to be registered as a voter in the Falkland Islands, has been omitted from the preliminary list, should notify the Registration Officer (Justice Department, Town Hall, Stanley) of such claim in writing within 28 days of publication. Additionally, any person who wishes to object to the inclusion of a person whose name appears in the preliminary list, should notify the Registration Officer within 28 days of publication. The Registration Officer shall, upon receipt of any such claim or objection, subsequently determine the same in accordance with the provisions of the Electoral Ordinance 1988.

The preliminary list has been prepared from last years Electoral Register. The following is a summary of the deletions from and additions and alterations to last years list :-

Deceased Electors - Camp

Betts, Arthur John
Porter, George

Deceased Electors - Stanley

Bermtsen, Mary Clarissa Elizabeth
Bermtsen, William Blyth
Blackley, Charles David
Cheek, John
Ford, James Edward
Jaffray, Angus
Johnson, Stanley Howard
Malcolm, George
Shedden, James Alexander
Tellez, Jeanette
Valler, Danuta Cecelia Krystyna

Electors who have changed Constituency - Camp to Stanley

Anderson, Marina Rose
Anderson, Ronald
Clarke, Petula Jane
Clausen, Sophie Marina
Dickson, Michael Keith
Ellis, Lucy

Evans, Russel
 Felton, Sonia Ellen
 Goss, Ian Ernest Earle
 Goss, Roderick Jacob
 Goss, Susan Diann
 Hutton, Elizabeth Isabella
 Hutton, Philip
 Johnson, Lily Ann
 Lee, Owen Henry
 Morrison, Michael John
 Morrison, Susan Margaret
 Sackett, Michael John Carlos
 Whitney, Lana Rose

Electors who have changed Constituency - Stanley to Camp

Barnes, Paul
 Decroliere, Eric Ernest Albert
 Hewitt, Brian David
 Hoy, Dawn
 Jones, Michael David
 Jones, Sheila Janice
 Minto, Dilys Rose
 Minto, Timothy Ian
 Sinclair, Serena Samantha

Electors who are no longer resident - Camp

Lee, Christopher
 Molkenbuhr, Lee Charles

Electors who are no longer resident - Stanley

Bell, Margaret Maud Elizabeth
 Bitcheno, Audrey Marie
 Bound, Graham Leslie
 Davis, Lynsey Leander
 Felton, Faith Dilys
 French, Irene Ann
 Laffi, Lisa Marie

Electors who have changed name by deed poll or by marriage - Camp

Findlay, Cathy Ann

Electors who have changed name by deed poll or by marriage - Stanley

Anthony, Enid Elizabeth

Clausen, Andrea Patricia
 Gough, Phyllis Candy
 Jaffray, Marina Morrison
 Lowe, Fiona Alison
 McGill, Coral Elizabeth
 McKay, Trudi Ann
 McLaren, Caroline Mary
 McLeod, Jane Elizabeth Diana
 Morrison-Betts, Priscilla Violet
 Stenning, Anna Russalka
 Vidal Roberts, Leona Lucila

Electors entitled to vote for the first time - Camp

Coleman, Anthony Hugh John
 Evans, Tracy
 Knight, Justin Robert Campbell
 Morrison, Timothy
 Poncet, Dion Michael
 Poncet, Jerome Pierre
 Rozee, Fiona

Electors entitled to vote for the first time - Stanley

Anderson, Carol Ann
 Anthony, Malcolm James
 Backhouse, Cheryl Paulette
 Backhouse, Nicholas
 Ballard, Wanda Rose
 Bedford, Carole Anne
 Berntsen, Matthew John
 Berntsen, Valorie Marcela
 Besley-Clark, Douglas James
 Betts, Ian
 Blades, Helen Jean
 Bonner, Cheryl Anne
 Brownlee, Andrew Samuel
 Brownlee, Lynn Frances
 Burnard, Eleanor Jane
 Burnard, Jennifer
 Burnett, Anthony
 Burnett, Elizabeth Ann
 Card, Patricia Collette
 Carey, Martin Rex
 Cartwright, Stephen
 Chaloner, Sheila Catherine
 Clark, Jonathan Andrew
 Clarke, Sasha Michelle

Clarke, Shane Adrian
Cotter, Mary Jane
Cotter, Timothy Stewart
Crowie, David Sean
Diggle, Katherine Elizabeth
Diggle, Roger John
Drysdale, Karen Margaret
Elliott, Henry James
Eynon, Christopher Huntlee
Fleming, Richard Ian
Ford, Simon
Gilbert, Christopher Paul
Goodwin, Gareth Kevin
Harris, Roslyn
Hayward, Neville
Howells, Lorna Marie
Howells, Melissa Louise
Humphreys, Dennis James
Humphreys, Margaret Anne
Keane, Olaf James
Kirkham, Campbell Joseph
Kultschar, Richard Paul
Lang, Marie-Bernard Therese
Lee, Angela Audrey
Lee, Anthony John
Leyland, Vera
Marsden, Hugh
Paice, Craig Arthur
Patterson-Smith, Ian Colin
Peck, Harwood John Charles
Plumb, Christopher Philip
Pollard, Andrew Keith
Pompert, Joost Herman Willem
Roberts, Joselynn Lynette Margaret
Robson, Anna Jenine
Rozee, Shona Mary
Short, Marc Peter
Simpson, James Alexander Bruce
Smallwood, Kio Mikhailovich
Smallwood, Margo Anee
Smallwood, Michael Anthony
Spruce, Mark Felton
Stedman, Dianne Audrey
Stedman, Robin George
Stewart, Irene Ann
Summers, Jacqueline
Summers, Jonathon Derek
Summers, Naomi Christine

Summers, Nichola Jane
 Watt, Stephen Robert
 Williams, Margaret Elizabeth
 Wood, Nicholas Paul Thomas

Electors and potential electors are advised that qualification for registration as an elector is governed by the provisions of section 27 of the Constitution. This section provides that, subject to certain exceptions, no person shall be qualified to be registered as a an elector unless, on the qualifying date for registration as such an elector -

- (a) he is a Commonwealth citizen;
- (b) he is eighteen years of age or over; and
- (c) he has been resident in the Falkland Islands during the qualifying period.

“Resident” is defined in section 3 of the Electoral Ordinance 1988 as follows”

“Meaning of “resident” for the purpose of qualification to be registered as an elector

3. (1) Subject to subsection (3), for the purpose of qualification to be registered as an elector, a person is to be treated as being resident in the Falkland Islands-

- (a) during such part or parts of the period of twelve months ending on the qualifying date as he was in the Falkland Islands; and
- (b) during such part or parts of the period of twelve months ending on the qualifying date as his absence from the Falkland Islands was by reason of subsection (2) a permitted absence for the purposes of this section.

(2) Subject to subsection (3), a person’s absence from the Falkland Islands shall for the purposes of subsection (1) be regarded as a permitted absence to the extent that it was occasioned by one or more of the following-

- (a) the performance of duties as a public officer in the employment of the Falkland Islands Government;
- (b) the performance of duties as a member of the Legislative Council or as a member or an employee of the Corporation;
- (c) service in the Her Majesty’s regular armed forces;
- (d) service as a member of the Falkland Islands Defence Force;
- (e) undergoing a course of education or training overseas;
- (f) undergoing a course of medical treatment overseas;
- (g) accompanying a spouse absent overseas for a reason mentioned in paragraphs (a) to (e) of this subsection;

(h) any other absence for a period or periods not exceeding six months in the period of twelve months immediately preceding the qualifying date.

(3) A person's absence from the Falkland Islands shall not be regarded as a permitted absence if he has not had a home in the Falkland Islands at any time during the five years preceding the qualifying date.

The "qualifying period" is prescribed by section 4 of the Electoral Ordinance 1988 as follows

"Meaning of "resident for the qualifying period"

4. (1) Subject to the provisions of this subsection, for the purposes of the provisions of this Ordinance as to the qualification of a person to be registered as an elector, a person is to be regarded as being resident in the Falkland Islands for the qualifying period if under the provisions of section 3 he is to be treated as being resident in the Falkland Islands for the period of twelve months immediately preceding the qualifying date. Notwithstanding the foregoing, a person not born in the Falkland Islands shall not, in respect of any electoral register prepared in relation to the qualifying date in 1997 (that is to be say, 15th May 1997), be treated as resident in the Falkland Islands for the qualifying period unless on that date he had been ordinarily resident in the Falkland Islands for a period of not less than five years expiring on the that date. For the purposes of this subsection, "ordinarily resident" has the same meaning as it has at common law."

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|------|-----------|------------------------|----------------------|
| 1 | Adams | John Harvey | 21 Ross Rd. East |
| 2 | Adams | Marjorie Rose | 21 Ross Rd. East |
| 3 | Alazia | Andrew | 66 Davis St. |
| 4 | Alazia | Anita Jayne | Government House |
| 5 | Alazia | Freda | 2 Fitzroy Rd. |
| 6 | Alazia | Freda Evelyn | 33 Ross Rd. West |
| 7 | Alazia | James Andrew | 2 Fitzroy Rd. |
| 8 | Alazia | Keith | 4 James St. |
| 9 * | Alazia | Maggie Ann | 6 John St. |
| 10 | Alazia | Stuart John | 31 Fitzroy Rd. |
| 11 | Alazia | Yvonne | Flat 2, 1A Moody St. |
| 12 | Aldridge | Caroline Mary | 2 H Jones Rd. |
| 13 | Aldridge | Kenneth John | 2 H Jones Rd. |
| 14 | Aldridge | Nina Ann | 2 H Jones Rd. |
| 15 | Allan | John | 28 John St. |
| 16 | Allan | Joyce Ena | 28 John St. |
| 17 | Allan | Michael Charles | 3 Philomel Place |
| 18 | Almonacid | Orlando | 1 Villiers St. |
| 19 | Anderson | Carol Anne | 22 Endurance Ave. |
| 20 | Anderson | Claudette | 56 John St. |
| 21 | Anderson | Eddie | 22 Endurance Ave. |
| 22 * | Anderson | Edward Bernard | 42 Davis St. |
| 23 * | Anderson | Elizabeth Nellie | 42 Davis St. |
| 24 * | Anderson | Gloria | Jersey Est. |
| 25 * | Anderson | Belen | 88 Davis St. |
| 26 | Anderson | Jamie Falkland | Stanley |
| 27 | Anderson | Margaret Kathleen | 21 John St. |
| 28 | Anderson | Marina Rose | Moody St. |
| 29 * | Anderson | Mildred Nessie | 8 St. Marys Walk |
| 30 | Anderson | Paul James | 39 Eliza Cres. |
| 31 | Anderson | Reginald Stanford | 21 John St. |
| 32 | Anderson | Richard Louis | 88 Davis St. |
| 33 | Anderson | Ronald | Moody St. |
| 34 | Anderson | Rupert William | Stanley |
| 35 | Anderson | Stephen Robert | Stanley |
| 36 | Anthony | Enid Elizabeth | 6 Dairy Paddock Rd |
| 37 | Anthony | Geraldine Sylvia | Flat 6, 6 Jersey Rd. |
| 38 | Anthony | Malcolm James | 17 Brandon Rd. |
| 39 | Backhouse | Cheryl Paulette | 19 Scoresby Close |
| 40 | Backhouse | Nicholas | 19 Scoresby Close |
| 41 | Ballard | Wanda Rose | 1 Fieldhouse Close |
| 42 | Barkman | Margaret Mary | 16 Fieldhouse Close |
| 43 * | Barnes | Ernest | 70 Davis St. |
| 44 * | Barnes | Molly Stella | 70 Davis St. |
| 45 * | Barnes | Sigrid Geraldine Wells | 39 John St. |
| 46 | Barnes | Trevor Marshall | 1 Auster Place |
| 47 | Barton | Alison Mary | 6 Villiers St. |
| 48 | Barton | Arthur John | 6 Villiers St. |
| 49 | Battersby | Jon Alan | 16 Fieldhouse Close |
| 50 | Bedford | Carole Anne | 16 Scoresby Close |
| 51 | Bedford | Kita Muriel | 2 Drury St. |
| 52 * | Bennett | Harold | 14 Alardyce St. |
| 53 * | Bennett | Lena Grace Gertrude | 14 Allardyce St. |
| 54 | Berntsen | Benjamin John | 31 Ross Rd. West |
| 55 | Berntsen | Cecilia Del Rosario | 14 St Marys Walk |

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|-------|--------------|--------------------------|-------------------------------|
| 56 | Berntsen | Christian Olaf Alexander | 32 Eliza Cres. |
| 57 | Berntsen | Iain Kenneth | 9 Eliza Cres. |
| 58 * | Berntsen | Kathleen Gladys | 10 Fitzroy Rd. |
| 59 | Berntsen | Kenneth Frederick | Stanley |
| 60 * | Berntsen | Lavinia Maud | KEMH |
| 61 | Berntsen | Matthew John | 39 Davis St. |
| 62 | Berntsen | Olaf Christian Alexander | Eliza Cres. |
| 63 | Berntsen | Patrick | 10 James St. |
| 64 | Berntsen | Saphena Anya Jane | Flat 7, 6 Jersey Rd. |
| 65 | Berntsen | Valdamar Lars | 14 St. Marys Walk |
| 66 | Berntsen | Valorie Marcela | 14 St. Marys Walk |
| 67 * | Bertrand | Catherine Gladys | 11 Ross Rd. East |
| 68 | Besley-Clark | Barbara June | 53 Callaghan Rd. |
| 69 | Besley-Clark | Craig Norman Leigh | 53 Callaghan Rd. |
| 70 | Besley-Clark | Douglas James | 53 Callaghan Rd. |
| 71 | Besley-Clark | Norman | 53 Callaghan Rd. |
| 72 | Betts | Amelia | 1 Callaghan Rd. |
| 73 | Betts | Arlette | Lafone House, Ross Rd. East |
| 74 | Betts | Donald William | 7 Jeremy Moore Ave. |
| 75 * | Betts | Ellen Alma | 21 Fitzroy Rd. |
| 76 | Betts | George Winston Charles | 35 Ross Rd. West |
| 77 | Betts | Ian | 1 Villiers St. |
| 78 | Betts | Lucia Elizabeth | 35 Ross Rd. West |
| 79 | Betts | Owen | Flat 4, Church House |
| 80 | Betts | Severine | 2B Jeremy Moore Ave. East |
| 81 | Betts | Shirley Rose | 7 Jeremy Moore Ave. |
| 82 | Betts | Terence Severine | Lafone House, Ross Rd. East |
| 83 | Biggs | Alastair Gordon | Trehayle, 50 John St. |
| 84 | Biggs | Althea Maria | 3 Dairy Paddock Rd. |
| 85 * | Biggs | Betty Josephine | 9 Moody St. |
| 86 * | Biggs | Edith Joan | Trehayle, 50 John St. |
| 87 | Biggs | Frances | 16 Endurance Ave. |
| 88 * | Biggs | Frederick James | KEMH |
| 89 * | Biggs | Irene Mary | Harbour View, 4 Ross Rd. East |
| 90 | Biggs | Leslie Frederick | 3 Dairy Paddock Rd. |
| 91 | Biggs | Michael Elfed | 21 Fitzroy Rd. |
| 92 | Biggs | Peter Julian Basil | 16 Endurance Ave. |
| 93 | Binnie | Juliet Ann | 33 Eliza Cres. |
| 94 | Binnie | Susan | 3 Brandon Rd. |
| 95 | Birmingham | John | 4 Drury St. |
| 96 | Birmingham | Susan Jane | 4 Drury St. |
| 97 | Blackley | Candy Joy | 4 Barrack St. |
| 98 | Blackley | Hilda | 11 Thatcher Drive |
| 99 | Blackley | John David | 4 Barrack St. |
| 100 | Blackley | Maurice | The Lodge, Market Garden |
| 101 | Blackley | Shane David | 4 Barrack St. |
| 102 | Blades | Helen Jean | 10 John St. |
| 103 | Blake | Thomas Patrick | 90 Davis St. |
| 104 * | Blizard | Lawrence Gordon | 51 Fitzroy Rd. |
| 105 * | Blizard | Malvina Mary | 51 Fitzroy Rd. |
| 106 * | Blyth | Agnes Ruth | 2 Brandon Rd. |
| 107 * | Blyth | Alfred John | 2 Brandon Rd. |
| 108 | Bonner | Angela Jane | 5 John St. |
| 109 | Bonner | Cheryl Anne | 4a Ross Road West |
| 110 * | Bonner | Donald William | Chaffeurs Cottage |

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| 111 | Bonner | Hayley Trina | 41 Ross Rd. West |
| 112 | Bonner | Linda Jane | 4A Ross Rd. West |
| 113 | Bonner | Nicholas | 4A Ross Rd. West |
| 114 | Bonner | Paul Roderick | 5 John St. |
| 115 | Bonner | Timothy | 41 Ross Rd. West |
| 116 | Bonner | Vera Ann | 5 John St. |
| 117 | Bonner | Vera Joan | Chaffeurs Cottage |
| 118 | * Bonner | Violet | 40 Ross Rd. |
| 119 | * Booth | Jessie | Racecourse Cottage |
| 120 | * Booth | Joseph Bories | 7 Philomel St. |
| 121 | Booth | Myriam Margaret Lucia | 7 Philomel St. |
| 122 | * Booth | Stuart Alfred | Racecourse Cottage |
| 123 | * Bound | Joan | Barrack St. |
| 124 | Bowles | Norma Evangeline | 1A Villiers St. |
| 125 | Bowles | William Edward | 1A Villiers St. |
| 126 | Bowles | William George Troyd | 1A Villiers St. |
| 127 | Bragger | Edward Laurence | 14 Jeremy Moore Ave. |
| 128 | Bragger | Olga | 14 Jeremy Moore Ave. |
| 129 | Brock | Juanita Lois | Flat5, 1 Jeremy Moore Ave East |
| 130 | Brooks | Cheryl Rose | 25 Callaghan Rd. |
| 131 | Brooks | Peter William | 25 Callaghan Rd. |
| 132 | Browning | Colin George | 1 Moody St. |
| 133 | Browning | Edwina | Davis St. |
| 134 | Browning | Rex | 35 Davis St. |
| 135 | Browning | Richard William | Davis St. |
| 136 | Browning | Trevor Osneith | Rose Hotel |
| 137 | Brownlee | Andrew Samuel | Stanley |
| 138 | Brownlee | Lynn Frances | Stanley |
| 139 | Buckett | Ronald Peter | 49 Fitzroy Rd. |
| 140 | Buckett | Susan Vera | 49 Fitzroy Rd. |
| 141 | Buckland | Colin Michael | 90 Davis St. |
| 142 | Buckland | Darlene Joanna | 11 James St. |
| 143 | Buckland | Peter John | 9 Callaghan Rd. |
| 144 | * Bundes | Robert John Christian | 17 Fitzroy Rd. |
| 145 | Burnard | Eleanor Jane | 3 Jeremy Moore Ave. |
| 146 | Burnard | Jennifer | 3 Jeremy Moore Ave. |
| 147 | Burnard | Linda May | 3 Jeremy Moore Ave. |
| 148 | Burnard | Peter | 3 Jeremy Moore Ave. |
| 149 | Burnett | Anthony | 59 Fitzroy Rd. |
| 150 | Burnett | Elizabeth Ann | 59 Fitzroy Rd. |
| 151 | * Burns | Mary Anne | 34 Davis St. |
| 152 | Burston | Catherine | Stanley |
| 153 | Burston | Stephen Leslie | Stanley |
| 154 | Bury | Ian Thomas | 63 Davis St. |
| 155 | Butcher | Michael George | 3A Dairy Paddock Rd. |
| 156 | Butcher | Trudi | 3A Dairy Paddock Rd. |
| 157 | * Butler | Elsie Maud | 8 John St. |
| 158 | * Butler | Frederick Lowther Edward Olai | 8 John St. |
| 159 | * Butler | George Joseph | 1A Moody St. |
| 160 | Butler | Joan May | 1A Moody St. |
| 161 | Butler | Laurence Jonathan | 2 Davis St. |
| 162 | Butler | Margaret Orlanda | 15A James St. |
| 163 | Butler | Orlanda Betty | 2 Davis St. East |
| 164 | Cameron | Jane Diana Mary Keith | Old Bakery, Fitzroy Rd. |
| 165 | Cant | Carol Rosine | Stanley |

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|-------|------------|-------------------------|----------------------|
| 166 | Cant | Martin Ronald | Stanley |
| 167 | Card | Patricia Collette | 7 Ian Campbell Drive |
| 168 * | Carey | Anthony Michael | 19 Ross Rd. West |
| 169 | Carey | Bonita Colleen | 19 Ross Rd. West |
| 170 * | Carey | Gladys | 19 Ross Rd. West |
| 171 | Carey | Martin Rex | 21 Eliza Cove Cres. |
| 172 * | Carey | Mary Ann Margaret | 18 Ross Rd. West |
| 173 * | Carey | Terence James | 18 Ross Rd. West |
| 174 | Cartwright | Stephen | 39 Ross Road West |
| 175 | Castle | David Peter | 26 John St. |
| 176 | Castle | Isobel | 26 John St. |
| 177 | Ceballos | Eulogio Gabriel | 28 Endurance Ave. |
| 178 | Chaloner | Sheila Catherine | 28 Jersey Rd. |
| 179 | Chapman | Helen | 6 Fitzroy Rd. East |
| 180 | Chapman | Paul | 6 Fitzroy Rd. East |
| 181 | Chater | Annie | 33 Fitzroy Rd. |
| 182 | Chater | Anthony Richard | 33 Fitzroy Rd. |
| 183 | Chater | Thomas Frederick | 33 Fitzroy Rd. |
| 184 | Chater | William John | 33 Fitzroy Rd. |
| 185 | Cheek | Barbara | 10 Ross Rd. |
| 186 | Cheek | Gerald Winston | 10 Ross Rd. |
| 187 | Cheek | Janet Linda | 25 Ross Rd. West |
| 188 | Cheek | Marie | 10 Ross Rd. |
| 189 | Cheek | Miranda | 25 Ross Rd. West |
| 190 | Cheek | Rosalind Catriona | 25 Ross Rd. West |
| 191 | Clapp | Kevin Christopher | 1 Murray Heights |
| 192 | Clark | Jonathan Andrew | 18 Scoresby Close |
| 193 | Clarke | Camilla Marie | 8 Drury St. |
| 194 | Clarke | Christopher | Stanley |
| 195 | Clarke | David James | 17 Ross Rd. West |
| 196 | Clarke | Derek Simon | 23 Jeremy Moore Ave. |
| 197 * | Clarke | Doreen | 17 Ross Rd. West |
| 198 | Clarke | Gwynne Edwina | 17 Jeremy Moore Ave. |
| 199 * | Clarke | Hector | 27 Eliza Cres. |
| 200 | Clarke | Ian | 17 Ross Rd. West |
| 201 | Clarke | Isabel Joan | 1A Moody St. |
| 202 * | Clarke | James Martin | 4B Ross Rd. West |
| 203 | Clarke | Jonathan Terence | 17 Jeremy Moore Ave. |
| 204 * | Clarke | Joyce Kathleen | 27 Eliza Cres. |
| 205 | Clarke | Julie Ann | Globe Tavern |
| 206 | Clarke | Kathleen Gay | 60 Davis St. |
| 207 | Clarke | Marvin Thomas | 7 Fitzroy Rd. |
| 208 | Clarke | Paul Ian | Stanley |
| 209 | Clarke | Petula Jane | Stanley |
| 210 | Clarke | Rachel Ena | 32 Eliza Cres. |
| 211 * | Clarke | Ronald John | 17 Ross Rd. West |
| 212 | Clarke | Rudy Thomas | 8 Drury St. |
| 213 | Clarke | Sasha Michelle | Stanley |
| 214 | Clarke | Shane Adrian | 1 Callaghan Rd. |
| 215 | Clarke | Suzanna | YHCA |
| 216 | Clarke | Terence John | 17 Jeremy Moore Ave. |
| 217 | Clarke | Trudi Ann | 7 Fitzroy Rd. |
| 218 | Clarke | Violet Rose | 31 Ross Rd. West |
| 219 | Clasen | Wayne Ian Summers James | 9 Fitzroy Rd. |
| 220 | Clausen | Andrea Patricia | 3 St. Marys Walk |

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|-------|-----------|-------------------------|---------------------------|
| 221 | Clausen | Denzil George Gustavius | 3 St. Marys Walk |
| 222 | Clausen | Melanie Florence | 1 Hebe St. |
| 223 | Clausen | Sophie Marina | Stanley |
| 224 * | Claxton | Frank Brian | 28 Ross Rd. East |
| 225 | Claxton | Margaret | 28 Ross Rd. East |
| 226 | Clayton | Brian | 16 St. Marys Walk |
| 227 | Clayton | Susan | 16 St. Marys Walk |
| 228 | Clement | Gary | 9 Snake St. |
| 229 | Clement | Jane | 9 Snake St. |
| 230 | Cletheroe | Kenneth Stanley | 45 Fitzroy Rd. |
| 231 * | Clifton | Charles | 3 Ross Rd. West |
| 232 | Clifton | Darwin Lewis | 53 Davis St. |
| 233 | Clifton | Doreen | 3 Ross Rd. West |
| 234 | Clifton | Kevin | 20 Davis St. |
| 235 | Clifton | Marie | 6 Discovery Close |
| 236 | Clifton | Neil | 20 Davis St. |
| 237 | Clifton | Stephen Peter | 61 Fitzroy Rd. |
| 238 | Clifton | Terence Charles | 3 Ross Rd. West |
| 239 | Clifton | Teresa Ann | 12 Callaghan Rd. |
| 240 | Clifton | Valerie Ann | 61 Fitzroy Rd. |
| 241 | Clingham | Leslie George | 2 Brisbane Rd. |
| 242 | Clingham | Yvonne Belen | 2 Brisbane Rd. |
| 243 | Cockwell | Maurice Adam | 90 Davis St. |
| 244 | Cofre | Anya Evelyn | 6A Ross Rd. West |
| 245 | Cofre | Elvio Miguel | 6A Ross Rd. West |
| 246 | Collier | Mark Walter | 11 Campbell Drive |
| 247 | Collier | Sharon | 11 Campbell Drive |
| 248 | Collins | Shiralee | Flat 9, 6 Jersey Rd. |
| 249 | Connolly | Janice | 10 Beaver Rd. |
| 250 | Connolly | Kevin Barry | 1 Kings St. |
| 251 | Coombe | Peter | 12 Ross Rd. West |
| 252 | Coombe | Robert | 12 Ross Rd. West |
| 253 | Coombe | Shirley Anne | 12 Ross Rd. West |
| 254 | Cotter | Mary Jane | 9 Jeremy Moore Ave. |
| 255 | Cotter | Timothy Stewart | 9 Jeremy Moore Ave. |
| 256 | Coulter | Paula | 9 Fieldhouse Close |
| 257 | Courtney | Anthony Clive | Lady Hunt House, John St. |
| 258 | Courtney | Julie Doris | Lady Hunt House, John St. |
| 259 | Coutts | Charles | 12 Endurance Ave. |
| 260 * | Coutts | Charles Lindsay | 33 Ross Rd. |
| 261 | Coutts | Diana Marion | 6B Ross Rd. West |
| 262 | Coutts | John | 36 Ross Rd. West |
| 263 | Coutts | Olga | 33 Ross Rd. |
| 264 | Coutts | Peter | 13 Campbell Drive |
| 265 | Crabb | Elizabeth Ann | 38 Eliza Cres. |
| 266 | Crowie | Ana Bonita | 3 Fitzroy Rd. East |
| 267 | Crowie | David Sean | Stanley |
| 268 | Crowie | Nicola Jane | 35 Callaghan Rd. |
| 269 | Curtis | Alfred William Hamilton | 6 Brandon Rd. West |
| 270 | Curtis | Barbara Joan | 6 Brandon Rd. West |
| 271 | Curtis | James William Hamilton | 6 Ross Rd. |
| 272 | Davies | Andrew Liam | Flat 7, 6 Jersey Rd. |
| 273 | Davies | Anthony Warren | 7 Callaghan Rd. |
| 274 | Davies | Christine Susan | 8 Fitzroy Rd. East |
| 275 | Davies | Colin George | 15 Ross Rd. West |

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|-----|------------|--------------------------|--------------------------------|
| 276 | Davies | Eileen Wynne | 15 Ross Rd. West |
| 277 | Davies | Jacqueline Nancy | 7 Callaghan Rd. |
| 278 | Davies | Stephen Andrew | 7 Callaghan Rd. |
| 279 | Davies | William | 8 Fitzroy Rd. East |
| 280 | Davis | Ellen Rose | 39 Davis St. |
| 281 | Davis | Mandy John | 15 James St. |
| 282 | Davis | Maurice | 39 Davis St. |
| 283 | Davis | Nicholas | 15 James St. |
| 284 | Davis | Roy George Victor | 6 Narrows View |
| 285 | Davis | Sharon Sandra Evelyn | 6 Narrows View |
| 286 | Davy | Patrick Alex Field | Flat3, 3 Jeremy Moore Ave East |
| 287 | Decroliere | Carrie Madeline Helen | 5 Discovery Close |
| 288 | * Dickson | Caroline Christine Bird | 108 Davis St. |
| 289 | Dickson | Michael Keith | C/o Tamar |
| 290 | Didlick | Fiona Margaret | 13 Jeremy Moore Ave |
| 291 | Didlick | Graham John | 13 Jeremy Moore Ave |
| 292 | Didlick | Rhiannon Elinore | 13 Jeremy Moore Ave |
| 293 | Diggle | Katherine Elizabeth | 12 Jersey Rd. |
| 294 | Diggle | Roger John | 12 Jersey Rd. |
| 295 | Dodd | Alison | 1 Pioneer Row |
| 296 | Dodd | Nigel Keith | 1 Pioneer Row |
| 297 | Doherty | Ian | 12 McKay Close |
| 298 | Drysdale | Karen Margaret | Stanley |
| 299 | * Duncan | Doreen | Tenacres |
| 300 | * Duncan | William | Tenacres |
| 301 | Earnshaw | Jacqueline Elizabeth | 32 Ross Rd. West |
| 302 | East | Justin Clive Richard | 1 Fieldhouse Close |
| 303 | Eccles | Bernard Leslie | 18 Jeremy Moore Ave. |
| 304 | Eccles | Moiria Cameron | 18 Jeremy Moore Ave. |
| 305 | Edwards | Rebecca Elizabeth | KEMH |
| 306 | Elliott | Elizabeth Rose | 15 Callaghan Rd |
| 307 | Elliott | Henry James | 15 Callaghan Rd. |
| 308 | * Ellis | Cyril | 24 Ross Rd. East |
| 309 | Ellis | Lucy | Stanley |
| 310 | Ellis | Valerie | 24 Ross Rd. East |
| 311 | Elsby | Barry | Moody Brook House. |
| 312 | Ericksen | Michelle | 1B Capricorn Rd. |
| 313 | Evans | Donna Newell | By-Pass Rd. |
| 314 | * Evans | Gladys Alberta | 6 Barrack St. |
| 315 | Evans | Michael David | By-Pass Rd. |
| 316 | Evans | Russel | Fieldhouse Close |
| 317 | Ewing | Gordon | 4 Jeremy Moore Ave |
| 318 | Ewing | Irene | 4 Jeremy Moore Ave |
| 319 | Eynon | Carol | 8 Villiers St. |
| 320 | Eynon | Christopher Huntlee | 8 Villiers St. |
| 321 | Eynon | David John | 8 Villiers St. |
| 322 | Faria | Basil Harry | 3A Brisbane Rd. |
| 323 | Faria | Maria Anne | 3A Brisbane Rd. |
| 324 | * Faria | Mary Ann | 6A Jeremy Moore Ave |
| 325 | Faria | Paul | Whyteways, James St. |
| 326 | Faria | Susana Caroline Berntsen | Whyteways, James St. |
| 327 | Felton | Sonia Ellen | Stanley |
| 328 | * Felton | Violet Regina Margaret | German Camp, Callaghan Rd. |
| 329 | Ferguson | Marie Anne | Stanley |
| 330 | * Ferguson | Robert John | 4 Capricorn Rd. |

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| 331 | Ferguson | Rose | Flat7, 1 Jeremy Moore Ave East |
| 332 | Ferguson | Thelma | 4 Capricorn Rd. |
| 333 | Fiddes | Douglas Graham | 18 Ross Rd. East |
| 334 | Fiddes | Gardner Walker | 8 Endurance Ave |
| 335 | Fiddes | Julia Bertrand | 18 Ross Rd. East |
| 336 | Fiddes | Mary McKinnon Livingstone | 4 Moody St. |
| 337 | Fiddes | Melody Christine | 8 Endurance Ave |
| 338 | Fiddes | Robert | 4 Moody St. |
| 339 | Fiddes | Shona Mary | Sir Rex Hunt House. |
| 340 * | Finlayson | Iris Dwenda Margaret | 7 John St. |
| 341 | Finlayson | Peter | 6 Brandon Rd. |
| 342 * | Finlayson | Phyllis | 6 Brandon Rd. |
| 343 | Fisher-Smith | Julie Ann | 8 Fieldhouse Close |
| 344 | Fleming | Richard Ian | 7 Ian Campbell Drive |
| 345 | Fogerty | Philip John | Stone Cottage |
| 346 | Fogerty | Richard Edwin John | Stone Cottage |
| 347 | Ford | Alison Jane Marie | 5 Jersey Rd. |
| 348 * | Ford | Arthur Henry | 6 Drury St. |
| 349 | Ford | Caroline | 2 Philomel Place |
| 350 | Ford | Cherry Rose | 1 James St. |
| 351 | Ford | Christopher James | 11 Fieldhouse Close |
| 352 | Ford | Colin Stewart | 15 Kent Rd. |
| 353 | Ford | Colleen Mary | Lady Hunt House John St. |
| 354 | Ford | David | 1 Davis St. |
| 355 | Ford | Frederick James | Lady Hunt House John St. |
| 356 | Ford | Gerard Allan | Flat 1, 3 Jeremy Moore Ave |
| 357 | Ford | Jonathan | 11 Beaver Rd. |
| 358 | Ford | Julie Ann | 11 Beaver Rd. |
| 359 | Ford | Leann Caroline | 15 Kent Rd. |
| 360 | Ford | Leonard | 5 Jersey Rd. |
| 361 | Ford | Marilyn Christina | 24 James St. |
| 362 | Ford | Michael | 1 James St. |
| 363 | Ford | Paul Edward | 2 Philomel Place |
| 364 | Ford | Robert | 1 Davis St. |
| 365 | Ford | Sara | 11 Fieldhouse Close. |
| 366 | Ford | Simon | 1 James St. |
| 367 | Forrest | Jennifer Carol | 16 Kent Rd. |
| 368 | Forster | Amanda | 39 Eliza Cres. |
| 369 | Forster | Lynne | Stanley |
| 370 | France | Graham Brian | 7 Snake St. |
| 371 | France | Jane Aileen Marie | 7 Snake St. |
| 372 | Freeman | Carl Francis | 10 James St. |
| 373 | Freeman | Dianne May | 10 James St. |
| 374 * | Fullerton | Mary Ellen | Government House |
| 375 | Geach | Alan John | Sir Rex Hunt House. |
| 376 | George | Magnus John Alexander | 14 Ross Rd. West |
| 377 | Gilbert | Christopher Paul | 22 Jeremy Moore Ave. |
| 378 | Gilbert | Judith Elizabeth | 22 Jeremy Moore Ave. |
| 379 | Gilbert | Robert Ernest | 22 Jeremy Moore Ave. |
| 380 | Gilding | Deborah | Murray Heights |
| 381 | Gilding | Melanie Carol | 4 Philomel St. |
| 382 | Gilding | Peter Bernard | 4 Philomel St. |
| 383 | Gilding | Sara Jane | 11 Pioneer Row. |
| 384 * | Gooch | Dudley Frederick | 34 John St. |
| 385 | Goodwin | Colin Valentine | 86 Davis St. |

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| 386 | Goodwin | Derek Samuel | 3 Police Cottages, 7 Ross Rd. |
| 387 * | Goodwin | Emily Rose | 7 Brisbane Rd. |
| 388 | Goodwin | Gareth Kevin | 86 Davis St. |
| 389 | Goodwin | Hazel Rose | 3 Police Cottages, 7 Ross Rd. |
| 390 | Goodwin | June Elizabeth | 86 Davis St. |
| 391 * | Goodwin | Kathleen Edith Marguerite | 6 Thatcher Drive |
| 392 | Goodwin | Margaret Ann | 3 H Jones Rd. |
| 393 | Goodwin | Robin Christopher | 27 Callaghan Rd. |
| 394 | Goodwin | Simon James | Flat 3, 2 Eliza Place |
| 395 | Goodwin | Una | 27 Callaghan Rd. |
| 396 | Goodwin | William John Maurice | 7 Brisbane Rd. |
| 397 | Goss | Amara Theresa | 7 Brandon Rd. |
| 398 | Goss | Annagret | 16 Jeremy Moore Ave. |
| 399 | Goss | Corina Rose | 15 Callaghan Rd. |
| 400 | Goss | Dorothy Ellen | Scoresby Close |
| 401 | Goss | Errol Barry Gordon | Flat 3, 7 Jeremy Moore Ave East |
| 402 * | Goss | Grace Elizabeth | 5 Ross Rd. East |
| 403 | Goss | Ian Ernest Earle | Fieldhouse Close |
| 404 | Goss | Morgan Edmund | 16 Jeremy Ave. |
| 405 | Goss | Odette Ellen May | Flat 1, 30 Jersey Rd. |
| 406 * | Goss | Roderick Jacob | Fitzroy Rd. |
| 407 | Goss | Sandra Kathleen | 11 Kent Rd. |
| 408 | Goss | Simon Peter Miller | 11 Kent Rd. |
| 409 | Goss | Susan Diann | Fieldhouse Close |
| 410 | Goss | William Henry (jnr) | 7 Brandon Rd. |
| 411 * | Goss | William Henry (snr) | 5 Ross Rd. East |
| 412 | Gough | Phyllis Candy | 11 Callaghan Rd. |
| 413 | Gould | Arthur William | Moody St. |
| 414 * | Grant | Lennard John | 3 Moody St. |
| 415 * | Grant | Milly | 3 Moody St. |
| 416 | Gray | Johan | 5 Philomel St. |
| 417 | Green | David William | 5 Police Cottages, Ross Rd. |
| 418 | Greenland | Bonita Doreen | 3 Racecourse Rd. |
| 419 | Greenland | Kenneth David | 3 Racecourse Rd. |
| 420 | Grimmer | Keith | 15 Pioneer Row |
| 421 | Grimmer | Marilyn | 15 Pioneer Row |
| 422 * | Hadden | Alexander Burnett | 27 Fitzroy Rd. |
| 423 * | Hadden | Sheila Peggy | 27 Fitzroy Rd. |
| 424 | Halford | Rodney John | Tenacres |
| 425 | Halford | Sharon | Tenacres |
| 426 | Hall | David Albert | 56 Davis St. |
| 427 | Hall | Marilyn Joyce | 56 Davis St. |
| 428 * | Halliday | Evelyn Edna | 9 Brisbane Rd. |
| 429 | Halliday | Gerald | Flat 1, 6 Racecourse Rd. |
| 430 | Halliday | Jeffrey James | Fieldhouse Close |
| 431 * | Halliday | John Arthur Leslie | 108 Davis St. |
| 432 * | Halliday | Leslie John | 5 Villiers St. |
| 433 | Halliday | Raynor | 9 Brisbane Rd. |
| 434 | Hancox | Rachel Mary | 9 Ross Rd. West |
| 435 | Hancox | Robert James | 9 Ross Rd. West |
| 436 | Hanlon | Michael John | 19 Jeremy Moore Ave. |
| 437 | Hanlon | Patricia | 19 Jeremy Moore Ave. |
| 438 | Hansen | Douglas John | 6 Fitzroy Rd. |
| 439 | Hansen | Keva Elizabeth | 1 Dairy Paddock Rd. |
| 440 | Hansen | Terence Joseph | 1 Dairy Paddock Rd. |

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| 441 | Harris | Christopher James | 8 Pioneer Row |
| 442 | Harris | Heather | 3 Ross Rd. East |
| 443 | Harris | Jill Yolanda Elizabeth Miller | 19 Fitzroy Rd. |
| 444 | Harris | Karl Henry | 19 Fitzroy Rd. |
| 445 | Harris | Leeann Watson | 10 Dairy Paddock Rd. |
| 446 | Harris | Leslie Sidney | 19 Fitzroy Rd. |
| 447 | Harris | Michael Ronald | 3 Ross Rd. East |
| 448 | Harris | Ralph Aaron | 10 Dairy Paddock Rd. |
| 449 | Harris | Roslyn | 19 Fitzroy Rd. |
| 450 * | Harvey | Muriel Elizabeth Elsie | 2 Kings St. |
| 451 | Harvey | Sheila | Flat 3, 5 Jeremy Moore Ave. |
| 452 | Harvey | William | 21 Fitzroy Rd. |
| 453 | Hawksworth | Christopher | 29 Fitzroy Rd. |
| 454 | Hawksworth | David | 29 Fitzroy Rd. |
| 455 | Hawksworth | Jeanette | 29 Fitzroy Rd. |
| 456 | Hawksworth | Mary Catherine | 5 A Brisbane Rd. |
| 457 | Hawksworth | Pauline May | 29 Fitzroy Rd. |
| 458 | Hawksworth | Terence | 5A Brisbane Rd. |
| 459 | Hayward | Marjorie | 30 Eliza Rd. |
| 460 | Hayward | Neville | Flat 2, Church House |
| 461 * | Hayward | Peter Dennis | 30 Eliza Rd. |
| 462 | Heathman | Malcolm Keith | 15 Eliza Cove Rd. |
| 463 | Heathman | Mandy Gail | 15 Eliza Cove Rd. |
| 464 | Henry | Alan Richard | 4 Beaver Rd. |
| 465 | Henry | Patricia Denise | 4 Beaver Rd. |
| 466 | Hewitt | Alison Denise | 23 Shackleton Drive |
| 467 | Hewitt | Frances Agnes | Stanley |
| 468 | Hewitt | Gary George | 3 Hebe Place |
| 469 | Hewitt | Kevin John | 14 Jeremy Moore Ave |
| 470 | Hewitt | Margaret Ann | 3 Hebe Place |
| 471 | Hewitt | Neil George | Stanley |
| 472 * | Hewitt | Rachel Catherine Orissa | 4 St. Marys Walk |
| 473 * | Hewitt | Robert John David | 3 Thatcher Drive |
| 474 | Higgins | Dawn | 2 Dean St. |
| 475 | Hill | Brian Jarvis | 1 Kent Rd. |
| 476 | Hill | Penelope Ann | 1 Kent Rd. |
| 477 * | Hills | Heather Margaret | 5 Davis St. |
| 478 * | Hills | Richard William | 5 Davis St. |
| 479 | Hirtle | Christine | 5 Capricorn Rd. |
| 480 | Hirtle | Leonard Lloyd | 20 Jeremy Moore Ave. |
| 481 * | Hirtle | Mary Ann | 12 Drury St. |
| 482 | Hirtle | Michael Barry | 20 Jeremy Moore Ave. |
| 483 | Hirtle | Rose Ann Shirley | 4 Villiers St. |
| 484 | Hirtle | Sandra May Winifred | Eliza Cove Rd. |
| 485 | Hirtle | Shirley | 20 Jeremy Moore Ave. |
| 486 | Hirtle | Zane Eric | Eliza Cove Rd. |
| 487 | Hobman | Anilda Marilu | 34 Ross Rd. West Flat |
| 488 | Hobman | Carol Margaret | Stanley |
| 489 | Hobman | David Gonsalo | 34 Ross Rd. West Flat |
| 490 | Hobman | Luis Alfonso | 34 Ross Rd. West Flat |
| 491 * | Hoggarth | Agnes Christina | 2 James St. |
| 492 | Horne-MacDonald | John Alexander | 2 Dairy Paddock Rd. |
| 493 | Horne-MacDonald | Myriam Beatriz | 2 Dairy Paddock Rd. |
| 494 | Howatt | Derek Frank | 4 Racecourse Rd. |
| 495 * | Howatt | Frank Derby | Flat5, 7 Jeremy Moore Ave East |

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| 496 | Howatt | Suzanna Margaret | 4 Racecourse Rd. |
| 497 | Howe | Alison Delia | 36 Davis St. |
| 498 | Howe | Paul Anthony | 36 Davis St. |
| 499 | Howells | Anne Stephanie | 112 Davis St. |
| 500 | Howells | Lorna Marie | 112 Davis St. |
| 501 | Howells | Melissa Louise | 112 Davis St. |
| 502 | Howells | Roger | 112 Davis St. |
| 503 | Humphreys | Dennis James | 7 Dean St. |
| 504 | Humphreys | Margaret Anne | 7 Dean St. |
| 505 * | Hutton | Elizabeth Isabella | 3 John St. |
| 506 * | Hutton | Philip | 3 John St. |
| 507 | Iqao | Pauline Lynx | 15 Scoresby Close |
| 508 | Irwin | Rhoda De Felton | Eliza Cove Rd. |
| 509 | Jacobsen | Alistair | 1A Philomel St. |
| 510 | Jacobsen | Catherine Joan | 1A Philomel St. |
| 511 | Jaffray | Donald | 15 Brandon Rd. |
| 512 | Jaffray | Eileen | 5 Hebe St. |
| 513 | Jaffray | Elaine Michele | 8 Discovery Close |
| 514 | Jaffray | Estelle Anita | Snake Hill |
| 515 | Jaffray | Frank Alexander | 8 Discovery Close |
| 516 | Jaffray | Gerard Alan | 5 Hebe St. |
| 517 | Jaffray | Helen Rose | 84 Davis St. |
| 518 | Jaffray | Ian | 5 Hebe St. |
| 519 | Jaffray | Ingrid Joyce | 5 Hebe St. |
| 520 | Jaffray | Jacqueline Ann | Flat 3, Church House |
| 521 | Jaffray | Janet | 40 Eliza Cres. |
| 522 | Jaffray | Janice Vanessa | 3C Jersey Est. |
| 523 | Jaffray | John | 40 Eliza Cres. |
| 524 | Jaffray | John Summers | 84A Davis St. |
| 525 | Jaffray | June Elizabeth | 17 Ross Rd. East |
| 526 | Jaffray | Kenneth Ian | 2 Dean St. |
| 527 | Jaffray | Lisa Jane | Flat 3, 1 Jeremy Moore Ave. |
| 528 | Jaffray | Marina Morrison | 15 Brandon Rd. |
| 529 | Jaffray | Stephen James | 11 James St. |
| 530 | Jaffray | Terence Roy | Flat 3, 1 Jeremy Moore Ave |
| 531 | Jaffray | Terri-Ann | 24 Endurance Ave. |
| 532 | Jaffray | Tony | 84 Davis St. |
| 533 | Jaffray | Wayne Neil | 5 Hebe St. |
| 534 | Jennings | Neil | Flat 4, 30 Jersey Rd. |
| 535 | Jennings | Stephen | 5 Fitzroy Rd. |
| 536 | Johnson | Jacqueline | 5 Kent Rd. |
| 537 * | Johnson | Lily Ann | Brandon Rd. |
| 538 | Johnson | Michael Neil | 5 Kent Rd. |
| 539 | Johnson | Vanda Joan | 38 Ross Rd. |
| 540 | Jones | Alan Smith | 26 Ross Rd. West |
| 541 | Jones | Jennifer | 26 Ross Rd. West |
| 542 | Jones | John Hugh | 1 Brandon Rd. |
| 543 | Jones | Kevin Richard | Stanley. |
| 544 | Jones | Michelle | 1 Brandon Rd. |
| 545 | Jones | Yvonne Malvina | 3 Discovery Close |
| 546 | Jordan | Dilys Margaret Ann | 6A Pioneer Row. |
| 547 | Keane | Alva Rose Marie | 18 Davis St. |
| 548 | Keane | Olaf James | 18 Davis St. |
| 549 | Keane | Thomas James | 18 Davis St. |
| 550 * | Keenleyside | Charles Desmond | 3 Pioneer Row |

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| 551 * Keenleyside | Dorothy Maud | 3 Pioneer Row |
| 552 Keenleyside | Manfred Michael Ian | Snake Hill |
| 553 Keenleyside | Nanette Barbara | Snake Hill |
| 554 Kenny | Erling | 20 James St. |
| 555 Kiddle | Robert Karl | Flat 3. 6 Racecourse Rd. |
| 556 King | Anna Constance Eve | 38 Davis St. |
| 557 King | Cherilyn Julie | Lafone House, Ross Rd. East |
| 558 * King | Desmond George Buckley | 38 Davis St. |
| 559 * King | Gladys Evelyn | 39 Fitzroy Rd. |
| 560 King | Glynis Margaret | 2 B Jeremy Moore Ave. East |
| 561 King | Michelle Beverley | 69 Fitzroy Rd. |
| 562 King | Peter Thomas | 10 Jeremy Moore Ave. |
| 563 King | Robert John | 1D Jersey Est. |
| 564 King | Rosemarie | 10 Jeremy Moore Ave |
| 565 * King | Vernon Thomas | 39 Fitzroy Rd. |
| 566 Kirkham | Campbell Joseph | 5 Capricorn Rd. |
| 567 Kluzniak | Beulah | 26 Ross Rd. East |
| 568 * Kluzniak | Boguslaw Sylvester | 26 Ross Rd. East |
| 569 Kultschar | Carolyn Wendy | 2 Moody St. |
| 570 Kultschar | John William | 4 Davis St. East |
| 571 Kultschar | Richard Paul | 4 Davis St. East |
| 572 Kultschar | Yvonne Rosina | 4 Davis St. East |
| 573 Laffi | Atilio Segundo | 3 Brisbane Rd. |
| 574 Laffi | Kathleen Mary | 3 Brisbane Rd. |
| 575 Lang | David Geoffrey | 45 Callaghan Rd. |
| 576 Lang | James Patrick | Flat2, 3 Jeremy Moore Ave East |
| 577 Lang | Marie-Bernard Therese | 45 Callaghan Rd. |
| 578 Lang | Sandra Shirleen | 2 Allardyce St. |
| 579 Lang | Theresa Margaret | 45 Callaghan Rd. |
| 580 Lang | William Frank | 3 James St. |
| 581 Larsen | Ellen | 74 Davis St. |
| 582 * Lee | Alfred Leslie | 11 Drury St. |
| 583 Lee | Angela Audrey | 8 Jersey Rd. |
| 584 Lee | Anthony John | 8 Jersey Rd. |
| 585 Lee | Beverley Christina | 10 Allardyce St. |
| 586 Lee | Derek William | 2 Davis St. |
| 587 Lee | Gladys | 11 Drury St. |
| 588 Lee | Leslie James | 10 Allardyce St. |
| 589 Lee | Owen Henry | Stanley |
| 590 Lee | Tanya | 15 Campbell Drive |
| 591 Lee | Trudi Dale | 10 Allardyce St. |
| 592 Lennie | Gordon Carnie | 9 Narrows View |
| 593 Lewis | David James | 3 Campbell Drive |
| 594 * Lewis | James | 2 St. Marys Walk |
| 595 Lewis | Jason | 3 Campbell Drive |
| 596 * Lewis | Jean | 2 St. Marys Walk |
| 597 Lewis | Pamela Irene | 3 Campbell Drive |
| 598 Leyland | Frank | 10 Brandon Rd. |
| 599 Leyland | Vera | 10 Brandon Rd. |
| 600 Livermore | Anton | 33 Callaghan Rd. |
| 601 Livermore | Darren | Stanley |
| 602 Loftus | Anthony | Stanley |
| 603 Loftus | Colleen | 11 Fitzroy Rd. East |
| 604 Lowe | Anthony Trevor | 54 Davis St. |
| 605 Lowe | Fiona Alison | 54 Davis St. |

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| 606 * | Luxton | Ernest Falkland | 38 John St. |
| 607 | Luxton | Jennifer Mary | 4 Hebe Place |
| 608 | Luxton | Michael | 1A Pioneer Row |
| 609 | Luxton | Nicola | 1A Pioneer Row |
| 610 | Luxton | Stephen Charles | 7 Narrows View |
| 611 * | Luxton | Sybil Grace | 38 John St. |
| 612 * | Luxton | Winifred Ellen | 15 Fitzroy Rd. |
| 613 | Luxton | Zoe | 1A Pioneer Row |
| 614 | Lyse | Ethel Malvina | 65 Fitzroy Rd. |
| 615 * | Lyse | George Walter | 8 Woody St. |
| 616 | Lyse | Linda Margaret | 65 Fitzroy Rd. |
| 617 * | Lyse | Reginald Sturdee | 65 Fitzroy Rd. |
| 618 | Macaskill | Angus Lindsay | 8 Jeremy Moore Ave. |
| 619 | Macaskill | Jeanette May | 8 Jeremy Moore Ave. |
| 620 | Macaskill | John | 34 Ross Rd. West |
| 621 | MacBeth | Phyllis Elizabeth Grace | 17 Brandon Rd. |
| 622 | MacDonald | Colin George | 26 Endurance Ave. |
| 623 | MacDonald | Derek George | 26 Endurance Ave. |
| 624 | MacDonald | Irene | 26 Endurance Ave. |
| 625 * | Malcolm | Velma | 7 Allardyce St. |
| 626 | Marsden | Hugh | Flat 2, 7 Jeremy Moore Ave. |
| 627 | May | Brian Roy | 21 Jeremy Moore Ave. |
| 628 | May | Bruce Raymond | Wardens House, KEMH |
| 629 | May | Connie | Wardens House, KEMH |
| 630 | May | Heather | 1 Glasgow Rd. |
| 631 | May | Jonathan Roy | 4 Allardyce St. |
| 632 | May | Monica | 21 Jeremy Moore Ave. |
| 633 | May | Roger | 33 Eliza Cres. |
| 634 * | May | William Albert | 1 Glasgow Rd. |
| 635 | McCallum | Bettina Kay | 14 Drury St. |
| 636 | McCallum | Christopher John | 8A Jeremy Moore Ave. |
| 637 | McCallum | Timothy Andrew | 14A Drury St. |
| 638 | McCormick | Dale Ronald | 29 Callaghan Rd. |
| 639 | McCormick | Pauline Margaret Ruth | 29 Callaghan Rd. |
| 640 | McCormick | Richard Paul | 29 Callaghan Rd. |
| 641 | McCormick | Wayne Stanley James | 29 Callaghan Rd. |
| 642 | McEachern | Gloria Jane | 2 H Jones Rd. |
| 643 | McEachern | James | 2 H Jones Rd. |
| 644 | McGill | Coral Elizabeth | 6 Ross Rd. |
| 645 | McGill | Darrel Ian | 2 Campbell Drive |
| 646 | McGill | David William | 17 James St. |
| 647 | McGill | Diane Beverley | 2 James St. |
| 648 * | McGill | Doris Mary | 32 Davis St. |
| 649 | McGill | Glenda | Barrack St. |
| 650 | McGill | Ian Peter | Barrack St. |
| 651 | McGill | Jane | 10 Ross Rd. East |
| 652 | McGill | Len Stanford | 2 James St. |
| 653 | McGill | Lorraine Iris | 10 Ross Rd. East |
| 654 * | McKay | Clara Mary | 20 Ross Rd. West |
| 655 | McKay | Ellen Rose | 51 Callaghan Rd. |
| 656 | McKay | Heather Valerie | 16 Eliza Cres. |
| 657 * | McKay | James John | 7 Villiers St. |
| 658 * | McKay | Jane Elizabeth | 7 Villiers St. |
| 659 | McKay | Jeannie Paullina | 64 Davis St. |
| 660 | McKay | Josephine Ann | 5 James St. |

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| 661 | McKay | Kenneth Andrew | 5 James St. |
| 662 | McKay | Kevin Derek Charles | Stanley |
| 663 | McKay | Michael John | 64 Davis St. |
| 664 | McKay | Neil | 62 Davis St. |
| 665 | McKay | Paul Anthony | Jeremy Moore Ave. |
| 666 | McKay | Peter John | 21 Ross Rd. West |
| 667 | McKay | Rex | 16 Eliza Cres. |
| 668 | McKay | Shelley Jane | 7 Villiers St. |
| 669 * | McKay | Stephen John | 8 Thatcher Drive |
| 670 | McKay | Trudi Ann | Jeremy Moore Avenue |
| 671 | McKay | Wayne Lawrence Kenneth | Stanley |
| 672 * | McKay | William Robert | 20 Ross Rd. West |
| 673 | McKenzie | Alice Maude | Moody Brook Homestead |
| 674 | McKenzie | Charles Alexander Albert John | Moody Brook Homestead |
| 675 | McLaren | Caroline Mary | 12 Allardye St. |
| 676 | McLaren | Tony Eugene Terence | 12 Allardye St. |
| 677 | McLeod | David | 49 Callaghan Rd. |
| 678 | McLeod | Dawn | 2 Brandon Rd. West |
| 679 * | McLeod | Donald Henry | 1B Jersey Est. |
| 680 | McLeod | Henry Donald Alexander | 36 Eliza Cres. |
| 681 | McLeod | Ian | 9 Fitzroy Rd. |
| 682 | McLeod | Ian James | 4 James St. |
| 683 | McLeod | Jane Elizabeth Diana | 36 Eliza Cres. |
| 684 | McLeod | Janet Wensley | 75 Davis St. |
| 685 | McLeod | Janice | 2 Ross Rd. West |
| 686 | McLeod | John (1) | 1 Campbell Drive |
| 687 | McLeod | John (2) | Flat 1, Jeremy Moore Ave |
| 688 | McLeod | Kenneth Benjamin John | 2 Brandon Rd. West |
| 689 | McLeod | Madeline Jean | 1 Campbell Drive |
| 690 | McLeod | Mally | 9 Fitzroy Rd. |
| 691 * | McLeod | Margaret Ann | Fitzroy Rd. East |
| 692 | McLeod | Michael William | 15A James St. |
| 693 * | McLeod | Pearl Mary Ann | 3 Brisbane Rd. |
| 694 | McLeod | Robert | 75 Davis St. |
| 695 | McLeod | Robert John | 2 Ross Rd. West |
| 696 | McMullen | Lucille Anne | 8 Brandon Rd. |
| 697 | McNally | Patricia Jayne | 18 Ross Rd. East |
| 698 | McPhee | Denise | 4 Brandon Rd. West |
| 699 * | McPhee | Iris Blanche | 14 Davis St. |
| 700 | McPhee | Justin Owen | 4 Brandon Rd. West |
| 701 | McPhee | Majorie May | 14 John St. |
| 702 * | McPhee | Owen Horace | 14 John St. |
| 703 * | McPhee | Patrick | 14 Davis St. |
| 704 | McRae | Michael | C/o MV Tamar |
| 705 | McRae | Richard Winston | Flat 2, 6 Racecourse Rd. |
| 706 | Middleton | Brian | 13 McKay Close |
| 707 | Middleton | Caroline Ann | 7 James St. |
| 708 | Middleton | Dennis Michael | Dolphin Cottage |
| 709 * | Middleton | Ellen | 50 Davis St. |
| 710 | Middleton | Graham Cyril | 50 Davis St. |
| 711 | Middleton | Joan Eliza | 8 James St. |
| 712 | Middleton | Leonard | 67 Fitzroy Rd. |
| 713 | Middleton | Phillip John | 5 St. Marys Walk |
| 714 | Middleton | Sharon Elizabeth | Dolphin Cottage |
| 715 | Middleton | Shirley | Stanley |

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| 716 | Middleton | Stephanie Anne | 13 McKay Close |
| 717 | Miller | Andrew Nigel | 1 Fieldhouse Close |
| 718 * | Miller | Betty Lois | 6 St. Marys Walk |
| 719 | Miller | Bruce Graham | 10 Pioneer Row |
| 720 | Miller | Carol | Kent Rd. |
| 721 * | Miller | Florence Roberta | 5 Moody St. |
| 722 | Miller | Gail Marie | 2 Police Cottages, 8 Ross Rd. |
| 723 | Miller | Janet Mary | Market Gdn. Stly Airport Rd. |
| 724 | Miller | Jayne Elizabeth | 1 Fieldhouse Close |
| 725 | Miller | Jeanette | 10 Pioneer Row |
| 726 | Miller | Simon Roy | Kent Rd. |
| 727 | Miller | Timothy John Durose | Market Gdn. Stly Airport Rd. |
| 728 | Mills | Terence Kenneth | 43 Callaghan Rd. |
| 729 | Minto | Alistair Daen | Flat 5, 6 Racecourse Rd. |
| 730 | Minto | Graham Stewart | 12 Brisbane Rd. |
| 731 | Minto | May Doreen | Flat 5, 6 Racecourse Rd. |
| 732 * | Miranda | Augusto | 31 Davis St. |
| 733 | Miranda | Carmen | Globe Tavern |
| 734 | Miranda | Ramon | 3 Drury St. |
| 735 * | Miranda | Winifred Dorothy | 3 Drury St. |
| 736 | Mitchell | Leon John | 6 Discovery Close. |
| 737 | Moffatt | Angela | 5 Davis St. East |
| 738 | Moffatt | James | 5 Davis St. East |
| 739 * | Monti | Elizabeth Ellen | 4 Fitzroy Rd. |
| 740 | Morris | Alana Marie | 4 Callaghan Rd. |
| 741 | Morris | David | 4 Callaghan Rd. |
| 742 | Morris | Jason Paul | 4 Callaghan Rd. |
| 743 | Morris | Michelle Jane | 6 McKay Close |
| 744 | Morris | Trevor Alan | 6 McKay Close |
| 745 | Morrison | Doreen | 82 Davis St. |
| 746 | Morrison | Edgar Ewen | 5 Racecourse Rd. |
| 747 | Morrison | Fayan | 54 John St. |
| 748 | Morrison | Graham Stewart | 46 Davis St. |
| 749 | Morrison | Joan Margaret | Flat 6, 1 Jeremy Moore Ave. |
| 750 | Morrison | Lewis Ronald | 82 Davis St. |
| 751 | Morrison | Michael John | Stanley |
| 752 * | Morrison | Muriel Eliza Ivy | 40 Eliza Cres. |
| 753 | Morrison | Nanette Rose | 46 Davis St. |
| 754 | Morrison | Nigel Peter | 7 James St. |
| 755 | Morrison | Paul Roderick | 1 Brandon Rd. |
| 756 * | Morrison | Ronald Terence | 5 Racecourse Rd. |
| 757 | Morrison | Stewart | 46 Davis St. |
| 758 | Morrison | Susan Margaret | Stanley |
| 759 | Morrison | Trevor | 6A Jeremy Moore Ave. |
| 760 | Morrison | Valerie Anne | 6A Jeremy Moore Ave. |
| 761 | Morrison | Violet Sarah | 5 Racecourse Rd. |
| 762 | Morrison | William Roderick Halliday | 54 John St. |
| 763 | Morrison-Betts | Priscilla Violet | 82 Davis St. |
| 764 | Murphy | Ann Susan | 2 King St. |
| 765 * | Murphy | Bessie | 68 Davis St. |
| 766 * | Murphy | Michael James | 68 Davis St. |
| 767 | Neal | Richard John | 1 Dean St. |
| 768 | Neilson | Barry Marwood | 23 Ross Rd. |
| 769 | Neilson | Margaret | 23 Ross Rd. |
| 770 | Newell | Cara Jane | 3 Villiers St. |

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| 771 | Newell | Joseph Orr | 3 Villiers St. |
| 772 | Newell | Paula Michelle | 6 Pioneer Row |
| 773 | Newell | Trudi Malvina | 3 Villiers St. |
| 774 | Newman | Andrew Raymond | 17 Ross Rd. East |
| 775 | Newman | Clive Alexander | 5 Brandon Rd. |
| 776 | Newman | Dwenda Rose | 5 Brandon Rd. |
| 777 | Newman | Glynis Karen | 4 James St. |
| 778 | Newman | Joyce Noreen | 80 Davis St. |
| 779 | Newman | Lisa Jeraine | Flat 5, 6 Jersey Rd. |
| 780 | Newman | Marlene | 11 Jeremy Moore Ave. |
| 781 | Newman | Raymond Winston | 11 Jeremy Moore Ave. |
| 782 | Newman | Tansy Fiona | Jersey Rd. |
| 783 | Newman | Terence | 24 Endurance Ave. |
| 784 | Nutter | Arthur Albert | 9 Brandon Rd. |
| 785 | Nutter | Josephine Lesley | 9 Brandon Rd. |
| 786 | O'Shea | Desmond | 9 Campbell Drive |
| 787 | Ormond | Christina Helen | 10 Fitzroy Rd. East |
| 788 | Paice | Craig Arthur | 90 Davis St. |
| 789 | * Parrin | Norman George | 108 Davis St. |
| 790 | Patterson-Smith | Ian Colin | 19 Davis St. |
| 791 | * Pauloni | Hilary Maud | 63 Fitzroy Rd. |
| 792 | * Pauloni | Romolo Vittorio | 63 Fitzroy Rd. |
| 793 | Paver | Bernadette Marguerite | Moody Brook House. |
| 794 | Payne | Dilys Agnes | Stanley |
| 795 | Peake | Arthur | 19 James St. |
| 796 | Peake | Clair Linda | 19 James St. |
| 797 | Peck | Burned Brian | 22 James St. |
| 798 | Peck | Carol Margaret | 2 Discovery Close |
| 799 | Peck | David Patrick | 78 Davis St. |
| 800 | Peck | Eleanor Margaret | 26 Shackleton Drive |
| 801 | Peck | Evelyn Elizabeth | 22 James St. |
| 802 | * Peck | Gordon Pedro James | 17 Brandon Rd. |
| 803 | Peck | Harwood John Charles | C/o Tamar |
| 804 | Peck | James | 2 Discovery Close |
| 805 | Peck | Maureen Heather | 78 Davis St. |
| 806 | * Peck | Patrick William | 78 Davis St. |
| 807 | Peck | Shirley | 2 Barrack St. |
| 808 | Peck | Terence John | 26 Shackleton Drive |
| 809 | PED | | 6 Beaver Rd. |
| 810 | Perkins | Vivienne Esther Mary | 33 John St. |
| 811 | * Perry | Augustave Walter | 9 Villiers St. |
| 812 | * Perry | Beatrice Annie Jane | 25 Ross Rd. East |
| 813 | * Perry | Hilda Blanche | 10 Campbell Drive |
| 814 | Perry | Robert Juan Carlos | Stanley |
| 815 | * Perry | Thomas George | 10 Campbell Drive |
| 816 | * Perry | Thora Virginia | 17 Fitzroy Rd. |
| 817 | Pettersson | Derek Richard | 21 Eliza Cres. |
| 818 | Pettersson | Eileen Heather | 30 Davis St. |
| 819 | Pettersson | Tony | 30 Davis St. |
| 820 | Pettersson | Trudi Ann | 21 Eliza Cres. |
| 821 | Phillips | Albert James | 16 Brandon Rd. |
| 822 | Phillips | David Dawson | 35 Fitzroy Rd. |
| 823 | Phillips | Gillian Carol | Stanley |
| 824 | Phillips | Lynda | 16 Brandon Rd. |
| 825 | Phillips | Paul David | Drury St. |

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| 826 | Platt | Veronica Shirley | Stanley |
| 827 | Plumb | Christopher Phillip | 2a Brisbane Rd. |
| 828 | Plumb | Elaine Margaret | 2A Brisbane Rd. |
| 829 | Plumb | Jason Alan | 34 Ross Rd. East Flat |
| 830 | Plumb | Norman Phillip | 2A Brisbane Rd. |
| 831 | Pole-Evans | Amy Rose | 4 Harbour View |
| 832 | Pole-Evans | John | 4 Harbour View |
| 833 | Pole-Evans | Michael Anthony | 4 Harbour View |
| 834 | Pollard | Andrew Keith | 4 Hebe Place |
| 835 | Pollard | Elizabeth Eve | 23 Ross Rd. East |
| 836 | Pollard | John | 23 Ross Rd. East |
| 837 | Pompert | Joost Herman Willem | 11 Ross Rd. West |
| 838 * | Poole | Evelyn May | 31 Fitzroy Rd. |
| 839 | Poole | Nancy Margaret | 52 John St. |
| 840 | Poole | Raymond John | 52 John St. |
| 841 * | Poole | William John | 31 Fitzroy Rd. |
| 842 * | Porter | Charles | 11 Fitzroy Rd. |
| 843 | Porter | Geoffrey Bell | 5 Jeremy Moore Ave. |
| 844 | Porter | Jean Lavinia | 11 Fitzroy Rd. |
| 845 | Porter | Tracy | 5 Jeremy Moore Ave. |
| 846 | Pratlett | Patricia Carol Ann | 10 James St. |
| 847 | Purvis | Alan | 3 Narrows View |
| 848 * | Purvis | Marion Louise | 3 Narrows View |
| 849 | Reddick | Keith John | By-Pass Rd. |
| 850 | Reeves | Jill Edith | Stanley |
| 851 | Reeves | Michael | 2 Moody St. |
| 852 | Reid | Ann | 5 Police Cottages, Ross Rd. |
| 853 | Reid | Colleen Rose | 9 Fitzroy Rd. East |
| 854 | Reid | John Alexander | 7 Ross Rd. |
| 855 | Reid | Reynold Gus | 9 Fitzroy Rd. East |
| 856 * | Reive | Roma Endora Mary | St Marys Walk |
| 857 | Rendell | Michael | 8 Ross Rd. West |
| 858 | Rendell | Phyllis Mary | 8 Ross Rd. West |
| 859 | Riddell | Lisa Marie | 9 Discovery Close |
| 860 | Riddell | Paul Robert | 9 Discovery Close |
| 861 | Roberts | Cheryl Ann Spencer | 57 Fitzroy Rd. |
| 862 | Roberts | Delsha | 18 Jeremy Moore Ave. |
| 863 | Roberts | Diana Christine | 7 Kent Rd. |
| 864 | Roberts | Jill Christine | 98 Davis St. |
| 865 | Roberts | Joselynn Lynette Margaret | Stanley |
| 866 * | Roberts | Laura May | 7 Kent Rd. |
| 867 | Roberts | Peter James | 57 Fitzroy Rd. |
| 868 | Roberts | Simon Theodore Nathaniel | 98 Davis St. |
| 869 * | Roberts | William Henry | 7 Kent Rd. |
| 870 | Robertson | Sally Jean | Flat 1, 2 Eliza Rd. |
| 871 | Robertson Pompert | Janet | 11 Ross Rd. West |
| 872 | Robson | Alison Emily | 15 Villiers St. |
| 873 | Robson | Anna Jenine | 6 Brisbane Rd. |
| 874 | Robson | Gerard Michael | 1 Philomel Place |
| 875 * | Robson | Gladys Mary | 5 Philomel St. |
| 876 | Robson | Miranda Gay | 6 Brisbane Rd. |
| 877 | Robson | Phyllis Ann | 1 Philomel Place |
| 878 | Robson | Raymond Nigel | 6 Brisbane Rd. |
| 879 | Robson | William Charles | 18 Ross Rd. East |
| 880 | Rogers | Ralph | 14 Endurance Ave |

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| 881 | Rogers | Roger Neil | 14 Endurance Ave |
| 882 * | Ross | Colin | 40 Eliza Cres. |
| 883 | Ross | Glenn Stephen | 22 Shackleton Drive |
| 884 | Ross | Janet | 22 Shackleton Drive |
| 885 | Ross | Lachlan Neil | 7 Discovery Close |
| 886 | Ross | Marie | 21 John St. |
| 887 | Ross | Roy | 21 John St. |
| 888 | Ross | Sheena Margaret | 12 Jeremy Moore Ave. |
| 889 | Rowland | Charlene Rose | 5A Ross Rd. West |
| 890 | Rowland | John Christopher | 5A Ross Rd. West |
| 891 * | Rowlands | Catherine Annie | 3 Hebe St. |
| 892 * | Rowlands | Daisy Malvina | 106 Davis St. |
| 893 * | Rowlands | Harold Theodore | 8 Ross Rd. East |
| 894 * | Rowlands | John Richard | 106 Davis St. |
| 895 | Rowlands | Neil | 3A Hebe St. |
| 896 | Rowlands | Robert John | 13 Callaghan Rd. |
| 897 | Rozee | Betty Ellen | 16 Davis St. |
| 898 * | Rozee | Derek Robert Thomas | 16 Davis St. |
| 899 | Rozee | Shona Mary | Stanley |
| 900 | Sackett | Albert John | 25 Ross Rd. East |
| 901 | Sackett | Michael John Carlos | 25 Ross Rd. East |
| 902 | Sackett | Pauline | 25 Ross Rd. East |
| 903 * | Sarney | Harry | 1 Thatcher Drive |
| 904 | Saunders | Tracey Clare | 23 Jeremy Moore Ave. |
| 905 | Sawle | Judith | Seaview Cottage, Ross Rd. |
| 906 | Sawle | Richard | Seaview Cottage, Ross Rd. |
| 907 | Seron | Jose Segundo | M/V Tamar, C/o Bryon Marine |
| 908 | Shepherd | Colin David | 11 Narrows View |
| 909 | Shepherd | David Samuel Dick | 13 Endurance Ave. |
| 910 | Shepherd | Elizabeth | 13 Endurance Ave. |
| 911 | Shepherd | Ramsey | Discovery Close |
| 912 | Shorroch | Joyce | 5 McKay Close |
| 913 | Shorroch | Nigel Arthur | 5 McKay Close |
| 914 | Short | Andrez Peter | 9 Pioneer Row |
| 915 | Short | Brenda | Barrack St. |
| 916 | Short | Celia Soledad | 1 Racecourse Rd. |
| 917 * | Short | Christina Ethel | 12 Brandon Rd. |
| 918 | Short | Donald Robert Gordon | Eliza Cove Rd. |
| 919 | Short | Ellen Mary | 12 Brandon Rd. |
| 920 | Short | Emily Christina | 1 Fitzroy Rd. East |
| 921 | Short | Gavin Phillip | 14 Pioneer Row |
| 922 | Short | Isobel Rose | 42 Eliza Cres. |
| 923 * | Short | Joseph Leslie | 12 Brandon Rd. |
| 924 | Short | Marc Peter | 1 Racecourse Rd. |
| 925 | Short | Marlene Cindy | 58 Davis St. |
| 926 | Short | Montana Tyrone | 4 Dairy Paddock Rd. |
| 927 | Short | Patrick Warburton | 42 Eliza Cres. |
| 928 | Short | Peter Robert | 1 Fitzroy Rd. East |
| 929 | Short | Richard Edward | 58 Davis St. |
| 930 | Short | Riley Ethroe | Barrack St. |
| 931 | Short | Robert Charles | 12A Brandon Rd. |
| 932 | Short | Vilma Alicia | 4 Dairy Paddock Rd. |
| 933 | Simpson | Bertha Veronica | 6 Police Cottages, 4 Ross Rd. |
| 934 | Simpson | James Alexander Bruce | 7 Racecourse Rd. |
| 935 | Simpson | James Garry | 7 Racecourse Rd. |

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| 936 | Simpson | John Frederick | 6 Police Cottages, 4 Ross Rd. |
| 937 | Simpson | Mirabelle Hermoine | 7 Racecourse Rd. |
| 938 | Sinclair | Veronica Joyce | 21 Ross Rd. West |
| 939 | Skene | Greta Winnora Miller | 22 Ross Rd. East |
| 940 | Smallwood | Kio Mikhailovich | 105 Davis St. |
| 941 | Smallwood | Margo Amee | 105 Davis St. |
| 942 | Smallwood | Michael Anthony | 105 Davis St. |
| 943 * | Smith | Adeline Jane | 2 Thatcher Drive |
| 944 | Smith | Alexander Gordon | 16 Jersey Rd. |
| 945 | Smith | Anthony David | 10 Fieldhouse Close. |
| 946 | Smith | Bruce Dennis | Stanley |
| 947 | Smith | Colin David | 6 James St. |
| 948 | Smith | Derek | 8 Eliza Cres. |
| 949 | Smith | Elenore Olive | 3 Brisbane Rd. |
| 950 | Smith | Eric | 3 Allardyce St. |
| 951 | Smith | Gerard Alexander | 8 Barrack St. |
| 952 * | Smith | Gwenifer May | 8 Barrack St. |
| 953 | Smith | Ian Lars | 2 Ross Rd. West |
| 954 | Smith | Ileen Rose | 28 Ross Rd. West |
| 955 * | Smith | James Terence | 3 Fitzroy Rd. West |
| 956 | Smith | Jean Waddell | 16 Jersey Rd. |
| 957 | Smith | Jennifer Ethel | Stanley |
| 958 | Smith | Jeremy | 1A Jersey Rd. |
| 959 | Smith | Joan Lucy Ann | 6A Pioneer Row |
| 960 | Smith | John | 28 Ross Rd. West |
| 961 | Smith | Julia Trinidad | 8 Eliza Cres. |
| 962 | Smith | Martyn James | 28 Ross Rd. West |
| 963 | Smith | Natalie Marianne | 6 James St. |
| 964 | Smith | Nora Kathleen | 5 Fitzroy Rd. East |
| 965 * | Smith | Osmund Raymond | 3 Brisbane Rd. |
| 966 * | Smith | Owen Archibald | 3 Fitzroy Rd. |
| 967 | Smith | Patricia Anne | 6A Moody St. |
| 968 | Smith | Paulette Rose | KEMH |
| 969 | Smith | Rhona | 8 Fitzroy Rd. |
| 970 | Smith | Russell James | 8 Fieldhouse Close |
| 971 | Smith | Shula Louise | Flat 4, 5 Jeremy Moore Ave. |
| 972 | Smith | Sidney Frederick | Jersey Rd. |
| 973 | Smith | Susan | 1 Hebe Place |
| 974 | Smith | Tyssen John Richard | Flat 8, 6 Jersey Rd. |
| 975 * | Sollis | Sarah Emma Maude | 20 Drury St. |
| 976 | Spall | Christopher Richard | German Camp West, Callaghan Rd |
| 977 | Spink | Roger Kenneth | 4 Hebe St. |
| 978 * | Spinks | Malvina Ellen | Flat 6, 7 Jeremy Moore Ave East |
| 979 | Spruce | Helena Joan | 29 Ross Rd. West |
| 980 | Spruce | Mark Felton | 29 Ross Road West |
| 981 | Spruce | Terence George | 29 Ross Rd. West |
| 982 | Stedman | Dianne Audrey | 15 St Marys Walk |
| 983 | Stedman | Robin Geoffrey | 15 St Marys Walk |
| 984 | Steen | Allan Graham | 11 Brandon Rd. |
| 985 | Steen | Barbara Ingrid | 39 Ross Rd. West |
| 986 * | Steen | Emma Jane | 36 Ross Rd. |
| 987 | Steen | Gail | 7 St. Marys Walk |
| 988 | Steen | Karen Lucetta | 7 St. Marys Walk |
| 989 | Steen | Vernon Robert | 7 St Marys Walk |
| 990 | Stenning | Anna Russalka | 5b Ross Rd. West |

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| 991 | Stephenson | James | Moody Valley |
| 992 | Stephenson | Joan Margaret | Moody Valley |
| 993 | Stephenson | Katrina | 4 Davis St. |
| 994 | Stephenson | Zachary | 4 Davis St. |
| 995 | Stevens | Paul Theodore | 9 Drury St. |
| 996 | Stevens | Teresa Rose | 9 Drury St. |
| 997 | Stewart | Aarron Stephen | 6 Pioneer Row |
| 998 | Stewart | Carol Ellen Eva | 7 Ross Rd. West |
| 999 | Stewart | Celia Joyce | 12 St. Marys Walk |
| 1000 * | Stewart | David William | 55 Davis St. |
| 1001 | Stewart | Hulda Fraser | 24 Ross Rd. West |
| 1002 | Stewart | Ian Bremner | 9 McKay Close |
| 1003 | Stewart | Irene Anne | Racecourse Rd. |
| 1004 | Stewart | Kenneth Barry | 3 Discovery Close |
| 1005 | Stewart | Pam Ellen | 18 Endurance Ave. |
| 1006 | Stewart | Robert | 12 St. Marys Walk |
| 1007 | Stewart | Robert William | Racecourse Rd. |
| 1008 | Stewart | Sheila Olga | 9 McKay Close |
| 1009 * | Stewart | Sylvia Rose | 7 Ross Rd. West |
| 1010 | Strange | Ian John | The Dolphins, Snake St. |
| 1011 | Strange | Maria Marta | The Dolphins, Snake St. |
| 1012 | Strange | Shona Marguerite | 36 Ross Rd. West |
| 1013 | Summers | Alastair Peter | 1 Ross Rd. East |
| 1014 | Summers | Brian | 1 Ross Rd. East |
| 1015 | Summers | Colin Owen | 5 Brandon Rd. |
| 1016 | Summers | Dennis David | 18 Endurance Ave. |
| 1017 | Summers | Donna | 15 Ross Rd. East |
| 1018 * | Summers | Edith Catherine | 5 Dean St. |
| 1019 | Summers | Irvin Gerard | Sir Rex Hunt House. |
| 1020 | Summers | Jacqueline | 11 Pioneer Row |
| 1021 | Summers | Joanna Rose | 7 Eliza Cres. |
| 1022 | Summers | Jonathan Derek | 5 Allardyce St. |
| 1023 | Summers | Judith Orissa | 1 Ross Rd. |
| 1024 | Summers | Lynn Jane | 2 Campbell Drive |
| 1025 | Summers | Melvyn Mark | Stanley |
| 1026 | Summers | Michael Kenneth | 6A Brisbane Rd. |
| 1027 | Summers | Michael Victor | 11 Pioneer Row |
| 1028 | Summers | Naomi Christine | Sir Rex Hunt House |
| 1029 | Summers | Nichola Jane | 84a Davis St. |
| 1030 * | Summers | Nigel Clive | 32 Fitzroy Rd. |
| 1031 | Summers | Owen William | 5 Brandon Rd. |
| 1032 | Summers | Pamela Rosemary Cheek | 32 Fitzroy Rd. |
| 1033 | Summers | Rowena Elsie | 5 Allardyce St. |
| 1034 | Summers | Roy | 9 Murray Heights |
| 1035 | Summers | Sandra Marie | 66 Davis St. |
| 1036 | Summers | Sheila | Sir Rex Hunt House, John St. |
| 1037 | Summers | Sybella Catherine Ann | 1 Ross Rd. West |
| 1038 | Summers | Sylvia Jean | 8 Racecourse Rd. |
| 1039 | Summers | Terence | 1 Ross Rd. West. |
| 1040 | Summers | Tony | 8 Racecourse Rd. |
| 1041 | Summers | Veronica | 5 Brandon Rd. |
| 1042 | Summers | Yona | 37 Davis St. |
| 1043 | Sutherland | Elizabeth Margaret | 13/14 Eliza Cove Rd. |
| 1044 | Sutherland | James David | Reflections Flat, Dean St. |
| 1045 | Sutherland | John Gall | 3B Jersey Est. |

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| 1046 | Sutherland | William John Munro | 13/14 Eliza Cove Rd. |
| 1047 | Teale | Colin Edwin | 8 Brisbane Rd. |
| 1048 | Teale | Jeannette | 8 Brisbane Rd. |
| 1049 | Teggart | Carol Wendy | 9 Callaghan Rd. |
| 1050 | Teggart | John Patrick | 9 Callaghan Rd |
| 1051 | Tellez | Jose Hector | 2 Hodson Villa West |
| 1052 | Thain | John | 8 Davis St. |
| 1053 | Thain | Stephanie Ann | 8 Davis St. |
| 1054 | * Thom | David Anderson | 47 Fitzroy Rd. |
| 1055 | Thom | Dorothy Irene | 47 Fitzroy Rd. |
| 1056 | Thom | Norma Ann | 92 Davis St. |
| 1057 | Thomas | Loretta Isobel | 1C Capricorn Rd. |
| 1058 | * Thompson | George Henry | 7 Thatcher Drive |
| 1059 | * Thompson | William John | Flat 2, 1 Moody St. |
| 1060 | Titterington | Lesley Ann | 55 Fitzroy Rd. |
| 1061 | Titterington | Robert Mark | 55 Fitzroy Rd. |
| 1062 | * Toase | Cora Agnes | 7 Ross Rd. East |
| 1063 | Triggs | Diane | 3 Fieldhouse Close |
| 1064 | Triggs | Michael David | 3 Fieldhouse Close |
| 1065 | Tuckwood | John Rodney | 1 Drury St. |
| 1066 | Tuckwood | Phyllis Majorie | 1 Drury St. |
| 1067 | Turner | Melvyn George | 36 John St. |
| 1068 | Tyrrell | Garry Bernard | 1 Beaver Rd. |
| 1069 | Tyrrell | Gina Michelle | 1 Beaver Rd. |
| 1070 | Valler | Robert Hugh | 9 Philomel St. |
| 1071 | * Vidal | Eileen Nora | 12 Jeremy Moore Ave. |
| 1072 | Vidal Roberts | Leona Lucila | Jersey Rd. |
| 1073 | Vincent | Janette Mary | 10 Endurance Ave. |
| 1074 | Vincent | Stephen Lawrence | 10 Endurance Ave. |
| 1075 | Wade | Donald Harold | 41 Fitzroy Rd. |
| 1076 | Wade | June Rose Elizabeth | 41 Fitzroy Rd. |
| 1077 | Wagner | Mary Elizabeth | 6 Jeremy Moore Ave. |
| 1078 | Wagner | Richard Karl | 6 Jeremy Moore Ave. |
| 1079 | Wallace | Fiona Alice | 38 Ross Rd. West |
| 1080 | Wallace | Fraser Barrett | 10 John St. |
| 1081 | Wallace | Maria Lilian | 38 Ross Rd. West |
| 1082 | Wallace | Michael Ian | 23 Callaghan Rd. |
| 1083 | Wallace | Stuart Barrett | 38 Ross Rd. West |
| 1084 | Wallace | Una | 23 Callaghan Rd. |
| 1085 | Watson | Ben | 7 Moody St. |
| 1086 | Watson | Boyd Edward Harold | Flat 4, 6 Jersey Rd. |
| 1087 | * Watson | Hannah Maud | 7 Moody St. |
| 1088 | Watson | Paul | 20 Endurance Ave. |
| 1089 | Watson | Ruth Jane | 20 Endurance Ave. |
| 1090 | Watt | Stephen Robert | 11 Narrows View |
| 1091 | Watt | Sylvia Ann | 11 Narrows View |
| 1092 | Watts | Lucinda Vikki | 4 Allardyce St. |
| 1093 | Watts | Patrick James | 13 Brisbane Rd. |
| 1094 | * White | Kathleen Elizabeth | 2 Brandon Rd. West |
| 1095 | * Whitney | Agnes Kathleen | 3 St. Marys Walk |
| 1096 | Whitney | Frederick William | 1 Police Cottages, 9 Ross Rd. |
| 1097 | * Whitney | Henry Leslie | 3 St. Marys Walk |
| 1098 | Whitney | Jason | 15 Ross Rd. East |
| 1099 | Whitney | Kurt Ian | 2 Pioneer Row |
| 1100 | Whitney | Lana Rose | 22 Eliza Cres. |

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| 1101 | Whitney | Robert Michael | Stanley |
| 1102 | Whitney | Susan Joan | 1 Police Cottages, 9 Ross Rd. |
| 1103 | Wilkinson | Alistair Graham | 5 Philomel St. |
| 1104 | Wilkinson | Dorothy Ruth | 5 Philomel St. |
| 1105 | Wilkinson | Robert John | YMCA |
| 1106 * | Williams | Gene | 23 Ross Rd. West |
| 1107 | Williams | Margaret Elizabeth | Gardeners Cottage |
| 1108 | Williams | Marlene Rose | 23 Ross Rd. West |
| 1109 | Winter | Teresa Irene | 4A Jeremy Moore Ave. East |
| 1110 | Wood | Nicholas Paul Thomas | 12 Scoresby Close |
| 1111 | Wylie | Julian Richard | 1 McKay Close |
| 1112 | Wylie | Wendy Jennifer | 1 Jersey Rd. |
| 1113 | Zuvic-Bulic | Kuzma Mario | 16 Ross Rd. West |
| 1114 | Zuvic-Bulic | Sharon Marie | 16 Ross Rd. West |

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| 1 * | Alazia | George Robert | Hope Cottage, East Falkland |
| 2 | Alazia | Hazel | Mullet Creek, East Falkland |
| 3 | Alazia | Mandy Gwyneth | Port Edgar Farm, West Falkland |
| 4 | Alazia | Michael Robert | Port Edgar Farm, West Falkland |
| 5 * | Alazia | Thora Lillian | North Arm, East Falkland |
| 6 | Aldridge | Brian George | Goose Green, East Falkland |
| 7 * | Aldridge | Olive Elizabeth | Hill Cove, West Falkland |
| 8 | Aldridge | Terence William | Hill Cove, West Falkland |
| 9 | Anderson | Andrew Ronald | Port Howard, West Falkland |
| 10 | Anderson | Jenny | Port San Carlos, East Falkland |
| 11 | Anderson | Tony James | Port San Carlos, East Falkland |
| 12 | Anderson | William John Stanley | Blue Beach Lodge, East Falkland |
| 13 | Ashworth | Glennis | Beckside Farm, East Falkland |
| 14 | Ashworth | Iain | Beckside Farm, East Falkland |
| 15 | Ashworth | Malcolm | Beckside Farm, East Falkland |
| 16 | Bagley | Jacqueline Elizabeth | Riverview Farm, East Falkland |
| 17 | Barnes | Dierdre | Dunbar Farm, West Falkland |
| 18 | Barnes | Marshall | Dunbar Farm, West Falkland |
| 19 | Barnes | Paul | Hope Harbour, West Falkland |
| 20 | Bayley | Patricia Ann Cecile | Turners, MPA, East Falkland |
| 21 | Bayley | Richard | Turners, MPA, East Falkland |
| 22 | Beattie | Ian Robert Ewen | North Arm, East Falkland |
| 23 | Benjamin | Fred Basil | Turners, MPA, East Falkland |
| 24 | Benjamin | Raymond John | Turners, MPA, East Falkland |
| 25 | Benjamin | Walter George | Turners, MPA, East Falkland |
| 26 | Berntsen | Arina Janis | Pebble Island, West Falkland |
| 27 | Berntsen | John Alexander | Goose Green, East Falkland |
| 28 | Berntsen | Leon | Albermarle Stn. West Falkland |
| 29 | Berntsen | Pamela Margaret | Albermarle Stn. West Falkland |
| 30 | Berntsen-McGill | Diana Mary | Goose Green, East Falkland |
| 31 | Betts | Bernard Keith | Boundary Farm, West Falkland |
| 32 | Betts | Diane Joan | Boundary Farm, West Falkland |
| 33 | Betts | Irene Marion | Boundary Farm, West Falkland |
| 34 * | Binnie | Horace James | Fox Bay Village, West Falkland |
| 35 | Binnie | Linda Rose | Fitzroy Farm, East Falkland |
| 36 | Binnie | Ronald Eric | Fitzroy Farm, East Falkland |
| 37 | Blake | Alexander Charles | The Peaks Farm, West Falkland |
| 38 | Blake | Anthony Thomas | Little Chartres, West Falkland |
| 39 | Blake | Lionel Geoffrey | The Peaks Farm, West Falkland |
| 40 | Blake | Lyndsay Rae | Little Chartres, West Falkland |
| 41 | Blake | Sally Gwynfa | The Peaks Farm, West Falkland |
| 42 | Bober | John | Turners, MPA, East Falkland |
| 43 | Bonner | Avril Margaret Rose | Salvador, East Falkland |
| 44 | Bonner | Keith James | Salvador, East Falkland |
| 45 | Bonner | Simon | Port Howard, West Falkland |
| 46 | Bonner | Susan Anne | Port Howard, West Falkland |
| 47 | Browning | Gavin | Fitzroy, East Falkland |
| 48 | Buckett | Roy Peter | Leicester Falls, West Falkland |
| 49 | Butler | Doreen Susan | Fitzroy, East Falkland |
| 50 | Butler | James Donald | Fitzroy, East Falkland |
| 51 | Chandler | Ann Beatrice | Port Howard, West Falkland |
| 52 | Chandler | Edward | Port Howard, West Falkland |
| 53 | Chandler | Lee | Port Howard, West Falkland |
| 54 | Clark | Frederick Thomas | Hawkbit, MPA, Rd. East Falkland |
| 55 | Clarke | Jeanette | Kings Ridge, East Falkland |

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| 56 | Clarke | Michael Jan | Kings Ridge, East Falkland |
| 57 | Clausen | Denzil | Weddell Is. West Falkland |
| 58 | Clausen | Henry Edward | Port Louis, East Falkland |
| 59 | Clifton | Leonard | North Arm, East Falkland |
| 60 | Clifton | Thora Janeene | North Arm, East Falkland |
| 61 | Cockwell | Benjamin William | Fox Bay Village, West Falkland |
| 62 | Cockwell | Grizelda Susan | Fox Bay Village, West Falkland |
| 63 | Cockwell | John Richard | Fox Bay Village, West Falkland |
| 64 | Coleman | Anthony Hugh John | Bristows, MPA, East Falkland |
| 65 | Collins | Bernard | Turners, MPA. East Falkland |
| 66 | Cook | Brian William | Turners, MPA. East Falkland |
| 67 | Coutts | Frederick George | Fitzroy, East Falkland |
| 68 | Dale | Helen | KIS, MPA, East Falkland |
| 69 | Davis | Aase | Evelyn Station, East Falkland |
| 70 | Davis | Ian John | Evelyn Station, East Falkland |
| 71 | Davis | Reginald John | Evelyn Station, East Falkland |
| 72 | Davis | William James | Goose Green, East Falkland |
| 73 | Decroliere | Eric Ernest Albert | Fox Bay Village, West Falkland |
| 74 | Dickson | Charles George | Brookfield, East Falkland |
| 75 | Dickson | Doreen | Wreck Point, East Falkland |
| 76 | Dickson | Gerald William | Wreck Point, East Falkland |
| 77 | Dickson | Iris | Goose Green, East Falkland |
| 78 | Dickson | Ronald Edward | Goose Green, East Falkland |
| 79 | Dickson | Steven Charles | Goose Green, East Falkland |
| 80 | Donnelly | Daniel | Crooked Inlet, West Falkland |
| 81 | Donnelly | Joyce Elizabeth | Crooked Inlet, West Falkland |
| 82 * | Duncan | Peter Ree Howard | Hill Cove, West Falkland |
| 83 | Dunford | David Philip | The Saddle, West Falkland |
| 84 | Edwards | Emma Jane | Lake Sullivan, West Falkland |
| 85 | Edwards | Norma | Lake Sullivan, West Falkland |
| 86 | Edwards | Roger Anthony | Lake Sullivan, West Falkland |
| 87 | Evans | Michelle Paula | Fitzroy, East Falkland |
| 88 | Evans | Raymond | Pebble Island, West Falkland |
| 89 | Evans | Richard Gregory | Fitzroy, East Falkland |
| 90 | Evans | Tracy | Saunders Is. West Falkland |
| 91 * | Fairley | John | Port Stephens, West Falkland |
| 92 * | Felton | Anthony Terence | North Arm, East Falkland |
| 93 * | Felton | Walter Arthur | North Arm, East Falkland |
| 94 | Ferguson | Finlay James | Bleaker Island, East Falkland |
| 95 | Ferguson | John William | Weddell Island, West Falkland |
| 96 | Ferguson | Stephanie Janet | Weddell Island, West Falkland |
| 97 | Findlay | Andrew John | Fox Bay Village, West Falkland |
| 98 | Findlay | Cathy Ann | Fox Bay Village, West Falkland |
| 99 * | Finlayson | Barry Donald | North Arm, East Falkland |
| 100 * | Finlayson | Iris Heather | North Arm, East Falkland |
| 101 | Finlayson | Neil Roderick | North Arm, East Falkland |
| 102 | Ford | Neil Fraser | Mossvale, West Falkland |
| 103 | Ford | Penelope Rose | Mossvale, West Falkland |
| 104 | Forster | Gwyneth May | Bold Cove, West Falkland |
| 105 | Forster | James | Bold Cove, West Falkland |
| 106 | Forsyth | Gordon | M.P.A. East Falkland |
| 107 | Giles | Gilbert | Walker Creek, East Falkland |
| 108 | Giles | Theresa Kathleen | Walker Creek, East Falkland |
| 109 | Gleadell | Ian Keith | East Bay, West Falkland |
| 110 | Gleadell | Marklin John | East Bay, West Falkland |

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|-------|------------|-------------------------|--------------------------------|
| 111 | Goodwin | Mandy Hazel | Greenfield, East Falkland |
| 112 | Goodwin | Margo Jane | Elephant Beach, East Falkland |
| 113 | Goodwin | Neil Alexander William | Elephant Beach, East Falkland |
| 114 | Goodwin | Robin | Greenfield, East Falkland |
| 115 | Goss | Eric Miller | North Arm, East Falkland |
| 116 | Goss | Margaret Rose | Horseshoe Bay, East Falkland |
| 117 | Goss | Peter | Horseshoe Bay, East Falkland |
| 118 | Goss | Shirley Ann | North Arm, East Falkland |
| 119 | Gray | David Edward | Sea Lion Island, East Falkland |
| 120 | Gray | Patricia May | Sea Lion Island, East Falkland |
| 121 | Griffin | Paul Simon | M.P.A. East Falkland |
| 122 | Halliday | Joyce Isabella Patience | Fox Bay Village, West Falkland |
| 123 | Halliday | Kenneth William | Fox Bay Village, West Falkland |
| 124 | Hansen | Ian | Main Point, West Falkland |
| 125 * | Hansen | Lionel Raymond | Hill Cove, West Falkland |
| 126 | Hansen | Rose Idina | Hill Cove, West Falkland |
| 127 | Hansen | Susan Ann | Main Point, West Falkland |
| 128 * | Hardcastle | Brook | Darwin, East Falkland |
| 129 * | Hardcastle | Eileen Beryl | Darwin, East Falkland |
| 130 | Harvey | Jen | Hill Cove, West Falkland |
| 131 | Harvey | Valerie Ann | Hill Cove, West Falkland |
| 132 | Hayles | Robert Jack | M.P.A. East Falkland |
| 133 | Heathman | Ailsa | Estancia, East Falkland |
| 134 | Heathman | Ewart Tony | Estancia, East Falkland |
| 135 | Henry | Dulcie Rose | KIS, MPA. East Falkland |
| 136 | Hewitt | Brian David | North Arm, East Falkland |
| 137 | Higgins | Stephen Sheamus | M.P.A. East Falkland |
| 138 | Hill | Jennifer Eileen | Pebble Island, West Falkland |
| 139 | Hirtle | Anthony | Pebble Island, West Falkland |
| 140 | Hirtle | Doris Linda | Port Howard, West Falkland |
| 141 | Hirtle | Odette Susan | Port Howard, West Falkland |
| 142 | Hirtle | Susan Mary | Pebble Island, West Falkland |
| 143 | Hobman | Juan Jose Eleuterio | Chartres, West Falkland |
| 144 | Hobman | Vivien | Chartres, West Falkland |
| 145 | Hooper | Peter Bernard | Mount Alice, West Falkland |
| 146 | Boy | Dawn | Travellers Rest, East Falkland |
| 147 | Jaffray | Alexander | Lively Island, East Falkland |
| 148 | Jaffray | Brian | Walker Creek, East Falkland |
| 149 | Jaffray | Dereck Charles | Walker Creek, East Falkland |
| 150 | Jaffray | Elliott Jessie | Lively Island, East Falkland |
| 151 | Jaffray | John Willie | Walker Creek, East Falkland |
| 152 | Jaffray | Phyllis | Walker Creek, East Falkland |
| 153 | Jaffray | Robin George | Port San Carlos, East Falkland |
| 154 | Jones | Michael David | Port Louis, East Falkland |
| 155 | Jones | Sheila Janice | Port Louis, East Falkland |
| 156 | Jonson | Carl | Bombilla, East Falkland |
| 157 | Jonson | Rita Elizabeth | Bombilla, East Falkland |
| 158 | Keeley | John Gabriel | Turners, MPA. East Falkland |
| 159 | Kidd | John Nathan | Burntside, East Falkland |
| 160 | Kidd | Lillian Rose Orissa | Burntside, East Falkland |
| 161 | Kilmartin | Dinah May | Bluff Cove, East Falkland |
| 162 | Kilmartin | Kevin Seaton | Bluff Cove, East Falkland |
| 163 | King | Edward Robert | Bristows, MPA. East Falkland |
| 164 | Knight | Justin Robert Campbell | Port Howard, West Falkland |
| 165 | Knight | Keith Andrew | Coast Ridge, West Falkland |

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| 166 | Knight | Nigel Arthur | Coast Ridge, West Falkland |
| 167 | Knight | Shirley Louvain Patricia | Coast Ridge, West Falkland |
| 168 | Lakin | Bernard | Turners, MPA. East Falkland |
| 169 | * Lang | Patrick Andrew | North Arm, East Falkland |
| 170 | Lang | Velma Emily | North Arm, East Falkland |
| 171 | Larsen | Josephine Mary | Speedwell Island, East Falkland |
| 172 | Larsen | Ronald Ivan | Speedwell Island, East Falkland |
| 173 | Larsen | Yvonne | Speedwell Island, East Falkland |
| 174 | Lawton | Brian | Turners, MPA. East Falkland |
| 175 | Lee | Carole | Port Howard, West Falkland |
| 176 | Lee | Elizabeth | Goose Green, East Falkland |
| 177 | Lee | John Alfred | Goose Green, East Falkland |
| 178 | Lee | Myles | Port Howard, West Falkland |
| 179 | Lee | Robin Myles | Port Howard, West Falkland |
| 180 | Lee | Rodney William | Port Howard, West Falkland |
| 181 | Leo | Brenda May | NAAFI, MPA. East Falkland |
| 182 | Limond | Alexander Buchanan | KIS. MPA. East Falkland |
| 183 | * Lloyd | John Moelwyn | Port Edgar, West Falkland |
| 184 | Lloyd | Melvyn John | Swan Inlet, East Falkland |
| 185 | Lloyd | Valerie Ann | Swan Inlet, East Falkland |
| 186 | Lowe | Adrian Stewart | Murrel, East Falkland |
| 187 | Lowe | Lisa Helen | Murrel, East Falkland |
| 188 | Luxton | William Robert | Chartres, West Falkland |
| 189 | MacBeth | Raymond John | Narrows Farm, West Falkland |
| 190 | MacKay | James | Turners, MPA. East Falkland |
| 191 | Maddocks | Robert Charles | Saunders Island, West Falkland |
| 192 | Marsh | Alastair Roy | Shallow Harbour, West Falkland |
| 193 | Marsh | Anna Dierdre | Fox Bay Village, West Falkland |
| 194 | Marsh | Arlette Sharon | Rincon Ridge, West Falkland |
| 195 | Marsh | Gavin Nicholas | Fox Bay Village, West Falkland |
| 196 | * Marsh | June Helen | Rincon Ridge, West Falkland |
| 197 | Marsh | Leon Peter | Rincon Ridge, West Falkland |
| 198 | Marsh | Marlane Rose | Shallow Harbour, West Falkland |
| 199 | Marsh | Patricia Ann | Lakelands, West Falkland |
| 200 | Marsh | Robin Frank | Lakelands, West Falkland |
| 201 | May | Christopher Raymond | New House, East Falkland |
| 202 | May | Lindsey Olga | New House, East Falkland |
| 203 | McBain | Arthur | Saladero, East Falkland |
| 204 | McBain | Rhoda Margaret | Saladero, East Falkland |
| 205 | McDougall | James Gilfillan Stewart | Turners, MPA. East Falkland |
| 206 | McGhie | James | Pebble Island, West Falkland |
| 207 | McGhie | Roy | Port North, West Falkland |
| 208 | McGill | Gary | Goose Green, East Falkland |
| 209 | McGill | Robin Perry | Carcass Island, West Falkland |
| 210 | McKay | Christine | Teal River, West Falkland |
| 211 | McKay | Frazer Roderick | Teal River, West Falkland |
| 212 | McKay | Isabella Alice | Westley, West Falkland |
| 213 | McKay | Margaret | KIS, MPA. East Falkland |
| 214 | * McKay | Richard | Westley, West Falkland |
| 215 | McLeod | Albert John | Goose Green, East Falkland |
| 216 | McLeod | Isabella Diana Frances | Weddell Is. West Falkland |
| 217 | McLeod | Sarah Rose | Goose Green, East Falkland |
| 218 | McHullen | June | Goose Green, East Falkland |
| 219 | McHullen | Tony | Goose Green, East Falkland |
| 220 | * McPhee | June Iris | Brookfield, East Falkland |

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| 221 * | McPhee | Kenneth John | Brookfield, East Falkland |
| 222 | McPhee | Sheila Margaret | Kingsford Valley, East Falkland |
| 223 | McPhee | Terence Owen | Kingsford Valley, East Falkland |
| 224 | McPhee | Trudi Lynette | Brookfield, East Falkland |
| 225 | McRae | Charlotte Melize | North Arm, East Falkland |
| 226 | McRae | David Michael | South Harbour, West Falkland |
| 227 | McRae | Gloria Linda | South Harbour, West Falkland |
| 228 | McRae | Mandy | Home Farm, East Falkland |
| 229 * | McRae | Robert George Hector | Estancia, East Falkland |
| 230 | Miller | Betty | Walker Creek, East Falkland |
| 231 | Miller | James Albert | Fox Bay Village, West Falkland |
| 232 | Miller | Phillip Charles | Cape Dolphin, East Falkland |
| 233 | Minnell | Adrian James | Blue Beach, East Falkland |
| 234 | Minnell | Benjamin James | Moss Side, East Falkland |
| 235 | Minnell | Donna Marie | Moss Side, East Falkland |
| 236 | Minnell | Hazel Eileen | Moss Side, East Falkland |
| 237 | Minnell | Michael Robert | Moss Side, East Falkland |
| 238 | Minnell | Michelle Rose | Blue Beach, East Falkland |
| 239 | Minto | Dilys Rose | Fox Bay Village, West Falkland |
| 240 | Minto | Patrick Andrew | Goose Green, East Falkland |
| 241 | Minto | Timothy Ian | Fox Bay Village, West Falkland |
| 242 | Morrison | Eric George | Goose Green, East Falkland |
| 243 | Morrison | Gerald | Goose Green, East Falkland |
| 244 | Morrison | Jacqueline Denise Anita | Port Howard, West Falkland |
| 245 | Morrison | John | Port Howard, West Falkland |
| 246 | Morrison | Kathleen Iris | Goose Green, East Falkland |
| 247 | Morrison | Kenneth | Port Howard, West Falkland |
| 248 | Morrison | Lena | Port Howard, West Falkland |
| 249 | Morrison | Leslie Theodore Norman | Port Howard, West Falkland |
| 250 | Morrison | Patrick | North Arm, East Falkland |
| 251 | Morrison | Timothy | West Lagoons, West Falkland |
| 252 | Murphy | Roy David | Port Howard, West Falkland |
| 253 | Napier | Lily | West Point, West Falkland |
| 254 * | Napier | Roderick Bertrand | West Point, West Falkland |
| 255 | Newman | Sheena Melanie | Cape Dolphin, East Falkland |
| 256 | Nightingale | Charlene | West Lagoons, West Falkland |
| 257 | Nightingale | Peter Richard | West Lagoons, West Falkland |
| 258 | Oxley | Brian | Bristows, MPA. East Falkland |
| 259 | Parkinson | Allen | Turners, MPA. East Falkland |
| 260 | Peck | Christine | Leicester Falls, West Falkland |
| 261 | Peck | Davina Margaret | Shallow Bay, West Falkland |
| 262 | Peck | Paul | Shallow Bay, West Falkland |
| 263 | Phillips | Carol Joan | Hope Cottage, East Falkland |
| 264 | Phillips | Terence | Hope Cottage, East Falkland |
| 265 * | Pitaluga | Jene Ellen | Salvador, East Falkland |
| 266 | Pitaluga | Nicholas Alexander R. | Salvador, East Falkland |
| 267 | Pitaluga | Robin Andreas McIntosh | Salvador, East Falkland |
| 268 | Pitt | Myra May | Goose Green, East Falkland |
| 269 * | Pole-Evans | Anthony Reginald | Saunders Island, West Falkland |
| 270 | Pole-Evans | David Llewellyn | Saunders Island, West Falkland |
| 271 | Pole-Evans | Ian | Manybranch, West Falkland |
| 272 | Pole-Evans | Lisa | Port Howard, West Falkland |
| 273 | Pole-Evans | Shirley Helen | Manybranch, West Falkland |
| 274 | Pole-Evans | Suzan | Saunders Island, West Falkland |
| 275 | Pole-Evans | William Reginald | Manybranch, West Falkland |

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| 276 | Poncet | Dion Michael | Beaver Island, West Falkland |
| 277 | Poncet | Jerome Pierre | Beaver Island, West Falkland |
| 278 | Poncet | Sally Elizabeth | Beaver Island, West Falkland |
| 279 | Poole | Ella Josephine | Port San Carlos, East Falkland |
| 280 | Poole | Steven Charles | Port San Carlos, East Falkland |
| 281 | Porter | Joan | Shallow Harbour, West Falkland |
| 282 | Porter | William Kenneth | Fox Bay Village, West Falkland |
| 283 | Reeves | Ronald James | Port Howard, West Falkland |
| 284 | Robertson | Ann | Port Stephens, West Falkland |
| 285 | Robertson | Paul Jonathan | Port Stephens, West Falkland |
| 286 | Robertson | Peter Charles | Port Stephens, West Falkland |
| 287 | Ross | William Henry | Rincon Grande, East Falkland |
| 288 | Rozee | Fiona | Spring Point, West Falkland |
| 289 | Rozee | Ronald David | Spring Point, West Falkland |
| 290 | Saunders | Felicity Joan Carlie | Hawkbit, East Falkland |
| 291 | Short | Derek Patrick | Goose Green, East Falkland |
| 292 | Short | Lindsay Marie | Goose Green, East Falkland |
| 293 | Short | Robert George | Goose Green, East Falkland |
| 294 | Simpson | John | Fitzroy, East Falkland |
| 295 | Sinclair | Serena Samantha | North Arm, East Falkland |
| 296 | Sinclair | Simon Keith | Goose Green, East Falkland |
| 297 | Smith | Andrew John | Port San Carlos, East Falkland |
| 298 | Smith | George Paterson | Johnsons Harbour, East Falkland |
| 299 | Smith | Georgina Carol Anderson | Port San Carlos, East Falkland |
| 300 | Smith | Heather | Harps Farm, West Falkland |
| 301 | Smith | Jacqueline | Stoney Ridge, West Falkland |
| 302 | Smith | Jenny Lorraine | Johnsons Harbour, East Falkland |
| 303 | Smith | Marlaine Rose | North Arm, East Falkland |
| 304 | Smith | Michael Edmund | Johnsons Harbour, East Falkland |
| 305 | Smith | Peter | Turners, MPA, East Falkland |
| 306 | Smith | Robert William | North Arm, East Falkland |
| 307 | Smith | Robin Charles | Harps Farm, West Falkland |
| 308 | Smith | Roy Alan | Stoney Ridge, West Falkland |
| 309 | Smith | Terence George | North Arm, East Falkland |
| 310 | * Smolarcsyk | Sylvester Emanuel | Turners, MPA, East Falkland |
| 311 | Stearn | Michael Thomas | M.P.A. East Falkland |
| 312 | Stevens | Richard James | Port Sussex, East Falkland |
| 313 | Stevens | Toni Donna | Port Sussex, East Falkland |
| 314 | Tellez | Arturo | North Arm, East Falkland |
| 315 | Thorsen | David Moller | Teal Inlet, East Falkland |
| 316 | Thorsen | Gloria Penelope | Teal Inlet, East Falkland |
| 317 | Tolo | Fatulatetele Tile | Port Howard, West Falkland |
| 318 | Towersey | Diane | Port Stephens, West Falkland |
| 319 | Turner | Arthur Leonard Pitaluga | Rincon Grande, East Falkland |
| 320 | * Turner | Diana Jane | Rincon Grande, East Falkland |
| 321 | Turner | Elaine Ellen | Rincon Grande, East Falkland |
| 322 | Turner | Ronald | Rincon Grande, East Falkland |
| 323 | Tuson | Olwyn Carol | Saunders Island, West Falkland |
| 324 | Velasquez | Arleen | North Arm, East Falkland |
| 325 | Watson | Glenda Joyce | Long Island, East Falkland |
| 326 | Watson | Neil | Long Island, East Falkland |
| 327 | Whitney | Daneila Grace | Mount Kent, East Falkland |
| 328 | Whitney | Dennis | Fitzroy, East Falkland |
| 329 | Whitney | Keith | Home Farm, East Falkland |
| 330 | Whitney | Leona Ann | Home Farm, East Falkland |

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| 331 | Whitney | Patrick George | Mount Kent, East Falkland |
| 332 | Whitney | Tyrone | Home Farm, East Falkland |
| 333 | Wilkinson | David Clive Walter | Dunnose Head, West Falkland |
| 334 | Wilkinson | Rosemary | Dunnose Head, West Falkland |
| 335 | Yon | Gillian Rose | KIS. MPA. East Falkland |
| 336 | Youde | Maxin Arthur | Turners, MPA. East Falkland |
| 337 | Young | Julie | Bristows, MPA. East Falkland |
| 338 | Young | Nigel Anthony | Turners, MPA. East Falkland |



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CVI

30th June 1997

No. 10

Appointments

Mrs. Amanda Susan Floyd, Auxiliary Nurse, Medical Department, 1.6.97.

Mrs. Rachel Mary Hancox, Staff Nurse (Community & Casualty), Medical Department, 1.6.97.

Edgar Ewen Morrison, Plant Operator/Handyman, Highways Section, Public Works Department, 2.6.97.

Mrs. Patricia Hanlon, Learning Support Assistant, Falkland Islands Community School, Education Department, 5.6.97.

Miss Marie-Bernard Therese Lang, Clerk, Public Service, 6.6.97.

Robin Christopher Goodwin, Plant Operator, Highways Section, Public Works Department, 9.6.97.

Miss Allison Coombe, Clerk, Public Service, 17.6.97.

Bryan Roy May, Plant Operator, Highways Section, Public Works Department, 17.6.97.

Thomas William Eggeling, Environmental Planning Officer, Secretariat, 20.6.97.

Mark David Porter, Police Constable, Royal Falkland Islands Police Force, 25.6.97.

Confirmation of Appointments

Douglas Graham Fiddes, Technical Assistant, Design & Contracts Section, Public Works Department, 1.1.97.

Mrs. Lynn Frances Brownlee, Senior Clerk, Public Service, 20.5.97.

Promotion

Terence Hawksworth, from Clerk, Public Service to Accounting Officer (Credit Controller) Treasury, 9.6.97.

Transfer

Miss Lynne Forster, from Clerk, Public Service to Secretary / Receptionist, Falkland Islands Government Office, London, 14.6.97.

Resignation

Mrs. Rachel Mary Hancox, Assistant Special Needs Teacher, Falkland Islands Community School, Education Department, 31.5.97.

NOTICES

No. 13

9th June 1997.

FALKLAND ISLANDS COMMUNITY SCHOOL SCHOOL MANAGERS

It is hereby notified that His Excellency the Governor has in exercise of his powers under section 50(1)(c) of the Education Ordinance 1988 appointed Mrs. Andrea Clausen to be a member of the Committee of Managers in relation to the Falkland Islands Community School and that her appointment will expire, pursuant to section 50(2) of that Ordinance on 9th June 1999.

Dated 9th June 1997.

No. 14

10th June 1997.

CURRENCY NOTE RULES

In exercise of the powers conferred by Rule 3 of the Currency Notes Rules, His Excellency the Governor has been pleased to approve the appointment of the following as Currency Officers with effect from 5 June 1997 -

Mr. Terence Hawksworth
Miss Alison Emily Robson
Mrs. Valerie Anne Morrison

The appointment of Miss Glynis Margaret King and Mrs. Danuta Cecelia Krystyna Valler is hereby cancelled.

The following is a full list of Currency Officers:

Mr. Derck Frank Howatt
Miss Linda Margaret Lyse
Mrs. Marie Check
Mr. Peter Julian Basil Biggs
Ms. Rose Ann Shirley Hirtle

Mr. Michael Luxton
Mr. Peter Woodward
Mr. Terence Hawksworth
Miss Alison Emily Robson
Mrs. Valerie Anne Morrison

Commissioners of Currency

10 June 1997.

Appointment of Temporary Customs Officer
Customs Ordinance 1943

In exercise of the powers conferred by Section 4 of the Customs Ordinance 1943,

I hereby appoint:

CPL. M. L. WATERS J8233930

to be a Temporary Customs Officer from 6th May 1997 until 6th September 1997.

R. J. King,
Collector of Customs.



**THE
FALKLAND ISLANDS GAZETTE
Supplement**

PUBLISHED BY AUTHORITY

Vol. 8

7th February 1997

No. 1

The following are published in this Supplement -

**The Land Charges Ordinance 1996;
The Mortgages and Property Ordinance 1996.**

ELIZABETH II



Colony of the Falkland Islands

RICHARD PETER RALPH, C.V.O.,
Governor.

Land Charges Ordinance 1996

(No: 24 of 1996)

ARRANGEMENT OF PROVISIONS

Section

1. Short title and commencement.
2. Interpretation.
3. The registers and the index.
4. The register of land charges.
5. Registration of land charges.
6. Effect of land charges and protection of purchasers.
7. The register of pending actions.
8. The register of writs and orders affecting land.
9. The register of deeds of arrangement affecting land.
10. Expiry and renewal of registration.
11. Searches.
12. Official searches.
13. Date of effective registration and priority notices.

14. Protection of legal practitioners, trustees, etc.
15. Saving for overreaching powers.
16. Application to the Crown.
17. General rules.
18. Appeals to the Supreme Court.
19. Future effect of section 9(2) of the Land Ordinance.

4
ELIZABETH II



Colony of the Falkland Islands

RICHARD PETER RALPH, C.V.O.,
Governor.

LAND CHARGES ORDINANCE 1996

(No. 24 of 1996)

AN ORDINANCE

(assented to: 12 December 1996)
(commencement: in accordance with section 1)
(published: 7 February 1997)

To provide for the registration of land charges and other instruments and matters affecting land in the Falkland Islands

ENACTED by the Legislature of the Falkland Islands as follows—

Preliminary

Short title and commencement

1. This Ordinance may be cited as the Land Charges Ordinance 1996 and shall come into force on such date as maybe fixed by the Governor by notice published in the *Gazette*.

Interpretation

2. In this Ordinance, unless the context otherwise requires,

“conveyance”, “estate owner”, “hereditament”, “land”, “legal estate” and “trust for sale” have the same meanings as they have under section 2(1) of the Mortgages and Property Ordinance 1996;

“court” means the Magistrate's Court, or the Supreme Court on appeal from that court;

“deed of arrangement” has the same meaning as in the Deeds of Arrangement Act 1914 in its application to the Falkland Islands;

"pending land action" means any action or proceeding pending in court relating to land or any interest in or change of land;

"purchaser" means any person (including a mortgagee or lessee) who, for valuable consideration, takes any estate or interest in land or a charge on land, and "purchase" has a corresponding meaning;

"registrar" means the Registrar General;

"registry" means the office of the Registrar General.

The registers and the index

3. (1) The registrar shall keep at the registry in the prescribed manner the following registers

- (a) a register of land charges;
- (b) a register of pending actions;
- (c) a register of writs and orders affecting land; and
- (d) a register of deeds of arrangement affecting land,

and shall keep there an index whereby all entries made in any of those registers can readily be traced.

(2) Every application to register shall be in the prescribed form and contain the prescribed particulars.

(3) Where any charge or other matter is registrable in more than one of the registers kept under this Ordinance, it shall be sufficient if it is registered in one such register, and if it is so registered the person entitled to the benefit of it shall not be prejudicially affected by any provision of this Ordinance as to the effect of non-registration in any other such register.

(4) An office copy of an entry in any register kept under this section shall be admissible in evidence in all proceedings and between all parties to the same extent as the original would be admissible.

(5) Subject to the provisions of this Ordinance, registration may be vacated pursuant to an order of the court.

(6) In this section "index" includes any device or combination of devices serving the purpose of an index.

Registration in register of land charges

The register of land charges

4. (1) If a charge on or obligation affecting land falls into one of the classes described in this section, it may be registered in the register of land charges as a land charge of that class.

(2) A Class I land charge is any of the following—

- (a) a mortgage;
- (b) a general equitable charge;
- (c) an estate contract;

and for this purpose—

(i) a mortgage is a legal mortgage whether or not that mortgage is purported to be protected by a deposit of documents relating to the legal estate affected;

(ii) a general equitable charge is any equitable charge which—

(a) does not arise or affect an interest arising under a trust for sale or a settlement;

(b) is not a charge given by way of indemnity against rents equitably apportioned or charged exclusively on land in exoneration of other land and against the breach or non observance of covenants and conditions; and

(c) is not included in any other class of land charges;

(iii) an estate contract is a contract by an estate owner or by a person entitled at the date of the contract to have a legal estate conveyed to him to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option to purchase a right of pre-emption or any other like right.

(3) A Class II land charge is any of the following—

- (a) a Tax Charge;
- (b) a restrictive covenant;
- (c) an equitable easement;

and for this purpose—

(i) a Tax Charge is a charge on land, being a charge acquired by the Crown or the Commissioner of Tax under and Ordinance of the Falkland Islands relating to tax;

(ii) a restrictive covenant is a covenant or agreement (other than a covenant or agreement between a lessor and a lessee) restrictive of the user of land and entered into after the coming into force of this Ordinance;

(iii) an equitable easement is an easement, right or privilege over or affecting land created or arising after the coming into force of this Ordinance, and being merely an equitable interest.

(4) A charge or obligation created before the coming into force of this Ordinance can only be registered as a Class I land charge if it is acquired under a conveyance made on or after the date on which this Ordinance comes into force.

(5) Registration of a charge which, by virtue of this section, is a registrable charge shall, subject to this Ordinance, constitute actual notice of the charge to every person of the existence of the charge, whether or not a search has been made pursuant to this Ordinance by the person in question.

Registration of land charges

5. (1) A land charge shall be registered in the name of the estate owner whose estate is affected.

(2) A mortgage created before the date on which this Ordinance comes into force may be registered as a land charge before any transfer of the mortgage is made.

(3) The expenses incurred by a person entitled to the charge in registering a land charge of Class I (other than an estate contract) or by the Commissioner of Tax in registering a Tax Charge shall be deemed to form part of the land charge, and shall be recoverable accordingly on the day for payment of any part of the land charge next after such expenses are incurred.

(4) In the case of a land charge for securing money created by a company as a floating charge, registration under section 95 of the Companies Act 1948 in its application to the Falkland Islands shall be sufficient in place of registration under this Ordinance, and shall have effect as if the land charge had been registered under this Ordinance.

Effect of land charges and protection of purchasers

6. (1) Subject to subsection (3) of this section, a land charge of Class I (other than an estate contract) created or arising after the coming into force of this Ordinance shall be void as against a purchaser of land charged with it, or any interest in such land, unless the land charge is registered in the appropriate register before the completion of the purchase.

(2) Subject to subsection (3) of this section, an estate contract and a land charge of Class II created or entered into after the coming into force of this Ordinance shall be void as against a purchaser for money or money's worth of a legal estate in the land charged with it, unless the land charge is registered in the appropriate register before the completion of the purchase.

(3) Subsections (1) and (2) have effect subject to section 12 (official searches) and section 13 (date of effective registration and priority notices).

Registration of registers of pending actions, writs and orders and deeds of arrangement

The register of pending actions

7. (1) There may be registered in the register of pending actions—

(a) a pending land action;

(b) a petition in bankruptcy filed after the coming into force of this Ordinance

(2) Subject to general rules under section 17 of this Ordinance, every application for registration under this section shall contain particulars of the title of the proceedings and the name, address and description of the estate owner or other person whose estate or interest is intended to be affected.

(3) An application for registration shall also state—

(a) if it relates to a pending land action, the court in which and the day on which the action was commenced; and

(b) if it relates to a petition in bankruptcy, the court in which and the day on which the petition was filed.

(4) The registrar shall forthwith enter the particulars in the register, in the name of the estate owner or other person whose estate or interest is intended to be affected.

(5) An application to register a petition in bankruptcy against a firm shall state the names and addresses of the partners, and the registration shall be effected against each partner as well as against the firm.

(6) No fee shall be charged for the registration of a petition in bankruptcy if the application is made by the registrar of the court in which the petition is filed.

(7) A pending land action shall not bind a purchaser without express notice of it unless it is for the time being registered under this section.

(8) A petition in bankruptcy shall not bind a purchaser of a legal estate in good faith, for money or money's worth, unless it is for the time being registered under this section.

(9) The court, if it thinks fit, may upon the determination of the proceedings, or during the pendency of the proceedings if satisfied that they are not prosecuted in good faith, make an order vacating a registration under this section, and direct the party on whose behalf it was made to pay all or any of the costs and expenses occasioned by the registration and its vacation.

The register of writs and orders affecting land

8. (1) There may be registered in the register of writs and orders affecting land—

- (a) any writ or order affecting land issued or made by any court for the purpose of enforcing a judgment or recognisance;
- (b) any order appointing a receiver or sequestrator of land;
- (c) any bankruptcy order, whether or not the bankrupt's estate is known to include land.

(2) Every entry made pursuant to this section shall be made in the name of the estate owner or other person whose land, if any, is affected by the writ or order registered.

(3) No fee shall be charged for the registration of a bankruptcy order if the application for registration is made by an official receiver.

(4) Except as provided by subsection (5) of this section and by section 37(5) of the Supreme Court Act 1981 and section 107(3) of the County Courts Act 1984 (which make special provision as to receiving orders in respect of the land of judgment debtors) in the application of those provisions to the Falkland Islands under the provisions of the Administration of Justice Ordinance, every such writ and order as is mentioned in subsection (1) of this section, and every delivery in execution or other proceedings taken pursuant to any such writ or order, or in obedience to any such writ or order, shall be void as against a purchaser of the land unless the writ or order is for the time being registered under this section.

(5) Subject to subsection (6) of this section, the title of a trustee in bankruptcy shall be void as against a purchaser of a legal estate in good faith for money or money's worth unless the bankruptcy order is for the time being registered under this section.

(6) Where a petition in bankruptcy has been registered under the proceeding section, the title of the trustee in bankruptcy shall be void as against a purchaser of a legal estate in good faith for money or money's worth claiming under a conveyance made after the date of registration, unless at the date of the conveyance either the registration of the petition is in force or a receiving order on the petition is registered under this section.

The register of deeds of arrangement affecting land

9. (1) A deed of arrangement affecting land may be registered in the register of deeds of arrangement affecting land, in the name of the debtor, on the application of a trustee of the deed or a creditor assenting to or taking the benefit of the deed.

(2) Every deed of arrangement shall be void as against a purchaser of any land comprised in it or affected by it unless it is for the time being registered under this section.

Expiry and renewal of registration

10. A registration under section 7, section 8 or section 9 of this Ordinance shall cease to have effect at the end of the period of five years from the date on which it is made, but may be renewed from time to time and, if so renewed, shall have effect for five years from the date of renewal.

Searches and official searches

Searches

11. (1) A person may search in any register kept under this Ordinance on paying the prescribed fee.

(2) Without prejudice to subsection (1) of this section, the registrar may provide facilities for enabling persons entitled to search in any such register to see photographic or other images or copies of any portion of the register which they may wish to examine.

Official searches

12. (1) Where any person requires a search to be made at the registry for entries of any matters or documents, entries of which are made or allowed to be made in the registry by this Ordinance, he may make a requisition in that behalf to the registrar, which may be either—

(a) a written requisition delivered at or sent by post to the registry; or

(b) a requisition communicated by teleprinter, telephone, telephonic facsimile transmission or other means in such manner as may be prescribed in relation to the means in question, in which case it shall be treated as made to the registrar if, but only if, he accepts it;

and the registrar shall not accept a requisition made in accordance with paragraph (b) unless it is made by a person maintaining a credit account at the registry, and may at his discretion refuse to accept it notwithstanding that it is made by such a person.

(2) The prescribed fee shall be payable in respect of every requisition made under this section; and that fee—

(a) in the case of a requisition made in accordance with subsection (1)(a) of this section, shall be paid in such manner as may be prescribed for the purposes of this paragraph unless the requisition is made by a person maintaining a credit account at the registry and the fee is debited to that account,

(b) in the case of a requisition made in accordance with subsection (1)(b) of this section it shall be debited to the credit account of the person by whom the requisition is made.

(3) Where a requisition is made under subsection (1) of this section and the fee payable in respect of it is paid or debited in accordance with subsection (2) of this section, the registrar shall thereupon make the search required and—

(a) shall issue a certificate setting out the result of the search; and

(b) without prejudice to paragraph (a) of this subsection, take such other steps as he considers appropriate to communicate that result to the person by whom the requisition was made.

(4) In favour of a purchaser or an intending purchaser, as against persons interested under or in respect of matters or documents entries of which are required or allowed as aforesaid, the certificate, according to its tenor, shall be conclusive, affirmatively or negatively as the case may be.

(5) If any officer, clerk or person employed in the registry commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate under this section, he commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding the maximum of level 7 on the standard scale.

(6) Without prejudice to subsection (5), no officer, clerk or person employed in the registry shall, in the absence of fraud on his part, be liable for any loss which may be suffered—

(a) by reason of any discrepancy between

(i) the particulars which are shown in a certificate under this section as being the particulars in respect of which the search for entries was made, and

(ii) the particulars in respect of which a search for entries was required by the person who made the requisition; or

(b) by reason of any communication of the result of a search under this section made otherwise than by issuing a certificate under this section.

Miscellaneous and supplementary

Date of effective registration and priority notices

13. (1) Any person intending to make an application for the registration of any contemplated charge, instrument or other matter in pursuance of this Ordinance or any rule made under or having effect under this Ordinance may give a priority notice in the prescribed form at least the relevant number of days before the registration is to take effect.

(2) Where a notice is given under subsection (1) of this section, it shall be entered in the register to which the intended application when made will relate.

(3) If the application is presented within the relevant number of days thereafter and refers in the prescribed manner to the notice, the registration shall take effect as if the registration had been made at the time when the charge, instrument or matter was created, entered into, made or arose, and the date at which the registration so takes effects shall be deemed to be the date of registration.

(4) Where—

- (a) any two charges, instruments or matters are contemporaneous; and
- (b) one of them (whether or not protected by a priority notice) is subject to or dependent on the other; and
- (c) the latter is protected by a priority notice,

the subsequent or dependent charge, instrument or matter shall be deemed to have been created, entered into or made, or to have arisen, after the registration of the other.

(5) Where a purchaser has obtained a certificate under the preceding section, any entry which is made in the register after the date of the certificate and before completion of the purchase, and is not made pursuant to a priority notice entered on the register on or before the date of the certificate, shall not affect the purchaser if the purchase is completed before the expiration of the relevant number of days after the date of the certificate.

(6) The relevant number of days is—

- (a) for the purposes of subsections (1) and (5) of this section, fifteen;
- (b) for the purposes of subsection (3) of this section, thirty;

or such other number as may be prescribed, but in reckoning the relevant number of days for any of the purposes of this section any days when the registry is not open to the public shall be excluded.

Protection of legal practitioners, trustees, etc

14. A legal practitioner, or a trustee, personal representative, agent or other person in a fiduciary position, shall not be answerable—

- (a) in respect of any loss occasioned by reliance on an office copy of an entry in any register kept under this Ordinance;
- (b) for any loss that may arise from error in a certificate under section 12 obtained by him.

Saving for overreaching powers

15. (1) The registration of any charge or any interest under this Ordinance shall not prevent the charge or interest being overreached under any other law having effect in the Falkland Islands, except where otherwise provided by that law.

(2) The registration as a land charge of a mortgage or charge shall not operate to prevent that mortgage or charge being overreached in favour of a prior mortgagee or a person deriving title under him where, by reason of a sale or foreclosure, or otherwise, the right of the subsequent mortgagee or subsequent chargee to redeem is barred.

Application to the Crown

16. This Ordinance binds the Crown, but—

(a) nothing in this Ordinance shall be construed as rendering land owned or occupied for the purposes of the Crown subject to any charge to which, independently of this Ordinance, it would not be subject;

(b) no fee shall be payable by or on behalf of the Crown in relation to the registration or discharge, on an application made by the Crown or on its behalf, of any entry in any register maintained under this Ordinance or in relation to any search in, or certificate of search in any such register or for a certified copy of any entry therein.

General rules

17. The Governor may make such general rules as may be required for carrying this Ordinance into effect, and in particular—

(a) as to forms and contents of applications for registration, modes of identifying where practicable the land affected, requisitions for and certificates of official searches, and regulating the practice of the registry in connection therewith;

(b) for providing for the mode of registration of a land charge (and in the case of a mortgage, general equitable charge, estate contract, restrictive covenant or equitable easement by reference to the instrument imposing or creating the charge, interest or restriction, of an extract from that instrument) and for the cancellation without an order of court of the registration of a land charge, on its cesser, or with the consent of the person entitled to it, or on sufficient evidence being furnished that the land charge has been overreached under the provisions of any law having effect in the Falkland Islands or in any other way;

(c) for determining the date on which applications and notices shall be treated for the purposes of section 13 of this Ordinance as having been made or given;

(d) for determining the times and order at and in which applications and priority notices are to be registered;

(e) for varying the number of relevant days for any of the purposes of section 11 of this Ordinance;

(f) for enabling the registrar to provide credit accounting facilities in respect of fees payable by virtue of this Ordinance;

(g) for treating the debiting of such a fee to a credit account maintained at the registry as being for such purposes of this Ordinance or of the rules as may be specified in the rules, payment of that fee;

(h) for the termination or general suspension of any credit accounting facilities provided under the rules or for their withdrawal or suspension in particular cases at the discretion of the registrar.

Appeals to the Supreme Court

18. (1) An appeal shall lie to the Supreme Court from any decision of the Magistrate's Court in the exercise, or purported exercise, of any of its powers under this Ordinance.

(2) An appeal to which subsection (1) of this section relates lies as of right at the instance of any person aggrieved by the decision of the Magistrate's Court.

Future effect of section 9(2) of the Land Ordinance

19. (1) Without prejudice to its continuing application in relation to deeds executed before the coming into force of this Ordinance, section 9(2) of the Land Ordinance shall not have any effect in relation to any deed executed after that time.

(2) In subsection (1), "deed" has the same meaning as it has for the purposes of the Land Ordinance.

Passed by the Legislature of the Falkland Islands this 29th day of November 1996.

C. ANDERSON,
Clerk of Councils.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council and is found by me to be a true and correctly printed copy of the said Bill.

C. ANDERSON,
Clerk of Councils.



Colony of the Falkland Islands

RICHARD PETER RALPH, C.V.O.,
Governor.

The Mortgages and Property Ordinance 1996

(No: 25 of 1996)

ARRANGEMENT OF PROVISIONS

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Schedule 1

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Colony of the Falkland Islands

RICHARD PETER RALPH, C.V.O.,
Governor.

MORTGAGES AND PROPERTY ORDINANCE 1996

(No. 25 of 1996)

AN ORDINANCE

(assented to: 12 December 1996)
(commencement: in accordance with section 1)
(published: 7 February 1997)

To make new provision in relation to mortgages and the sale or other disposition of property in the Falkland Islands, to provide for new covenants for title to be implied on dispositions of property, to make new provision in relation to deeds and their execution and for connected purposes.

ENACTED by the Legislature of the Falkland Islands as follows—

PART I

INTRODUCTORY

Short title and commencement

1. This Ordinance may be cited as the Mortgages and Property Ordinance 1996 and shall come into force on such date as may be fixed by the Governor by notice published in the *Gazette*.

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires—
"bankruptcy" includes liquidation by arrangement and in relation to a corporation includes its winding up;

"building purposes" include the erecting and improving of, and the adding to, and the repairing of buildings;

"building lease" means a lease for building purposes or purposes connected therewith;

"conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest in property by any instrument, except a will and "convey" has a corresponding meaning;

"disposition" includes a conveyance and the creation of a term of years and "dispose of" has a corresponding meaning;

"estate owner" means the owner of a legal estate;

"freehold", in relation to land, means the estate in fee simple;

"hereditament" means any real property which on an intestacy occurring before 1st January 1926 might have devolved upon an heir;

"incumbrance" includes a legal or equitable mortgage and a trust for securing money:

"incumbrancer" has a meaning corresponding with that of incumbrance and includes every person entitled to the benefit of an incumbrance or to require payment or discharge of it;

"instrument" includes an instrument which is not a deed but does not include a statute unless the statute creates a settlement;

"land" includes land of any tenure, and mines or minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments, incorporeal hereditaments, and an easement, right, privilege, or benefit in, over or derived from land; but not an undivided share in land;

"leasehold", in relation to land, means a term of years absolute;

"mining lease" means a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away or disposing of mines and minerals, or purposes connected therewith and includes a grant or licence for mining purposes;

"legal estates" means the estates, interests and charges in or over land (subsisting or created at law) which by any law of or applying in the Falkland Islands are authorised to subsist or be created as legal estates;

"legal mortgage" means a mortgage by demise or sub-demise or a charge by way of legal mortgage, and "legal mortgagee" has a corresponding meaning;

"mortgage" includes any charge or lien on any property for securing money or money's worth;

"mortgagee" includes a chargee by way of legal mortgage and any person from time to time deriving title under the original mortgagee;

"mortgagee in possession" means a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property;

"mortgage money" means money or money's worth secured by a mortgage;

"mortgagor" includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate interest or right to the mortgaged property;

"notice" includes constructive notice;

"personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person;

"possession" includes receipt of rents and profits or the right to receive the same, if any; and "income" includes rents and profits;

"property" includes a thing in action, and any interest in real or personal property;

"purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property, and where the context so requires "purchaser" includes an intending purchaser and "purchase" has a meaning corresponding with that of purchaser;

"rent" includes a rent service or a rentcharge, or other rent, toll, duty, royalty, or annual or periodical payment in money or money's worth, reserved or issuing out of or charged upon land, but does not include mortgage interest;

"right of redemption", in relation to a mortgage, includes an option to repurchase only if the option in effect creates a right of redemption;

"term of years" includes a term for less than a year, or for a year or years and a fraction of a year or from year to year;

"term of years absolute" means a term of years (taking effect either in possession or in reversion whether or not at a rent) with or without impeachment for waste, subject or not to another legal estate, and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event but

does not include a term of years which is not expressed to take effect within twenty-one years after its creation or any term of years which is not under the law of England capable of constituting a term of years absolute;

"trust for sale", in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale; and

"valuable consideration" does not include a nominal consideration in money.

(2) In the construction of a covenant or proviso, or other provision, implied in any document by virtue of this Ordinance, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

PART II

MORTGAGES OF FREEHOLDS AND LEASEHOLDS

Introductory

Mode of mortgaging freeholds (*15 & 16 Geo. 5 c.20, s.85*)

3. (1) A mortgage of a freehold shall only be capable of being effected at law either by a demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge expressed to be by way of legal mortgage.

(2) Any purported conveyance of a freehold made after the coming into force of this Ordinance shall (to the extent of the estate of the mortgagor) operate as a demise of the land to the mortgagee for a term of years absolute, without impeachment for waste, but subject to cesser on redemption, in the following manner—

(a) a first or only mortgagee shall take a term of three thousand years from the date of the mortgage;

(b) a second or subsequent mortgagee shall take a term (commencing from the date of the mortgage) one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee.

In this subsection, any such purported conveyance includes an absolute conveyance with a deed of defeasance and any other assurance which, but for this subsection, would operate to vest the freehold in a mortgagee subject to redemption.

(3) This section applies whether or not the mortgage is expressed to be by way of trust for sale or otherwise.

(4) Every power to mortgage or lend money on mortgage of a freehold shall be construed as a power to mortgage the freehold, without impeachment for waste, or by a charge by way of legal mortgage or to lend on such security.

Mode of mortgaging leaseholds (15 & 16 Geo. 5 c.20, s.86)

4. (1) A mortgage of a leasehold shall only be capable of being effected at law either by a sub-demise for a term of years absolute, less by one day at least than the term vested in the mortgagor, and subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage; and where a licence to sub-demise by way of mortgage is required, it shall not unreasonably be refused.

(2) Any purported assignment of a term of years absolute by way of mortgage made after the coming into force of this Ordinance shall (to the extent of the estate of the mortgagor) operate as a sub-demise of the leasehold land to the mortgagee for a term of years absolute, but subject to a cesser on redemption, in the following manner—

(a) the term to be taken by a first or only mortgagee shall be ten days less than the term expressed to be assigned;

(b) the term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last mentioned term permits, and in any case for a term less by one day at least than the term expressed to be assigned.

In this subsection, any such purported assignment as aforesaid includes an absolute assignment with a deed of defeasance and any other assurance which, but for this subsection, would operate in effect to vest the term of the mortgagor in a mortgage subject to redemption.

(3) This section applies whether or not the mortgage is made by way of sub-mortgage of a term of years absolute, or is expressed to be by way of trust for sale or otherwise.

(4) Every power to mortgage for or to lend money on mortgage of a term of years absolute by way of assignment shall be construed as a power to mortgage the term by sub-demise for a term of years absolute or by a charge by way of legal mortgage, or to lend on such security.

Charges by way of legal mortgage (15 & 16 Geo.5 c.20, s.87)

5. (1) Where a legal mortgage of land is created by a charge by deed expressed to be by way of legal mortgage, the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits, or any of them) as if—

(a) where the mortgage is a mortgage of a freehold, a mortgage term for three thousand years without impeachment of waste had been thereby created in favour of the mortgagee; and

(b) where the mortgage is a mortgage of a leasehold, a sub-term less by one day than the term vested in the mortgagor had thereby been created in favour of the mortgagee.

(2) Where an estate vested in a mortgagee immediately before the coming into force of this Ordinance has by virtue of this Ordinance been converted into a term of years absolute or sub-term, the mortgagee may, by declaration in writing to that effect signed by him, convert the mortgage into a charge by way of legal mortgage, and in that case the mortgage term shall be extinguished in the inheritance or in the head term as the case may be, and the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits or any of them) as if the mortgage term or sub-demise had remained existing.

Rights and powers of mortgagees

Realisation of freehold mortgages (15 & 16 Geo.5, c.20 s.88)

6. (1) Where a freehold has been mortgaged by the creation of a term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale—

(a) the conveyance by him shall operate to vest in the purchaser the freehold in the land conveyed subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon;

(b) the mortgage term or the charge by way of legal mortgage and any subsequent mortgage term or charges shall merge in or be extinguished as respects the land conveyed;

and such conveyance may, as respects the estate in fee simple, be made in the name of the estate owner in whom it is vested.

(2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall operate to vest the fee simple in him (subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured), and thereupon the mortgage term, if any, shall thereby be merged in the freehold, and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall thereupon be extinguished.

(3) Where any such mortgagee acquires a title under the Limitation Act 1980 in its application to the Falkland Islands, he, or the persons deriving title under him, may enlarge the mortgage term into a fee simple under the statutory power for that purpose discharged from any legal mortgage affected by the title so acquired, or in the case of a chargee by way of legal mortgage may by deed declare that the fee simple is vested in him discharged as aforesaid, and the same shall vest accordingly.

(4) Where the mortgage includes fixtures or chattels personal any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.

(5) In the case of a sub-mortgage by sub-demise of a long term (less a nominal period) itself limited out of an estate in fee simple, the foregoing provisions of this section shall operate as if the derivative term, if any, created by the sub-mortgage had been limited out of the fee simple, and so as to enlarge the principal term and extinguish the derivative term created by the sub-mortgage as aforesaid, and to enable the sub-mortgagee to convey the freehold or acquire it by foreclosure, enlargement, or otherwise as aforesaid.

(6) This section applies to a mortgage whether created before or after the coming into force of this Ordinance, and to a mortgage term created by this Ordinance, but does not operate to confer a better title to the fee simple than would have been acquired if the same had been conveyed by the mortgage (being a valid mortgage) and the restrictions imposed by this Ordinance in regard to the effect and creation of mortgages were not in force, and all prior charges (if any) not being merely equitable charges had been created by demise or by charge by way of legal mortgage.

(7) The Magistrate's Court has jurisdiction under this section where the amount owing in respect of the mortgage or charge at the commencement of the proceedings does not exceed £100,000 or such greater sum as may be prescribed by Order made by the Governor for the purposes of this section.

Realisation of leasehold mortgages (15 & 16 Geo.5 c.20, s.89)

7. (1) Where a term of years absolute has been mortgaged by the creation of another term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale,—

(a) the conveyance by him shall operate to convey to the purchaser not only the mortgage term, if any, but also (unless expressly excepted with the leave of the court) the leasehold reversion affected by the mortgage, subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon

(b) the mortgage term, or the charge by way of legal mortgage and any subsequent mortgage term or charge, shall merge in such leasehold reversion or be extinguished unless excepted as aforesaid;

and such conveyance may, as respects the leasehold reversion, be made in the name of the estate owner in whom it is vested.

Where a licence to assign is required on a sale by a mortgagee, such licence shall not be unreasonably refused.

(2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall, unless it otherwise provides, operate (without giving rise to a forfeiture for want of a licence to assign) to vest the leasehold reversion affected by the mortgage and any subsequent mortgage term in him, subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured, and thereupon the mortgage term and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall, subject to any express provision to the contrary contained in the order, merge in such leasehold reversion or be extinguished.

(3) Where any such mortgagee acquires a title under the Limitation Act 1980, he, or the persons deriving title under him, may by deed declare that the leasehold reversion affected by the mortgage and any mortgage term affected by the title so acquired shall vest in him, free from any right of redemption which is barred, and the same shall (without giving rise to a forfeiture for want of licence to assign) vest accordingly, and thereupon the mortgage term, if any, and any other mortgage term or charge by way of legal mortgage affected by the title so acquired shall, subject to any express provision to the contrary contained in the deed, merge in such leasehold reversion or be extinguished.

(4) Where the mortgage includes fixtures or chattels personal, any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.

(5) This section takes effect without prejudice to any incumbrance or trust affecting the leasehold reversion which has priority over the mortgage in right of which the sale, foreclosure, or title is made or acquired, and applies to a mortgage whether executed before or after the coming into force of this Ordinance, and to a mortgage term created by this Ordinance, but does not apply where the mortgage term does not comprise the whole of the land included in the leasehold reversion unless the rent (if any) payable in respect of the reversion has been apportioned as respects the land affected, or the rent is

of no money value or no rent is reserved, and unless the lessee's covenants and conditions (if any) have been apportioned, either expressly or by implication, as respects the land affected.

In this subsection references to an apportionment include an equitable apportionment made without the consent of the lessor.

(6) The Magistrate's Court has jurisdiction under this section where the amount owing in respect of the mortgage or charge at the commencement of the proceedings does not exceed £100,000 or such greater sum as may be prescribed by Order made by the Governor for the purposes of this section.

Powers of the courts

Realisation of equitable charges by the court (15 & 16 Geo.5 c.20 s.90)

8. (1) Where an order for sale is made by the court in reference to an equitable mortgage on land (not secured by a legal term of years absolute or by a charge by way of legal mortgage) the court may, in favour of a purchaser, make a vesting order conveying the land or may appoint a person to convey the land or create and vest in the mortgagee a legal term of years absolute or enable him to carry out the sale, as the case may require, in like manner as if the mortgage had been created by deed by way of legal mortgage pursuant to this Ordinance, but without prejudice to any incumbrance having priority to the equitable mortgage unless the incumbrancer consents to the sale.

(2) This section applies to equitable mortgages made or arising before or after the coming into force of this Ordinance, but not to a mortgage which has been over-reached by the powers conferred by the Law of Property Act 1925 in its application to the Falkland Islands or otherwise.

(3) The Magistrate's Court has jurisdiction under this section where the amount owing in respect of the mortgage or charge at the commencement of the proceedings does not exceed £100,000 or such greater sum as may be prescribed by Order made by the Governor for the purposes of this section.

Sale of mortgaged property in action for redemption or foreclosure (15 & 16 Geo. 5 c.20 s.91)

9. (1) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale and redemption in the alternative.

(2) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the court, on the request of the

mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding that—

(a) any other person dissents; or

(b) the mortgagee or any person so interested does not appear in the action;

and without allowing any time for redemption or for payment of any mortgage money, may direct a sale of the mortgaged property, on such terms as it thinks fit, including the deposit in the court of a reasonable sum fixed by the court to meet the expenses of sale and to secure performance of the terms.

(3) But, in an action brought by a person interested in the right of redemption and seeking a sale, the court may, on the application of any defendant, direct the plaintiff to give such security for costs as the court thinks fit, and may give the conduct of the sale to any defendant, and may give any such directions as it thinks fit respecting the costs of the defendants or any of them.

(4) In any case within this section the court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

(5) This section applies to actions brought either before or after the coming into force of this Ordinance.

(6) In this section "mortgaged property" includes the estate or interest which a mortgagee would have had power to convey if the statutory power of sale were applicable.

(7) For the purposes of this section the court may, in favour of a purchaser, make a vesting order conveying the mortgaged property, or appoint a person to do so, subject or not to any incumbrances, as the court may think fit; or in the case of an equitable mortgage, may create and vest a mortgage term in a mortgagee to enable him to carry out the sale as if the mortgage had been made by deed by way of legal mortgage.

(8) The Magistrate's Court has jurisdiction under this section where the amount owing in respect of the mortgage or charge at the commencement of the proceedings does not exceed £100,000 or such greater sum as may be prescribed by Order made by the Governor for the purposes of this section.

Power to authorise land and minerals to be dealt with separately (*15 & 16 Geo.5 c.20, s.92*)

10. (1) Where a mortgagee's power of sale in regard to land has become exercisable but does not extend to the purposes mentioned in this section, the court may, on his application, authorise him and the persons deriving title under him to dispose—

(a) of the land, with an exception or reservation of all or any mines and minerals, and with or without rights and powers of or incidental to the working, getting or carrying away of minerals;

(b) of all or any mines or minerals, with or without the said rights or powers separately from the land;

and thenceforth the powers so conferred shall have effect as if the same were contained in the mortgage.

(2) The Magistrate's Court has jurisdiction under this section where the amount owing in respect of the mortgage or charge at the commencement of the proceedings does not exceed £100,000 or such greater sum as may be prescribed by Order made by the Governor for the purposes of this section.

Restrictions on consolidation and tacking of advances

Restrictions on consolidation of mortgages (15 & 16 Geo.5 c.20, s.93)

11. (1) A mortgagor seeking to redeem any one mortgage is entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, solely on property other than that comprised in the mortgage which he seeks to redeem.

This subsection applies only if a contrary intention is not expressed in the mortgage deeds or one of them.

(2) Save as aforesaid, nothing in this Ordinance, in reference to mortgages affects any right of consolidation or renders inoperative a stipulation in relation to any mortgage made before or after the coming into force of this Ordinance reserving a right to consolidate.

Tacking and further advances (15 & 16 Geo.5 c.20, s.94)

12. (1) After the coming into force of this Ordinance, a prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable)—

(a) if an arrangement has been made to that effect with the subsequent mortgagees;

(b) if he had no notice of such subsequent mortgages at the time the further advance was made by him; or

(c) whether or not he had such notice as aforesaid, where the mortgage imposes an obligation on him to make further advances.

This subsection applies whether or not the prior mortgage was made expressly for securing further advances.

(2) In relation to the making of further advances after the coming into force of this Ordinance, a mortgagee shall not be deemed to have notice of a mortgage merely by reason of the fact that it is registered as a deed under the Land Ordinance or is registered as a land charge under the Land Charges Ordinance 1996 if it was not so registered at the time when the original mortgage was created or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened.

This subsection only applies where the prior mortgage was made expressly for securing a current account or other further advances.

(3) Save in relation to the making of further advances as aforesaid, the right to tack is hereby abolished, provided that nothing in this Ordinance shall affect any priority acquired before the coming into force of this Ordinance by tacking, or in respect of further advances made without notice of a subsequent incumbrance or by arrangement with the subsequent incumbrancer.

(4) This section applies to mortgages of land made before or after the coming into force of this Ordinance.

Rights of mortgagors to call for transfer

Obligation to transfer instead of reconveying, and as to right to take possession (15 & 16 Geo.5 c.20, s.95)

13. (1) Where a mortgagor is entitled to redeem, then subject to compliance with the terms on compliance with which he would be entitled to require a reconveyance or surrender, he shall be entitled to require the mortgagee, instead of reconveying or surrendering, to assign the mortgage debt and to convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall be bound to assign and convey accordingly.

(2) The rights conferred by this section belong to and are capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer prevails over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer prevails over a requisition of a subsequent incumbrancer.

(3) The foregoing provisions of this section do not apply in the case of a mortgagee being or having been in possession.

(4) Nothing in this Ordinance affects prejudicially the right of a mortgagee of land whether or not his charge is secured by a legal term of years absolute to take possession of the

land, but the taking of possession by the mortgagee does not convert any legal estate of the mortgagor into an equitable interest.

(5) This section applies to mortgages made either before or after the coming into force of this Ordinance, and takes effect notwithstanding any stipulations to the contrary.

Priorities, actions for possession by mortgagees and leasing powers of mortgagors and mortgagees in possession

Priorities as between mortgagees

14. Every mortgage affecting a legal estate in land made after the coming into force of this Ordinance, whether legal or equitable, shall rank according to its date of registration as a land charge pursuant to the Land Charges Ordinance 1996.

Actions for possession by mortgagors (15 & 16 Geo.5 c.20, s.98)

15. (1) A mortgagor for the time being entitled to the possession or receipt of the rents and profits of any land, as to which the mortgagee has not given notice of his intention to take possession or to enter into receipt of the rents and profits thereof, may sue for such possession, or for the recovery of such rents and profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

(2) This section does not prejudice the power of a mortgagor independently of this section to take proceedings in his own name only, either in right of any legal estate vested in him or otherwise.

(3) This section applies whether the mortgage was made before or after the coming into force of this Ordinance.

Leasing powers of mortgagor and mortgagee in possession (15 & 16 Geo.5 c.20, s.99)

16. (1) A mortgagor of land while in possession shall, as against every incumbrancer, have power to make from time to time any such lease of the mortgaged land, or any part thereof, as is by this section authorised.

(2) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have power to make from time to time any such lease as aforesaid.

(3) The leases which this section authorises are—

- (i) agricultural or occupation leases for any term not exceeding fifty years;

(ii) building leases for any term not exceeding nine hundred and ninety-nine years;

(4) Every person making a lease under this section may execute and do all assurances necessary and proper in that behalf.

(5) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within the time therein specified not exceeding thirty days.

(8) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9) Every such building lease shall be in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute within that time, on the land leased, an improvement for or in connection with building purposes.

(10) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagor or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee, but the lessee shall not be concerned to see that this provision is complied with.

(12) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

(13) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and has effect subject to the terms of the mortgage deed or of any other such writing and to the provisions therein contained.

(14) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve to or confer on the mortgagor or the mortgagee,

any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Ordinance, and with all the like incidents, effects and consequences, but the powers so reserved and conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

(15) In the case of a mortgage of leasehold land, a lease granted under this section shall reserve a reversion of not less than one day.

(16) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit to any letting, and to an agreement, whether in writing or not, for leasing or letting.

(17) For the purposes of this section, "mortgagor" does not include an incumbrancer deriving title under the mortgagor.

(18) The powers of leasing conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by a mortgagee under his statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land, and the mortgagee may, by writing, delegate any of such powers to the receiver.

Powers of mortgagor and mortgagee in possession to accept surrenders of leases (15 & 16 Geo.5 c.20 s.100)

17. (1) For the purpose only of enabling a lease authorised under section 16, or under any agreement made in pursuance of that section, or by the mortgage deed (in this section referred to as an authorised lease) to be granted, a mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Ordinance, power to accept from time to time a surrender of any lease of the mortgaged land or any part thereof comprised in the lease, with or without an exception of or in respect of all or any of the mines therein, and, on surrender of the lease so far as it comprises only part of the land or mines and minerals leased, the rent may be apportioned.

(2) For the same purpose, a mortgagee of land while in possession shall, as against all prior or other incumbrancers, if any, and as against the mortgagor, have, by virtue of this Ordinance, power to accept from time to time any such surrender as aforesaid.

(3) On the surrender of a part only of the mines and minerals leased, the original lease may be varied, provided that the lease when varied would have been valid as an authorised lease if granted by the person accepting the surrender; and, on a surrender and the making of a new or other lease, whether for the same or for any extended or other term, and whether subject or not to the same or to any other covenants, provisions or conditions, the

value of the lessee's interest in the lease surrendered may, subject to the provisions of this section, be taken into account in the determination of the rent to be reserved, and of the nature of the covenants, provisions and conditions to be inserted in the new or other lease.

(4) Where any consideration for the surrender, other than agreement to accept an authorised lease, is given by or on behalf of the lessee to or on behalf of the person accepting the surrender, nothing in this section authorises a surrender to a mortgagor without the consent of the incumbrancers, or authorises a surrender to a second or subsequent incumbrancer without the consent of every prior incumbrancer.

(5) No surrender shall by virtue of this section be rendered valid unless—

(a) an authorised lease is granted of the whole of the land or mines and minerals comprised in the surrender to take effect in possession immediately or within one month after the date of the surrender;

(b) the term certain or other interest granted by the new lease is not less in duration than the unexpired term or interest which would have been subsisting under the original lease if that lease had not been surrendered; and

(c) Where the whole of the land mines and minerals originally leased has been surrendered, the rent reserved by the new lease is not less than the rent which would have been payable under the original lease if it had not been surrendered; or where part only of the land or mines and minerals has been surrendered, the aggregate rents respectively remaining payable or reserved under the original lease and the new lease are not less than the rent which would have been payable under the original lease if no partial surrender had been accepted.

(6) A contract to make or accept a surrender under this section may be enforced by or against every person on whom the surrender, if completed, would be binding.

(7) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(8) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

(9) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve or confer on the mortgagor or mortgagee, or both, any further or other powers relating to the surrender of leases; and any further or other powers so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this Ordinance, and with all the like incidents, effects and consequences, but the powers

so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

(10) For the purposes of this section "mortgagor" does not include an incumbrancer deriving title under the original mortgagor.

(11) The powers of accepting surrenders conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by the mortgagee, under the statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgage were in possession of the land; and the mortgagee may, by writing, delegate any of such powers to the receiver.

Further powers of mortgagees

Powers incident to estate or interest of mortgage (15 & 16 Geo.5 c.20, s.101)

18. (1) A mortgagee, where the mortgage is made by deed, shall by virtue of this Ordinance, have the following powers to the like extent as if they had in terms been conferred by the mortgage deed, but not further—

(a) a power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title or other matter, as the mortgagee thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and

(b) a power, at any time after the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the property which or an estate or interest in which is mortgaged, and the premiums paid for any such insurance shall be a charge on the mortgaged property or estate or interest, in addition to the mortgage money, and with the same priority and with interest at the same rate, as the mortgage money;

(c) a power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or any part thereof;

(d) a power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract;

(e) a power to impose or reserve or make binding, as far as the law permits, by covenant condition or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or reservation with respect to building on or other use of land, or with respect to mines or minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing;

(f) a power to sell the mortgaged property, or any part thereof, or all or any mines or minerals apart from the surface—

(i) with or without a grant or reservation of rights of way, rights of water, easements rights and privileges for or connected with buildings or other purposes in relation to the property remaining in mortgage or any part thereof, or to any property sold; and

(ii) with or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged property, and with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage and other powers, easements, rights and privileges for or connected with mining purposes in relation to the property remaining unsold or any part thereof, or to any property sold; and

(iii) with or without covenants by the purchaser to expend money on the land sold.

(2) The provisions of this Ordinance relating to the foregoing powers, comprised either in this section, or in any other section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be operate in the like manner and with all the like incidents, effects and consequences, as if such variations or extensions were contained in this Ordinance.

(3) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and has effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4) The power of sale conferred by this section includes such power of selling the estate in fee simple or any leasehold reversion as is conferred by the provisions of this Ordinance relating to the realisation of mortgages.

Regulation of exercise of power of sale (15 & 16 Geo.5 c.20, s.103)

19. A mortgagee shall not exercise the power of sale conferred by this Ordinance unless and until—

(a) notice requiring payment of the mortgage money has been served on the mortgagor or one of two or more mortgagors, and default has been made in payment of the mortgage money, or part thereof for three months after such service; or

(b) some interest under the mortgage is in arrear and unpaid for two months after becoming due; or

(c) there has been a breach of some provision contained in the mortgage deed or in this Ordinance, or in an enactment replaced by this Ordinance, and on the part of the mortgagor, or of some person concurring in, or making the mortgage, to be observed and performed, other than a covenant for the payment of the mortgage money or interest thereon.

Conveyance on sale (*15 & 16 Geo.5 c.20, s.104*)

20. (1) A mortgagee exercising the power of sale conferred by this Ordinance shall have power, by deed, to convey the property sold, for such estate and interest therein as he is by this Ordinance authorised to sell or convey or may be the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests and rights which have priority to the mortgage.

(2) Where a conveyance is made in the exercise of the power of sale conferred by this Ordinance or any enactment replaced by this Ordinance, the title of the purchaser shall not be impeached on the ground—

(a) that no case had arisen to authorise the sale; or

(b) that due notice was not given; or

(c) that leave of the court, when required, was not obtained; or

(d) that the power was otherwise improperly or irregularly exercised;

and a purchaser is not, either before or after the conveyance, concerned to see or inquire whether a case has arisen to authorise the sale, or due notice has been given, or the power is otherwise properly and regularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power shall be entitled to recover damages from the person exercising the power.

(3) A conveyance on sale by a mortgagee made after the coming into force of this Ordinance shall be deemed to have been made in exercise of the power of sale conferred by this Ordinance unless the contrary intention appears.

Application of proceeds of sale (15 & 16 Geo.5 c.20, s.105)

21. The money which is received by the mortgagee arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into court under this Ordinance of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

Provisions as to exercise of power of sale (15 & 16 Geo.5 c.20, s.106)

22. (1) The power of sale conferred by this Ordinance may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(2) The power of sale conferred by this Ordinance does not affect the right of foreclosure.

(3) The mortgagee shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Ordinance, or of any trust connected therewith or of any power or provision contained in the mortgage deed.

Mortgagee's receipts, discharges etc. (15 & 16 Geo.5 c.20, s.107)

23. (1) The receipt in writing of the mortgagee shall be sufficient discharge for any money arising under the power of sale conferred by this Ordinance, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

(2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Ordinance directed respecting money received by him arising from a sale under the power of sale conferred by this Ordinance, subject to the variation that the costs, charges and expenses payable shall include the costs, charges and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

Amount and application of insurance money (15 & 16 Geo.5 c.20, s.108)

24. (1) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power conferred by this Ordinance shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified the amount that would be required, in case of total destruction, to restore the property insured.

(2) An insurance shall not, under the power conferred by this Ordinance, be effected by a mortgagee in any of the following cases—

- (a) where there is a declaration in the mortgage deed that no insurance is required;
- (b) where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed;
- (c) where the mortgage deed contains no stipulation respecting insurance, and insurance is kept up by or on behalf of the mortgagor with the consent of the mortgagee to the amount to which the mortgagee is by this Ordinance authorised to insure.

(3) All money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Ordinance, or any enactment replaced by this Ordinance, or an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Ordinance, or by any enactment replaced by this Ordinance, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, be applied in or towards the discharge of the mortgage money.

Appointment, powers, remuneration and duties of receiver (15 & 16 Geo.5 c.20, s.109)

25. (1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Ordinance shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Ordinance, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2) A receiver appointed under the powers conferred by this Ordinance, or any enactment replaced by this Ordinance, shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides.

(3) The receiver shall have the power to demand and recover all the income of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee pursuant to this Ordinance.

(4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate, not exceeding five per cent on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per cent on that gross amount, or at such other rate as the court thinks fit to allow, on an application made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8) Subject to the provisions of this Ordinance as to the application of the insurance money, the receiver shall apply all money received by him as follows—

(a) in discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property;

(b) in keeping down all annual sums and other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

(c) in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage deed or under this Ordinance, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(d) in payment of the interest accruing due in respect of any principal money due under the mortgage; and

(e) in or towards discharge of the principal money if so directed by the mortgagee;

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

Effect of bankruptcy of the mortgagor on the power to sell or appoint a receiver (15 & 16 Geo.5 c.20, s.110(1))

26. Where the statutory or express power for a mortgagee either to sell or to appoint a receiver is made exercisable by reason of the mortgagor being adjudged a bankrupt, such power shall not without the leave of the court be exercised only on account of the adjudication.

Advances on joint account

Effect of advance on joint account (15 & 16 Geo. 5 c.20, s.111)

27. (1) Where—

(a) in a mortgage, or in an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account; or

(b) a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly;

the mortgage money, or other money or money's worth for the time being due to those persons on the mortgage or obligation, shall, as between them and the mortgagor or obligor, be deemed to be and remain money or money's worth belonging to those persons on a joint account; and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of the severance of the joint account.

(2) This section applies if and so far as a contrary intention is not expressed in the mortgage, obligation, or transfer, and has effect subject to the terms of the mortgage, obligation or transfer, and to the provisions therein contained.

Notice of trusts affecting mortgage debts (15 & 16 Geo.5 c.20, s.113)

28. (1) A person dealing in good faith with a mortgagee, or with the mortgagor if the mortgage has been discharged released or postponed as to the whole or any part of the mortgaged property, shall not be concerned with any trust at any time affecting the mortgage money or the income thereof, whether or not he has notice of the trust, and may assume unless the contrary is expressly stated in the instruments relating to the mortgage—

(a) that the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account;

(b) that the mortgagee has or had power to give valid receipts for the purchase money or mortgage money and the income thereof (including any arrears of interest) and to release or postpone the priority of the mortgage debt or any part thereof or to deal with the same or the mortgaged property or any part thereof;

without investigating the equitable title to the mortgage debt or the appointment or discharge of trustees in reference thereto.

(2) This section does not affect the liability of any person in whom the mortgage debt is vested for the purposes of any trust to give effect to that trust.

Transfers of mortgages

Transfers of mortgages (15 & 16 Geo.5 c.20, s.114)

29. (1) A deed executed by a mortgagee purporting to transfer his mortgage or the benefit thereof shall, unless a contrary intention is therein expressed, and subject to any provisions therein contained, operate to transfer to the transferee—

(a) the right to demand, sue for, recover, and give receipts for, the mortgage money or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon; and

(b) the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; and

(c) all the estate and interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such estate and interest subject to the right of redemption then subsisting.

(2) In this section "transferee" includes his personal representatives and assigns.

(3) A transfer of mortgage may be made in the form contained in Schedule 1 to this Ordinance with such variations and additions, if any, as the circumstances may require.

(4) This section applies, whether the mortgage transferred was made before or after the coming into force of this Ordinance, but applies only to transfers made after the coming into force of this Ordinance.

(5) This section does not extend to a transfer of a bill of sale of chattels by way of security.

Discharge of mortgages

Reconveyances of mortgages by endorsed receipts (15 & 16 Geo.5 c.20, s.115)

30. (1) Subject to subsection (2), a receipt endorsed on, written at the foot of, or annexed to, a mortgage for all money thereby secured, which states the name of the person who pays the money and is executed by the chargee by way of legal mortgage or the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage money shall operate, without any reconveyance, surrender or release—

(a) where a mortgage takes effect by demise or sub-demise, as a surrender of the term, so as to determine the term or merge the same in the reversion immediately expectant thereon;

(b) where the mortgage does not take effect by demise or sub-demise, as a reconveyance thereof to the extent of the interest which is the subject matter of the mortgage, to the person who immediately before the execution of the receipt was entitled to the equity of redemption;

and in either case, as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under the mortgage, but without prejudice to any term or other interest which is paramount to the estate or interest of the mortgagee or other person in whom the mortgaged property was vested.

(2) Notwithstanding subsection (1), where by the receipt the money appears to have been paid by a person who is not entitled to the immediate equity of redemption, the receipt shall operate as if the benefit of the mortgage had by deed been transferred to him unless—

(a) it is otherwise expressly provided;

(b) the mortgage is paid off out of capital money, or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt is to operate as a transfer.

(3) Nothing in this section confers a right on a mortgagor to keep alive a mortgage paid off by him, so as to affect prejudicially any subsequent incumbrancer, and where there is no right to keep a mortgage alive, the receipt does not operate as a transfer.

(4) This section does not affect the right of any person to require a reassignment, surrender, release or transfer to be executed in lieu of a receipt.

(5) A receipt may be given in the form contained in Schedule 1 to this Ordinance with such variations and additions, if any as may be deemed expedient.

(6) In a receipt given under this section the same covenants shall be implied as if the person who executes the receipt had by deed been expressed to convey the property as mortgagee, subject to any interest which is paramount to the mortgage.

(7) Where the mortgage consists of a mortgage and a further charge or of more than one deed, it shall be sufficient for the purposes of this section if the receipt refers either to all the deeds whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured and for the time being owing, and is endorsed on, written at the foot of, or annexed to, one of the mortgage deeds.

(8) This section applies to a discharge of a charge by way of legal mortgage, and to the discharge of a mortgage, whether made by way of statutory mortgage or not, executed before or after the coming into force of this Ordinance, but only as respects discharges effected after such coming into force.

(9) In this section "mortgaged property" means the property remaining subject to the mortgage at the date of the receipt.

(10) A receipt delivered to the Registrar General for registration in the Deeds Registry and which, except that it is not endorsed on, written at the foot of or annexed to the legal charge or mortgage, complies with the requirements of subsection (1) of this section, shall have the same effect as a receipt which fully complies with the requirements of that subsection.

Cesser of mortgage terms (15 & 16 Geo.5 c.20, s.116)

31. Without prejudice to the right of any person having only a limited interest in the equity of redemption to require a mortgage to be kept alive by transfer or otherwise, a mortgage term shall, when the mortgage has been discharged, become a satisfied term and shall cease.

Forms of mortgage etc

Forms

32. Schedule 1 to this Ordinance shall have effect so as to prescribe forms which may be used, with such variations and additions, if any, as the circumstances may require as—

- (a) a mortgage of freeholds by demise;
- (b) a mortgage of leaseholds by sub-demise;
- (c) a charge of freeholds or leaseholds or both together by charge by way of legal mortgage;

- (d) a further charge of freeholds or leaseholds by way of legal mortgage;
- (e) a transfer of legal charge;
- (f) a receipt on discharge of a charge by way of legal mortgage or a mortgage;
- (g) a conveyance on sale;
- (h) a conveyance on sale, legal chargees or mortgagees concurring; and
- (i) a conveyance on sale by legal chargees or mortgagees.

Provisions as to actions by mortgagees for possession

Additional powers of court in action by mortgagee for possession of dwelling-house
(1970 c.31, ss.36 & 39)

33. (1) Where the mortgagee under a mortgage of land which consists of or includes a dwelling-house brings an action in which he claims possession of the mortgaged property, not being an action for foreclosure in which a claim for possession of the mortgaged property is also made, the court may exercise any of the powers conferred on it by subsection (2) if it appears to the court that in the event of its exercising the power the mortgagor is likely to be able within a reasonable period to pay any sums due under the mortgage or to remedy a default consisting of a breach of any other obligation arising under or by virtue of the mortgage.

(2) The court may—

- (a) adjourn the proceedings, or
- (b) on giving judgment, or making an order, for delivery of possession of the mortgaged property, or at any time before the execution of such judgment or order, may—
 - (i) stay or suspend execution of the judgment or order, or
 - (ii) postpone the date for delivery of possession,

for such period or periods as the court thinks reasonable.

(3) Any such adjournment, stay, suspension or postponement as is referred to in subsection (2) may be made subject to such conditions with regard to payment by the mortgagor of a sum secured by the mortgage or the remedying of any default as the court thinks fit.

(4) The court may from time to time vary or revoke any condition imposed by virtue of this section.

(5) This section shall have effect in relation to such an action as is referred to in subsection (1) begun before the commencement of this Ordinance unless in that action judgment has been given, or an order made, for delivery of possession of the mortgaged property and that judgment or order was executed before that date.

(6) In this section and in the following section, "dwelling-house" includes any building or part thereof which is used as a dwelling-house.

(7) The fact that part of the premises comprised in a dwelling-house is used as a shop or office or for business trade or professional purposes shall not prevent the dwelling-house from being a dwelling-house for the purposes of this section.

Supplementary to section 33 (*cf 1973 c.15 s.8*)

34. (1) Where by a mortgage of land which consists of or includes a dwelling-house, or by any agreement between the mortgagee under such a mortgage and the mortgagor, the mortgagor is entitled or is to be permitted to pay the principal sum secured by instalments or otherwise to defer payment of it in whole or in part, but provision is also made for earlier payment in the event of any default by the mortgagor or of a demand by the mortgagee or otherwise, then for the purposes of the preceding section a court may treat as due under the mortgage on account of the principal sum secured and of interest on it only such amounts as the mortgagor would have expected to pay if there had not been such a provision for earlier payment.

(2) A court shall not by virtue of subsection (1) exercise the powers conferred by the preceding section unless it appears to the court not only that the mortgagor is likely to be able within a reasonable period to pay any amounts regarded (in accordance with subsection (1) of this section) as due on account of the principal sum secured, together with interest on those amounts, but also that he is likely by the end of that period to pay any further amounts that he would have been expected to be required to pay by then on account of that sum and interest on it if there had been no such provision as is referred to in subsection (1) of this section for earlier payment.

(3) Where subsection (1) of this section would apply to an action in which a mortgagee only claimed possession of the mortgaged property, and the mortgagee brings an action for foreclosure (with or without his claiming possession of the property) then the preceding section and subsections (1) and (2) of this section shall apply as they would apply if it were an action in which the mortgagee only claimed possession of the mortgaged property, except that—

(a) paragraph (b) of subsection (2) of the preceding section shall apply only in relation to a claim for possession; and

(b) subsection (5) of the preceding section shall not apply.

(4) This section shall have effect in relation to an action begun before commencement of this Ordinance if before that date judgment has not been given, nor an order made, in that action for delivery of possession of the mortgaged property and, where it is a question of subsection (3) above, an order *nisi* for foreclosure has not been made in that action.

PART III

IMPLIED COVENANTS FOR TITLE

The covenants

Covenants to be implied on a disposition of property (1994 c.36 s.1)

35. (1) In an instrument effecting or purporting to effect a disposition of property there shall be implied on the part of the person making the disposition, whether or not the disposition is for valuable consideration, such of the covenants specified in sections 36 to 39 as are applicable to the disposition.

(2) Of those sections—

(a) sections 36, 37(1) and (2), 38 and 39 apply where dispositions are expressed to be made with full title guarantee; and

(b) sections 36, 37(3), 38 and 39 apply where dispositions are expressed to be made with limited title guarantee.

(3) Sections 36 to 38 have effect subject to section 40 (no liability under covenants in certain cases) and sections 36 to 39 have effect subject to section 42(1) (limitation or extension of the covenants by instrument effecting the disposition).

Right to dispose and further assurance (1994 c.36, s.2(1) & (3))

36. (1) If the disposition is expressed to be made with full title guarantee there shall be implied the following covenants—

(a) that the person making the disposition has the right (with the concurrence of any other person conveying the property) to dispose of the property as he purports to, and

(b) that that person will at his own cost do all that he reasonably can to give the person to whom he disposes of the property the title he purports to give.

(2) In the case of a disposition of an existing legal interest in land, the following presumptions apply, subject to the terms of the instrument, in ascertaining for the purposes of the covenants implied by this section what the person making the disposition purports to dispose of—

(a) if it appears from the instrument that the interest is a leasehold interest, it shall be presumed that the disposition is of the property for the unexpired portion of the term of years created by the lease; and

(b) in any other case, it shall be presumed that what is disposed of is the fee simple.

Charges incumbrances and third party rights (1994 c.36, s.3)

37. (1) If the disposition is expressed to be made with full title guarantee there shall be implied a covenant that the person making the disposition is disposing of the property free—

(a) from all charges and incumbrances (whether monetary or not), and

(b) from all other rights exercisable by third parties,

other than any charges, incumbrances or rights which that person does not and could not reasonably be expected to know about.

(2) In its application to charges, incumbrances and other third party rights subsection (1) extends to liabilities imposed and rights conferred by or under any enactment, except to the extent that such liabilities and rights are, by reason of—

(a) being at the time of the disposition, only potential liabilities and rights in relation to the property, or

(b) being liabilities and rights imposed or conferred in relation to property generally.

(3) If the disposition is expressed to be made with limited title guarantee there shall be implied a covenant that the person making the disposition has not since the last disposition for value—

(a) charged or incumbered the property by means of any charge or incumbrance which subsists at the time the disposition is made, or granted third party rights in relation to the property which so subsists, or

(b) suffered the property to be so charged or incumbered or subjected to any such rights,

and that he is not aware that anyone else has done so since the last disposition for value.

Validity of lease (1994 c.36, s.4)

38. (1) Where the disposition is of leasehold land and is expressed to be made with full title guarantee or with limited title guarantee, the following covenants shall also be implied—

(a) that the lease is subsisting at the time of the disposition, and

(b) that there is no subsisting breach of a condition or of a tenant's obligation, and nothing which at that time would render the lease liable to forfeiture.

(2) If the disposition is the grant of an underlease, the references to "the lease" in subsection (1) of this section are references to the lease out of which the underlease is granted.

Discharge of obligations where property is subject to rentcharge or leasehold land (1994 c.36, s.5)

39. (1) Where the disposal is a mortgage of property subject to a rentcharge, or of leasehold land, and is expressed to be made with title guarantee or with limited title guarantee, the following covenants shall also be implied.

(2) If the property is subject to a rentcharge, there shall be implied a covenant that the mortgagor will fully and promptly observe and perform all the obligations under the instrument creating the rentcharge that are for the time being enforceable with respect to the property by the owner of the rentcharge in his capacity as such.

(3) If the property is leasehold land, there shall be implied a covenant that the mortgagor will fully and promptly observe and perform all the obligations under the lease subject to the mortgage that are for the time being imposed on him in his capacity as tenant under the lease.

Effect of covenants

No liability under covenants in certain cases (1994 c.36, s.6)

40. (1) The person making the disposition is not liable under the covenants implied by virtue of—

(a) section 36 (1)(a) (right to dispose),

(b) section 37 (charges, incumbrances and third party rights), or

(c) section 38 (validity of lease),

in respect of any particular matter to which the disposition is expressly made subject.

(2) Furthermore that person is not liable under any of those covenants for anything (not falling within subsection (1))—

(a) which at the time of the disposition is within the actual knowledge, or

(b) which is a necessary consequence of facts that are then within the actual knowledge,

of the person to whom the disposition is made.

(3) For this purpose section 46 of this Ordinance (deemed notice by virtue of registration) shall be disregarded

Annexation of benefit of covenants (1994 c.36, s.7)

41. The benefit of a covenant implied by this Part shall be annexed and incident to, and shall go with, the estate or interest of the person to whom the disposition is made, and shall be capable of being enforced by every person in whom the estate or interest is (in whole or part for the time being vested).

Supplementary (cf 15 & 16 Geo.5 c.20, s.81 and 1994 c.36, s.8(3))

42. (1) A covenant, and a contract executed as a deed, and a bond or obligation executed as a deed, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of every other person the right to sue on the covenant, contract, bond or obligation devolves, and where made after the commencement of this Ordinance shall be construed as being also made with each of them.

(2) Subsection (1)—

(a) extends to a covenant implied by virtue of this Part;

(b) has effect without prejudice to the operation, prior to the coming into force of this Ordinance, of any enactment to the like effect; and

(c) applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation and to the provisions contained in the document in question.

(3) Where an instrument effecting or purporting to effect a disposition of property a person is expressed to direct the disposition, this Part applies to him as if he were the person making the disposition.

PART IV

MISCELLANEOUS AND GENERAL

Orders of court

Orders of court conclusive (*15 & 16 Geo. 5 c.20, s.204*)

43. (1) An order of the court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of such want or not.

(2) This section has effect—

(a) without prejudice to the operation, prior to the commencement of this Ordinance, of any enactment having a like or similar effect;

(b) with respect to any lease, sale or other act under the authority of the court, and purporting to be in pursuance of any statutory power notwithstanding any exception in the statute in question.

(3) This section applies to all orders made before or after the commencement of this Ordinance.

Sale by survivor of joint tenants

Assumptions on sale of land by survivor of joint tenants (*cf 1964 c.63, s.1*)

44. (1) Subject to subsection (2) of this section, the survivor of two or more joint tenants shall in favour of a purchaser of a legal estate, be deemed to be solely and beneficially interested if the conveyance contains a statement that he is so interested.

(2) Subsection (1) of this section shall not apply if, at any time before the conveyance by the survivor—

(a) a memorandum of severance (that is to say a note or memorandum signed by the joint tenants or one of them and recording that the joint tenancy was severed in equity on a date therein specified) has been registered in the deeds registry;

(b) an order of adjudication in bankruptcy made against any of the joint tenants, or a petition for such an order, had been registered in the deeds register or in such other manner as may from time to time be required by the law of the Falkland Islands, being an order or petition of which the purchaser has notice, by virtue of the registration, on the date of a conveyance by the survivor.

(3) The foregoing provisions of this section shall apply with the necessary modifications in relation to a conveyance by the personal representative of the survivor of joint tenants as they apply in relation to a conveyance by such a survivor.

Deeds and contracts

Deeds and their execution

45. (1) Any rule of law which—

- (a) restricts the substances on which a deed may be written;
- (b) requires a seal for the valid execution of an instrument as a deed by an individual; or
- (c) requires authority by one person to another to deliver an instrument on his behalf to be given by deed,

is abolished.

(2) An instrument shall not be a deed unless—

- (a) it makes it clear on its face that it is intended to be a deed by the person making it, or as the case may be, by the parties to it (whether by describing itself as a deed or expressing itself to be executed or signed as a deed or otherwise); and
- (b) it is validly executed as a deed by that person or, as the case may be, one or more of those parties.

(3) An instrument is validly executed as a deed by an individual if, and only if—

- (a) it is signed—
 - (i) by him in the presence of a witness who attests the signature;
 - (ii) at his direction and in his presence and the presence of two witnesses who each attest his signature; and
- (b) it is delivered as a deed by him or a person authorised to do so on his behalf,

but notwithstanding paragraph (a) of this subsection, a deed affecting land or an interest in land in the Falkland Islands shall not be validly executed unless it is witnessed in accordance with the requirements of section 8(1) of the Land Ordinance.

(4) In subsections (2) and (3) above "sign", in relation to an instrument, includes making one's mark on the instrument and "signature" is to be construed accordingly.

(5) Where a legal practitioner, or an agent or employee of a legal practitioner, in the course of or in connection with a transaction involving the disposition or creation of an interest in land, purports to deliver an instrument as a deed on behalf of a party to the instrument, it shall be conclusively presumed in favour of a purchaser that he is authorised to deliver the instrument.

(6) Where an instrument under seal that constitutes a deed is required for the purposes of an enactment made or passed before the commencement of this Ordinance, this section shall have effect as to signing, sealing or delivery of an instrument by an individual in place of any provision of that enactment as to signing, sealing or delivery.

(7) The references in this section to the execution of a deed by an individual do not include execution by a corporation sole and the reference in subsection (6) above to signing, sealing or delivery by an individual does not include signing sealing or delivery by such a corporation.

(8) Nothing in this section applies in relation to instruments delivered as deeds before the commencement of this Ordinance.

Provisions as to actual and constructive notice

Registration under the Land Charges Ordinance 1996 to be notice (15 & 16 Geo.5 c.20, s.198)

46. (1) The registration of any instrument or matter in any register kept under the Land Charges Ordinance 1996 shall be deemed to constitute actual notice of such instrument or matter, and of the fact of such registration, to all persons and for all purposes connected with the land affected, as from the date of registration or other prescribed date and so long as the registration continues in force.

(2) This section operates without prejudice to the provisions of this Ordinance respecting the making of further advances by a mortgagee and applies only to instruments and matters required to be registered.

Restrictions on constructive notice (15 & 16 Geo.5 c.20, s.199)

47. (1) A purchaser shall not be prejudicially affected by notice of—

(a) any instrument or matter capable of registration under the provisions of the Land Charges Ordinance 1996, which is void or not enforceable against him under that Ordinance, by reason of the non-registration thereof;

(b) any other instrument or matter or any fact or thing unless—

(i) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably have been made by him;

(ii) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the notice of a legal practitioner or other lawyer instructed by him or with his authority on his behalf, as such, or an other agent for him, as such, or would have come to the notice of any such person, as such, if such inquiries had been made as ought reasonably to have been made by such legal practitioner, other lawyer or other agent.

(2) Paragraph (b) of the preceding subsection shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision or restriction contained in any instrument under which his title is derived mediately or immediately, and such liability may be enforced in the same manner and to the same extent as if that paragraph had not been enacted.

(3) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4) This section applies to purchases made either before or after the commencement of this Ordinance.

Notices

Provisions as to notices (15 & 16 Geo.5 c.20, s.196)

48. (1) Any notice required or authorised to be served or given by this Ordinance shall be in writing.

(2) Any notice required or authorised by this Ordinance to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3) Any notice required or authorised by this Ordinance to be served shall be sufficiently served if it is left at the last-known place of abode or business in the Falkland Islands of the lessee, lessor mortgagee, mortgagor or other person to be served, or, in the case of a

notice required or authorised to be served on a mortgagor, is affixed or left for him on the land or on any house or building comprised in the mortgage.

(4) Any notice required or authorised by this Ordinance to be served shall also be sufficiently served if it is sent by post in a registered letter addressed to the mortgagee, mortgagor or other person to be served, by name, at the aforesaid place of abode or business, and if that letter is not returned through the post office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered or, in the case of a registered letter addressed to an address in Stanley, be available for collection by the addressee from the post office.

(5) The provisions of this section shall extend to notices required to be served by any instrument affecting property executed or coming into operation after the coming into force of this Ordinance unless a contrary intention appears.

(6) This section does not apply to notices served in proceedings in the court.

Repeals, transitional provisions and savings

Repeals, disapplication of English Acts and amendment of Land Ordinance

49. (1) The Ordinances specified in Column 1 of Part 1 of Schedule 2 to this Ordinance are repealed to the extent specified in relation to them in Column 2 of that Part

(2) The Acts of the Parliament at Westminster specified in Column 1 of Part 2 of Schedule 2 to this Ordinance shall to the extent specified in relation to them in Column 2 of that Part cease to apply to the Falkland Islands.

(3) Section 8 of the Land Ordinance (witnessing of deeds) is amended by the insertion of a comma and the words “manager of a financial institution which is licensed under the Banking Ordinance 1987” immediately after the words “legal practitioner”.

Transitional: covenants in old form to apply in certain cases (*cf 1994 c.36, s.11*)

50. (1) Notwithstanding its repeal by subsection(1) of the preceding section and Part 1 of Schedule 2 to this Ordinance, section 3(2) of the Lands Ordinance shall continue to apply in any case—

(a) where the Conveyance is made pursuant to a contract entered into before the coming into force of this Ordinance; and

(b) the contract contains a term providing for a disposition to which that section would have applied if the disposition had been made before the coming into force of this Ordinance,

unless there has been an intervening disposition of the property expressed, in accordance with Part III of this Ordinance to be made with full title guarantee, and for the purposes of this subsection "intervening disposition" means a disposition after the coming into force of this Ordinance to, or to a predecessor in title of, the person by whom the disposition in question is made.

(2) Where in order for subsection (1) to apply it is necessary for certain matters to be apparent on the face of the instrument effecting the disposition, the contract shall be deemed to contain an implied term that they should so appear.

Transitional: covenants in new form to apply in certain cases (*cf 1994 c.36, s.12*)

51. (1) This section applies to a contract for the disposition of property entered into before the coming into force of this Ordinance where the disposition is made after such coming into force and the preceding section does not apply because there has been an intervening disposition expressed, in accordance with Part III of this Ordinance, to be with full title guarantee.

(2) A contract which contains a term that the person making the disposition shall do so as beneficial owner shall be construed as requiring that person to do so by an instrument expressed to be made with full title guarantee.

(3) A contract which contains a term that the person doing so shall do so—

(a) as settlor;

(b) as trustee or mortgagee or personal representative,

shall be construed as requiring that person to do so by an instrument expressed to be made with limited title guarantee.

(4) Where this section applies and the contract provides that any of the covenants to be implied by virtue of section 3(2) or 4(2) of the Land Ordinance shall be implied in a modified form, the contract shall be construed as requiring a corresponding modification in the covenants to be implied by virtue of Part III of this Ordinance.

Transitional: conversion of existing mortgages

52. Schedule 3 of this Ordinance shall have effect so as to convert existing freehold mortgages into mortgages by demise and so as to convert existing leasehold mortgages into mortgages by sub-demise.

Further transitional provisions in relation to implied covenants

53. (1) The repeal by section 49(1) of and Schedule 2 of this Ordinance of section 3(2) and section 4(2) of the Land Ordinance shall not affect the enforcement of a covenant implied by virtue of either of them on a disposition made before the coming into force of this Ordinance.

(2) For the purposes of sections 50 and 51 (transitional provisions: implication of covenants in old form in certain cases and new form in others) as they apply in relation to a disposition of property in accordance with an option granted before the coming into force of this Ordinance and exercised after its coming into force, the contract for the disposition shall be deemed to have been entered into on the grant of the option.

The Crown

Provisions in relation to the Crown

54. (1) A recognisance, on behalf of the Crown or otherwise, whether entered into before or after the coming into force of this Ordinance, and an inquisition finding a debt due to the Crown, and any obligation or specialty made to or in favour of the Crown, whatever may have been its date, shall not operate as a charge on any interest in land, or on the unpaid purchase money for any land, unless a writ or order, for the purpose of enforcing it, has been registered under the provisions of the Land Charges Ordinance 1996.

(2) This Ordinance binds the Crown.

SCHEDULE 1

(section 32)

Forms in relation to mortgages and connected matters

FORM 1

First mortgage of freeholds by demise

THIS MORTGAGE is made the day of 1997
B E T W E E N ARTHUR HOOPER of 123 High Street Stanley in the Falkland Islands
Plumber ("the Mortgagor") of the one part and LENDING BANK LIMITED having its
registered office at 99 Exchange Street Stanley aforesaid ("the Mortgagee") of the other
part

W H E R E A S the Mortgagor is seised for an estate in fee simple absolute in possession
of the dwelling-house and premises described in the Schedule hereto and the Mortgagee
has agreed to lend to the Mortgagor the sum of £50,000 upon the security of a first
mortgage of the same and upon the terms and conditions hereafter appearing

3. The Mortgagee has agreed to lend to the Mortgagor the sum of £20,000 upon the security of a first mortgage of the said Flat and upon the terms and conditions hereinafter appearing

NOW THIS DEED WITNESSETH—

1. In consideration of the sum of £20,000 now paid by the Mortgagee to the Mortgagor (the receipt whereof the Mortgagor hereby acknowledges)—

(a) the Mortgagor sub-demises to the Mortgagee with full title guarantee ALL THAT the property described in the Schedule to this Legal Mortgage TO HOLD the same unto the Mortgagee for the term of 99 years less ten days from 25th December 1993 but subject to cesser of the said term on payment by the Mortgagor to the Mortgagee of all principal money interest and other money secured by this Mortgage

(b) the Mortgagor covenants with the Mortgagee in manner hereinafter appearing.

2. *[Covenants to pay principal and interest and other moneys]*

3. *[Add other provisions desired, e.g. covenant to insure, covenant not to further sub-demise or part with possession without consent of the mortgagee, covenant to observe and perform the provisions of the Lease]*

EXECUTED as a Deed the day and year first before written

[Add Schedule]

FORM 3

Charge of freeholds or leaseholds or both together by way of legal mortgage

THIS LEGAL CHARGE is made the day of 1997
B E T W E E N CHARLES COOPER of 31 New England Way Stanley in the Falkland
Islands Shipwright ("the Chargor") of the one part and HENRY HIGGINS of 1
Pygmalion Close Stanley aforesaid University Professor ("the Chargee") of the other part

W H E R E A S—

[Recite the title of the Chargor to the freehold or leasehold property or freehold and leasehold properties described in the Schedule (e.g. along lines following "WHEREAS" in Forms 1 and 2) and the agreement for the loan by the Chargee]

NOW THIS DEED WITNESSETH —

1. In consideration of the sum of £15,000 now paid by the Chargee to the Chargor (the receipt whereof the Chargor hereby acknowledges)—

(a) the Chargor charges by way of legal mortgage with full title guarantee ALL THAT the property (or where more than one property is charged ALL THOSE the properties severally) described in the Schedule hereto with the payment to the Chargee of the principal money interest and other money hereinafter covenanted to be paid by the Chargor

(b) the Chargor covenants with the Chargee in manner hereinafter appearing

2. *[Add the requisite covenants to pay principal, interest and other moneys]*

3. *[Add covenants any other covenants desired (e.g. to insure buildings and not to lease or part with possession)]*

EXECUTED as a Deed the day and year first before written

[Add Schedule]

FORM 4

Further Charge by way of Legal Mortgage

THIS FURTHER CHARGE is made the day of 1998
B E T W E E N CHARLES COOPER of 31 New England Way Stanley in the Falkland
Islands Shipwright ("the Chargor") of the one part and HENRY HIGGINS of 1
Pygmalion Close Stanley aforesaid University Professor ("the Chargee") of the other part

W H E R E A S this Further Charge is supplemental to a Legal Charge ("the Principal
Deed") dated the day of 1997 and made between the same
parties as are parties hereto and in the same order for securing the sum of £15,000 with
interest thereon as therein provided on the property described in the Schedule to the
Principal Deed

NOW THIS DEED WITNESSETH that in consideration of the further sum of £3,000
now paid by the Chargee to the Chargor (the receipt whereof the Chargor hereby
acknowledges)—

(a) the Chargor charges by way of legal mortgage with full title guarantee the
premises comprised in the Principal Deed with the payment to the Chargee of the

principal money and interest hereinafter covenanted to be paid as well as the principal money interest and other money secured by the principal deed

(b) the Chargor covenants *[add covenant to pay the further advance and interest]*

EXECUTED as a Deed the day and year first before written

FORM 5

Transfer of Legal Charge

THIS TRANSFER of LEGAL CHARGE is made the day of 1997
B E T W E E N ALFRED DOULTON of 23 Craddock Street Stanley in the Falkland
Islands Chartered Accountant ("the Transferor") of the one part and MICHAEL MOORE
of 16 Sturdee Road Stanley aforesaid Dentist ("the Transferee") of the other part

W H E R E A S—

1. This deed is supplemental to a Legal Charge ("the Legal Charge") dated 12th October 1997 and made between Eliza Doolittle of the one part and the Transferor of the other part whereby the dwelling-house known as 3 Dustmen's Villas Cove Road Stanley aforesaid and more particularly described in the Schedule to the Legal Charge was charged by way of legal mortgage with the payment to the Transferor of the principal sum of £5,000 and interest and other money as provided by the Legal Charge

2. There is at the date hereof the said principal sum and £112.50 interest and no other money owing under the Legal Charge

NOW THIS DEED WITNESSETH that in consideration of the sum of £5,112.50 now paid to him by the Transferee (the receipt whereof the Transferor hereby acknowledges) the Transferor with full title guarantee hereby transfers to the Transferee the benefit of the Legal Charge

EXECUTED as a Deed the day and year first before written

FORM 6

Receipt on discharge of a Legal Charge or Mortgage (with additions where there is a
Further Charge or Mortgage)

I NICHOLAS FENWICK of 7 Marigold Way Stanley in the Falkland Islands Auctioneer
hereby acknowledge that I have this day of 1998 received the sum of

£..... representing the [aggregate] [balance owing in respect of the] mortgage money secured by a [Legal Charge] [Mortgage] dated day of 1997 of the property known as 10 High Street Stanley aforesaid and more particularly described in the said [Legal Charge] [Mortgage] which was made between PHILIP HULL of 10 High Street Stanley of the one part and myself of the other part [and by a Further Legal Charge dated etc. *or otherwise as required*] together with all interest and costs the payment having been paid by [the said Philip Hull] [Colin Philips who stated to me that he paid the same out of a fund applicable to the discharge of the [Legal Charge] [Mortgage]]

NOTE: Where the Legal Charge or Mortgage is repaid by a person other than the Chargor or Mortgagor or some other person who is entitled to the immediate equity of redemption in the property charged or mortgaged the receipt may operate as a transfer unless (a) it is otherwise provided or (b) the money is paid off out of capital money under a settlement or money in the hands of a personal representative or trustee properly applicable to the discharge of the Legal Charge or Legal Mortgage and it is not provided that the receipt shall operate as a transfer: see section 30(2)

FORM 7

Form of conveyance on sale

THIS CONVEYANCE is made the day of 1997 B E T W E E N HENRY PHILIPS of 17 Ship Hill Stanley in the Falkland Islands Baker ("the Vendor") of the one part and RICHARD WARDLE of Goose Green East Falkland Shepherd ("the Purchaser") of the other part

W H E R E A S the Vendor is seised for an estate in fee simple absolute in possession of the property hereinafter described and has agreed to sell the same to the Purchaser for the like estate at the price of £45,000

NOW THIS DEED WITNESSETH that in consideration of the said sum of £45,000 now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor hereby conveys to the Purchaser with full title guarantee ALL THAT piece of land having a frontage of fifty-two feet or thereabouts to the west side of Ship Hill Stanley and a depth therefrom on the north side of one hundred and twelve feet and on the south side of one hundred and ten feet (the said piece of land being for the purpose of delineation and not of limitation shown coloured pink on the plan annexed to this Conveyance and being part of the land comprised in Crown Grant Number 10027 dated 3rd February 1922 to one Alfred Bloggs) TOGETHER WITH the dwelling-house erected on the said piece of land or on some part or parts thereof and known as 17 Ship Hill Stanley TO HOLD the same unto the Purchaser in fee simple

EXECUTED as a Deed the day and year first before written

Note: It is tautological to recite that the Vendor is seised free from encumbrances: see section 37 as to the covenants implied when a person is expressed to convey with full title guarantee.

FORM 8

Conveyance on Sale, Legal Chargees or Mortgagees concurring

THIS CONVEYANCE is made the day of 1999
B E T W E E N THOMAS ELPHINSTONE of 26 Stowe Road Stanley in the Falkland
Islands Carpenter ("the Vendor") of the first part BRIAN CASH of 73 High Street Stanley
aforesaid Plumber and PETER MONEY of 75 High Street Stanley Electrician ("the
Mortgagees") of the second part and DONALD DRAKE of 19 Temperance Place Stanley
Licensed Victualler of the third part

W H E R E A S—

1. By a [Legal Charge] [Mortgage] dated 16th January 1997 the property hereinafter conveyed was [charged] [mortgaged] to the Mortgagees to secure the principal sum of £30,000 with interest at the rate of eight per cent per annum and other moneys as in the said [Legal Charge] [Mortgage] provided
2. There is at the date hereof the principal sum of £28,270 outstanding under the said [Legal Charge] [Mortgage] and £220 interest no other moneys being on the date hereof owing thereunder
3. The Vendor is seised of the property hereinafter conveyed for an estate in fee simple absolute in possession subject only to the said [Legal Charge] [Mortgage] and has agreed to sell the said property for the sum of £7,000 for the like estate but subject to the said [Legal Charge] [Mortgage] to the Purchaser and the Mortgagees have in consideration of the covenants by the Purchaser in favour of the Mortgagees and hereinafter contained agreed to concur in such sale and to release and discharge the Vendor from each and all of his obligations to the Mortgagees under the [Legal Charge] [Mortgage]

NOW THIS DEED WITNESSETH—

1. In consideration of the sum of £7000 paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) and of the covenants by the Purchaser with the Mortgagees the Vendor with the concurrence of the Mortgagees hereby with full title guarantee conveys to the Purchaser the land and premises known as 26 Stowe Road Stanley in the Falkland Islands and more particularly described in the Schedule hereto TO HOLD the same unto the Purchaser in fee simple SUBJECT to the hereinbefore recited [Legal Charge] [Mortgage].

2. *(Covenants by Purchaser with Mortgagees henceforth to perform and observe obligations of Vendor under Legal Charge/Mortgage and release and discharge by Mortgagees of Vendor from any further obligation under the Legal Charge/Mortgage).*

EXECUTED as a Deed the day and year first before written

[Add Schedule]

NOTE: In practice, where a Legal Charge/Mortgage has not been repaid before the Mortgagor wishes to sell the property, it is more likely that the Legal Charge/Mortgage will be redeemed contemporaneously with the sale and that, if the Mortgagees have agreed to lend money to the Purchaser, a new Legal Charge/ Mortgage will be entered into between the Purchaser and the Mortgagees.

FORM 9

Conveyance on sale by Legal Chargees or Mortgagees

THIS CONVEYANCE is made the day of 1999 B E T W E E N
JAMES COOK of 17 South Sandwich Street Stanley in the Falkland Islands Explorer and
CHARLES DARWIN of 1 Evolution Place Stanley aforesaid Biologist ("the Vendors") of
the one part and OSCAR WILDE of 9 Ernest Street Stanley aforesaid Author ("the
Purchaser") of the other part

W H E R E A S

1. By a Conveyance dated 13 February 1997 the property hereinafter conveyed was conveyed to Charles Micawber in fee simple who by a Legal Charge of the same date Charged the said property to the Mortgagees to secure the principal sum of £50,000 and interest thereon at the rate of 10 per cent and such other sums as might become due under the provisions of the said Legal Charge

2. The Mortgagees are entitled to exercise the statutory power of sale under section 20 of the Mortgages and Property Ordinance 1996 and in exercise of that power have agreed with the Purchaser for the sale to him in fee simple of the property hereinafter conveyed at the price of £60,000

NOW THIS DEED WITNESSETH that in consideration of the sum of £60,000 now paid by the Purchaser to the Mortgagees (the receipt whereof the Mortgagees hereby acknowledge) the Mortgagees in exercise of the power of sale conferred on them by section 20 of the Mortgages and Property Ordinance 1996 and of all other powers enabling them hereby convey unto the Purchaser with limited title guarantee ALL THAT piece of land having a frontage of 45 feet to the west side of Dickens Street Stanley and a

return frontage of 95 feet to the north side Copperfield Close Stanley as the same is for the purpose of identification only and not of limitation shown edged red on the plan drawn hereon TOGETHER with the dwelling-house erected on the said piece of land or on some part or parts thereof and known as 20 Dickens Street TO HOLD the same unto the Purchaser in fee simple discharged from all right of redemption and claims under the recited Legal Charge

EXECUTED as a Deed the day and year first before written

NOTE: The purchaser is not obliged to satisfy himself as to the matters mentioned in section 20(2) and consequently the above specimen Conveyance contains no recitals as to those matters.

SCHEDULE 2

(section 49)

Part 1

Repeals

| Column 1 Name of Ordinance | Column 2 Extent to which repealed |
|-------------------------------|---|
| Land Ordinance | Sections 3, 4, 5 and 6 and First Schedule |
| Law of Contract Ordinance | Section 10 |

Part 2

Provisions of English Acts disapplied

| Column 1 Name of Act | Column 2 Extent to which disapplied |
|---|--|
| Law of Property Act 1925 (15 & 16 Geo.5 c.20) | Section 76 and, in so far as they may ever have formed part of the law of the Falkland Islands, section 73 and Parts I to VI of Schedule 2 |
| Law of Property (Joint Tenants) Act 1964 (1964 c.63) | The whole Act |
| Law of Property (Miscellaneous Provisions) Act 1989 (1989 c.34) | The whole Act |

SCHEDULE 3

(section 52)

Conversion of existing mortgages

1. Where on the commencement of this Ordinance land is subject to a mortgage, the legal estate affected shall vest in accordance with the provisions as to mortgages contained in this Schedule, if a right of redemption is subsisting at the commencement of this Ordinance.
2. All land which immediately before the commencement of this Ordinance was vested in a first or only mortgagee for an estate in fee simple in possession, whether legal or equitable, shall, from and after the commencement of this Ordinance vest in the first or only mortgagee for a term of three thousand years from such commencement, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the fee simple.
3. The estate in fee simple which immediately before the commencement of this Ordinance was vested in any such mortgagee shall, from and after such commencement, vest in the mortgagor, trustee for sale, personal representative or other person of full age who, if all money owing on the security of the mortgage and all other mortgages or charges (if any) had been discharged at the commencement of this Ordinance, would have been entitled to have the fee simple conveyed to him, but subject to any mortgage term created by this Schedule or otherwise and to the money secured by any such mortgage or charge.
4. If a sub-mortgage by conveyance of the fee simple is subsisting immediately before the commencement of this Ordinance, the principal mortgage shall take the principal term created by paragraphs 2 or 3 of this Schedule (as the case may require) and the sub-mortgagee shall take a derivative term less by one day than the term so created, without impeachment of waste, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.
5. All leasehold land which immediately before the commencement of this Ordinance was vested in a first or only mortgagee by way of assignment of a term of years absolute shall, from and after the commencement of this Ordinance, vest in the first or only mortgagee for a term equal to the term assigned by the mortgage, less the last ten days thereof, but subject to a provision for cesser corresponding to the right of redemption which at such commencement was subsisting with respect to the term assigned.
6. All leasehold land which immediately before the commencement of this Ordinance was vested in a second or subsequent mortgagee by way of assignment of a term of years absolute (whether legal or equitable) shall, from and after the commencement of this Ordinance, vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before such

second or subsequent mortgagee if the length of the last-mentioned term permits, and in any case for a term less by one day at least than the term assigned by the mortgage, but subject to the term or terms vested in such first or other prior mortgagee, and subject to a provision for cesser on redemption corresponding to the right of redemption which, at the commencement of this Ordinance, was subsisting with respect to the term assigned by the mortgagee.

7. The term of years absolute assigned by any such mortgage shall, from and after the commencement of this Ordinance, vest in the mortgagor, trustee for sale, personal representative or other person of full age who, if all money owing on the security of the mortgage and all other mortgages or charges, if any, had been discharged at the commencement of this Ordinance, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative mortgage term created by this Schedule or otherwise and to the money secured by any such mortgage or charge.

8. If a sub-mortgage by assignment of a term is subsisting immediately before the commencement of this Ordinance, the principal mortgagee shall take the principal derivative term created by paragraphs 5 or 6 of this Schedule or the derivative term created by his mortgage (as the case may require) and the sub-mortgagee shall take a derivative term less by one day than the term so vested in the principal mortgagee, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.

9. A mortgage affecting a legal estate made before the commencement of this Ordinance which was not protected by registration of the mortgage deed pursuant to the provisions of the Land Ordinance as to registration of deeds in force immediately before the commencement of this Ordinance shall not, as against a purchaser in good faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage by this Schedule, but shall, in favour of such purchaser, be deemed to remain an equitable interest.

10. This Schedule applies whether the mortgage is made by way of trust for sale or otherwise.

11. Nothing in this Schedule shall affect priorities or the title of any mortgagee to or his rights over any fixtures or chattels personal comprised in the mortgage.

Passed by the Legislature of the Falkland Islands this 29th day of November 1996.

C. ANDERSON,
Clerk of Councils.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council and is found by me to be a true and correctly printed copy of the said Bill.

C. ANDERSON,
Clerk of Councils.



**THE
FALKLAND ISLANDS GAZETTE
Supplement**

PUBLISHED BY AUTHORITY

Vol. 8

7th February 1997

No. 2

The following is published in this Supplement -

The Supplementary Appropriation (1996-1997) (No. 3) Ordinance 1996.

ELIZABETH II



Colony of the Falkland Islands

RICHARD PETER RALPH, C.V.O.,
Governor.

The Supplementary Appropriation (1996-1997) (No 3) Ordinance 1996

(No: 30 of 1996)

ARRANGEMENT OF PROVISIONS

Section

1. Short title.
2. Appropriation of further sum.

Schedule

ELIZABETH II



Colony of the Falkland Islands

RICHARD PETER RALPH, C.V.O.,
Governor.

THE SUPPLEMENTARY APPROPRIATION (1996-1997) (No 3) ORDINANCE 1996

(No. 30 of 1996)

AN ORDINANCE

(assented to: 28th January 1997)
(commencement: on publication)
(published: 7th February 1997)

To appropriate and authorise the withdrawal from the Consolidated Fund of the additional sum of £172,230 for the service of the financial year ending 30 June 1997.

ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Supplementary Appropriation (1996-1997) (No 3) Ordinance 1996.

Appropriation of further sum

2. The Financial Secretary may for the purposes specified in the Schedule cause to be withdrawn from the Consolidated Fund and applied to the service of the year commencing on 1 July 1996 and ending on 30 June 1997 ("the financial year") the further sum of £172,230 in addition to sums already appropriated by Ordinance.

SCHEDULE

| PART I OPERATING BUDGET | | £ |
|---------------------------------|---|-----------------------|
| 102 | Falkland Islands Government Air Service | 8,000 |
| 200 | Health and Social Services | 10,000 |
| 300 | Customs and Immigration | 5,000 |
| 600 | Central Administration | 20,500 |
| 650 | Pensions and Gratuities | 10,000 |
| 850 | Falkland Islands Government Office London | 19,730 |
| TOTAL OPERATING BUDGET | | <u>73,230</u> |
| | | |
| PART II CAPITAL BUDGET | | |
| 950 | Expenditure | <u>99,000</u> |
| TOTAL SUPPLEMENTARY EXPENDITURE | | <u><u>172,230</u></u> |

Passed by the Legislature of the Falkland Islands this 20th day of December 1996.

C. ANDERSON,
Clerk of Councils.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council and is found by me to be a true and correctly printed copy of the said Bill.

C. ANDERSON,
Clerk of Councils.



**THE
FALKLAND ISLANDS GAZETTE
Supplement**

PUBLISHED BY AUTHORITY

Vol. 8

20th March 1997

No. 3

The following is published in this Supplement -

The Child Abduction and Custody (Falkland Islands) Order 1996.

STATUTORY INSTRUMENTS

1996 No. 3156

CHILDREN AND YOUNG PERSONS

**The Child Abduction and Custody (Falkland Islands)
Order 1996**

Made - - - - - *19th December 1996*

Laid before Parliament *7th January 1997*

Coming into force *1st March 1997*

At the Court at Buckingham Palace, the 19th day of December 1996

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 28 of the Child Abduction and Custody Act 1985(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Child Abduction and Custody (Falkland Islands) Order 1996, and shall come into force on 1 March 1997.

2. Sections 1 to 24A, inclusive, section 25(1) and (2), sections 26 and 27 of and Schedules 1 to 3, inclusive, to the Child Abduction and Custody Act 1985, modified as in the Schedule hereto, shall extend to the Falkland Islands.

3. For the purpose of the Schedule hereto, the term "Governor" means the officer for the time being administering the Government of the Falkland Islands.

N. H. Nicholls
Clerk of the Privy Council

SCHEDULE
PROVISIONS OF THE CHILD ABDUCTION AND CUSTODY ACT 1985
AS EXTENDED TO THE FALKLAND ISLANDS

PART I

INTERNATIONAL CHILD ABDUCTION

- 1.—(1) In this Part of this Order "the Convention" means the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25th October 1980. The Hague Convention.
(2) Subject to the provisions of this Part of this Order, the provisions of that Convention set out in Schedule 1 to this Order shall have the force of law in the Falkland Islands.

- 2.—(1) For the purposes of the Convention as it has effect under this Part of this Order the Contracting States shall be the United Kingdom and those for the time being specified by an Order in Council under section 2(2) of the United Kingdom Child Abduction and Custody Act 1985. Contracting States.
(2) An Order in Council under that section shall specify the date of the coming into force of the Convention as between the United Kingdom and any State specified in the Order. On the same date the Convention shall come into force as between the Falkland Islands and that State; and except where the Order otherwise provides, the Convention shall apply as between the Falkland Islands and that State only in relation to wrongful removals or retentions occurring on or after that date.
(3) Where the Convention applies, or applies only, to a particular territory or particular territories specified in a declaration made by a Contracting State under Article 39 or 40 of the Convention references to that State in sub-sections (1) and (2) above shall be construed as references to that territory or those territories.

3. The functions under the Convention of a Central Authority shall be discharged by the Governor. Central Authority.

4. The court having jurisdiction to entertain applications under the Convention shall be the Supreme Court of the Falkland Islands. Judicial authority.

5. Where an application has been made to the Supreme Court under the Convention, the court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application. Interim powers.

6. Where the Governor is requested to provide information relating to a child under Article 7(d) of the Convention he may— Reports.
 - (a) request any public officer he believes to be appropriate to make a report to him in writing with respect to any matter which appears to him to be relevant;
 - (b) request any court to which a written report relating to the child has been made to send him a copy of the report;
and such a request shall be duly complied with.

- 7.—(1) For the purposes of Article 14 of the Convention a decision or determination of a judicial or administrative authority outside the Falkland Islands may be proved by a duly authenticated copy of the decision or determination; and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown. Proof of documents and evidence.
(2) For the purposes of sub-paragraph (1) above a copy is duly authenticated if it bears the seal, or is signed by a judge or officer, of the authority in question.
(3) For the purposes of Articles 14 and 30 of the Convention any such document as is mentioned in Article 8 of the Convention, or a certified copy of any such document, shall be sufficient evidence of anything stated in it.

8. The Supreme Court may, on an application made for the purposes of Article 15 of the Convention by any person appearing to the court to have an interest in the matter, make a declaration that the removal of any child from, or his retention outside the Falkland Islands was wrongful within the meaning of Article 3 of the Convention. Declaration by the Supreme Court.

9. The reference in Article 16 of the Convention to deciding on the merits of rights of custody shall be construed as a reference to—

- (a) making, varying or revoking a custody Order, or a supervision order under section 17 of the Children Ordinance 1994; or
- (b) registering or enforcing a decision under Part II of this Order.

Suspension of Court's powers in cases of wrongful removal.

10.—(1) An authority having power to make rules of court may make such provision for giving effect to this Part of this Order as appears to that authority to be necessary or expedient.

(2) Without prejudice to the generality of subsection (1) above, rules of court may make provision—

- (a) with respect to the procedure on applications for the return of a child and with respect to the documents and information to be furnished and the notices to be given in connection with any such application;
- (b) for the giving of notices by or to a court for the purposes of the provisions of Article 16 of the Convention and paragraph 9 above and generally as respects proceedings to which those provisions apply;
- (c) for enabling a person who wishes to make an application under the Convention in a Contracting State other than the Falkland Islands to obtain from any court in the Falkland Islands an authenticated copy of any decision of that court relating to the child to whom the application is to relate.

11. The United Kingdom having made such a reservation as is mentioned in the third paragraph of Article 26 of the Convention, the costs mentioned in that paragraph shall not be borne by the Governor or any other authority in the Falkland Islands except so far as they fall to be so borne by virtue of the grant of legal aid or legal advice and assistance provided by funds appropriated from the Consolidated Fund of the Falkland Islands.

Cost of applications.

PART II

RECOGNITION AND ENFORCEMENT OF CUSTODY DECISIONS

12.—(1) In this Part of this Order “the Convention” means the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children which was signed in Luxembourg on 20th May 1980.

(2) Subject to the provisions of this Part of this Order, the provisions of that Convention set out in Schedule 2 to this Order (which include Articles 9 and 10 as they have effect in consequence of a reservation made by the United Kingdom under Article 17) shall have the force of law in the Falkland Islands.

13.—(1) For the purposes of the Convention as it has effect under this Part of this Order the Contracting States shall be the United Kingdom and those for the time being specified by an Order in Council under section 13(1) of the United Kingdom Child Abduction and Custody Act 1985.

Contracting States.

(2) An Order in Council under that section shall specify the date of the coming into force of the Convention as between the United Kingdom and any State specified in the Order. On the same date the Convention shall come into force as between the Falkland Islands and that State.

(3) Where the Convention applies, or applies only, to a particular territory or particular territories specified by a Contracting State under Articles 24 or 25 of the Convention references to that State in sub-paragraph (1) and (2) above shall be construed as references to that territory or those territories.

14. The functions under the Convention of a Central Authority shall be discharged by the Governor.

Central Authority.

15.—(1) Articles 7 and 12 of the Convention shall have effect in accordance with this paragraph.

(2) A decision to which either of those Articles applies which was made in a Contracting State other than the Falkland Islands shall be recognised in the Falkland Islands as if made by a court having jurisdiction to make it there but—

Recognition of decisions.

- (a) the Supreme Court may, on the application of any person appearing to it to have an interest in the matter, declare on any of the grounds specified in Article 9 or 10 of the Convention that the decision is not to be recognised in the Falkland Islands; and
- (b) the decision shall not be enforceable in the Falkland Islands unless registered in the appropriate court under paragraph 16 below.

(3) The references in Article 9(1)(c) of the Convention to the removal of the child are to his improper removal within the meaning of the Convention.

16.—(1) A person on whom any rights are conferred by a decision relating to custody made by an authority in a Contracting State other than the Falkland Islands may make an application for the registration of the decision in an appropriate court in the Falkland Islands.

Registration
of decisions.

(2) The Central Authority in the Falkland Islands shall assist such a person in making such an application if a request for such assistance is made by him or on his behalf by the Central Authority of the Contracting State in question.

(3) An application under sub-paragraph (1) above or a request under sub-paragraph (2) above shall be treated as a request for enforcement for the purposes of Articles 10 and 13 of the Convention.

(4) The Supreme Court shall refuse to register a decision if—

- (a) the court is of the opinion that on any of the grounds specified in Article 9 or 10 of the Convention the decision should not be recognised in any part of the Falkland Islands;
- (b) the court is of the opinion that the decision is not enforceable in the Contracting State where it was made and is not a decision to which Article 12 of the Convention applies; or
- (c) an application in respect of the child under Part I of this Order is pending.

(5) In this paragraph “decision relating to custody” has the same meaning as in the Convention.

17.—(1) Where a decision which has been registered under paragraph 16 above is varied or revoked by an authority in the Contracting State in which it was made, the person on whose behalf the application for registration of the decision was made shall notify the court in which the decision is registered of the variation or revocation.

Variation
and
revocation
of registered
decisions.

(2) Where a court is notified under sub-paragraph (1) above of the revocation of a decision, it shall—

- (a) cancel the registration, and
- (b) notify such persons as may be prescribed by rules of court of the cancellation.

(3) Where a court is notified under sub-paragraph (1) above of the variation of a decision, it shall—

- (a) notify such persons as may be prescribed by rules of court of the variation; and
- (b) subject to any conditions which may be so prescribed, vary the registration.

(4) The court in which a decision is registered under paragraph 16 above may also, on the application of any person appearing to the court to have an interest in the matter, cancel or vary the registration if it is satisfied that the decision has been revoked or, as the case may be, varied by an authority in the Contracting State in which it was made.

18. Where a decision relating to custody has been registered under paragraph 16 above, the court in which it is registered shall have the same powers for the purpose of enforcing the decision as if it had been made by that court; and proceedings for or with respect to enforcement may be taken accordingly.

Enforcement
of decisions.

19. Where an application has been made to a court for the registration of a decision under paragraph 16 above or for the enforcement of such a decision, the court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application or, in the case of an application for registration, to the determination of any subsequent application for the enforcement of the decision.

Interim
powers.

20.—(1) Where it appears to any court in which such proceedings as are mentioned in sub-paragraph (2) below are pending in respect of a child that—

Suspension
of court's
powers.

- (a) an application has been made for the registration of a decision in respect of the child under paragraph 16 above other than a decision mentioned in sub-paragraph (3) below or that such a decision is registered; and
- (b) the decision was made in proceedings commenced before the proceedings which are pending,

the powers of the court with respect to the child in those proceedings shall be restricted as mentioned in sub-paragraph (2) below unless, in the case of an applicant for registration, the application is refused.

(2) Where sub-paragraph (1) above applies the Court shall not in the case of custody proceedings make, vary, or revoke any custody order, or a supervision order under section 17 of the Children Ordinance 1994.

(3) The decision referred to in sub-paragraph (1) above is a decision which is only a decision relating to custody within the meaning of paragraph 16 of this Order by virtue of being a decision relating to rights of access.

(4) Paragraph (b) of Article 10(2) of the Convention shall be construed as referring to custody proceedings within the meaning of this Order.

21. Where the Governor is requested to make enquiries about a child under Article 15(1)(b) of the Convention he may— Reports.

- (a) request a probation officer to make a report to him in writing with respect to any matter relating to the child concerned which appears to him to be relevant;
- (b) request any court to which a written report relating to the child has been made to send him a copy of the report;

and any such request shall be duly complied with.

22.—(1) In any proceedings under this Part of this Order a decision of an authority outside the Falkland Islands may be proved by a duly authenticated copy of the decision; and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown. Proof of documents and evidence.

(2) For the purposes of sub-paragraph (1) above a copy is duly authenticated if it bears the seal, or is signed by a judge or officer, of the authority in question.

(3) In any proceedings under this Part of this Order any such document as is mentioned in Article 13 of the Convention, or a certified copy of any such document, shall be sufficient evidence of anything stated in it.

23.—(1) Where a person on whom any rights are conferred by a decision relating to custody made by a court in the Falkland Islands makes an application to the Governor under Article 4 of the Convention with a view to securing its recognition or enforcement in another Contracting State, the Governor may require the court which made the decision to furnish him with all or any of the documents referred to in Article 13(1)(b), (c) and (d) of the Convention. Decisions of Falkland Islands courts.

(2) Where in any custody proceedings a court in the Falkland Islands makes a decision relating to a child who has been removed from the Falkland Islands, the court may also, on an application made by any person for the purposes of Article 12 of the Convention, declare the removal to have been unlawful if it is satisfied that the applicant has an interest in the matter and that the child has been taken from or sent or kept out of the Falkland Islands without the consent of the person (or, if more than one, all the persons) having the right to determine the child's place of residence under the law of the part of the Falkland Islands in which the child was habitually resident.

(3) In this section "decision relating to custody" has the same meaning as in the Convention.

24.—(1) An authority having power to make rules of court may make such provision for giving effect to this Part of this Order as appears to that authority to be necessary or expedient. Rules of court.

(2) Without prejudice to the generality of subsection (1) above, rules of court may make provision—

- (a) with respect to the procedure on applications to a court under any provision of this Part of this Order and with respect to the documents and information to be furnished and the notices to be given in connection with any such application;
- (b) for the giving of directions requiring the disclosure of information about any child who is the subject of proceedings under this Part of this Order and for safeguarding its welfare.

PART III SUPPLEMENTARY

24A.—(1) Where—

- (a) in proceedings for the return of a child under Part I of this Order; or
- (b) on an application for the recognition, registration or enforcement of a decision in respect of a child under Part II of this Order,

there is not available to the court adequate information as to where the child is, the court may order any person who it has reason to believe may have relevant information to disclose it to the court.

Power to order disclosure of child's whereabouts.

(2) A person shall not be excused from complying with an order under subsection (1) above by reason that to do so may incriminate him or his spouse of an offence; but a statement or admission made in compliance with such an order shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.

25.—(1) Where—

- (a) an order is made for the return of a child under Part I of this Order; or
- (b) a decision with respect to a child (other than a decision mentioned in sub-paragraph (2) below) is registered under paragraph 16 of this Order,

Termination
of existing
custody
orders etc.

any custody order relating to him shall cease to have effect.

(2) The decision referred to in sub-paragraph 1(b) above is a decision which is only a decision relating to custody within the meaning of paragraph 16 of this Order by virtue of being a decision relating to rights of access.

26. There shall be paid out of money provided by Parliament—

Expenses.

- (a) any expenses incurred by the Governor by virtue of this Order; and
- (b) any increase attributable to this Order in the sums so payable under any other Act or Order.

27.—(1) In this Order “custody order” means (unless the contrary intention appears) any such order as is mentioned in Schedule 3 to this Order and “custody proceedings” means proceedings in which an order within that Schedule may be made, varied or revoked.

Interpreta-
tion.

(2) In this Order a decision relating to rights access means a decision as to the contact which a child may, or may not, have with any person.

SCHEDULES

SCHEDULE 1

Paragraph
1(2).

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

CHAPTER I—SCOPE OF THE CONVENTION

Article 3

The removal of the retention of a child is to be considered wrongful where—

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph (a) above may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of sixteen years.

Article 5

For the purposes of this Convention—

- (a) “rights of custody” shall include rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence;
- (b) “rights of access” shall include the right to take a child for a limited period of time to a place other than the child’s habitual residence.

CHAPTER II—CENTRAL AUTHORITIES

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures—

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- (d) to exchange, where desirable, information relating to the social background of the child;
- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;
- (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III—RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain—

- (a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- (b) where available, the date of birth of the child;
- (c) the grounds on which the applicant's claim for return of the child is based;
- (d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by—

- (e) an authenticated copy of any relevant decision or agreement;
- (f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
- (g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested state has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that—

- (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but

the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

CHAPTER IV—RIGHTS OF ACCESS

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V—GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units—

- (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- (b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

SCHEDULE 2

EUROPEAN CONVENTION ON RECOGNITION AND ENFORCEMENT OF DECISIONS CONCERNING CUSTODY OF CHILDREN

Paragraph
12(2).

Article 1

For the purposes of this Convention—

- (a) “child” means a person of any nationality, so long as he is under 16 years of age and has not the right to decide on his own place of residence under the law of his habitual residence, the law of his nationality or the internal law of the State addressed;
- (b) “authority” means a judicial or administrative authority;
- (c) “decision relating to custody” means a decision of an authority in so far as it relates to the care of the person of the child, including the right to decide on the place of his residence, or to the right of access to him.
- (d) “improper removal” means the removal of a child across an international frontier in breach of a decision relating to his custody which has been given in a Contracting State and which is enforceable in such a State; “improper removal” also includes—
 - (i) the failure to return a child across an international frontier at the end of a period of the exercise of the right of access to this child or at the end of any other temporary stay in a territory other than that where the custody is exercised;
 - (ii) a removal which is subsequently declared unlawful within the meaning of Article 12.

Article 4

(1) Any person who has obtained in a Contracting State a decision relating to the custody of a child and who wishes to have that decision recognised or enforced in another Contracting State may submit an application for this purpose to the central authority in any Contracting State.

(2) The application shall be accompanied by the documents mentioned in Article 13.

(3) The central authority receiving the application, if it is not the central authority in the State addressed, shall send the documents directly and without delay to that central authority.

(4) The central authority receiving the application may refuse to intervene where it is manifestly clear that the conditions laid down by this Convention are not satisfied.

(5) The central authority receiving the application shall keep the applicant informed without delay of the progress of his application.

Article 5

(1) The central authority in the State addressed shall take or cause to be taken without delay all steps which it considers to be appropriate, if necessary by instituting proceedings before its competent authorities, in order—

- (a) to discover the whereabouts of the child;
- (b) to avoid, in particular by any necessary provisional measures, prejudice to the interests of the child or of the applicant;
- (c) to secure the recognition or enforcement of the decision;
- (d) to secure the delivery of the child to the applicant where enforcement is granted;
- (e) to inform the requesting authority of the measures taken and their results.

(2) Where the central authority in the State addressed has reason to believe that the child is in the territory of another Contracting State it shall send the documents directly and without delay to the central authority of that State.

(3) With the exception of the cost of repatriation, each Contracting State undertakes not to claim any payment from an applicant in respect of any measures taken under paragraph (1) of this Article by the central authority of that State on the applicant's behalf, including the costs of proceedings and, where applicable, the costs incurred by the assistance of a lawyer.

(4) If recognition or enforcement is refused, and if the central authority of the State addressed considers that it should comply with a request by the applicant to bring in that State proceedings concerning the substance of the case, that authority shall use its best endeavours to secure the representation of the applicant in the proceedings under conditions no less favourable than those available to a person who is resident in and a national of that State and for this purpose it may, in particular, institute proceedings before its competent authorities.

Article 7

A decision relating to custody given in a Contracting State shall be recognised and, where it is enforceable in the State of origin, made enforceable in every other Contracting State.

Article 9

(1) [Recognition and enforcement may be refused] if—

- (a) in the case of a decision given in the absence of the defendant or his legal representative, the defendant was not duly served with the document which instituted the proceedings or an equivalent document in sufficient time to enable him to arrange his defence; but such a failure to effect service cannot constitute a ground for refusing recognition or enforcement where service was not effected because the defendant had concealed his whereabouts from the person who instituted the proceedings in the State of origin;
- (b) in the case of a decision given in the absence of the defendant or his legal representative, the competence of the authority giving the decision was not founded—
 - (i) on the habitual residence of the defendant; or
 - (ii) on the last common habitual residence of the child's parents, at least one parent being still habitually resident there, or
 - (iii) on the habitual residence of the child;

- (c) the decision is incompatible with a decision relating to custody which became enforceable in the State addressed before the removal of the child, unless the child has had his habitual residence in the territory of the requesting State for one year before his removal.
- (3) In no circumstances may the foreign decision be reviewed as to its substance.

Article 10

- (1) [*Recognition and enforcement may also be refused*] on any of the following grounds—
 - (a) if it is found that the effects of the decision are manifestly incompatible with the fundamental principles of the law relating to the family and children in the State addressed;
 - (b) if it is found that by reason of a change in the circumstances including the passage of time but not including a mere change in the residence of the child after an improper removal, the effects of the original decision are manifestly no longer in accordance with the welfare of the child;
 - (c) if at the time when the proceedings were instituted in the State of origin—
 - (i) the child was a national of the State addressed or was habitually resident there and no such connection existed with the State of origin;
 - (ii) the child was a national both of the State of origin and of the State addressed and was habitually resident in the State addressed;
 - (d) if the decision is incompatible with a decision given in the State addressed or enforceable in that State after being given in a third State, pursuant to proceedings begun before the submission of the request for recognition or enforcement, and if the refusal is in accordance with the welfare of the child.
- (2) Proceedings for recognition or enforcement may be adjourned on any of the following grounds—
 - (a) if an ordinary form of review of the original decision has been commenced;
 - (b) if proceedings relating to the custody of the child, commenced before the proceedings in the State of origin were instituted, are pending in the State addressed;
 - (c) if another decision concerning the custody of the child is the subject of proceedings for enforcement or of any other proceedings concerning the recognition of the decision.

Article 11

- (1) Decisions on rights of access and provisions of decisions relating to custody which deal with the rights of access shall be recognised and enforced subject to the same conditions as other decisions relating to custody.
- (2) However, the competent authority of the State addressed may fix the conditions for the implementation and exercise of the right of access taking into account, in particular, undertakings given by the parties on this matter.
- (3) Where no decision on the right of access has been taken or where recognition or enforcement of the decision relating to custody is refused, the central authority of the State addressed may apply to its competent authorities for a decision on the right of access if the person claiming a right of access so requests.

Article 12

Where, at the time of the removal of a child across an international frontier, there is no enforceable decision given in a Contracting State relating to his custody, the provisions of this Convention shall apply to any subsequent decision, relating to the custody of that child and declaring the removal to be unlawful, given in a Contracting State at the request of any interested person.

Article 13

- (1) A request for recognition or enforcement in another Contracting State of a decision relating to custody shall be accompanied by—
 - (a) a document authorising the central authority of the State addressed to act on behalf of the applicant or to designate another representative for that purpose;
 - (b) a copy of the decision which satisfies the necessary conditions of authenticity;

- (c) in the case of a decision given in the absence of the defendant or his legal representative, a document which establishes that the defendant was duly served with the document which instituted the proceedings or an equivalent document;
- (d) if applicable, any document which establishes that, in accordance with the law of the State of origin, the decision is enforceable;
- (e) if possible, a statement indicating the whereabouts or likely whereabouts of the child in the State addressed;
- (f) proposals as to how the custody of the child should be restored.

Article 15

(1) Before reaching a decision under paragraph (1)(b) of Article 10, the authority concerned in the State addressed—

- (a) shall ascertain the child's views unless this is impracticable having regard in particular to his age and understanding; and
- (b) may request that any appropriate enquiries be carried out.

(2) The cost of enquiries in any Contracting State shall be met by the authorities of the State where they are carried out.

Requests for enquiries and the results of enquiries may be sent to the authority concerned through the central authorities.

Article 26

(1) In relation to a State which has in matters of custody two or more systems of law of territorial application—

- (a) reference to the law of a person's habitual residence or to the law of a person's nationality shall be construed as referring to the system of law determined by the rules in force in that State or, if there are no such rules, to the system of law with which the person concerned is most closely connected;
- (b) reference to the State of origin or to the State addressed shall be construed as referring, as the case may be, to the territorial unit where the decision was given or to the territorial unit where recognition or enforcement of the decision or restoration of custody is requested.

(2) Paragraph (1)(a) of this Article also applies *mutatis mutandis* to States which have in matters of custody two or more systems of law of personal application.

SCHEDULE 3 CUSTODY ORDERS

Paragraph
27(1).

1. The following are the orders referred to in paragraph 27(1) of this Order—

- (a) a care order under the Children Ordinance 1994 (as defined by section 2(1) of that Ordinance);
- (b) a residence order within the meaning it has for the purposes of section 9 of the Children Ordinance 1994; and
- (c) any order under—
 - (i) the Matrimonial Proceedings (Courts of Summary Jurisdiction) Ordinance 1967;
 - (ii) the Matrimonial Causes Ordinance 1979; or
 - (iii) the Guardianship of Minors Ordinance 1979.
 which is an existing order for the purposes of paragraphs 4 to 9 of Schedule 4 to the Children Ordinance 1994.

2. An order made by the Supreme Court in the exercise of its jurisdiction relating to wardship so far as it gives the care and control of a child to any person.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends to the Falkland Islands, with modifications certain provisions of the Child Abduction and Custody Act 1985.



THE FALKLAND ISLANDS GAZETTE Supplement

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27th March 1997

No. 4

SUBSIDIARY LEGISLATION

ROAD TRAFFIC

The Stanley (Various Roads) One Way Street (Amendment) Order 1997

(S.R. & O. No. 1 of 1997)

Made: 26 February 1997

Published: 27 March 1997

Coming into force: in accordance with article 1

IN EXERCISE of my powers under section 18(1) of the Road Traffic Ordinance^(a) I make the following Order—

Citation and commencement

1. This Order may be cited as the Stanley (Various Roads) One Way Street (Amendment) Order 1997 and shall come into force on such date as is notified by the Governor in the *Gazette*.

(a) Cap 60, Vol I Laws of the Falkland Islands 1950 Edition

Amendment of Stanley (Various Roads) One Way Street Order 1989

2. The Stanley (Various Roads) One Way Street Order 1989(b) is amended as follows—

(a) by replacing, in the entry relating to Drury Street, the words “with the road known as Hacketts Hill to the eastern boundary of the Rose Hotel where it abuts Drury Street” with the words “from its junction with Brisbane Road to its junction with King Street”

(b) by adding the following entry, immediately after the entry relating to Drury Street—

| | |
|---|-----------------|
| “Hacketts Hill (otherwise known as Halketts Hill) along its whole length (that is to say, from Drury Street to Pioneer Row). | South to North” |
|---|-----------------|

Made this 26th day of February 1997

R P Ralph
Governor

EXPLANATORY NOTE (not forming part of the Order)

The Order amends the 1989 Order so as to extend the length of Drury Street which is a one way street westwards from Hacketts Hill to King Street and so as to make the whole length of Hacketts Hill a one way street in a South to North (downhill) direction.

(b) S.R. & O. No. 19 of 1989



**THE
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No.5

The following is published in this Supplement -

The Fishing Licences (Applications and Fees) Regulations Order 1997.

THE FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 1986

(No. 11 of 1986)

The Fishing Licences (Application and Fees) Regulations Order 1997

S.R. & O. No. 2 of 1997

Made: 27th day of March 1997

Published: 31st March 1997

Coming into operation: on publication

IN EXERCISE, of my powers under section 20 of the Fisheries (Conservation and Management) Ordinance 1986 I make the following Order -

Commencement and citation

1. (1) This Order may be cited as the Fishing Licences (Applications and Fees) Regulations Order 1997 and shall come into operation on the date it is first published in the Gazette and cease to have effect on 31st December 1997.

(2) This Order is hereinafter called "these Regulations" and any paragraph of this Order may be cited as (and is hereafter described as) a regulation bearing the same number as that paragraph and every subparagraph of a paragraph of this Order may be cited as (and is hereafter described as) a paragraph of the same number of the regulation in which it appears.

2. Nothing in these Regulations applies to licences for exploratory or scientific purposes or to fishing within the territorial sea or internal waters.

Application

3. In these Regulations -

"exploratory or scientific purposes" means purposes related to the assessment of the commercial or practical viability of fishing for fish generally or for a particular species of fish or to the assessment or quantification of stocks of any species of fish or fish of any age, stage of maturity or size of a species of fish or the locations in which they or any species of fish or fish of any age, stage of maturity or size may be found;

"FICZ" means the interim conservation and management zone as defined in Section 2 of the Fisheries (Conservation and Management) Ordinance 1986;

"FOCZ" means the outer conservation zone as defined in Proclamation 2 of 1990 as varied by Proclamation 1 of 1994;

"fishing licence" means a licence to catch or take fish within the fishing waters;

"the fishing season" means -

- a) in relation to an "R" licence a period commencing on 1st July 1997 and ending on 31st December 1997;
- b) in relation to an "X" licence the period commencing on 1st August 1997 and ending on 31st October 1997;
- c) in relation to a "Y" licence a period commencing on 1st July 1997 and ending on 31st December 1997;
- d) in relation to a "Z" licence a period commencing on 1st July 1997 and ending on 31st December 1997;

"the principal regulations" means the Fishing Regulations Order 1987.

Relationship with principal Regulations

4. For so long as these Regulations are in force such of the provisions of the principal regulations as are inconsistent with these Regulations shall not be in force, but except as aforesaid the provisions of the principal regulations remain in force and shall be complied with in addition to those of these Regulations.

Types of Licence

5. (1) For the purpose of these Regulations there shall be the following categories of licence -

- (a) an "R" licence;
- (b) an "X" licence ;
- (c) a "Y" licence; and
- (d) a "Z" licence.

(2) An "R" licence issued under these Regulations shall permit the catching or taking of all species of the family Skate (Rajidae) and shall not permit the taking of other species of finfish or squid of any kind.

(3) An "X" licence issued under these Regulations shall authorise the catching or taking of squid of the species *Loligo gahi*.

(4) A "Y" licence issued under these Regulations shall permit the catching or taking of any finfish, that is to say vertebrate fish having a dorsal fin, a ventral or pectoral fin and not in any case include Toothfish (*Dissostichus eleginoides*), Skate (Rajidae) or squid of any kind.

(5) A "Z" licence issued under these Regulations shall permit the catching or taking of any finfish except Hake (*Merluccius spp.*), Toothfish (*Dissostichus eleginoides*) or Skate (Rajidae) that is to say a vertebrate fish having a dorsal fin, a ventral or pectoral fin and not in any case including Hake (*Merluccius spp.*), Toothfish (*Dissostichus eleginoides*), Skate (Rajidae) or squid of any kind.

Provided that a "by-catch" which, in the reasonable opinion of the Director of Fisheries could not reasonably be avoided, shall not be deemed to have been caught or taken without the authority of a licence.

Applications for Licences

6. (1) Applications for licences in respect of the whole or any part of any fishing season shall be made to the Director of Fisheries at the Falkland Islands Fisheries Department, P.O. Box 122, Stanley, Falkland Islands.

(2) Any application to which paragraph (1) of this regulation relates shall be accompanied by an application fee of £200 (which shall not be returnable whether or not the application is granted) and shall be made so as to be received there by Monday, 14th April 1997.

(3) The Director of Fisheries in his discretion may consider an application lodged after the date mentioned in paragraph (2) of this regulation but shall not be bound to do so.

The Schedule and its Tables

7. (1) Table 1 of the Schedule to these Regulations applies in respect of the fees payable for type "R" licences.

(2) Table 2 of the Schedule to these Regulations applies in respect of the fees payable for type "X" licences.

(3) Table 3 of the Schedule to these Regulations applies in respect of the fees payable for type "Y" licences.

(4) Table 4 of the Schedule to these Regulations applies in respect of the fees payable for type "Z" licences.

(5) All fees payable under this regulation shall be paid in pounds Sterling and in accordance with the principal regulations.

(6) The explanatory notes at the commencement of each Table in the Schedule to these Regulations are for guidance only and shall not have legislative effect.

(7) The fees for transshipment or transshipment and export licences for the period 1st July 1997 to 31st December 1997 shall be £150 per transshipment operation.

THE SCHEDULE

Provision as to fishing licences in respect of the fishing season

TABLE 1

Skate - Type "R" Licences

(Explanatory notes :

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take Skate (Rajidae) only.
3. The season for this type of licence commences on 1st July 1997 and ends on 31st December 1997 and will be subject to a closed area and The Fishing (Nets and Supplementary Equipment) Regulations Order 1990.
4. Fees calculated by the Formula set out in this Table are payable in respect of the number of months for which the licence is valid.)

Effective text (of legislative effect)

A. In the following Formula, "GT" means "Gross Tonnage" as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules;

B. A licence is not transferable.

FORMULA

Fee payable per licensed month is the result of:

$$£(2.646 * GT) + 21376$$

TABLE 2

Squid - Type "X" Licences

(Explanatory notes :

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take the squid species *Loligo gahi*.
3. The season for this type of licence commences on 1st August 1997 and ends on 31st October 1997 and is exempt from the Fishing (Nets and Supplementary Net Equipment) Regulations Order 1990.
4. Fees calculated by the Formula set out in this Table are for the full season.)

Effective text (of legislative effect)

- A. In the following Formula, "GT" means "Gross Tonnage" as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules.
- B. A licence is not transferable.

FORMULA

Fee payable is the result of;

$$£(28.644 * GT) + 50765$$

TABLE 3

Finfish Only - Type "Y" Licences

(Explanatory notes :

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take all finfish species with the exception of Toothfish (*Dissostichus eleginoides*), Skate (Rajidae) or squid.
3. The season for this type of licence commences on 1st July 1997 and ends on 31st December 1997 and will be subject to a closed area and The Fishing (Nets and Supplementary Equipment) Regulations Order 1990.

4. Fees calculated by the Formula set out in this Table are payable in respect of the number of months for which the licence is valid.)

Effective text (of legislative effect)

A. In the following Formula, "GT" means "Gross Tonnage" as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules;

B. A licence is not transferable.

FORMULA

Fees payable per licensed month of fishing is calculated by adding £5,000 to the relevant Finfish (Species Restricted) type "Z" licence fee, taking account of the GT of the vessel.

TABLE 4

Finfish Only - Species Restricted - Type "Z" Licences

(Explanatory notes :

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take all finfish species with the exception of Hake (*Merluccius spp.*), Toothfish (*Dissostichus eleginoides*) and Skate (*Rajidae*) or squid.
3. The season for this type of licence commences on 1st July 1997 and ends on 31st December 1997 and will be subject to a closed area and the Fishing (Nets and Supplementary Net Equipment) Regulations Order 1990.
4. Fees calculated by the Formula set out in this Table are payable in respect of the number of months for which the licence is valid.)

Effective text (of legislative effect)

A. In the following Formula, "GT" means "Gross Tonnage" as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules;

B. A licence is not transferable.

FORMULA

Fees payable per licensed month is the result of whichever of the following is applicable:

- I. Where the vessel has a GT of 1400 or less;
 $\pounds(0.496 * GT) + 12443$
- II. Where the vessel has a GT between 1401 and 2200;
 $\pounds(21.519 * GT) - 16990$
- III. Where the vessel has a GT between 2201 and 3500;
 $\pounds(17.271 * GT) - 7641$
- IV. Where the vessel has a GT between 3501 and 4000;
 $\pounds(91.146 * GT) - 266208$
- V. Where the vessel has a GT of 4001 or greater;
 $\pounds(27.646 * GT) - 12228$

Made this 27th day of March 1997

R Ralph
Governor



**THE
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No. 6

The following is published in this Supplement -

The Taxes (Amendment) Bill 1997.

THE TAXES (AMENDMENT) BILL 1997

EXPLANATORY MEMORANDUM

This Bill makes miscellaneous amendments to the Taxes Ordinance 1994 which is referred to in this Memorandum as the 1994 Ordinance. The 1994 Ordinance has already been substantially amended by the Taxes (Amendment) Ordinance 1996 and other Ordinances, and as soon as possible after this Ordinance has been enacted, a Bill to consolidate this and the earlier Ordinances on tax will be introduced.

In this Memorandum "FICS" means the Falkland Islands Continental Shelf.

CLAUSE 1

Subsection (1) of this clause contains the short title of the Bill.

Subsection (2) provides for the majority of the amendments to come into force on 1st April 1997.

Clause 3 which amends section 9 of the 1994 Ordinance is retrospective as it clarifies the effect of that section.

Clause 7, which amends the provisions in the 1994 Ordinance relating to depreciation allowances, will have effect from the beginning of 1997, to enable the Taxation Office to take full account of the presence of seismic vessels in Falkland Islands waters from that time.

Clause 9, which amends the provisions of the 1994 Ordinance relating to group relief, will have effect in relation to the charge to corporation tax for years beginning on or after 1st January 1996. These amendments are favourable to the tax-payer so the back-dating to the commencement of corporation tax should not give rise to any criticism.

Subsection (3) defines "the 1994 Ordinance", used throughout the following provisions of the Bill, as the Taxes Ordinance 1994.

CLAUSE 2

This clause amends section 4 of the 1994 Ordinance so as to allow the Governor to appoint a Deputy Commissioner of Taxation to whom the Commissioner will be able to delegate any of his functions under the various tax Ordinances, regulations and rules.

The new office is likely to be required to relieve the Commissioner of some of the work-load which may well arise in connection with oil related businesses.

It is anticipated that the person appointed to be Deputy Commissioner will be a public officer so that no further salary or pension commitment will be incurred.

CLAUSE 3

This clause amends section 7 of the 1994 Ordinance in order to make it clear that where remuneration or other payments are paid "free of tax" the amount paid must be grossed up before calculating the tax payable. This is an established principle of UK law supported by a long line of cases.

It has not been a matter of concern to the Taxes Office previously but tax-free salaries are not uncommon in multi-national companies or other companies with personnel working away from their home country. It allows the employee some measure of certainty as to what his salary will be, no matter where he is sent to work. In view of this it is considered worthwhile making it plain on the face of the legislation that such salaries must be grossed up in order to determine the employee's tax liability.

EXAMPLE

A employs B to work on an oil rig on the FICS under a contract of employment which provides for B to be paid £45,000 pa. free of tax, A to pay all taxes.

The amount used to calculate the tax payable is not £45,000, but £58,534.

EXPLANATION

The correct way of calculating B's tax liability on his salary is to find the sum which will after tax equal £45,000. This figure is £58,534 which (on current rates and ignoring allowances etc.) gives a tax liability of £13,534. A will be taken to be paying a gross salary of £58,534 on which he pays the tax of £13,534 leaving £45,000 to be paid net to B.

In contrast, the tax liability on £45,000 (on current rates and ignoring allowances etc.) is £10,150 which is £3,384 less than the true liability.

The equation used in this case to show the true grossed up figure from which the tax liability is to be calculated is as follows:

$$22,000 + \frac{4}{3}(N - 17,600) = \text{the grossed up figure}$$

For this purpose, N is the net salary.

The tax payable is the difference between the grossed up figure and the net salary.

Apportionments will be made where part only of the salary is chargeable to Falkland Islands tax.

CLAUSE 4

Section 9 of the 1994 Ordinance does not represent the policy on income tax rates applicable to companies' income prior to the introduction of corporation tax and incorrectly states the position as at the time when that Ordinance was enacted. Since it is clear that no change to those rates was intended to have been made, the opportunity is being taken in this Ordinance to clarify the position for the past years. All current corporate income will be subject to corporation tax under section 25 of the 1994 Ordinance.

Subsection (1) provides that the amendments are to have effect as if they had been included in the 1994 Ordinance when it was originally enacted.

Subsection (2) excludes companies from the scope of paragraph (a) of section 9 which sets out the higher and the lower rates on income tax. Corporate income was never within the lower rate under the Taxes Ordinance 1939, which was consolidated by the 1994 Ordinance, and, as is made clear by the Explanatory Memorandum for the later Ordinance, no alteration was intended to be made in 1994. The correct view is considered to be that companies should continue to pay income tax at the higher rate not at the lower rate. Subsection (2) of clause 4 makes this plain.

Subsection (3) sets out variable rates of 25% and 32.5% for corporate income which are comparable to the rates at which corporation tax is charged under section 25 of the 1994 Ordinance.

CLAUSE 5

This clause substitutes a new section 25 for the existing section 25 of the 1994 Ordinance and adds a new section 25A which contains new provisions relating to the corporation tax rates. Having regard to the length and complexity of these new provisions, it is considered better to separate them from the provisions relating to the time when the tax is due. There are accordingly two new sections instead of one.

Section 25

The first new section is section 25 which restates the provisions relating to the time when corporation tax is due and payable. These provisions are presently set out in the existing section 25(2) and they are not changed in this Bill.

Section 25A

The second new section is section 25A which sets out the new corporation tax rates. The main change is the introduction of a small companies' rate for companies with an income of less than £1m and a marginal rate for companies to give relief to companies whose income is between £1m and £3m. In determining the amount of a company's income for the purposes of these reliefs, ring fence

income and franked investment income is excluded from the computation.

Where a company is associated with another, then the income limits are reduced by dividing them by the total number of associated companies. A company is associated with another if one of them is controlled by the other or both are controlled by another person or persons. The definition of control in section 165A of the 1994 Ordinance applies for this purpose.

Where a company has an accounting period of less than 12 months, the limits of £1m and £3m will be correspondingly apportioned.

A company which has an income of £1m or less will, on a claim being made, be charged to tax at the rate of 25% on that income. This is the small companies' rate.

A company which has an income between £1m and £3m may claim to be charged to tax on that income in accordance with a formula which yields an average tax rate of 25% at £1m and rising to an average tax rate of 32.5% at £3m.

Other companies will pay corporation tax at the rate of 32.5% on their income, and all ring fence income of any company, including a company paying the small companies' or marginal rate, will also be charged to tax at 32.5%.

The other important alteration in the present tax rates in section 25, apart from the introduction of the small and medium companies' rates, is the abolition of the 25% rate for resident companies on any income which is not distributed to non-residents and is not ring fence income.

EXAMPLES

1. A, a FI resident company, is associated with 2 other companies. A has an income of £250,000 and no ring fence income or franked investment income. £50,000 of that income is distributed to a UK resident company.

Under the present law, A will pay tax on £50,000 at 32.5% and on £200,000 at the rate of 25%, giving a total tax bill of £66,250.

Under the new provisions, in these circumstances the lower limit

will be $\frac{£1m}{3}$ giving £333,333, which A's income does not

exceed.

A will pay tax at the rate of 25% on the full £250,000 giving a total tax bill of £62,500, a reduction of £3,750.

2. B a UK company trading through a branch in the Falkland Islands is associated with another company and has an income of £2m plus £2m ring fence income. All the income is distributed to a UK resident.

Under the present law, B will pay tax at 32.5% on all its income.

Under the new law, the higher maximum amount will be $\frac{£3m}{2}$.

so B will not be able to take advantage of the medium sized companies' rate but will continue to pay tax at 32.5%.

- c. C is a Falkland Islands company with £2m income and £1m ring fence income. It has no associated companies and none of the income is distributed to non-residents.

Under the present law, C will pay tax at 32.5% on its ring fence income, but at 25% on the remainder, giving a tax bill of £325,000 plus £500,000, a total of £825,000.

Under the new law, C will continue to pay tax at 32.5% on its ring fence income but can claim to have the other income taxed at the medium sized companies' rate. This would produce a tax bill in respect of the £2m of £612,500. If C does not make this claim it will be charged on the £2m at the rate of 32.5% which produces a tax liability of £650,000.

Accordingly C will claim to be charged at the medium sized company rate and save £37,500.

C's total tax liability will be £937,500. This is an increase over the present situation which reflects the removal of the 25% rate except for small companies.

CLAUSE 6

This clause substitutes a new section 39 in the 1994 Ordinance which was intended to deal with problems arising in connection with advance corporation tax (ACT) where there changes in the rate of income tax or no rate set. The new section reproduces the present subsection (3) of section 39(3) which is all that is thought to be necessary for the Falkland Islands.

Section 39 was derived from section 246 of the Income and Corporation Taxes Act 1988 which is required to take account of the fact that, unlike the Falkland Islands, in the United Kingdom income tax is an annual tax and also because, again unlike the Falkland Islands, in the United Kingdom the corporation tax year begins on 1st April but the income tax year does not start until 6th April.

Since ACT is a payment of corporation tax calculated by reference to income tax rates, some provision is needed in the UK to deal with the situation where the income tax is not imposed before or the rates are changed after 1st April in any year.

In the Falkland Islands the income tax year and the corporation tax year both start

on 1st January and income tax is not an annual tax, so all that is needed in the Falkland Islands is a provision to ensure that where the tax rates change during the year, the tax-payer is neither penalised nor enriched. Accordingly the new section 39 allows for any necessary adjustments to be made to correct over- or under-payments of ACT where there is a change of rate. No other provision is considered necessary.

CLAUSE 7

This clause makes a number of amendments to the POAT provisions of the 1994 Ordinance.

Subsection (2) corrects some references to years of assessment in section 80 of the 1994 Ordinance. The alterations are required to make it clear that POAT is paid in respect of income in the year before the year of assessment in which the income actually falls to be taxed.

So for example where A is employed by B, a UK company, to work on the FICS from 1st March to 1st September 1998, the POAT deductions (if any) will be made in 1998 but the income will fall to be taxed in 1999. Of course if the POAT deductions are made then the liability to tax in 1999 may well have been settled by those deductions.

Subsection (3) inserts a new subsection (5A) in section 81. This new provision makes it clear that subsection (5) of that section, which enables the Commissioner to recover unpaid POAT from employers, does not prevent the Commissioner from recovering unpaid income tax from the employee, as an alternative remedy.

Subsection (4) introduces new subsections (2A), (2B) and (2C) in section 82. These new provisions have effect where subsection (2) of section 82 applies, or would apply apart from these new subsections.

Subsection (2) provides that where a deduction on account of POAT is made, then the employee is exempt from any further liability for an equal amount of income tax, whether or not the employer pays the POAT over to the Commissioner. This means that the Commissioner cannot recover the amount from the employee and if the employer is dishonest or bankrupt, the Treasury suffers a loss.

The new subsection (2A) limits the application of subsection (2) to cases where the employer is resident in the Falkland Islands or is trading through a branch or agency there and is bankrupt or wound-up within 2 years of the end of the year in which the POAT deduction was made. This will enable the Commissioner to recover tax from the employee for example where the employer is dishonest or where the employer is non-resident and the employee is working on the FICS.

The new subsection (2B) further limits the application of subsection (2) by allowing the Commissioner to determine that subsection (2) shall not apply in particular cases. Where such a determination is made, the employer and employee must be notified of that fact.

The new subsection (2C) then imposes a limit on the application of subsection (2A) by allowing the Commissioner to determine that subsection (2A) shall not apply in particular cases. Where such a determination is made, the employer and employee must be notified of that fact.

Subsection (5) of clause 7 makes further amendments relating to the use of the expression "year of assessment". As with the amendments in subsection (2), this amendment will clarify the year for which tax liabilities of the employee may be settled by the application of the POAT deductions.

Subsection (6) amends section 85 so that the POAT regulations, in so far as they make provision for the POAT deductions, may be framed by reference to tables prepared by the Commissioner but not included in the regulations. This will give the Commissioner more flexibility in publishing the tables, which are long and complex and do not need to be included in legislation.

The amendments here also simplify the existing provisions by breaking up one long subsection into 5 much shorter ones.

Subsection (7) further amends section 85.

The first amendment will prevent employees and employers avoiding POAT in cases where an employee is employed by more than one employer. The effect of this amendment will be to aggregate the total hours worked by the employee for all the employers in determining whether the minimum hours requirement is fulfilled.

The second amendment increases the maximum criminal penalty which may be imposed under the regulations for breaches of the regulations to level 7 on the standard scale, currently £10,000.

Subsection (8) amends section 87 further clarifying the year in which the tax liability arises which may be referable to POAT payments.

The last amendment in this group is to section 87(4). Under that provision an employee is able to claim, not later than a date to be prescribed, to have amounts of POAT paid before the commencement of the 1994 Ordinance repaid to him if they exceeded his tax liability. The amendment removes the requirement for a date to be prescribed and instead limits the making of such a claim to the period of 6 years from the end of the year of assessment following the year in which the POAT deduction was made.

Subsection (9) amends section 88 which imposes criminal penalties for breaches of the regulations. The amendments make it clear that section 88 does not apply where the regulations have made specific provision for penalties. The penalty is increased to level 7 of the standard scale (£10,000) and, where POAT has not been paid to the Commissioner, introduces a civil penalty equal to the amount of POAT unpaid.

CLAUSE 8

The clause amends Chapter II of Part V of the 1994 Ordinance which contains provisions relating to depreciation allowances.

Subsection (2) amends section 98(1F) which defines "relevant event" for the purposes of the depreciation allowances provisions. A relevant event is an event which will or may trigger a claw back of allowances. Two new relevant events are added: the business in which the asset is used ceasing to be within the charge to tax in the Falkland Islands, and the asset being moved out of the Falkland Islands or any designated area.

These amendments are particularly designed to deal with persons carrying on a trade or business on the FICS. If they are not otherwise carrying on a business in the Falkland Islands, the start and finish of their work on the FICS will be the beginning and end of their being chargeable to tax in the Falkland Islands. Since when assets are brought on to the FICS they will be eligible for allowances, provision needs to be made for the claw-back of the allowances when the assets are removed from the FICS.

Subsection (3) makes it clear that references to market value in Chapter II are to the open market price.

Subsection (4) introduces a new subsection (1A) into section 98E. This will enable allowances to be made in respect of assets brought into use on the FICS after having been used for a different purpose. The allowances will be based on whichever is the lower of the market value of the asset when brought on to the FICS and its original cost.

Subsection (5) will ensure that where a trader uses an asset on petroleum exploration or exploitation before he begins to carry on a ring fence trade, the amount of expenditure to be taken into account for the purposes of depreciation allowances will not exceed its market value at the start of the trade.

Subsection (6) makes it clear that the machinery and plant allowances under section 99A are available where the asset is bought some time before it is first used for the purposes of the business.

CLAUSE 9

This clause corrects a reference in section 102 of the 1994 Ordinance to section 107 which should be a reference to section 107(1)(a). The existing reference would mean that a loss had to be incurred as specified in section 107(1)(b) before section 102 could apply. However, all that is intended is that the same circumstances should exist as are set out in section 107(1)(a), that is, that an individual is transferring his business to a company in exchange for shares in the company.

CLAUSE 10

This clause widens the existing provisions in Chapter IV of Part V of the 1994 Ordinance about relief for 75% groups by introducing new relief for 51% groups and for consortia.

Subsection (2) inserts new subsections (3), (3A), (3B) and (3C) into section 111 which contains the primary provisions for group relief.

The new provisions will allow group relief to be given to companies which are part of a 51% group or which are not more than three companies, two of which each own half the equity in the surrendering company. In either case relief will not be available under the new provision if any of the companies carries on a ring fence trade.

Subsections (3) to (12) make consequential amendments to the 1994 Ordinance to bring in references to the new groups and consortia where necessary. The definition of the 51% groups is in subsection (6) which provides that any two companies are members of a 51% group if one is a 51% subsidiary of the other or both are 51% subsidiaries of a third.

CLAUSE 11

This clause introduces section 135A into the 1994 Ordinance, making new provision for late assessments where there has been fraud or neglect.

Section 135A will enable assessments to be made in cases of fraud or neglect, in the case of income tax, up to 20 years after the 31st August following the year of assessment to which the tax relates. In the case of corporation tax, the period will be 21 years from the end of the accounting period to which the tax relates.

Where the late assessment is to be made on a business which is carried on in partnership, all the partners may be assessed, not only the one in default.

All reliefs and allowances may be given on a late assessment as would have been given on an assessment made in the normal time limits.

CLAUSE 12

This clause adds sections 136A, 136B and 136C to the 1994 Ordinance, conferring new powers on the Commissioner to call for documents from taxpayers and from third parties.

SECTION 136A

This section confers new powers on the Commissioner to obtain information from a taxpayer or from a third party. *Subsection (1)* limits the use of the new powers

to cases where the Commissioner has reasonable grounds for believing that the taxpayer has failed or may have failed to comply with any provision of the 1994 Ordinance *and* that the failure may prejudice or may have prejudiced the assessment or collection of tax. So where there the taxpayer defaults in some way, he can avoid the use of these new powers by making good the default before the powers are exercised.

Subsection (2) ensures that this section has effect subject to sections 136B and 136C and contains the definitions of "3rd party notice", a notice under subsection (4). It also ensures that the section applies in relation to defaults affecting the amount of tax payable, not merely the question whether or not a person is liable to tax at all. Paragraph (c) applies the section to cases where the default has been on the part of a person's tax adviser so that a taxpayer cannot shelter behind his accountant or similar adviser to avoid the provisions of the section.

Subsection (3) sets out the powers which may be exercised in relation to the taxpayer himself. The Commissioner may require him to give the Commissioner documents which are relevant to his tax liability or to provide him with information about that liability.

Subsection (4) sets out the powers which may be used in relation to persons other than the taxpayer. In this case the powers are limited to the production of documents by a person other than the taxpayer which relate to the tax liability of the taxpayer. The documents may either be given to the Commissioner or made available for an officer of his to inspect, at the option of the person producing them.

Subsection (5) allows any person producing documents in response to a notice under the section to produce facsimile copies, provided that the originals are available for inspection.

Subsection (6) prevents the Commissioner from serving a notice on anyone without giving them the opportunity of producing the documents or giving the information voluntarily.

Subsection (7) requires the Commissioner to specify a period of time within which the notice must be complied with, not being less than 30 days after the date of the notice.

Subsection (8) permits the Commissioner to take copies of any documents produced to him under the section.

SECTION 136B

Subsection (1) excludes certain documents from the scope of section 136A. These are documents or information identifying a person individually and relating to his physical or mental health, or to spiritual counselling, or to counselling otherwise relating to his welfare given by a person under an order of a court or by a person who in his job has responsibilities for the person's welfare.

Subsection (2) excludes from the scope of section 136A material acquired by a journalist.

Subsection (4) excludes from the scope of section 136A material relating to pending appeals.

SECTION 136A

This section contains supplementary provisions relating to 3rd party notices.

Subsection (2) requires the Commissioner to name the taxpayer to whose affairs the 3rd party notice relates unless he does not know his name and the information cannot easily be obtained from other sources.

Subsection (3) permits notices under section 136A to be served in respect of companies which have ceased to exist or persons who have died, but in the latter case, only within 6 years of the death.

Subsection (4) requires the Commissioner to give a copy of a 3rd party notice which names the taxpayer concerned, to the taxpayer, except in cases involving fraud.

Subsection (5) restricts the application of subsection (4) in cases where disclosure might identify the person who gave the information which has given rise to the notice or might prejudice the collection of tax.

Subsection (6) confers a right to object to complying with a 3rd party notice where the taxpayer is not named on the ground that compliance will be onerous. An appeal lies to the Tax Appeal Tribunal where agreement is not reached.

Subsection (7) restricts the application of 3rd party notices to documents which are not more than 6 years old, except in cases of fraud.

Subsection (8) prevents the disclosure of documents subject to legal professional privilege.

Subsections (9), (10) and (11) prevent the disclosure of documents prepared by statutory auditors and tax advisers unless they are prepared in connection with any documents or information made available to the Commissioner in connection with a person's tax affairs or contain information otherwise made available to the Commissioner or identify a person to whom a 3rd party notice, which does not identify the taxpayer, relates.

CLAUSE 13

This clause amends the provisions of the 1994 Ordinance relating to offences and penalties.

Subsection (1) amends section 145, which relates to offences involving wilfulness and intent. It adds a reference to other documents to paragraph (a) which at present only refers to returns of income. The subsection also adds a new paragraph to ensure that the wilful destruction of a document which is required to be disclosed under section 136A will be an offence, unless the destruction is with the consent of the Commissioner or after the documents have been made available to the Commissioner.

Subsection (2) amends section 146 which is similar to section 145 but deals with cases of wrongdoing not involving wilfulness and intent, so that it is an offence under that section to fail to deliver or make available for inspection a document required to be disclosed under section 136A.

Section 149 imposes a time-limit of 6 years for the bringing of proceedings under the Ordinance for offences or recovery of penalties. *Subsection (3)* of clause 13 adds a new subsection which prevents the 6 year period from starting to run until the Commissioner knew or had reasonable grounds for suspecting that an offence had been committed.

CLAUSE 14

This clause amends the provisions of the 1994 Ordinance relating to the powers of the Falkland Islands Government's tax agent in the United Kingdom.

Subsection (2) extends the references to persons to include companies which trade through a branch or agency in the United Kingdom and makes it clear that "residing" in the United Kingdom means being resident or ordinarily resident there. The extension to branches or agencies is intended to facilitate the collection of tax from companies not resident in the Falkland Islands: more may be expected to be within the charge to tax in the Falkland Islands as the exploration of the FICS gathers pace.

Subsection (3) makes it plain that the agent appointed under section 151 may issue assessments in the United Kingdom in the name of the Commissioner.

TAXES (AMENDMENT) ORDINANCE 1997

ARRANGEMENT OF PROVISIONS

- 1. Short title and commencement*
- 2. Functions of officers and appointment of Deputy Commissioner of Taxation.*
- 3. Free of tax earnings*
- 4. Company income tax rates.*
- 5. Corporation tax amendments.*
- 6. Changes in rate of ACT*
- 7. Amendments to Part IV of the 1994 Ordinance (POAT).*
- 8. Depreciation allowances.*
- 9. Capital allowances: transfers of businesses*
- 10. Relief for groups and consortia .*
- 11. Late assessments in cases of fraud or neglect*
- 12. Power to call for documents of taxpayer and others.*
- 13. Criminal and civil penalties.*
- 14. UK tax agent.*

THE TAXES (AMENDMENT) BILL 1997

(No. of 1997)

A draft of

An Ordinance

To amend the Taxes Ordinance 1994.

(assented to: 1997)

(commencement: in accordance with section 1)

(published: 1997)

ENACTED by the Legislature of the Falkland Islands as follows:—

1.—(1) This Ordinance may be cited as the Taxes (Amendment) Ordinance 1997.

*Short title and
commencement*

(2) Section 8 of this Ordinance shall apply for the charge to corporation tax for corporation tax years beginning on or after 1st January 1997, and section 10 shall apply for the charge to corporation tax for corporation tax years beginning on or after 1st January 1996 but, subject to that, the provisions of this Ordinance shall come into force on 1st April 1997.

(3) In this Ordinance “the 1994 Ordinance” means the Taxes Ordinance 1994.

2. In section 4 of the 1994 Ordinance—

(a) in subsection (2) after “collect” there shall be inserted “assess”, and at the end there shall be inserted “and generally to assist the Commissioner and the Deputy Commissioner in the performance of their functions”; and

(b) the following subsection shall be inserted after subsection (3)—

“(4) The Governor may appoint a Deputy Commissioner of Taxation to whom the Commissioner may delegate any of his functions under this Ordinance or under any instrument made under this Ordinance or under any other enactment relating to taxation.”

*Functions of
officers and
appointment of
Deputy
Commissioner of
Taxation*

3.—(1) In section 7 of the 1994 Ordinance the following subsections shall be added after subsection (3)— *Free of tax earnings*

(4) It is hereby declared that for the purposes of determining the amount of tax payable in accordance with this Ordinance in respect of any net sum, the net sum shall be deemed to be increased to such gross amount as will, after deduction of the amount of tax so payable in respect of an amount equal to that gross amount produce an amount equal to the net sum.

(5) In subsection (4) above a "net sum" is a sum payable to or in respect of a person under any agreement or arrangement which (however expressed) provides for the sum to be paid wholly or partly free of tax.

4.—(1) Section 9 of the 1994 Ordinance shall have effect, and shall be deemed always to have had effect, subject to the following amendments. *Company income tax rates.*

(2) In paragraph (a) immediately before "on the first" there shall be inserted "in the case of any person other than a company," and at the end of that paragraph there shall be inserted "and on the remainder, at 25 per cent."

(3) For paragraph (b) there shall be substituted—

"(b) in the case of a company trading through a branch or agency in the Falkland Islands, on all its chargeable income, at the rate of 32.5 per cent;

(c) in the case of any other company, on any part of its income which the company pays to any person not ordinarily resident or company not resident in the Falkland Islands, at the rate of 32.5 per cent. and on all other income, whether distributed or undistributed, at the rate of 25 per cent."

(4) For the words "the rate specified in paragraph (a) or (b) respectively" there shall be substituted "the lower or the higher rate specified in paragraph (a) respectively".

5. The following sections shall be substituted for section 25 of the 1994 Ordinance— *Corporation tax amendments.*

25. Subject to section 28, corporation tax for a corporation tax year charged on the income of an accounting period shall be due and payable on the day following the expiry of 8 months from the end of that accounting period (whether or not the tax has been assessed). *Corporation tax time for payment.*

25A.—(1) Where in any accounting period the chargeable income of a company does not exceed the lower maximum amount, the company may claim that its chargeable income for that period shall be charged to tax at the rate of 25 per cent. ("the small companies' rate of corporation tax").

Corporation tax rates.

(2) Where in any accounting period the chargeable income of a company exceeds the lower maximum amount but does not exceed the higher maximum amount, the company may claim that the amount of corporation tax charged on its chargeable income for that period shall be equal to—

$$EL + M(I - L),$$

where L is the lower maximum amount,

E is the small companies' rate of corporation tax;

M is the marginal tax rate, and

I is the amount of its chargeable income for that period.

(3) Any reference in subsections (1) and (2) above to a company's chargeable income for any period is a reference to the amount of that income less the amount of any ring fence income and any franked investment income of the company for that period.

(4) Subject to subsections (1) and (2) above, the chargeable income of any company, including any ring fence income, shall be charged to tax at the rate of 32.5 per cent.

(5) In this section, in relation to the accounting period of a company—

(a) the lower maximum amount for that period—

(i) if at any time in that period the company has any associated companies is—

$$\frac{\pounds 1,000,000}{1 + A}$$

where A is the number of associated companies; or

(ii) if sub-paragraph (i) does not apply, £1,000,000;

(b) the higher maximum amount for that period—

(i) if at any time in that period the company has any associated companies is—

$$\frac{\pounds 3,000,000}{1 + A}$$

where A is the number of associated companies; or

- (ii) if sub-paragraph (i) does not apply, £3,000,000; and
 (c) the marginal tax rate is—

$$\frac{BC - DE}{B - D} \text{ per cent.}$$

where B is the higher maximum amount,
 C is the rate of corporation tax specified in subsection (4) above;
 D is the lower maximum amount, and
 E is the small companies' rate of corporation tax.

- (6) For the purposes of subsection (5)(a) and (b) above—
 (a) a company is associated with another at any time if at that time one of them has control of the other or both are controlled by the same person or persons; and
 (b) an associated company which has not carried on any business during the accounting period in question or, if associated for part only of that period, during that part, shall be disregarded.

Section 165A shall apply for the purposes of this subsection.

(7) In relation to any accounting period of less than 12 months, the higher maximum amount and the lower maximum amount shall be proportionately reduced.

6. The following section is substituted for section 39 of the 1994 Ordinance 1994—

Changes in rate of ACT

39. If ACT for any corporation tax year is charged otherwise than as it has been paid or assessed, the necessary adjustment shall be made by discharge or repayment of tax or by a further assessment.

Changes in rate of ACT.

7.—(1) Part IV of the 1994 Ordinance shall have effect subject to the following amendments.

Amendments to Part IV of the 1994 Ordinance (POAT).

(2) In section 80B—

- (a) in subsection (1) omit “of assessment”, and at the end of paragraph (b) insert “in that year”;
 (b) in subsection (2) omit “of assessment” (in the first place where it appears) and for “for a year of assessment during” substitute “during a year in”; and
 (c) in subsections (4)(a) and (6)(b) omit “of assessment”.

(3) In section 81(5) after subsection (5) insert—

(5A) Without prejudice to section 82(2), in any case where—

- (a) an employer has failed to comply with any requirement of the POAT regulations to account to the Commissioner for any sum on account of the liability of an employee of his to income tax, and
- (b) the Commissioner has not recovered that sum from the employer under subsection (5) above or section 86 or otherwise,

then subsection (5) does not have effect to prevent the Commissioner from recovering any such income tax as is mentioned in paragraph (a).

(4) In section 82 in subsection (2) at the beginning insert “Subject to subsection (2A)” and after that subsection insert—

(2A) Subject to subsections (2B) and (2C) below, subsection (2) above shall apply only in relation to any deduction made in respect of an employee by his employer where the employer—

- (a) is resident in the Falkland Islands or trading through a branch or agency in the Falkland Islands at the time the deduction is made, and
- (b) fails to account to the Commissioner for the deduction in accordance with the POAT regulations or otherwise, and
- (c) before the end of second year of assessment following the year in which the deduction was made, is either adjudicated bankrupt or (in the case of a company) is insolvent and has had a winding-up order made in respect of it.

(2B) Subsection (2) above shall not apply in relation to any deduction as respects which the Commissioner notifies the employer and the employee that the Commissioner has determined that subsection (2) shall not apply.

(2C) Subsection (2A) above shall not apply in relation to any deduction as respects which the Commissioner notifies the employer and the employee that the Commissioner has determined that subsection (2A) shall not apply.

(5) In section 83(1)(b) for “any year of assessment other than a year which has not begun at that time” substitute “the year of assessment in which the deduction was made or the immediately following year or any earlier year”.

(6) In section 85 for subsection (2) substitute—

(2) The Governor may make regulations for determining the sums which an employer is, under this Part, required to deduct from payments to any employee of that employer in any year.

(2A) Regulations under this section may require sums to be deducted in accordance with tables prepared, or directions given, by the Commissioner from time to time.

(2B) Sums to be deducted under this Part from payments made by an employer to an employee in any year shall be related to the earned income of the employee under that employer, in such manner as is calculated so far as is possible to achieve the result that the total sum deducted in respect of any employee does not exceed the likely liability of that employee for income tax in respect of that income (but, nevertheless, the regulations, tables or directions, as the case may be, shall not be invalid merely because, for any reason, they fail to achieve that result).

(2C) The amounts to be deducted in respect of any pay period in respect of any employee shall be calculated having regard either—

- (a) to that employee's gross earnings from that employment during the calendar year to date; or
- (b) to the amount of the cash or money earned from that employment during that pay period;

and for the purposes of this subsection "pay period" means the period in respect of which an employee is paid, but the regulations may make such provision as may be necessary to cater for pay periods of differing length and shall, in any case, make provision for monthly and weekly pay periods.

(2D) Regulations under this section may prescribe the times at which employers shall submit information to the Commissioner as to deductions made, the information to be submitted and the time or times at which employers shall pay over to the Commissioner sums deducted under this Part.

(7) In section 85—

- (a) in subsection (3)(a) after "that employer" insert "or in the case of an employee with more than one employer, for all his employers"; and
- (b) in subsection (5)(c) for "level 4" substitute "level 7".

(8) In section 87—

- (a) in subsection (1)(a) for "that year" substitute "the year immediately preceding that year";
- (b) for in subsection (1)(b) for "that year" substitute "that

- year of assessment";
- (c) in subsection (2) omit "of assessment";
 - (d) in subsection (3) in paragraph (a) for "that year" substitute "the year immediately preceding that year", and in the words following paragraph (b) omit "for that year"; and
 - (e) in subsection (4) for all the words preceding "the Commissioner" substitute "If the employee makes a claim before the sixth anniversary of the end of the year of assessment referred to in subsection (3)(a) above" and omit "as mentioned in subsection (3) above".

(9) In section 88 at the beginning insert "(1)", for "level 4" substitute "level 7", and at the end add—

(2) Subsection (1) above does not apply in relation to any failure which is a criminal offence by virtue of any provision of the regulations.

(2A) Any person who fails to comply with any requirement of the POAT regulations to pay any sum to the Commissioner shall be liable to a penalty equal in amount to that sum.

8. —(1) Chapter II of Part V of the 1994 Ordinance (depreciation allowances) shall have effect subject to the following modifications.

Depreciation allowances.

(2) In section 98(1F) after paragraph (e) there shall be inserted—

"(ea) that person ceases to be within the charge to tax in the Falkland Islands in respect of the business for the purposes of which the asset is used;

(eb) the asset ceases to be situated in the Falkland Islands or any designated area, unless its absence is only temporary and not for the purposes of any business carried on (wholly or partly) outside the Falkland Islands and the designated areas;"

(3) In section 98(5) after the definition of "expenditure" there shall be inserted—

"market value", in relation to any asset at any time, means the price which the asset would have fetched if sold in the open market at that time;"

(4) After section 98E(1) there shall be inserted—

"(1A) In any case where—

(a) expenditure not falling within subsection (1)(a) or (c) above is incurred at any time by any person on the

provision of an asset, and

- (b) at any later time that asset begins to be used by that person for the purposes of petroleum exploration and appraisal or for the purposes of a ring fence trade, without any relevant event having occurred in relation to that asset,

then, for the purposes of this Chapter, that person shall be treated as if at that later time he had acquired the asset for the purposes for which it is then used and had incurred expenditure on its acquisition equal to the market value of that asset at that time or equal to his original expenditure on that asset if less (and accordingly such expenditure shall be treated for the purposes of this Chapter as falling within subsection (1)(a) or (c) above, as the case may be)."

(5) At the end of section 98E(6) there shall be added—

"Where an asset has been used otherwise than for the purposes of a ring fence trade, and the market value of the asset on the day he begins to carry on the ring fence trade is less than the amount of expenditure which he is deemed to have incurred, then he shall be deemed to have incurred expenditure equal to that market value on the provision on that asset."

(6) In section 99A(1) after "machinery or plant" where it first occurs there shall be inserted "which is or is to be used for".

9. Section 102 of the 1994 Ordinance shall have effect, and shall be deemed always to have had effect, with the substitution for "section 107" of "section 107(1)(a)".

Depreciation allowances: transfers of businesses

10.—(1) Chapter IV of Part V of the 1994 Ordinance (group relief) shall have effect subject to the following modifications.

Relief for groups and consortia.

(2) In section 111 for subsection (3) there shall be substituted—

"(3) Group relief shall be available in a case where the surrendering company and the claimant company are both members of the same 75 per cent. group.

(3A) Group relief shall also be available in a case where—

- (a) the surrendering company and the claimant company are both members of the same 51 per cent. group, and
- (b) none of the members of the group carries on a ring fence trade at any relevant time.

(3B) Group relief shall also be available where—

- (a) the claimant company is one of two companies each of which directly and beneficially owns 50 per cent. of the ordinary share capital in the surrendering company, and
- (b) none of those three companies carries on a ring fence trade at any relevant time.

(3C) For the purposes of subsections (3A) and (3B) above a time is relevant as respects any company if at that time the company is a member of a 51 per cent. group or is one of three companies two of which directly and beneficially own 50 per cent. of the ordinary share capital of the third.

(3) In section 113—

- (a) in subsection (1) after “only if” there shall be inserted “either” and after “same group” there shall be inserted “or fulfill the requirements of section 111(3B)(a) with respect to each other”;
- (b) in subsection (2) after “same group” there shall be inserted “or begin or cease to fulfill the requirements of section 111(3B)(a)”;

and subsections (4) and (5) shall cease to have effect.

(4) In section 117—

- (a) in subsection (1) for “group claim” there shall be substituted “claim”, and
- (b) in subsection (4) for “paragraph” there shall be substituted “section”.

(5) In section 119 in subsection (2) for the definition of “group claim” there shall be substituted—

“claim” means a claim for group relief under section 111.

(6) In section 119(3)(a) for “a group” there shall be substituted “a 75 per cent. group” and after that paragraph there shall be inserted—

“(aa) two companies shall be deemed to be members of a 51 per cent. group if one is the 51 per cent subsidiary of the other or if both are 51 per cent subsidiaries of a third company;”

(7) In section 119(4) for the words from the beginning to “163” there shall be substituted “For the purposes of the application of section 163 in relation to any provision of this Chapter,”

(8) In section 119(5) for “is a 75 per cent. subsidiary of another” there shall be substituted “owns any share capital in another”.

(9) In section 119(6) for “75” in each place where it occurs there shall be substituted “51 per cent. or 75”, and after that subsection there

shall be added—

“(7) Notwithstanding that at any time a company owns 50 per cent. of the ordinary share capital in another company it shall not be treated as the owner of that share capital for the purposes of this Chapter unless additionally at that time it is directly and beneficially entitled—

(a) to 50 per cent. of any profits available for distribution to equity holders of the other company, and

(b) to 50 per cent. of the assets of the other company available for distribution to equity holders on a winding-up;

and Schedule A1 shall have effect for the purposes of this subsection as it applies for the purposes of section 33A(10)(b).”

(10) In paragraph 1(8)(b) of Schedule A1 to the 1994 Ordinance for all following “if” there shall be substituted “—

(a) in a case where the matter is relevant to section 33A or 46A, the other company is a 51 per cent. subsidiary of the parent company, or

(b) in a case where the matter is relevant to section 119 by virtue of subsection (6) of that section, a 51 per cent., 75 per cent. or (as the case may be) 90 per cent. subsidiary of the parent company, or

(c) in a case where the matter is relevant to section 119 by virtue of subsection (7) of that section, the parent company and a third company each directly and beneficially owns 50 per cent. of the ordinary share capital in the other company.

(11) In the following provisions of that Schedule for each reference to section 119(6) of the 1994 Ordinance there shall be substituted a reference to section 119(6) and (7) of that Ordinance.

(12) In both sections 27A(3) and 119A(2) of the 1994 Ordinance for “in accordance with” there shall be substituted “as a reference to a 75 per cent. group within the meaning of”.

11.—(1) At the beginning of each of sections 133(5), 134(5) and 135(3) there shall be inserted “Subject to section 135A”.

Late assessments in cases of fraud or neglect.

(2) After section 135 there shall be inserted the following section—

Late assessments in cases of fraud or neglect.

135A.—(1) An assessment on any person (“the person in default”) for the purpose of making good to the government a loss of tax attributable to his fraudulent or negligent conduct or the fraudulent or negligent conduct of a person acting on his behalf may be made at any time not later than—

- (a) in the case of an assessment to income tax, 20 years after the 31st August next following the year of assessment to which it relates; and
- (b) in the case of an assessment to corporation tax, 21 years after the end of the accounting period to which it relates.

(2) Where the person in default carried on a business with one or more other persons at any time in the period for which the assessment is made, an assessment in respect of the profits or gains of the business for the purpose mentioned in subsection (1) above may be made not only on the person in default but also on his partner or any of his partners.

(3) If the person on whom the assessment is made so requires, in determining the amount of the tax to be charged for any chargeable period in any assessment made for the purpose mentioned in subsection (1) above, effect shall be given to any relief or allowance to which he would have been entitled for that chargeable period on a claim or application made within the time allowed by this Ordinance.

12. After section 136 there shall be inserted the following sections—

Power to call for documents of taxpayer and others.

136A.—(1) The Commissioner may serve a notice under this section for the purpose of enquiring into the tax liability of any person ("the taxpayer") in any case where he has reasonable grounds for believing—

- (a) that the taxpayer may have failed or may fail to comply with any provision of this Ordinance, and
- (b) that any such failure may have prejudiced or may prejudice the proper assessment or collection of tax;

but he may not otherwise serve a notice under this section.

(2) The provisions of this section are subject to sections 136B and 136C and for the purposes of this section—

Power to call for documents of taxpayer and others.

- (a) "3rd party notice" means a notice under subsection (4) below;
- (b) any reference to a tax liability includes a reference to the amount of the tax liability;
- (c) any reference to a taxpayer's failure to comply with any provision of this Ordinance includes a failure by a person assisting him as mentioned in section 136C(10)(a).

(3) The Commissioner may by notice require a person—

- (a) to deliver to the Commissioner such documents as are in that person's possession or power and as (in the Commissioner's reasonable opinion) contain, or may contain, information relevant to any tax liability to which that person is or may be subject, or
- (b) to give the Commissioner such particulars as the Commissioner may reasonably require as being relevant to any such liability.

(4) The Commissioner may by notice require a person—

- (a) to deliver to the Commissioner, or
- (b) if that person so elects, to make available for inspection by a named officer of the Commissioner,

such documents as are in his possession or power and as (in the Commissioner's reasonable opinion) contain, or may contain, information relevant to any tax liability to which a taxpayer is or may be, or may have been, subject.

(5) A person may comply with a notice under this section by delivering copies of documents instead of the originals if (but only if) any such copy—

- (a) is a facsimile of the original (whether photographic or other), and

(b) where so required by the Commissioner in the case of any documents specified in the notice, the originals are made available for inspection by a named officer of the Board; and references in this section and sections 136B and 136C to documents shall be construed accordingly.

(6) A notice shall not be served on a person under this section unless that person has previously been given a reasonable opportunity to deliver or, as the case may be, to deliver or make available the documents in question or to furnish the particulars in question.

(7) A notice under this section shall specify the time, not being less than 30 days after the date of the notice, within which the documents are to be delivered, or delivered or made available, or the particulars to be furnished.

(8) The Commissioner may take copies of any document to which a notice under this section relates.

*Documents etc
excluded from
section 20
notices.*

136B.—(1) A notice under section 136A may not relate to documentary and other records concerning an individual (whether living or dead) who can be identified from them if—

(a) they relate to his physical or mental health, to spiritual counselling or assistance given or to be given to him, or

(b) they relate to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who—

(i) by reason of his office or occupation has responsibilities for personal welfare, or

(ii) by reason of an order of a court has responsibilities for supervision.

(2) A notice under section 136A may not relate to material acquired or created for the purposes of journalism which is in the possession of a person who acquired or created it for the purposes of journalism; and for this purpose a person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

(3) Any reference in section 136A to particulars does not include a reference to particulars contained in records or material falling within subsection (1) or (2) above.

(4) A notice under section 136A(3) does not oblige a person to deliver documents or furnish particulars relating to the conduct of any pending appeal by him, and a 3rd party notice does not oblige a person to deliver or make available documents relating to the conduct of a pending appeal by the taxpayer.

In this subsection "appeal" means an appeal relating to tax.

*Special
provisions
relating to 3rd
party notices.*

136C.—(1) In this section—

- (a) a "3rd party notice" means a notice under section 136A(4); and
- (b) "taxpayer" has the meaning given by section 136A(1).

(2) A 3rd party notice shall name the taxpayer to whom it relates unless—

- (a) the Commissioner does not know that person's identity or, if the notice relates to a class of taxpayers, those person's individual identities, and
- (c) the Commissioner is satisfied that the information which is likely to be contained in the documents to which the notice relates is not readily available from another source.

(3) A 3rd party notice may relate to the tax liability of a company which has ceased to exist or an individual who has died, but in the case of a taxpayer who has died it may not be served more than 6 years after his death.

(4) A copy of a 3rd party notice which names the taxpayer shall be given to that taxpayer unless the Commissioner has reasonable grounds for suspecting him of fraud.

(5) Subsection (4) above does not require the disclosure of any information if—

(a) it would, or might, identify any person who has provided the Commissioner with any information which he took into account in deciding whether to serve the notice, or

(b) the Commissioner has reasonable grounds for believing that disclosure of the information in question would prejudice the assessment or collection of tax.

(6) Where the taxpayer is not named in a 3rd party notice, the person to whom the notice is given may object to the notice on the ground that it would be onerous for him to comply with it; and if the matter is not resolved by agreement, it shall be referred to the Appeal Tribunal who may confirm, vary or cancel that notice.

Such an objection shall be made by way of notice which shall be given to the Commissioner within 30 days after the date of the 3rd party notice.

(7) A 3rd party notice does not oblige a person to deliver or make available any document the whole of which originates more than 6 years before the date of the notice unless—

(a) the Commissioner has reasonable grounds for believing that tax has, or may have been, lost to the government owing to the fraud of the taxpayer, and

(b) the notice expressly disapplies this subsection.

(8) A 3rd party notice does not oblige a lawyer to deliver or make available, without his client's consent, any document with respect to which a claim to legal professional privilege could be maintained.

(9) Subject to subsections (10) and (11) below, a 3rd party notice—

(a) does not oblige a person who has been appointed as an auditor for the purposes of any enactment to deliver or make available documents which are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment, and

(b) does not oblige a tax adviser to deliver or make available documents which are his property and consist of communications between—

(i) himself and the person whose tax adviser he is, or

(ii) himself and any other tax adviser of that person,

the purpose of which is the giving or obtaining of advice about any of those tax affairs.

In this subsection "tax adviser" means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that other person or by another tax adviser of his).

(10) Subject to subsection (11) below, subsection (9) above shall not have effect in relation to any document which contains information—

(a) explaining any information, return, accounts or other document which the person to whom the notice is given has assisted any other person in preparing for, or delivering to, the Commissioner and which he knows will be, or is likely to be, used for any purpose of tax, or

- (b) in the case of a 3rd party notice which does not name the taxpayer in question, giving the identity or address of any taxpayer to whom the notice relates or of any person who has acted on behalf of any such person.

(11) Subsection (9) above shall not apply in relation to any document if the information referred to in that subsection is contained in some other document, and the person to whom the notice is given either—

- (a) delivers that other document or so much of it as contain the information to the Commissioner, or
- (b) makes that other document, or so much of it as contains the information, available for inspection by an officer of the Commissioner.

13.—(1) Section 145 (penalties relating to fraud etc.) shall be amended as follows—

Criminal and civil penalties.

- (a) in paragraph (d) of subsection (1) after "records" (in both places) there shall be inserted "or any other document";
- (b) after that paragraph there shall be inserted—

"(da) destroys or conceals any document which he is required to deliver to the Commissioner or which he is required to make available for inspection by an officer of the Commissioner, or any document which he has been put on notice may be made the subject of such a requirement";

- (c) in subsection (3) after "he is liable" there shall be inserted "or for which the person whom he has assisted is liable, as the case may be,"; and
- (d) after subsection (3) there shall be inserted—

(3A) A person does not commit an offence under subsection (1)(da) above if he destroys a document—

- (a) with the written permission of the Commissioner, or
- (b) after he has delivered the document in question to the Commissioner or has made it

available for inspection by an officer of the Commissioner.

(2) In section 146 (penalties for failure to make returns etc.) In subsection (1) at the end of paragraph (c) there shall be added "or

(d) fails to deliver any document to the Commissioner or to make any document available for inspection by an officer of the Commissioner;"

(3) In section 149 (time within which prosecutions may be brought) after subsection (2) there shall be inserted—

(3) Where the Commissioner did not know and had no reasonable grounds for suspecting that an offence has been committed or that a penalty was due, the 6 years referred to in subsections (1) and (2) above shall not begin to run until the end of the period in which the Commissioner did so know or had reasonable grounds for so suspecting.

14.—(1) Section 151 of the 1994 Ordinance shall have effect *UK tax agent.* subject to the following amendments.

(2) In subsection (1) for "residing in the United Kingdom" there shall be substituted "resident or ordinarily resident or carrying on business through a branch or agency in the United Kingdom".

(3) The following subsection shall be inserted after subsection (2)—

(2A) The Commissioner may authorise an agent appointed under this section to issue assessments in the name of the Commissioner.



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The Criminal Law (Amendment) Bill 1997;
Evidence (Amendment) Bill 1997;
Currency (Amendment) Bill 1997;
Abattoirs Bill 1997;
Misuse of Drugs (Amendment) Bill 1997.

EXPLANATORY MEMORANDUM

CRIMINAL LAW (AMENDMENT) BILL 1997

Introductory

The Criminal Law (Amendment) Bill 1997 would, if enacted, make a number of miscellaneous, but important, amendments to laws of the Falkland Islands relating to criminal law and particularly the Crimes Ordinance 1989, the Criminal Justice Ordinance 1989 and the Criminal Justice (Amendment) Ordinance 1991. The subjects in relation to which amendments would be made include a number of amendments in relation to offensive weapons, an amendment in relation to the unlawful discharge of a firearm, amendments in relation to money laundering and other similar offences, amendments to the jurisdiction of Falkland Islands courts in relation to certain offences of dishonesty and blackmail and as to trespassers and new provisions in relation to video recordings. The Bill would also provide additions to arrestable offences, major amendments in relation to confiscation orders and include new provisions in relation to the investigation of criminal conduct as well as a number of minor amendments.

Clause 1

This clause provides that the Bill, if enacted, shall come into force on such date as is appointed by the Governor by notice published in the Gazette.

Clause 2 and Part I of Schedule 1

Clause 2 and Part I of Schedule 1 to the Bill would have effect to make a number of amendments associated with offensive weapons to the Crimes Ordinance 1989 and the Criminal Justice Ordinance 1989. The detail is set out in Part I of Schedule 1. Paragraph 1 of that Schedule would replace the existing section 14(6) of the Crimes Ordinance 1989 so as substantially to increase the maximum punishment available for an offence of having an article with a blade or point in a public place by increasing the maximum fine which can be imposed and providing that, in the worst cases, a sentence of imprisonment can be imposed upon an offender. This provision and the provisions of paragraphs 2 and 3 of Schedule 1 are modelled on provisions of the Offensive Weapons Act 1996 of the United Kingdom. That Act was a response to increasing concern about a "knife culture", that is to say the carrying and use of knives particularly amongst the young and on school premises. While there has been no serious problem in the Falkland Islands of the kind that has been experienced in the United Kingdom, it would appear sensible for legislation to be pro-active in this respect.

Paragraph 2 in Part I of Schedule 1 to the Bill would insert a new section 14A in the Crimes Ordinance 1989, modelled on the new section 139A inserted in the Criminal Justice Act 1988 of England by section 4 of the Offensive Weapons Act 1996. The provision is necessary because the offences of possession of knives or offensive weapons contrary to section 1 of the Prevention of Crime Act 1953 (in its application to the Falkland Islands) or section 14 of the Crimes Ordinance 1989 are restricted as they can only be committed in a *public place* (which for these purposes is defined as

"any highway and any other premises or place to which at the material time the public have or are permitted to have access, whether by payment or otherwise"). Although the public have a right of access to the school if they have legitimate business, this does not make the school premises public, as the class of persons invited to enter is very restricted.

The Bill does not, however, include provisions equivalent to section 139B of the Criminal Justice Ordinance 1989 (also inserted by the Offensive Weapons Act 1996) which give powers of entry to police officers without a warrant or permission to search for articles with a blade or point and offensive weapons upon school premises. It is considered that such provisions are not, in present circumstances, justified in the Falkland Islands. A police officer could, it is believed, search school premises without such a provision at the invitation or with the permission of the head of the school.

Paragraph 3 of Part I of Schedule 1 to the Bill would insert a new section 104A in the Criminal Justice Ordinance 1989. This would confer a power upon police officers to stop and search persons, vehicles etc if the police officer reasonably believed that the search would disclose an article which has a blade or is sharply pointed (except a penknife) or a cross bow or an offensive weapon with which a person had committed, was committing or was about to commit an offence of carrying an offensive weapon in a public place or an offence under section 14 of the Crimes Ordinance 1989 relating to objects with a blade or a sharp point. The provision is not intended to, nor will it, confer arbitrary powers to stop and search a person. The new section 104B of the Criminal Justice Ordinance 1989 which would also be inserted contains protective provisions, among which is a provision requiring a police officer, if he searches a person under section 104A to state the object of the proposed search and his grounds for proposing to make it and the effect of the new section 104C(7) or (8), whichever is appropriate. The new section 104C which would be inserted in the Criminal Justice Ordinance 1989 requires records to be made concerning searches under section 104A.

Part II of Schedule 1 to the Bill would replace section 25A of the Firearms and Ammunition Ordinance 1987 with a new section 25A. The purpose of doing so is to extend the operation of the section to the discharge of a firearm in a public place or upon any land or in any building without the consent of the occupier or from a motor vehicle or bicycle into a public place or onto anybody else's land, and to provide an offence of entering any land or building while carrying a firearm without the consent of the person in occupation of the land or building concerned.

Clause 4

Section 4 of the Bill would have the effect of modifying the application under the Crimes Ordinance 1989 of the Protection of Children Act 1978 by extending the application of the section so as to include section 1(6), (7) and (8) of the 1978 Act which were inserted by section 84(1)(c) of the Criminal Justice and Public Order Act 1994. The purpose of doing so is to strike at computer pornography, which is a comparatively new phenomenon. The effect is to extend section 1 of the 1978 Act, in its application to the Falkland Islands, to a picture, simulated by computer graphics or by other means, which appears to be an indecent photograph of a child ("a pseudo-photograph"). The definition of "pseudo-photograph" is wide enough to cover an

image (which appears to be a photograph) made by any form of technology. This would include images received via telephone transmission (fax or otherwise) or bulletin boards. The purpose is to preclude a defence that a "pseudo-photograph" is not a photograph caught by the section. Consequential amendments will be made by clause 4(2) to section 22 of the Crimes Ordinance 1989, so as to extend that section to cover pseudo-photographs of children.

Clause 5

Clause 5 of the Bill would alter the item in Part I of Schedule 1 of the Crimes Ordinance 1989 (application of provisions of English criminal law statutes) relating to the Criminal Justice Act 1988 so that it includes some provisions in relation to money-laundering. These provisions are sections 93A to 93G(1) and (5). These sections were inserted in the Criminal Justice Act 1988 of England by section 29(1) of the Criminal Justice Act 1993.

Money-laundering can be a domestic problem (ie are generated in the Falkland Islands) if proceeds of crime here are "laundered" and "invested" here. Because of the circumstances of Falkland Islands society that, happily, is not at present a cause of concern. But the Falkland Islands are committed, as part of the international effort against laundering of criminal profits (including but not limited to activities of organised criminal gangs) to co-operate with overseas authorities in tracing and recovering proceeds of crime committed elsewhere which may have been "invested" in the Falkland Islands.

Section 93A of the Criminal Justice Act 1988 relates to the offence of assisting another to retain the benefit of criminal conduct and section 93B relates to the offence of a person acquiring or using property knowing that in whole or in part it directly or indirectly represents another persons proceeds of criminal conduct. Section 93C of the Criminal Justice Act 1988 relates to the offence of concealing or disguising any property which is or in whole or in part directly or indirectly represents, the criminal's proceeds of criminal conduct or the conversion or transfer of that property or removal of it from the jurisdiction (the Falkland Islands) for the purpose of avoiding prosecution for an offence to which the provision applies. Section 93D creates an offence of "tipping off" a person that a police officer is acting or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering and disclosing to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation. Section 93G(5) and (6) make it an offence for a Crown servant to assist in money-laundering activities and bring him or her within the scope of the previous sections.

Clause 6

Clause 6 of the Bill would apply as law of the Falkland Islands certain provisions of the Video Recordings Act 1984. The principle effect of applying these provisions would be that it would become an offence to supply or offer to supply a non-exempt uncertificated video or to supply a certificated video marked "12", "15" or "18" to a person apparently under the relevant age, and not known to the supplier to be over that age.

An effect of clause 6 of the Bill would be to apply sections 1 to 6 of the Criminal Justice Act 1993 as law of the Falkland Islands. The purpose of doing so is to extend the jurisdiction of courts in the Falkland Islands so as to enable them to try a range of offences contrary to the Theft Acts of 1968 and 1978 (including blackmail) which apply in the Falkland Islands and offences contrary to the Forgery and Counterfeiting Act 1981 (which apply in the Falkland Islands), where there is a significant foreign element in the commission of the offence. At common law, jurisdiction is determined by reference to the place where the last act or event took place or was intended to take place and, as a general rule, that is so whether the offence falls within the category of "conduct crime" (for example, theft) or in the category of being a "result crime" (for example the offence of obtaining property by deception). For purposes of sections 1 to 6 of the Criminal Justice Act 1993, this test would no longer apply. All that would be required (for the full offence) is that one or more of the ingredients of the offence occurred in the Falkland Islands. The Criminal Law Act 1977 and the Criminal Attempts Act 1981, in their application to the Falkland Islands, have also been amended (automatically in their application to the Falkland Islands) so that a conspiracy (or an attempt) to commit certain offences abroad, will now be triable in the Falkland Islands (if certain conditions are fulfilled, including a test of "double criminality" in respect of conspiracies and attempts to commit an offence wholly abroad). Sections 5 and 6 of the 1993 Act would have effect to give Falkland Islands courts jurisdiction over incitements, conspiracies and attempts which are performed in the Falkland Islands, but which are aimed at the commission abroad of an equivalent substantive offence to those listed in "Group A" in section 1 of the 1993 Act. This would have the effect that persons who conspire here to defraud victims in, say, St Helena, will commit an offence contrary to Falkland Islands law and they will now be triable in the Falkland Islands.

The problems giving rise to Part I of the 1993 Act was summarised by the English Law Commission as stemming from the nature of "modern crimes of dishonesty" which the Commission said-

often involve complex operations designed to conceal the dishonest conduct and to make detection and conviction as difficult as possible, and the planning, preparation and execution of the many operations which are involved in a complicated swindle frequently take place in several different countries. Under the present law none of the participants can be prosecuted here unless the *last* event which make up the underlying crime occurs in [the Falkland Islands]. Moreover, in cases in which those concerned are detected before they have completed their purpose, it is unlikely that they will be prosecuted in the country where they plan to reap the benefit, and because the underlying crime was not completed here they cannot be tried in [the Falkland Islands] in the result, they will in all probability not be convicted anywhere.

The purpose of section 1 of the 1993 Act is to particularise those offences to which the new provisions in respect of jurisdiction apply. In Group A are theft, obtaining property by deception, obtaining pecuniary advantage by deception, false accounting, false statements by company directors etc, procuring execution of a valuable security by deception, blackmail, handling stolen goods, obtaining services by deception, avoiding liability by deception, forgery, copying a false instrument, using a false instrument, using a copy of a false instrument, offences in relation to money orders, share certificates, passports etc and the common law offence of cheating in relation to the public revenue. The Group B offences are conspiracy to commit a Group A

offence, conspiracy to defraud, attempting to commit a Group A offence and incitement to commit a Group A offence. There are two separate lists because the rules applicable to determine jurisdiction in respect of either a Group A or Group B differ. For the commission of a Group A offence there must be proof that a "relevant event" took place in the Falkland Islands, even if the result occurred abroad.

At common law, the general rule is that jurisdiction will be assumed by the courts of the Falkland Islands where the *last* act or event (which is required to be performed to complete the offence) took place in the Falkland Islands. This is because a crime (amounting to the full offence) is clearly not committed until all relevant acts or events making up that offence have been performed.

In respect of Group B offences, different rules apply depending on whether the offence is a conspiracy or an attempt and to whether the offence relates to an offence to be committed in this country or abroad.

Section 2(1) of the 1993 Act defines "relevant event" as being any act or omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence. Section 3(1) provides that it is irrelevant whether a person was a British Citizen at any material time or was in the Falkland Islands at any such time. Section 3(2) provides that on a charge of conspiracy to commit a Group A offence, or on a charge of conspiracy to defraud in the Falkland Islands, the defendant may be guilty of the offence whether or not he became a party to the conspiracy in the Falkland Islands and whether or not any act or omission or other event in respect of the conspiracy occurred in the Falkland Islands.

Section 3(3) of the 1993 Act provides that on a charge of attempting to commit a Group A offence, the defendant may be guilty of the offence whether or not the attempt was made in the Falkland Islands or had an effect in the Falkland Islands.

Section 4 of the 1993 Act provides that there is an obtaining of property in the Falkland Islands if the property is either dispatched from or received at a place in the Falkland Islands and there is a communication in the Falkland Islands of any information, instruction, request, demand or other matter if it is sent by any means from a place in the Falkland Islands to a place elsewhere or from a place elsewhere to a place in the Falkland Islands.

Section 5 of the 1993 Act inserts a new section 1A in the Criminal Law Act 1977, inserts a new section 1A in the Criminal Attempts Act 1981 and provides in section 5(3) that a person may be guilty of conspiracy to defraud if a party to the agreement constituting the conspiracy, or a parties agent, did anything in the Falkland Islands in relation to the agreement before its formation, or a party to it became a party in the Falkland Islands (by joining it either in personal or through an agent) or a party to it, or a parties agent, did or omitted anything in the Falkland Islands in pursuance of it if (and only if) the conspiracy would be triable in the Falkland Islands but for the fraud which the parties to it had in view not being intended to take place in the Falkland Islands. Section 6 of the 1993 Act deals with the relevance of external law.

Clause 6 of the Bill would also apply as law of the Falkland Islands sections 68, 69, 75 and 76 of the Criminal Justice and Public Order Act 1994.

Section 68 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act") relates to an offence of aggravated trespass. It provides that people who trespass on land and seek to deter by intimidation, obstruct or disrupt other people engaged in a lawful activity commit a summary offence of aggravated trespass. For the section to apply there must be a trespass on land in the open air. The offence can be committed by one person: the section does not require him to be with others. The person trespassing must do some act which is *intended* to intimidate other persons lawfully on the land from carrying on a lawful activity (but it need not have that effect). That intention must be shown by the defendant doing something.

Section 69 of the 1994 Act gives the police power to remove persons committing or participating in aggravated trespass.

Section 75 of the 1994 Act relates to an offence of making a false or misleading statement for the purpose of obtaining an interim possession order from a court against a trespasser and section 76 of the Act provides that where an interim possession order has been made in respect of any premises and served in accordance with Rules of Court any person who is present on the premises as a trespasser at any time during the currency of the order commits an offence unless he leaves the premises within 24 hours of the time of the service of the order (and does not return) or a copy of the order is fixed to the premises in accordance with Rules of the Court.

Clause 7

Clause 7 of the Bill would add to the list of offences for which a police officer might arrest a person without a warrant. All of those offences are offences for which a person may, in England, be arrested by a police officer without a warrant.

Clause 8

Clause 8 of the Bill would amend the Criminal Justice Ordinance 1989 in the manner specified in Schedule 2 to the Bill. The amendments relate to the recovery of the proceeds of crime by confiscation orders. The amendments to Part IIIA of the Criminal Justice Ordinance 1989 ("the 1989 Ordinance"), which empowers the courts to confiscate from defendants in certain criminal cases the proceeds of offences do not apply to confiscation of the proceeds of drug trafficking offences (as to which see the Drug Trafficking Offences Ordinance 1989). Paragraph 2 of Schedule 2 to the Bill, which would amend section 49 of the 1989 Ordinance, would make two significant changes to the present law. First, it would place a duty upon the court to exercise its powers to order confiscation in every case in which written notice has been given by the prosecutor. Under the existing law, while the court might in any appropriate case exercise its powers, it has not been placed under a specific duty to do so. It will be for the prosecutor, primarily, to bring to the attention of the court the relevance of considering the making of a confiscation order. Apart from cases where the prosecutor has served a notice, the court retains its power to pursue the matter and to make a confiscation order of its own volition.

The second change is the abolition of the present rule which restricts the making of orders to cases in which at least £10,000 is expected to be recovered. If the Bill is

enacted there will be no minimum figure but it may well be that the £10,000 figure would, because of the cost of pursuing confiscation of assets, continue to be the floor figure for most practical purposes.

The offences in relation to which a confiscation order could be made would be -

- (a) any offence which, if that offence had been committed in England, would be triable in England before a judge and jury;
- (b) any offence which in the Falkland Islands is triable only before the Supreme Court, and not before any lower court; and
- (c) any offence under the Fisheries (Conservation and Management) Ordinance 1986.

The explanation for including special provision in relation to offences under that Ordinance is that an offence under that Ordinance can involve the illicit acquisition of fish of a value exceeding the amount of the maximum fine for the offence available under the Ordinance. Fines, in any case, are intended to be imposed by way of punishment and while there is nothing, in principle, to prevent a fine being increased by the amount of the ill-gotten gains, it is better that those be dealt with by way of confiscation order rather than by way of fine. A confiscation order in relation to fish on board a fishing vessel is, of course, available where the vessel is in port in the Falkland Islands at the time the offence is tried. Where the vessel has been allowed to depart, pending trial, that is not, however, the case.

Paragraph 3 would repeal section 50(1) to (4) of the 1989 Ordinance because those subsections would be inconsistent with the amendments which would be made by paragraph 2 of that Schedule to section 49 of the 1989 Ordinance.

Paragraph 4 of Schedule 2 to the Bill would insert new sections 50A and 50AA in the Crimes Ordinance 1989.

Under the existing provisions of the 1989 Ordinance, confiscation orders can only be made in respect of the offence (or offences) in respect of which the defendant is convicted and any offence (or offences) which he specifically requests the court to take into consideration. This can cause a number of practical difficulties: one example is that illustrated by pornographic computer disks. A criminal may copy and distribute thousands of such disks a month, but the production of each disk will constitute a separate offence. Under the present law, for the entire proceeds of that criminal enterprise to be confiscated, every offence would have to be charged and convicted separately or taken into consideration by the court. For that reason the new section 50A would empower the court to make either or both of two assumptions relating to the defendant (which he could rebut by evidence). The first assumption would be that all property held by the defendant at the date of his conviction or at any time between that date and the making of the order, is assumed to be the proceeds of his criminal activity. The second assumption is that any property which has passed through the defendant's hands in the six years prior to the institution of the current proceedings against him is also assumed to represent the proceeds of his criminal activity. The court would not, however, be able to make the assumption where it has proceeded of

its own motion to assess the issue. An important further restriction would be that the assumptions could only be made where the defendant has been convicted of a "relevant offence" (that is to say the offences mentioned above as those to which the provisions apply) in previous proceedings within the last six years, or where the defendant is convicted of at least two relevant offences in the present proceedings.

The new section 50AA which would be inserted in the 1989 Ordinance would confer power on the court to postpone consideration of the making of a determination that the defendant has benefited from any relevant criminal conduct and would make supplemental provision in relation to any such postponement.

Paragraph 5 of Schedule 2 to the Bill would make a number of amendments to section 51 of the 1989 Ordinance. One of the effects of the amendments made would be to require the prosecutor in the circumstances mentioned in the new subsection (1) to tender to the court a statement containing information relevant as to whether the defendant has benefited from relevant criminal conduct and the value of any such benefit (see the new subsection (1A)). Where the prosecution tenders such a statement the defendant would be asked by the court or by the prosecutor specifically whether he admits the allegations contained in the statement. If he does admit them, that admission is conclusive for the purposes of the proceedings and for the purposes of any appeal against the confiscation order.

The new section 51A, which would be inserted in the 1989 Ordinance by paragraph 6 of Schedule 2 to the Bill, would empower the court to order the defendant to give it information to assist it in carrying out its functions of deciding whether a confiscation order should be made. A failure to comply with an order made by a court under the new section 51A would be punishable as a contempt of court.

Paragraph 7 of Schedule 2 to the Bill would insert a new section 52A in the 1989 Ordinance. This new section would allow for questions relating to confiscation orders to be reopened where the court did not proceed against the defendant for the making of a confiscation order, but where further and contrary evidence comes to light within a period of time not exceeding six years from the date of the relevant conviction.

Paragraph 8 in Schedule 2 to the Bill would insert a new section 52B in the 1989 Ordinance. That section would allow for questions relating to confiscation orders to be reopened in cases where the court made an original determination that the defendant had not benefited from his offending, but where further and contrary evidence comes to light within a period of time not exceeding six years from the date of the relevant conviction.

Paragraph 9 of Schedule 2 to the Bill would insert a new section 52C in the 1989 Ordinance. This new section would allow for a revision of an earlier assessment of the amount to be recovered from the defendant under a confiscation order. The matter could be reopened where further evidence of the true extent of that benefit comes to light within a period of time not exceeding six years from the date of the relevant conviction.

Paragraph 10(1) would amend the present law by, in effect, providing that where a defendant serves a term of imprisonment or detention in default of payment of a confiscation order, the serving of that term would not expunge the obligation to pay the full sum which is due under the order.

Paragraph 11 of Schedule 2 to the Bill would insert a new section 53A in the 1989 Ordinance. That new section would make it clear that whenever a sum required to be paid under a confiscation order is not paid forthwith, or at the date specified by the court, the court could charge interest upon the outstanding sum.

Paragraph 12 of Schedule 2 to the Bill would insert a new section 56A in the 1989 Ordinance which would apply the provisions of the Land Charges Ordinance 1996, requiring registration, in the same way as that Ordinance applies in relation to the registration of orders or writs issued or made for the purpose of enforcing judgments.

Paragraph 13 of Schedule 2 to the Bill would amend section 60 of the 1989 Ordinance relating to the variation of a confiscation order upon application by a receiver.

Paragraph 14 of Schedule 2 to the Bill would take into account the fact that, subsequent to the enactment of the Criminal Justice Ordinance 1989, the application of the Insolvency Act 1986 in the Falkland Islands was, for the time being, brought to an end until such time as the modifications to it which would be required to give effect to it in the Falkland Islands could be determined. The effect of the amendment is to apply the relevant provisions of the Bankruptcy Act 1914 which form part of the law of the Falkland Islands.

Paragraph 15 of Schedule 2 to the Bill would insert a new section 65AA in the 1989 Ordinance containing provisions as to the interpretation of Part IIIIA of the 1989 Ordinance.

Clause 9

Clause 9 of the Bill would insert new sections 127A, 127B and 127C in the Criminal Justice Ordinance 1989. The new section 127A would permit a police officer, with the consent in writing of the Attorney General, to apply to the court for an order permitting the obtaining of relevant material for use in making an assessment for a confiscation order.

The new section 127B would allow a police officer, with the consent in writing of the Attorney General, to obtain from the Senior Magistrate a warrant authorising him to conduct a search for material which might constitute evidence that a person has benefited from criminal conduct or as to the extent or whereabouts of the proceeds of any criminal conduct. "Relevant criminal conduct" has the same meaning as it has under section 49(9) explained above.

The new section 127C would bring information in the possession of the Falkland Islands Government into the same position as that held by anybody else, for the purposes of an investigation into whether any person had benefited from relevant criminal conduct.

Clause 10

Clause 10 of the Bill would make a minor amendment to section 10 of the Criminal Justice (Amendment) Ordinance 1991, the effect of which would be to enable and order preventing the disposal of property in the Falkland Islands where an overseas forfeiture order, enforceable in the Falkland Islands, had not yet been made but is about to be made.

Clause 11

Clause 11 of the Bill would make a procedural amendment enabling a court to convict a person acquitted of a more serious offence if, on the evidence, he could be convicted of a less serious offence of which in England, under the provision of English law adopted as law of the Falkland Islands he could have been so convicted.

Clause 12

Clause 12 of the Bill read with Schedule 3 to the Bill -

(a) would amend section 4(5) of the Criminal Justice Ordinance 1989 by extending the power to vary fines payable on the standard scale so as to cover reasons other than a drop in the value of money;

(b) would amend provisions of the Criminal Justice Ordinance 1989 so as to increase to 18 the age of the persons affected by those provisions;

(c) would exclude the application in the Falkland Islands of section 12 of the Theft Act 1968, which relates to taking vehicles without consent, because provision is made by section 9P of the Road Traffic Ordinance in relation to that subject; and

(d) would repeal section 9P(4) of the Road Traffic Ordinance because it is no longer necessary.

Criminal Law (Amendment) Bill 1997

(No: of 1997)

ARRANGEMENT OF PROVISIONS

Clause

- 1. Short title and commencement.
- 2. Amendments to the law in respect of offensive weapons.
- 3. Amendment of Firearms and Ammunition Ordinance 1987.
- 4. Indecency involving children.
- 5. Application of provisions of the Criminal Justice Act 1988.
- 6. Further amendments to Part I of Schedule 1 to the Crimes Ordinance 1989.
- 7. Amendment of section 129(2) of the Criminal Justice Ordinance 1989.
- 8. Amendments of provisions of the Criminal Justice Ordinance 1989 in relation to confiscation orders.
- 9. New sections 127A to 127C of the Criminal Justice Ordinance 1989.
- 10. Amendment of section 10 of the Criminal Justice (Amendment) Ordinance 1991
- 11. Alternate offences.
- 12. Minor amendments.

Schedule 1

Schedule 2

Schedule 3

CRIMINAL LAW (AMENDMENT) BILL 1997

(No: of 1997)

A BILL

for

AN ORDINANCE

(assented to: 1997)

(commencement: in accordance with section 1)

(published: 1997)

An Ordinance to amend the criminal law of the Falkland Islands

BE IT ENACTED by the Legislature of the Falkland Islands as follows—

Preliminary

Short title and commencement

1. This Ordinance may be cited as the Criminal Law (Amendment) Ordinance 1997 and shall come into force on such date as may be appointed by the Governor by notice published in the *Gazette*.

Offensive weapons

Amendments to the law in respect of offensive weapons

2. Part I of Schedule 1 to this Ordinance shall have effect to make a number of amendments associated with offensive weapons to the Crimes Ordinance 1989 and the Criminal Justice Ordinance 1989.

Firearms

Amendment of Firearms and Ammunition Ordinance 1987

3. Part II of Schedule 1 to this Ordinance shall have effect to replace section 25A of the Firearms and Ammunition Ordinance 1987.

Obscenity and pornography

Indecency involving children

4.(1) Part 1 of Schedule 1 to the Crimes Ordinance 1989 is amended in the material appearing therein as to the application in the Falkland Islands of provisions of the Protection of Children Act 1978 by replacing the words appearing between the words "**Extent of application**" and the word "**Modifications**" with the words "The whole Act except section 8 and section 9(2) and (3)" (and so as to apply to the Falkland Islands section 1(6), (7) and (8) of that Act, which were inserted by section 84(1)(c) of the Criminal Justice and Public Order Act 1994).

(2) Section 22 of the Crimes Ordinance 1989 (which makes provision corresponding with that made by section 160 of the Criminal Justice Act 1988) is amended—

(a) in subsections (1), (2) and (5) by inserting the words "or pseudo-photograph" after the word "photograph" wherever it appears in those subsections; and

(b) in subsection (3), by replacing all words appearing therein after the word "liable" with the words "to imprisonment for a term not exceeding six months or to a fine not exceeding the maximum of level 5 on the standard scale"

Money laundering and other offences

Application of provisions of the Criminal Justice Act 1988

5. Part 1 of Schedule 1 to the Crimes Ordinance 1989 is amended by replacing the material appearing therein relating to the application of certain provisions of the Criminal Justice Act 1988 with the following material (and so as to additionally apply certain provisions of that Act in relation to money laundering and associated activities)—

"CRIMINAL JUSTICE ACT 1988 (1988 c.33)

Extent of application

Sections 39, 46(2) and 46(3), 93A, 93B, 93C, 93D and 93G(1) and (5), 141, 142, 160, and 173

Modifications

1. Section 93A shall be construed as if the following appeared therein in place of subsections (6) and (7)—

“(6) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding fourteen years or to a fine unlimited in amount.

“(7) In this Part of this Act “criminal conduct” means conduct which constitutes an offence to which this Part of this Act applies or would constitute such an offence if it had occurred in the Falkland Islands”.

2. Section 93B shall be construed as if the following appeared therein in place of subsection (9)—

“(9) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding fourteen years or to a fine unlimited in amount.”

3. Section 93C shall be construed as if the following appeared therein in place of subsection (4)—

“(4) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding fourteen years or to a fine unlimited in amount.”

4. Section 93D shall be construed as if the following appeared therein in place of subsections (7) and (9) respectively—

“(7) In this section “money laundering” means doing any act which constitutes an offence under section 93A, 93B or 93C above or, in the case of an act done otherwise than in the Falkland Islands, would constitute such an offence if done in the Falkland Islands.” and

“(9) A person convicted of an offence under this section is liable to imprisonment to imprisonment for a term not exceeding five years or to a fine unlimited in amount.”

5. Section 93G shall be construed as if the words “The Governor” replaced the words “The Secretary of State” wherever those words appear in subsections (1) and (5) and as if in the definition of “the Crown” in subsection (5)—

(a) the word “includes” were replaced by the word “means”; and

(b) the words “Northern Ireland” were replaced by the words “Falkland Islands”.

6. Section 141 shall be construed as if—

(a) in subsection (2)(a) the words “the Firearms and Ammunition Ordinance 1987” replaced the words “the Firearms Act 1968”;

(b) in subsection (3) the words “the Legislative Council” replaced the word “Parliament”;

(c) in subsections (5)(b) and (8)(b) the words “sections 180 to 183 inclusive of the Customs Ordinance” replaced the words “section 50(2) or (3) of the Customs and Excise Management Act 1979” where they appear in those provisions; and

(d) in subsection (7) the words “section 2(1) of the Offshore Minerals Ordinance 1994” replaced the words “section 1(7) of the Continental Shelf Act 1964”.

7. Section 142 shall be construed as if—

(a) in subsection (1) the words and parentheses “(including in Scotland, the sheriff)” were omitted; and

(b) subsection (4) were omitted.

Provisions in relation to jurisdiction of the courts of the Falkland Islands in relation to certain offences of dishonesty and blackmail and provisions as to trespassers

Further amendments to Part 1 of Schedule 1 to the Crimes Ordinance 1989

6. Part 1 of the Schedule 1 to the Crimes Ordinance 1989 is further amended by inserting the following in Part 1 of that Schedule immediately following the material related to the application of certain provisions of the Broadcasting Act 1990—

“VIDEO RECORDINGS ACT 1984 (1984 c.39)

Extent of application

Sections 1, 2, 3(1) to (5), (8), (10) (a) and (c) and (12) and 9 to 23, except sections 12(2)(b), (4)(b), (5) and (6), 16A and 20.

Modifications

Any reference in the applied provisions to a classification certificate having been issued in respect of a video work shall be construed as a reference to a classification certificate within the meaning given by section 7(1) of the Act as it has effect in the United Kingdom and which certificate—

(a) satisfies the requirements set out in section 7(2) of the Act as it has effect in the United Kingdom;

(b) was issued in the United Kingdom by the authority designated under section 4(1) of the Act as it has effect in the United Kingdom.

Section 12(1) shall have effect as if it read—

“(1) Where a classification certificate issued in respect of a video work states that no video recording containing that work is to be supplied other than in a licensed sex shop, a person who at any place in the Falkland Islands—

(a) supplies a video recording containing the work, or

(b) offers to do so,

commits an offence unless the supply is, or would if it took place be, an exempted supply.

CRIMINAL JUSTICE ACT 1993

(1993 c. 36)

Extent of application

Part 1 (sections 1 to 6)

Modifications

Section 6 shall be construed as if in subsection (7) the words “Crown Court” were replaced by the words “Supreme Court”.

CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

(1994 c.33)

Extent of application

Sections 68, 69, 75 and 76

Modifications

Section 68 shall be construed as if the following appeared therein as subsection (5)—

“(5) In this section, except in the case of a footpath, “land” does not include land which is part of a highway.””.

Additions to arrestable offences

Amendment of section 129(2) Criminal Justice Ordinance 1989

7. Section 129(2) of the Criminal Justice Ordinance 1989 (arrest without warrant for arrestable offences) is amended by the insertion of the following paragraphs after paragraph (e)—

“(f) an offence under section 1(1) of the Prevention of Crime Act 1953 in its application to the Falkland Islands (prohibition of carrying of offensive weapons without lawful authority or excuse);

(g) an offence under section 14(1) of the Crimes Ordinance 1989 (offence of having article with blade or point in a public place);

(h) an offence under section 14A(1) or (2) of the Crimes Ordinance 1989 (offence of having article with blade or point on school premises).

(i) an offence under section 2 of the Obscene Publications Act 1959 (publication of obscene matter) in its application to the Falkland Islands;

(j) an offence under section 1 of the Protection of Children Act 1978 (indecent photographs and pseudo-photographs of children) in its application to the Falkland Islands;

(k) an offence under section 19 of the Public Order Act 1986 (publishing etc. of material intended or likely to stir up racial hatred) in its application to the Falkland Islands;

(l) an offence under section 10, 14, 14A, 18 or 22 of the Crimes Ordinance 1989.”

Confiscation Orders

Amendments of provisions of Criminal Justice Ordinance 1989 in relation to confiscation orders

8. Schedule 2 to this Ordinance has effect to amend the Criminal Justice Ordinance 1989 in relation to confiscation orders and matters connected therewith.

Investigations into the proceeds of criminal conduct

New sections 127A to 127C of the Criminal Justice Ordinance 1989.

9. The following cross-heading and sections are inserted in the Criminal Justice Ordinance 1989 immediately after section 127—

"Investigation into the proceeds of criminal conduct"

Order to make material available (1988 c.33 s.93H)

127A.(1) With the consent in writing of the Attorney General, a police officer may, for the purpose of an investigation whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to the Senior Magistrate for an order under subsection (2) of this section in relation to particular material or material of a particular description.

(2) If, on such an application, the Senior Magistrate is satisfied that the conditions in subsection (4) of this section are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—

(a) produce it to a police officer for him to take away; or

(b) give a police officer access to it,

within such period as the order may specify. This subsection has effect subject to section 127B(11).

(3) The period specified in an order under subsection (2) of this section shall be seven days unless it appears to the Senior Magistrate that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (4) of this section are—

(a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;

(b) that there are reasonable grounds for suspecting that the material to which the application relates—

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made;

(ii) does not consist of or include items subject to legal privilege or excluded material; and

(c) there are reasonable grounds for believing that it is in the public interest, having regard—

(i) to the benefit likely to accrue to the investigation if the material is obtained, and

(ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

(5) Where the Senior Magistrate makes an order under subsection (2)(b) of this section in relation to material on any premises he may, on the application of a police officer made with the consent in writing of the Attorney General, order any person who appears to him to be entitled to grant entry to the premises to allow a police officer to enter the premises to gain access to the material.

(6) An application under subsection (1) or (5) of this section may be made ex parte to the Senior Magistrate in chambers.

(7) Provision may be made by rules of court as to—

(a) the discharge and variation of orders under this section; and

(b) proceedings relating to such orders.

(8) An order of the Senior Magistrate under this section shall have effect as if it were an order of the Magistrate's Court.

(9) Where the material to which an application under subsection (1) of this section relates consists of information contained in a computer—

(a) an order under subsection (2) (a) of this section shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and

(b) an order under subsection (2)(b) of this section shall have effect as an order to give access to the material in a form in which it is visible and legible.

(10) An order under subsection (2) of this section—

(a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material;

(b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise;

(c) may be made in relation to material in possession of Her Majesty's Government in right of the Falkland Islands ("the Falkland Islands Government").

(11) For the purposes of section 126 and 127 of this Ordinance, material produced in pursuance of an order under subsection (2)(a) of this section shall be treated as if it were material seized by a police officer.

(12) In this section references to a person benefiting from any criminal conduct which does not constitute an offence in the Falkland Islands, but would be if it had occurred in the Falkland Islands, shall be construed in accordance with section 49(4) and (5) of this Ordinance as if it had so occurred.

Authority for search

127B (1) With the consent in writing of the Attorney General, a police officer may, for the purposes of an investigation as to whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct apply to the Senior Magistrate for a warrant under this section in relation to specified premises.

(2) On such an application the Senior Magistrate may issue a warrant authorising a police officer to enter and search the premises if the Senior Magistrate is satisfied —

(a) that an order under section 127A in relation to material on the premises has not been complied with;

(b) that the conditions in subsection (3) of this section are fulfilled; or

(c) that the conditions in subsection (4) of this section are fulfilled.

(3) The conditions referred to in subsection (2)(b) of this section are—

(a) that there are reasonable grounds for suspecting that a specified person has benefited from criminal conduct;

(b) that the conditions in subsection (4)(b) and (c) of section 127A are fulfilled in relation to any material on the premises; and

(c) that it would not be appropriate to make an order under that section in relation to the material because—

(i) it is not practicable to communicate with any person entitled to produce the material;

(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or

(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.

(4) The conditions referred to in subsection (2)(c) are—

(a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;

(b) that there are reasonable grounds for suspecting that there is on the premises any such material relating—

(i) to the specified person, or

(ii) to the question whether that person has benefited from any criminal conduct or to any question as to the extent or whereabouts of the proceeds of any criminal conduct,

as is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, but that the material cannot at the time of the application be particularised; and

(c) that—

(i) that it is not practicable to communicate with any person entitled to grant entry to the premises;

(ii) entry to the premises will not be granted unless a warrant is produced; or

(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate entry to them.

(5) Where a police officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege and excluded material, which is likely to be of substantial value (whether by itself or taken with other material) to the investigation for the purposes of which the warrant was issued.

(6) Subsection (12) of section 127A applies for the purposes of this section as it applies for the purposes of that section.

Disclosure of information held by the Falkland Islands Government (1988 c.33 s.93J)

127C. (1) Subject to subsection (4) of this section, the Supreme Court may, on an application made by or on behalf of the Attorney General, order any material which is in the possession of—

(a) the Falkland Islands Government (that is to say Her Majesty's Government in right of the Falkland Islands);

(b) any department or office of that Government; or

(c) any public officer (that is to say the holder of a public office within the meaning of the Constitution) who is in the employment of that Government (but only if the material is in his possession in his official capacity),

to be produced to the court within such period as the court may specify.

(2) The power to make an order under subsection (1) is exercisable if—

(a) the powers conferred on the court by sections 55(1) and 56(1) of this Ordinance are exercisable by virtue of section 54(1) of this Ordinance; or

(b) those powers are exercisable by virtue of section 54(2) and the court has made a restraint order or a charging order which (in either case) has not been discharged.

(3) The material referred to in subsection (1) of this section is any material which—

(a) has been submitted to a public officer by the defendant or by a person who has at any time held property which was realisable property;

(b) has been made by a public officer in relation to the defendant or such a person; or

(c) is correspondence which passed between a public officer and the defendant or such a person;

and an order under that subsection may require the production of all such material or of a particular description of such material, being material possessed as mentioned in subsection (1).

(4) An order under subsection (1) of this section shall not require the production of any material unless it appears to the Supreme Court that the material is likely to contain information that would facilitate the exercise of the powers conferred either—

(a) on the court by sections 55 to 58 of this Ordinance; or

(b) on a receiver appointed under section 55 or 58 of this Ordinance or in pursuance of a charging order.

(5) The court may by order authorise the disclosure to such a receiver of any material produced under subsection(1) of this Ordinance or any part of such material.

(6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions by virtue of Part IIIAA of this Ordinance of the Supreme Court, of the Magistrate's Court and of the Summary Court.

(7) The Court may by order authorise the disclosure to a person mentioned in subsection (8) of this section of any material produced under subsection (1) or of any part of such material, but the court shall not make an order under this subsection unless it appears to the court that the material is likely to be of substantial value in exercising functions relating to the investigation of crime.

(8) The persons referred to in subsection (7) are—

(a) any police officer;

(b) the Attorney General and any public officer in respect of whom he is the head of department;

(c) any customs officer.

(9) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purpose of functions relating to the investigation of crime, of whether any person has benefited from any criminal conduct or of the extent and whereabouts of the proceeds of any such conduct.

(10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon disclosure imposed by statute or otherwise.

(11) An order under subsection (1) above and, in the case of material possessed as mentioned in subsection (1) of this section, an order under section 127A may require any public officer (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it.

(12) Where any requirement is included in any order by virtue of subsection (11), the person on whom the order is served—

(a) shall take all reasonable steps to bring it to the attention of the public officer concerned; and

(b) if the order is not brought to that officer's attention within the period referred to in subsection (1) of this section, shall report the reasons for the failure to the court,

and it shall also be the duty of any other public officer serving under the same head of department to take such steps as are mentioned in paragraph (a) of this subsection.

(13) Subsection (12) of section 127A applies for the purpose of this section as it applies for the purpose of that section.”

Amendment of section 10 of the Criminal Justice (Amendment) Ordinance 1991

10. Section 10 of the Criminal Justice (Amendment) Ordinance 1991 is amended by inserting the following subsection immediately after subsection (1)—

“(1A) Without prejudice to the generality of subsection (1) the provision which may be made by virtue of that subsection includes provision which, for the purpose of facilitating the enforcement of any order that may be made, has effect at times before there is an order to be enforced.”.

Alternate offences

11. Section 6 of the Crimes Ordinance 1989 is amended by the insertion of the following subsections immediately after subsection (2)—

(3) Any provision of any English Act applied as law of the Falkland Islands by subsection (1) of this section the effect of which is that a person found not guilty on indictment of an offence specified in that provision (“the first-mentioned offence”) may be convicted of another offence (“the cognate offence”) specified in that provision shall, if the first-mentioned offence is triable summarily in the Falkland Islands, have effect so as to permit any court finding him not guilty of the first-mentioned offence to convict him of the cognate offence even if he was not charged therewith.

(4) Subsection (3) has effect without prejudice to any other provision which has, or in the circumstances specified in the other provision could have, the same or a similar effect.”

Minor amendments

12. Schedule 3 of this Ordinance has effect to amend the Ordinances there mentioned in the manner specified therein.

SCHEDULE 1

PART I

Amendments related to offensive weapons etc.

Increased penalty for offence of having article with blade or point in public place

1. (1) Section 14(6) of the Crimes Ordinance 1989 is replaced by—

“(6) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding six months and to a fine not exceeding the maximum of level 6 on the standard scale.”

Offence of having article with blade or point (or offensive weapon) on school premises

2. The following section is inserted in the Crimes Ordinance 1989 after section 14—

“Offence of having article with blade or point (or offensive weapon) on school premises
(1988 c. 33 s.139A)

14A. (1) A person commits an offence who has with him on school premises an article to which section 14 applies.

(2) A person commits an offence who has an offensive weapon with him on school premises.

(3) In this section—

“offensive weapon” has the same meaning as it has in section 1 of the Prevention of Crime Act 1953 in its application to the Falkland Islands; and

“school premises” means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school (and “school” for the purposes of this definition means an educational institution providing education to persons under the age of eighteen years whether or not the institution also provides education to persons above the age of eighteen years and whether or not any person is at the time in question present upon the premises for the purpose of education).

(4) It shall be a defence for a person charged with an offence under subsection (1) or (2) to prove that he had good reason or lawful authority for having the article or weapon with him on the premises in question.

(5) Without prejudice to the generality of subsection (4), it shall be a defence for a person charged with an offence under subsection (1) or (2) to prove that he had the article or weapon with him—

(a) for use at work;

(b) for educational purposes;

(c) for religious reasons; or

(d) as part of any national costume.

(6) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding two years and to a fine not exceeding the maximum of level 6 on the standard scale.

(7) A person convicted of an offence under subsection (2) is liable on conviction to imprisonment for a term not exceeding four years and to a fine not exceeding the maximum of level nine on the standard scale."

Power to stop and search persons suspected of having article with blade or point (or offensive weapon) in public place or place to which the public have ready access

3. The following sections are inserted in the Criminal Justice Ordinance 1989 after section 104—

"Power of police officer to stop and search persons, vehicles etc.

104A. (1) A police officer may exercise any power conferred by this section—

(a) in any place to which at the time when he proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

(b) in any other place to which people have ready access at the time when he proposes to exercise the power but which is not a dwelling.

(2) Subject to subsections (3) to (5) a police officer—

(a) may search—

(i) any person or vehicle;

(ii) anything which is in or on a vehicle,

for prohibited articles; and

(b) may detain a person or vehicle for the purpose of such a search.

(3) This section does not give a police officer power to search a person or vehicle or anything in or on a vehicle unless he has reasonable grounds for suspecting that he will find prohibited articles.

(4) If a person is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer may not search him in the exercise of the power conferred by this section unless the police officer has reasonable grounds for believing—

(a) that he does not reside in the dwelling; and

(b) that he is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) If a vehicle is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer may not search the vehicle or anything in or on it in the exercise of the power conferred by this section unless he has reasonable grounds for believing—

(a) that the person in charge of the vehicle does not reside in the dwelling; and

(b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(6) If in the course of such a search a police officer discovers an article which he has reasonable grounds for suspecting to be a prohibited article, he may seize it.

(7) An article is prohibited for the purpose of this section and the purposes of sections 104B and 104C if it is—

(a) an offensive weapon, that is to say it is an article made or adapted for use for causing injury to persons or an article intended by the person having it with him for such use by him or by some other person; or

(b) an article to which subsection (8) applies.

(8) This subsection applies to any article in relation to which a person has committed or is committing or is going to commit an offence under section 1 of the Prevention of Crime Act 1953 in its application to the Falkland Islands or section 14 of the Crimes Ordinance 1989.

Provisions relating to search under section 104A

104B. (1) A police officer who detains a person or vehicle in the exercise—

(a) of the power conferred by section 104A; or

(b) to search a vehicle without making an arrest,

need not make a search if it appears to him subsequently—

(i) that no search is required; or

(ii) that a search is impracticable.

(2) If a police officer contemplates a search, other than a search of an unattended vehicle, in the exercise—

(a) of the power conferred by section 104A;

(b) of any other power, except the power conferred by the Aviation Security Act 1982 in its application to the Falkland Islands—

(i) to search a person without first arresting him; or

(ii) to search a person without first making an arrest,

subject to subsection (4), he shall take reasonable steps before he commences the search to bring to the attention of the appropriate person —

(i) if the police officer is not in uniform, documentary evidence that he is a police officer; and

(ii) whether or not he is in uniform, the matters specified in subsection (3);

and the police officer shall not commence the search until he has performed that duty.

(3) The matters referred to in subsection (2)(ii) are—

(a) the police officer's name;

(b) the object of the proposed search;

(c) the police officer's grounds for proposing to make it; and

(d) the effect of section 104C(7) or (8) below as may be appropriate.

(4) A police officer need not bring the effect of section 104C(7) or (8) to the attention of the appropriate person if it appears to the police officer that it will not be practicable to make the record mentioned in section 104C(1).

(5) In this section "the appropriate person" means—

(a) if the police officer proposes to search a person, that person; and

(b) if he proposes to search a vehicle, or anything in or on a vehicle, the person in charge of the vehicle.

(6) On completing a search of an unattended vehicle or anything in or on such a vehicle in the exercise of any such power as is mentioned in subsection (2) the police officer shall leave a notice—

(a) stating that he has searched it;

(b) stating his name and rank;

(c) stating that an application for compensation for any damage caused by the search may be made to the Chief Police Officer; and

(d) stating the effect of section 104C(8).

(7) The police officer shall leave the notice inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle.

(8) The time for which a person or vehicle may be detained for the purposes of such a search is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.

(9) Neither the power conferred by section 104A nor any other power to detain and search a person without first arresting him or to detain and search a vehicle without making an arrest is to be construed—

(a) as authorising a police officer to require a person to remove any of his clothing in public other than an outer coat jacket or gloves; or

(b) as authorising a police officer not in uniform to stop a vehicle.

(10) This section and section 104A apply to vessels, aircraft and hovercraft as they apply to vehicles.

Duty to make records concerning searches

104C. (1) Where a police officer has carried out a search in the exercise of any such power as is mentioned in section 104B(1), other than a search under section 27(2) of the Aviation Security Act 1982 in its application to the Falkland Islands, he shall make a record in writing unless it is not practicable to do so.

(2) If—

(a) a police officer is required by subsection (1) to make a record of a search; but

(b) it is not practicable to make the record on the spot,

he shall make it as soon as practicable after the completion of the search.

(3) The record of a search of a person shall include a note of his name, if the police officer knows it, but a police officer shall not detain a person to find out his name.

(4) If a police officer does not know the name of a person whom he has searched, the record of the search shall include a note otherwise describing that person.

(5) The record of a search of a vehicle shall include a note describing the vehicle, which shall include the registration number of that vehicle if displayed upon that vehicle.

(6) The record of a search of a person or of a vehicle—

(a) shall state—

(i) the object of the search;

(ii) the grounds for making it;

(iii) the date and time when it was made;

(iv) the place where it was made;

(v) whether anything, and if so what, was found;

(vi) whether any, and if so what, injury to a person or damage to property appears to the police officer to have resulted from the search; and

(b) shall identify the police officer making it.

(7) If a police officer who conducted a search of a person made a record of it, the person who was searched shall be entitled to a copy of the record if he asks for one before the end of the period specified in subsection (9).

(8) If—

(a) the owner of a vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search before the end of the period specified

in the search before the end of the period specified in subsection (9); and

(b) the police officer who conducted a search made a record of it,

the person who made the request shall be entitled to a copy.

(9) The period mentioned in subsections (7) and (8) is the period of 12 months beginning with the date on which the search was made.

(10) The requirements imposed by this section with regard to records of searches of vehicles also apply to records of searches of vessels, aircraft and hovercraft."

PART II

Replacement of section 25A of the Firearms and Ammunition Ordinance 1987

Firearms

Replacement of section 25A of the Firearms and Ammunition Ordinance 1987

5. Section 25A of the Firearms and Ammunition Ordinance 1987 is replaced by the following section—

“Unlawful discharge of a firearm

25A. (1) Except as is provided in subsection (2) a person commits an offence who without lawful excuse—

(a) discharges a firearm in a public place or, without the consent of a person in occupation of the land or building concerned, on land or in a building of which he is not a lawful occupier;

(b) while in or upon a motor vehicle or upon a bicycle or in or upon a vessel of any kind, discharges a firearm;

(c) discharges a firearm in such a way that a missile or ammunition discharged traverses or falls in a public place or any other place not in his occupation, other than, in the latter case, with the consent of the occupier of the land or building concerned;

(d) without the consent of a person in occupation of the land or building concerned, enters any land or building while carrying a firearm.

(2) It is a defence for a person charged with an offence to which paragraph (b) of subsection (1) relates that the motor vehicle or bicycle was on land, other than land forming part of a highway, and that a person in occupation of the land had given consent to discharge of the firearm from in or upon the motor vehicle or upon the bicycle.

(3) For the purposes of subsection (1) —

(a) “land” includes land covered by water;

(b) any tidal part of any river or stream is deemed to be land in the occupation of the Crown; and

(c) irrespective of the number of wheels it has, a wheeled vehicle propelled otherwise than by means of an engine is deemed to be a bicycle.

(4) A person convicted of an offence under subsection (1) is liable to a term of imprisonment not exceeding six months and to a fine not exceeding the maximum of level 5 on the standard scale.”

SCHEDULE 2

Amendments in relation to the recovery of the proceeds of crime

Preliminary

1. (1) In this Schedule, a reference to a section is a reference to the section of the number referred to of the Criminal Justice Ordinance 1989.

(2) Immediately above the heading "Confiscation of the proceeds of an offence" which precedes section 49 is inserted the heading—

"PART IIIAA"

CONFISCATION ORDERS

Making of confiscation orders"

Amendment of section 49

2.(1) Section 49 is amended as follows—

(a) subsections (1) to (3) of are replaced by the following subsections—

"(1) Where an offender is convicted, in any proceedings in any court, of an offence of a relevant description, it shall be the duty of the court—

(a) if the prosecutor has given written notice to the court that he considers that it would be appropriate for the court to proceed under this section, or

(b) if the court considers, even though it has not been given such notice, that it would be appropriate for it so to proceed,

to act as follows before sentencing or otherwise dealing with the offender in respect of that offence or any other relevant criminal conduct.

(1A) The court shall first determine whether the offender has benefited from the relevant criminal conduct.

(1B) Subject to subsection (1C), if the court determines that the offender has benefited from any relevant criminal conduct, it shall then—

(a) determine in accordance with subsection (6) the amount to be recovered in his case by virtue of this section, and

(b) make an order under this section ordering the offender to pay that amount.

(1C) If, in a case falling within subsection 1(B), the court is satisfied that a victim of any relevant criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct—

(a) the court shall have a power, instead of a duty, to make an order under this section;

(b) subsection (6) shall not apply for determining the amount to be recovered in that case by virtue of this section; and

(c) where the court makes an order in exercise of that power, the sum required to be paid under that order shall be of such amount, not exceeding the amount which (but for paragraph (b) of this subsection) would apply by virtue of subsection (6) of this section, as the court thinks fit.

(2) In this Part of this Ordinance "relevant criminal conduct", in relation to a person convicted of an offence in any proceedings before a court, means (subject to section

50AA). that offence taken together with other offences of a relevant description which are either—

(a) offences of which he is convicted in the same proceedings, or

(b) offences which the court will be taking into consideration in determining his sentence for the offence in question.

(3) For the purposes of this Part of this Ordinance an offence is an offence of a relevant description if it is an offence to which this Part of this Ordinance applies."

(b) in subsection (6) (amount to be paid under a confiscation order)—

(i) at the beginning there shall be inserted the words "Subject to subsection (1C)"; and

(ii) for the words "must be at least the minimum amount but must not exceed" there shall be substituted the words "shall be equal to".;

(c) subsections (7) and (8) are repealed and the following new subsection (7) is inserted—

"(7) The standard of proof required to determine any question arising under this Part of this Ordinance as to—

(a) whether a person has benefited from any offence; or

(b) the amount to be recovered in his case,

shall be that applicable in civil proceedings"

(d) paragraph (c) of subsection (9) is replaced by the following—

"(c) references to an offence to which this Part applies are references to any offence to which one or more of the following subparagraphs relate—

(i) any offence under any provision of an English Act adopted by section 6 of and Schedule 1 to the Crimes Ordinance 1989 which, if that offence had been committed in England, would be triable in England on indictment;

(ii) any offence which is in the Falkland Islands triable on indictment; and

(iii) any offence under the Fisheries (Conservation and Management) Ordinance 1986;

and, for the sake of avoidance of doubt, it is hereby declared that a reference in this paragraph to an offence under an Ordinance includes a reference to an offence under subsidiary legislation made under that Ordinance."

(e) by adding the following subsection after subsection (9)—

"(10) The Governor may by Order under this subsection vary sub-paragraph (c) of subsection (9) so as to add to the offences which are ones included in references to which this Part of this Ordinance applies."

(2) Sub-paragraph (1) shall not apply in the case of any proceedings against any person where that person is convicted in those proceedings of an offence which was committed before the commencement of this Ordinance.

Repeal of section 50(1) to (4)

3. Subsections (1) to (4) of section 50 are repealed.

New sections 50A and 50AA

4. The following two sections are inserted in after section 50—

“Confiscation relating to a course of criminal conduct (1988 c.33 s.72AA)

50A. (1) This section applies in a case where an offender is convicted of a qualifying offence which is an offence of a relevant description, if—

- (a) the prosecutor gives written notice for the purposes of section 49(1)(a);
- (b) that notice contains a declaration that it is the prosecutor’s opinion that the case is one in which it is appropriate for the provisions of this section to be applied; and
- (c) the offender—
 - (i) is convicted in those proceedings of at least two qualifying offences (including the offence in question); or
 - (ii) has been convicted of a qualifying offence on at least one previous occasion during the relevant period.

(2) In this section “qualifying offence” means any offence in relation to which all the following conditions are satisfied, that is to say—

- (a) that is an offence to which this Part of this Ordinance applies;
- (b) it is an offence which was committed after the commencement of the Criminal Law (Amendment) Ordinance 1997; and
- (c) the court is satisfied that is an offence from which the defendant has benefited.

(3) When proceeding under section 49 in pursuance of a notice mentioned in subsection (1) (a) of this section, the court may, if it thinks fit, determine that (subject to subsection (5) of this section) the assumptions specified in subsection (4) of this section are to be made for the purpose—

- (a) of determining whether the defendant has benefited from relevant criminal conduct; and
- (b) if he has, of assessing the value of the defendant’s benefit from such conduct.

(4) Those assumptions are—

- (a) that any property appearing to the court—
 - (i) to be held by the defendant at the date of the conviction or at any time in the period between that date and the determination in question; or
 - (ii) to have been transferred to him at any time since the beginning of the relevant period,

was received by him, at the earliest time when he appears to the court to have held it, as a result of or in connection with the commission of offences to which this Part of this Ordinance applies;

(b) that any expenditure of his since the beginning of the relevant period was met out of the payments received by him as a result of or in connection with the commission of offences to which this Part of this Ordinance applies; and

(c) that, for the purposes of valuing any benefit which he had or is assumed to have had at any time, he received the benefit free of any other interests in it.

(5) Where the court has determined that the assumptions specified in subsection (4) are to be made in any case it shall not in that case make any such assumption in relation to any particular property or expenditure if—

(a) that assumption, so far as it relates to that property or expenditure, is shown to be incorrect in the defendant's case;

(b) that assumption, so far as it so relates, is shown to be correct in relation to an offence the defendant's benefit from which has been the subject of a previous confiscation order; or

(c) the court is satisfied that there would (for any other reason) be a serious risk of injustice in the defendant's case if the assumption were to be made in relation to that property or expenditure.

(6) Where the assumptions specified in subsection (4) are made in any case, the offences from which, in accordance with those assumptions, the defendant is assumed to have benefited shall be treated as if they were comprised, for the purposes of this Part of this Ordinance, in the conduct which is to be treated, in that case, as relevant criminal conduct in relation to the defendant.

(7) In this section "the date of conviction" means—

(a) in a case not falling within paragraph (b) of this subsection, the date on which the defendant is convicted of the offence in question, or

(b) where he is convicted of that offence and one or more other offences in the proceedings in question and those convictions are not all on the same date, the date of the latest of those convictions; and

"the relevant period" means the period of six years ending when the proceedings in question were instituted against the defendant.

Postponed determinations (1988 c.33 s.72A)

50AA. (1) Where a court acting under section 49 of this Ordinance considers that it requires further information before —

(a) determining whether the defendant has benefited from any relevant criminal conduct; or

(b) determining the amount to be recovered in his case,

it may, for the purpose of enabling that information to be obtained, postpone making that determination for such period as it may specify.

(2) More than one postponement may be made under subsection (1) of this section in relation to the same case.

(3) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (1) of this section which—

(a) by itself; or

(b) where there have been one or more previous postponements under subsection (1) or subsection (4) of this section, when taken together with the earlier specified period or periods,

exceeds six months beginning with the date of the conviction.

(4) Where the defendant appeals against his conviction, the court may, on that account—

(a) postpone making any of the determinations mentioned in subsection (1) of this section for such period as it may specify; or

(b) where it has already exercised its powers under this section to postpone, extend the specified period.

(5) A postponement or extension under subsection (1) or (4) of this section may be made—

(a) on application by the defendant or the prosecutor; or

(b) by the court of its own motion.

(6) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) of this section shall not exceed the period of three months after the date on which the appeal is determined or otherwise disposed of.

(7) Where the court exercises its power under subsection (1) or (4) of this section, it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the offence or any of the offences concerned.

(8) Where the court has so proceeded—

(a) section 49(1) of this Ordinance shall have effect as if the words from “before sentencing” onwards were omitted;

(b) that section shall further have effect as if references to an offence that will be taken into consideration in determining any sentence included references to an offence that has been so taken into account; and

(c) section 50(5) shall have effect as if after the word “determining” there were inserted the words “in relation to any offence in respect of which he has not been sentenced or otherwise dealt with”.

(9) In sentencing, or otherwise dealing with, the defendant in respect of the offence, or any of the offences, concerned at any time during the specified period, the court shall not—

(a) impose any fine on him; or

(b) make any such order as is referred to in section 50(5)(b) or (c) of this Ordinance.

(10) In this section “the date of conviction” means—

- (a) the date on which the defendant was convicted of the offence concerned, or
- (b) where he was convicted in the same proceedings, but on different dates, of two or more offences which are comprised in relevant criminal conduct, the date of the latest of those convictions."

Incidental provisions in relation to confiscation

Provision of information by prosecutor

5. (1) For section 51(1) (effect of provision of statement by the prosecutor) there shall be substituted the following subsections—

"(1) Subsection (1A) of this section applies in a case where a person has been convicted of an offence of a relevant description if—

- (a) the prosecutor has given written notice to the court for the purposes of section 49(1)(a); or
- (b) the court is proceeding in pursuance of section 49(1)(b) and requires a statement under this section from the prosecutor.

(1A) Where this subsection applies, the prosecutor shall, within such period as the court may direct, tender a statement as to any matters relevant—

- (a) to determining whether the defendant has benefited from any relevant criminal conduct or;
- (b) to an assessment of the value of the defendant's benefit from that conduct;

and, where such a statement is tendered in a case in which a declaration has been made for the purposes of section 50A(1)(b), that statement shall also set out all such information available to the prosecutor as may be relevant for the purposes of section 50(A)(4) and (5)(b) or (c).

(1B) Where a statement is tendered to a court under this section—

- (a) the prosecutor may at any time tender to the court a further statement as to the matters mentioned in subsection (1A) of this section; and
- (b) the court may at any time require the prosecutor to tender a further such statement within such period as it may direct.

(1C) Where—

- (a) any statement has been tendered to any court by the prosecutor under this section, and
- (b) the defendant accepts to any extent any allegation in the statement,

the court may, for the purpose of determining whether the defendant has benefited from any relevant criminal conduct or of assessing the value of the defendant's benefit from such conduct, treat his acceptance as conclusive as to the matters to which it relates.

(2) In section 51(2)(a) (power of court to require defendant to indicate extent of acceptance of allegations) the words "under subsection (1)(a) above" are replaced by the words "by the prosecutor under this section".

(3) In section 51(6) (issue of certificate by the court) the words from “the offence” onwards are replaced by the words “any relevant criminal conduct”.

(4) The following subsection is inserted immediately after section 51(6)—

“(7) Where the court has given a direction under this section, it may at any time vary the direction by giving a further direction.”

Provision of information by defendant

6. The following section is inserted after section 51 —

“Provision of information by the defendant (1988 c.33 s.73A)

51A. (1) This section applies in a case where a person has been convicted of an offence of a relevant description if—

(a) the prosecutor has given written notice to the court for the purposes of section 49(1)(a); or

(b) the court is proceeding in pursuance of section 49(1)(b) or is considering whether to so proceed.

(2) For the purpose of obtaining information to assist it in carrying out its functions under this Part of this Ordinance, the court may at any time order the defendant to give it such information as may be specified in the order.

(3) An order under subsection (2) may require all, or any specified part, of the required information to be given in such manner, and before such date, as may be specified in the order.

(4) Rules of court may make provision as to the maximum or minimum period that may be allowed under subsection (3) of this section.

(5) If the defendant fails, without reasonable excuse, to comply with an order under this section, the court may draw such inference from that failure as it considers appropriate.

(6) Where the prosecutor accepts to any extent any allegation made by the defendant—

(a) in giving to the court information required by an order under this section;

(b) in any other statement tendered to the court for the purposes of this Part of this Ordinance,

the court may treat that acceptance as conclusive as to the matters to which it relates.

(7) For the purposes of this section an allegation may be accepted in such manner as may be prescribed by rules of court or as the court may direct.”

Review and revision of certain questions and determinations

Review of cases where proceeds of crime not assessed

7. The following section is inserted after section 52 —

"Review of cases where proceeds of crime not assessed"

Review of cases where proceeds of crime not assessed (1988 c.33 s.74A)

52A.(1) This section applies in any case where—

- (a) a person has been convicted in proceedings before the Supreme Court or a court of summary jurisdiction, of an offence of a relevant description;
- (b) the prosecutor did not give written notice for the purposes of section 49(1)(a) of this Ordinance;
- (c) a determination was made for the purposes of section 49(1)(b) not to proceed under that section or no determination was made for those purposes.

(2) If the prosecutor has evidence—

- (a) which, at the date of conviction or, if later, when any determination not to proceed under section 49 was made, was not available to the prosecutor (and, accordingly, was not considered by the court); but
- (b) which the prosecutor believes would have led the court to determine, if—
 - (i) the prosecutor had given written notice for those purposes of section 49(1)(a) of that section; and
 - (ii) the evidence had been considered by the court,

that the defendant had benefited from relevant criminal conduct, the prosecutor may apply to the relevant criminal court for it to consider the evidence.

(3) If, having considered the evidence, the relevant court is satisfied that it is appropriate to do so, it shall proceed under section 49 of this Ordinance as if it were doing so before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct, and section 50AA of this Ordinance shall apply accordingly.

(4) In considering whether it is appropriate to proceed under section 49 of this Ordinance in accordance with subsection (3) of this section, the court shall have regard to all the circumstances of the case.

(5) Where, having decided in pursuance of subsection (3) of this section to proceed under section 49 of this Ordinance, the relevant court decides that the defendant did benefit from relevant criminal conduct—

- (a) subsection (1B)(b) of that section shall not apply and subsection (6) of that section shall not apply for determining the amount to be recovered in that case;
- (b) the court shall have a power, instead of a duty, to make a confiscation order; and
- (c) if the court makes an order in exercise of that power, the sum required to be paid by that order shall be of such amount, not exceeding the amount which (but for paragraph (a) of this subsection) would apply by virtue of subsection (6) of that section, as the court thinks fit.

(6) In considering the circumstances of the case either under subsection (4) of this section or for the purposes of subsection (5) (b) and (c) of this section, the relevant court shall have regard, in particular, to—

(a) any fine imposed on the defendant in respect of any relevant criminal conduct; and

(b) any order made in connection with any such conduct under section 35 of this Ordinance (compensation orders).

(7) In making any determination under or for the purposes of this section the relevant court may take into account, to the extent that they represent aspects which the defendant has benefited from any relevant criminal conduct, any payments or other rewards which were not received by him until after he was sentenced or otherwise dealt with in the case in question.

(8) Where an application under this section contains such a declaration as is mentioned in section 50A(1)(b) of this Ordinance, that section shall apply (subject to subsection (9) of this section) in the case of any determination on the application as if it were a determination in a case in which the requirements of section 50A(1)(a) and (b) had been satisfied.

(9) For the purposes of any determination to which section 50A of this Ordinance applies by virtue of subsection (8) of this section, none of the assumptions specified in section 50A(4) shall be made in relation to any property unless it is property held or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

(10) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(11) Section 51 and 51A of this Ordinance shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the court for the purposes of section 49(1)(a) of this Ordinance, but as if the reference in section 51(1A) to a declaration made for the purposes of section 50A of this Ordinance were a reference to a declaration for the purposes of subsection (8) of this section.

(12) In this section—

“the date of conviction” means—

(a) in a case not falling within paragraph (b) of this subsection, the date on which the defendant was convicted of the offence in question, or

(b) where he was convicted of that offence and one or more other offences in the same proceedings and those convictions were not all on the same date, the date of the latest of those convictions; and

“the relevant court” means the court before which the defendant was convicted.

Revision of assessment of proceeds of crime

8. The following section is inserted after the section 52A inserted by paragraph 7 of this Schedule—

“Revision of assessment of proceeds of crime (1988 c.33 s.74B)”

52B(1) This section applies in any case where there has been a determination under section 49(1A) (“the original determination”) that the defendant in that case had not benefited from any relevant criminal conduct.

(2) If the prosecutor has evidence—

(a) which was not considered by the court which made the original determination; but

(b) which the prosecutor believes would have led that court (if it had been considered) to determine that the defendant had benefited from relevant criminal conduct,

the prosecutor may apply to the relevant court for it to consider that evidence.

(3) If, having considered that evidence, the relevant court is satisfied that (if the evidence had been available to it) it would have determined that the defendant had benefited from relevant criminal conduct, that court—

(a) shall proceed, as if it were proceeding under section 49 of this Ordinance before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct—

(i) to make a fresh determination of whether the defendant has benefited from any relevant criminal conduct; and

(ii) then to make such determination as is mentioned in section 49(1B)(a);

and

(b) subject to subsection (4) of this section, shall have a power, after making those determinations, to make an order requiring the payment of such sum as it thinks fit;

and an order under paragraph (b) of this subsection shall be deemed for all purposes to be a confiscation order.

(4) The court shall not, in exercise of the power conferred by subsection (3)(b) of this section, make any order for the payment of a sum which is more than the amount determined in pursuance of subsection (3)(a)(ii) of this section.

(5) In making any determination under or for the purposes of subsection (3) of this section the relevant court may take into account, to the extent that they represent respects in which the defendant has benefited from any relevant criminal conduct, any payments or other rewards which were not received by him until after the making of the original determination.

(6) Where in a case to which section 50A does not otherwise apply, a application under this section contains such a declaration as is mentioned in section 50A(1)(b), that section shall apply (subject to subsection (7) of this section) in the case of any determination on the application as if it were a determination in a case in which the requirements of section 50A(1)(a) and (b) had been satisfied.

(7) In the case of any determination under or for the purposes of subsection (3) of this section to which section 50A of this Ordinance applies, none of the assumptions specified in section 50A(4) shall be made in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

(8) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(9) Section 50AA shall apply where the court is acting under this section as it applies where the court is acting under section 59 of this Ordinance.

(10) Sections 51 and 51A of this Ordinance shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the court for the purposes of section 49(1)(a) of this Ordinance but—

(a) as if the reference in section 51(1A) to a declaration made for the purposes of section 50A(1)(b) of this Ordinance contained a reference to a declaration for the purposes of subsection (6) of this section; and

(b) as if any reference in section 51(6) of this Ordinance to the time the confiscation order is made were a reference to the time the order is made on that application.

(11) In this section—

“the date of conviction” has the same meaning as it has in section 52A of this Ordinance; and

“the relevant court” means the court in which the conviction by reference to which the original determination was made took place.”

Revision of assessment of amount to be recovered

9. The following section is inserted after the section 52B inserted by paragraph 8 of this Schedule—

“Revision of assessment of amount to be recovered (1988 c.33 s.74C)

52C.(1) This section applies where, in the case of a person convicted of any offence, there has been a determination under this Part of this Ordinance (“the current determination”) of any sum required to be paid in his case under any confiscation order.

(2) Where the prosecutor is of the opinion that the value of any benefit to the defendant from any relevant criminal conduct was greater than the value at which that benefit was assessed by the court on the current determination, the prosecutor may apply to the relevant court for the evidence on which the prosecutor has formed his opinion to be considered by the court.

(3) If, having considered the evidence, the relevant court is satisfied that the value of the benefit from any relevant criminal conduct is greater than the value so assessed by the court (whether because its real value was higher at the time of the current determination than was thought or because the value of the benefit in question has subsequently increased), the relevant court—

(a) subject to subsection (4) of this section, shall make a fresh determination, as if it were proceeding under section 49 of this Ordinance before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct, of the following amounts, that is to say—

(i) the amount by which the defendant has benefited from such conduct; and

(ii) the amount appearing to be the amount that might be realised at the time of the fresh determination; and

(b) subject to subsection (5) of this section, shall have a power to increase, to such extent as it thinks just in all the circumstances of the case, the amount to be recovered by virtue of that section and to vary accordingly any confiscation order made by reference to the current determination.

(4) Where—

(a) the court is under a duty to make a fresh determination for the purposes of subsection (3)(a) of this section in any particular case, and

(b) that case is not a case to which section 50A of this Ordinance applies,

the court shall not have power, in determining any amounts for those purposes, to make any of the assumptions specified in subsection (4) of that section in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

(5) The court shall not, in exercise of the power conferred by paragraph (a) of subsection (3) of this section, vary any order so as to make it an order requiring the payment of any sum which is more than the lesser of the two amounts determined in pursuance of paragraph (a) of that subsection.

(6) In making any determination for the purposes of subsection (3) of this section the relevant court may take into account, to the extent that they represent respects in which the defendant has benefited from any relevant criminal conduct, any payments or other rewards which were not received by him until after the making of the original determination.

(7) Where the Supreme Court varies a confiscation order under subsection (3) of this section, it shall substitute for the term of imprisonment or detention fixed under section 42(2) of this Ordinance in respect of the amount to be recovered under the order a longer term determined in accordance with that section (as it has effect by virtue of section 53 of this Ordinance) in respect of any greater amount substituted under subsection (3) of this section.

(8) Subsection (7) of this section shall apply only if the effect of the substitution is to increase the maximum period applicable in relation to the order under section 42(4) of this Ordinance.

(9) No application shall be entertained by a court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(10) Section 50AA of this Ordinance shall apply where the court is acting under this section as it applies where the court is acting under section 49 of this Ordinance.

(11) Sections 51 and 51A of this Ordinance shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the court for the purposes of section 49(1)(a) of this Ordinance, but as if a reference in section 51(6) to the time the confiscation order is made were a reference to the time of the determination to be made on that application.

(12) In this section—

“the date of the conviction” has the same meaning as it has in section 52A of this Ordinance; and

“the relevant court” means—

(a) where the court which made the current determination is the Supreme Court, that court;

(b) where the court which made that determination is a court of summary jurisdiction, the court which made the determination.”

Enforcement etc of confiscation orders

10. (1) In section 53 (application of procedure for enforcing fines) the following subsection shall be inserted after subsection (5)—

“(5A) Where the defendant serves a sentence of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned”.

(2) Subsections (1) and (2) of section 54 of the Criminal Justice Ordinance 1989 (cases in which restraint or charging order may be made) are replaced by the following subsections—

“(1) The powers conferred on the Supreme Court by sections 55(1) and 56(1) of this Ordinance are exercisable where—

(a) proceedings have been instituted in the Falkland Islands against any person for an offence to which this Part of this Ordinance applies;

(b) the proceedings have not been concluded or (if they have) an application that has not been concluded has been made under section 52A, 52B or 52C of this Ordinance in respect of the defendant in those proceedings; and

(c) the court is satisfied that there is reasonable cause to believe—

(i) in a case where there is an application under section 52C of this Ordinance, that the court will be satisfied as mentioned in subsection (3) of that section;

(ii) in any other case, that the proceedings may result or have resulted in, or that the application is made by reference to, a conviction of the defendant for an offence of a relevant description from which he may be, or has been, shown to have benefited.

(1A) The court shall not exercise those powers by virtue of subsection (1) of this section if it is satisfied—

(a) that there has been undue delay in continuing the proceedings or application in question;

(b) that the person who appears to the court to be the person who has or will have the conduct of the prosecution or, as the case may be, who made that application does not intend to proceed with it.

(2) The powers conferred on the Supreme Court by sections 55(1) and 56(1) of this Ordinance are also exercisable where—

(a) the court is satisfied that a person is to be charged (whether by the laying of an information or otherwise) with an offence to which this Part of this Ordinance applies or that an application of a kind mentioned in subsection (1)(b) of this section is about to be made; and

(b) the court is satisfied that the making or variation of a confiscation order may result from proceedings for that offence or, as the case may be, from the application.”

(3) Section 54(4) is amended —

(a) by inserting after the word and parenthesis "otherwise)" the punctuation words and parentheses ",or (as the case may be) no application is made," and

(b) by inserting at the end of the subsection the words "or if the court is satisfied that the case has become a case in which, in pursuance of subsection (1A) of this section, it would be unable to exercise the powers conferred by virtue of subsection (1) of this section."

(4) Section 55(6) (discharge of restraint orders) is amended by replacing paragraph (b) with the following paragraph—

"(b) shall be discharged on the conclusion of the proceedings or application in question".

(5) Section 56 (charging orders) is amended by replacing subsection (7) with the following subsection—

"(7) In relation to a charging order, the court—

(a) may at any time make an order discharging or varying it;

(b) shall make an order discharging it on the occurrence of whichever of the following first occurs, that is to say:

(i) the conclusion of the proceedings or the application in question; and

(ii) the payment into court of the amount payment of which is secured by the charge."

(6) Section 58(1) (circumstances in which the Supreme Court may exercise powers relating to the realisation of property) is amended by replacing paragraphs (a) to (c) with the following paragraphs—

"(a) a confiscation order is made in proceedings instituted for an offence to which this Part of this Ordinance applies or an order is made or varied on an application under section 52A, 52B or 52C of this Ordinance;

(b) the proceedings in question have not, or the application in question has not, been concluded; and

(c) the order or variation is not subject to appeal;"

(7) Section 62(6) of the Ordinance (bankruptcy of defendant) is amended by replacing paragraphs (a) and (b) with the following paragraphs—

"(a) no order shall be made under 339 or 423 of that Act (avoidance of certain transactions) in respect of the making of the gift at any time when—

(i) proceedings for an offence to which this Part of this Ordinance applies have been instituted against him and have not been concluded;

(ii) an application has been made under section 52A, 52B or 52C of this Ordinance in respect of the defendant in any such proceedings and has not been concluded; or

(iii) the property of the person to whom the gift was made is subject to a restraint order or a charging order; and

(b) any order made under section 339 or 423 of that Act after the conclusion of the proceedings or application shall take into account any realisation under this Part of this Ordinance of property held by the person to whom the gift was made."

(8) Sub-paragraph (1) of this paragraph shall not apply where the offence, or any of the offences, in respect of which the confiscation order was made was committed at a time when, by virtue of paragraph 2(2) of this Schedule, paragraph 2(1) does not have effect.

Payment of interest on sums unpaid

11.(1) The following section is inserted immediately after section 53—

"Interest on sums unpaid under confiscation orders (1988 c.33 s.75A)

53A. (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified under 42(1) of this Ordinance or for the purposes of section 75(1) or (2) of the Magistrates' Court Act 1980 in its application to the Falkland Islands)—

(a) that person shall be liable to pay interest on that sum for the period for which it remains unpaid;

(b) the amount of the interest shall, for the purposes of enforcement, be treated as part of the amount to be recovered from him under the confiscation order.

(2) The Supreme Court may, on the application of the prosecutor, increase the term of imprisonment or detention fixed in respect of the confiscation under section 42(2) of this Ordinance (as it has effect by virtue of section 53) if the effect of subsection (1) of this section is to increase the maximum period applicable in relation to the order under section 42(4).

(3) The rate of interest under subsection (1) of this section shall be that for the time being applying to a civil judgment debt under section 17 of the Judgments Act 1838 in its application to the Falkland Islands."

(2) Sub-paragraph (1) of this paragraph shall not apply where the offence, or any of the offences, in respect of which the confiscation order was made was committed at a time when, by virtue of paragraph 2(2) of this Schedule, paragraph 2(1) does not have effect.

Insertion of section 56A

12. The following section is inserted immediately after section 56—

"Charging Orders: supplementary provisions (1988 c.33 s.79)

56A. (1) The Land Charges Ordinance 1996 shall apply in relation to charging orders as it applies in relation to orders or writs issued or made for the purpose of enforcing judgments.

(2) Where a charging order has been registered under section 8 of the Land Charges Ordinance 1996, subsection (4) of that section (effect of non-registration of writs and orders registrable under that section) shall not apply to an order appointing a receiver made in pursuance of the charging order.

(3) Subject to any provision made under section 57 of this Ordinance or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

(4) Where a charging order has been protected by an entry registered under the Land Charges Ordinance 1996, an order under section 56(7) of this Ordinance discharging the charging order may direct that the entry be cancelled."

Variation of confiscation order on receiver's application

13. Section 60 (variation of confiscation orders) is amended—

(a) in subsection (1) (variation on application by the defendant), by replacing the words "by the defendant in respect of the confiscation order the" with the following—

"(a) by the defendant, or

(b) by a receiver appointed under section 55 or 57 of this Ordinance, or in pursuance of a charging order,

the";

(b) in subsection (3), by replacing the word "defendant" with the words "person who applied for it"; and

(c) by inserting the following subsection after subsection (4)—

"(5) Rules of Court may make provision—

(a) for the giving of notice of any application under this section; and

(b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court."

Amendment of section 61

14. Section 61(7) is amended by replacing the words "before 29th December 1986 (the date on which the Insolvency Act 1986 came into force)" with the words "before such date as such of the provisions of the Insolvency Act 1986 as relate to the insolvency of individuals next form part of the law of the Falkland Islands".

Insertion of section 65AA

15. The following section is inserted immediately after section 65—

"Interpretation of this Part (1988 c.33 s. 102)

65AA. (1) In this Part of this Ordinance—

"interest", in relation to property, includes right;

"property" includes money and all other property, real or personal, and includes things in action and other intangible or incorporeal property.

(2) The expressions listed in the left-hand column of the following table are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Ordinance listed in the right-hand column in relation to the expressions—

| Expression | Relevant provision |
|--|-----------------------|
| Benefited from an offence | Section 49(1) |
| Charging order | Section 56(2) |
| Confiscation order | Section 49(1)(a) |
| Dealing with property | Section 55(9) |
| Defendant | Section 49(9)(d) |
| Gift caught by this Part of this Ordinance | Section 52(10) |
| Making a gift | Section 52(12) |
| Offence to which this Part of this Ordinance applies | Section 49(1)(c) |
| Realisable property | Section 52(1) |
| Restraint order | Section 55(1) |
| Value of gift | Section 52(7) and (8) |
| Value of property | Section 52(4) to (6) |

(3) This Part of this Ordinance applies to property wherever situated.

(4) References in this Part of this Ordinance to offences include references to offences committed before the commencement of this Part of this Ordinance; but nothing in this Part of this Ordinance confers any power on any court in connection with proceedings against a person for an offence instituted before the commencement of this Part of this Ordinance.

(5) References in this Part of this Ordinance to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence include a reference to property obtained or to a pecuniary advantage derived, both in that connection and in some other connection.

(6) The following provisions have effect for the interpretation of this Part of this Ordinance.

(7) Property is held by a person if he holds any interest in it.

(8) References to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator.

(9) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.

(10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(11) Proceedings for an offence are instituted—

(a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 in its application to the Falkland Islands;

(b) when a person is charged with an offence after being taken into custody without a warrant;

(c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section in its application to the Falkland Islands;

and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(12) Proceedings for an offence are concluded—

(a) when the defendant is acquitted on all counts or, as the case may be, every charge against him is dismissed;

(b) if he is convicted on one or more counts or charges but the court decides not to make a confiscation order against him, when the court makes that decision;

(c) if he is sentenced without the court having considered whether or not to proceed under section 49 of this Ordinance in his case, when he is sentenced; and

(d) if a confiscation order is made against him in those proceedings, when the order is satisfied.

(13) An application under section 52A, 52B or 52C of this Ordinance is concluded—

(a) if the court decides not to make or, as the case may be, not to vary any order against the defendant on that application, when it makes that decision;

(b) if an order against the defendant is made or varied on that application, when the order is satisfied; and

(c) if the application is withdrawn, when the prosecutor notifies the withdrawal of the application to the court to which it was made.

(14) For the purposes of this Part of this Ordinance, a confiscation order is satisfied when no amount is due under it.

(15) For the purposes only of section 61 of this Ordinance, a confiscation order shall be treated as satisfied when the defendant in respect of whom it was made has served a term of imprisonment or detention in default of payment of the amount due under the order.

(16) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be set aside."

SCHEDULE 3

Minor amendments to various Ordinances

1. Section 4 (5) of the Criminal Justice Ordinance 1989 is amended by replacing all words appearing after the words "under the provisions of this subsection" with the words "or that for any other reason it is desirable to vary any sum or sums set out in the table appearing in subsection (2) he may by Order amend that subsection so as to vary any sum or sums appearing therein in such manner as in the circumstances appears to him to be justified".

2. Sections 15, 18(2), 24(3), 25 and 28(1)(a) of the Criminal Justice Ordinance 1989 are amended by replacing the word "seventeen" wherever it appears in those provisions with the word "eighteen".

3. Part 1 of Schedule 1 to the Crimes Ordinance 1989 is amended in the item relating to the application in the Falkland Islands of provisions of the Theft Act 1968 by replacing the words "The whole Act except sections 12(3)" which appear immediately following the cross-heading "Extent of Application" with the words "The whole Act except sections 12" (and so that no provision of section 12 the Theft Act 1968 (the subject matter of which section is provided for by section 9P of the Road Traffic Ordinance) applies as part of the law of the Falkland Islands).

4. Section 9P(4) of the Road Traffic Ordinance (which applies provisions of the Powers of Criminal Courts Act 1973 in relation to matters as to which corresponding provision is now made in the Criminal Justice Ordinance 1989) is repealed.

EXPLANATORY MEMORANDUM

EVIDENCE (AMENDMENT) BILL 1997

Introductory

The Evidence (Amendment) Bill 1997 would amend the Schedule to the Evidence Ordinance 1994 so as to apply to the Falkland Islands the provisions of the Civil Evidence Act 1995. It would also make consequential amendments to the Criminal Justice Ordinance 1989 and to the Children Ordinance 1994 and would repeal section 70(b)(2) of the Criminal Justice Ordinance 1989.

The provisions of the Civil Evidence Act 1995

1. Introductory

In the Falkland Islands, as is the case in England, it is the norm for evidence in court to be given orally, on oath, in the presence of the court. As is the case in England, a degree of suspicion naturally attaches to any attempt by a party to the proceedings to encourage the court to rely on statements made out of court, not on oath, which are not capable of being tested or evaluated and upon which the maker of the statement cannot be cross-examined. For that reason, as is the case in England, as part of the common law courts in the Falkland Islands apply the "hearsay rule", which excludes such statements out of court being relied upon.

Classically stated the hearsay rule has the effect that a statement, other than one made by a person while giving orally evidence in proceedings in court, is inadmissible as evidence of the matter stated. ("In admissible" means the court will not accept it as any kind of evidence at all of the matter stated in the statement. However if the mere fact that the statement was made is of some relevance in the proceedings, evidence of the making of the statement is admissible but the court will ignore what was said in the statement. That is to say it will not use it as evidence of the truth of the matter stated because that is "hearsay".

However, over the years a number of exceptions to the rule were developed at common law or introduced by statute. These allow "hearsay evidence" in a number of special circumstances where there is either no other evidence obtainable or, for some reason, the out of court statement (or document) is likely to be reliable for some special reason.

Formerly, many civil trials were before juries (civil trials before juries have now been entirely abolished in the Falkland Islands) and the "hearsay rule" was to some large degree a rule which was built up to prevent juries being lead astray by the sort of second hand evidence which the hearsay rule excluded. Judges, however, sitting in civil cases have of course built up a body of expertise in the evaluation of evidence and have the ability to attribute appropriate weight to evidence that come in directly (that is to say, is second hand or hearsay).

The Civil Evidence Act 1968 ("the 1968 Act") which has been applied in the Falkland Islands by the Evidence Ordinance 1994, made all statements (whether hearsay or not) admissible, but restricted the proof of multiple oral hearsay, with the result that statements made in documents, and first-hand oral hearsay ("A told me that X happened"), became admissible. Second-hand hearsay ("A told me that B told him that X happened"), or multiple hearsay ("A told me that B told him that C told her that ...") might be admissible if it formed part of a business record. There are complex procedural rules and provisions dealing with computerised records, having effect under the Civil Evidence Act 1968, which have become outdated. The 1968 Act, as applied in the Falkland Islands by the Evidence Ordinance 1994, is far from comprehensive in its abolition of the hearsay rule. Moreover judicial development of the hearsay rule, in England, has taken a very restrictive approach. The House of Lords, the highest appellate court in the land, has decided that the courts have no power to create new exceptions to the hearsay rule. In another case, the English Court of Appeal said that the strict rules of evidence, including the hearsay rule, applied in civil proceedings not governed by the 1968 Act (in the Falkland Islands this would mean the summary court sitting in civil proceedings).

An example of the harsh operation of the hearsay rule, not relieved by the Civil Evidence Act 1968 as applied by the Evidence Ordinance 1994, is the case in which an English court was invited to admit letters, in normal terms, written to a man who had made a will by persons who could not be called in court to give evidence. The reason for wanting to produce the letters to the court was that evidence that the man who had made the will was sane. The argument was that by writing to him in normal terms, the writers of the letters were demonstrating that at the time they wrote the letters they were of the belief that the man who had made a will was sane and their act in writing was accordingly evidence on which the court should rely. The Judge refused to admit the evidence for that purpose. He said -

The man who made a will or is elected, in his absence, to some high and responsible office; the conduct of a physician who permitted a will to be executed by a sick testator; the conduct of a deceased sea captain on a question of sea worthiness, who, after examining every part of a vessel, embarked in it with his family; all these, when deliberately considered are ... mere instances of hearsay evidence, mere statements, not on oath, but implied in or vouched by the actual conduct of persons ..." (*Parke B. Wright v Director of Education d. Tatham* (1837)).

In cases in 1988 and 1982 the English Court of Appeal decided that the decision in 1837 was wholly correct and still represented the law. Because the common law of England applies, where there is no statutory provision to the contrary, in the Falkland Islands it still represents the law here.

2. Overview of the provisions of the 1995 Act

Section 1 of the Civil Evidence Act 1995 substantially abolishes the hearsay rule in civil proceedings. Sections 2 to 6 of that Act contain provisions for giving notice of intention to adduce hearsay evidence, and guidance on its evaluation. Section 7 preserves a few common law exceptions to the hearsay rule. Sections 8 and 9 contain provisions as to the proof of documents. Section 10 makes provisions enabling the Ogden Tables (these are specialist actuarial tables) admissible in personal injury proceedings. Sections 11 to 16 contain supplementary provisions.

Section 1

Section 1 of the Civil Evidence Act 1995 abolishes the "hearsay rule" *as defined in subsection (2)*. The definition of hearsay is—

A statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matter stated.

Section 2

Section 2(1) of the Civil Evidence Act 1995 requires a party to proceedings, who intends to introduce a hearsay statement under the Act, to give to the other parties to the proceedings "such notice as is reasonable and practicable in the circumstances", so as to enable those other parties to the proceedings to deal with any matters arising from the fact that the evidence will be hearsay. The person receiving the notice is entitled to require further particulars, subject to reasonableness, practicality and need under section 2(3) of the 1995 Act, the notice requirements can be excluded by the agreement of the parties to the proceedings or waived by the party to whom notice was required to be given. Under section 2(4) it is provided that failure to give notice, or to comply with rules as to notice, does not affect the admissibility of the evidence. The court can, however, take account of the failure in two ways. It can do so first in directing the course of the proceedings (for example the order in which the evidence is to be heard) or by allowing an adjournment to one of the parties to the proceedings. Secondly, the failure to give proper notice may be taken into account in assessing the weight to be given to the hearsay statement. This is because if the other party to the proceedings is taken by surprise so that he has had little opportunity to investigate or test the hearsay evidence, it may well be right, if it is on a matter which is contested to attribute little weight to that evidence.

Section 3

Section 3 deals with powers of the court to make rules under which, if the maker of a hearsay statement is not called as a witness by the party tendering the statement, any other party may call him as a witness and cross examine him. It is believed, however, that even if no such rules are made the court would have power, in the exercise of its general discretion to control proceedings, to allow a party to call a witness whose hearsay statement had been tendered by another party.

Section 4

Section 4(1) requires the court to have regard to any circumstances from which any inference can be drawn as to the reliability or otherwise of the hearsay evidence. Section 4(2) contains a list of factors to which, in particular, the court may have regard.

Section 5

The principal effect of the section is to make provisions relating to the competence and credibility of a person who is not called in the court as a witness, but whose statement

is admitted as hearsay evidence. Subsection (1) provides that a hearsay statement shall not be admissible if, at the time he made the statement, the person making it would not have been competent to be a witness (whether he would be competent at the date of the proceedings is irrelevant). Subsection (2) of section 5 extends, to any person upon whose accuracy the court must depend if the hearsay statement is to be relied upon, the common law rules by which credibility may be impeached or supported. By way of an example if the evidence of a witness giving evidence in court on oath is of the form "A said that B said that X happened", the credibility of A and of B may be supported or impeached by calling evidence, in exactly the same way, and subject to the same restriction on evidence relating to collateral issues, as if they had been called as witnesses.

Section 6

Section 6 governs the admissibility of the out of court (that is to say previous) statements of a person who is called as a witness. Subsection (1) of this section allows any party to adduce evidence of previous statements of the witness, in order to prove the matter stated. However because this subsection is subject to the rest of the section, its effect is to give this right to any party other than the party calling the witness.

Subsection (2) of section 6 restricts the party calling a witness from also adducing evidence of his previous statements, unless the purpose is to rebut a suggestion that the evidence he gives in court is a recent fabrication. The provision is intended to prevent the pointless proliferation of previous consistent statements which would otherwise needlessly prolong trials and increase costs.

Section 6(3) preserves the rules in sections 3, 4 and 5 of the Criminal Procedure Act 1865 (which under section 81A of the Interpretation and General Clauses Ordinance 1977 applies in the Falkland Islands) in so far as they apply to civil proceedings. The sections contain rules about hostile witnesses, procedural rules relating to the admissibility and proof of a previous oral statement by a witness who does not admit he made it, and a previous written statement before the maker of it can be contradicted by it.

Section 6(4) preserves the basic rule that if the ambit of the cross-examination extends outside the part of the document used by the witness to refresh his memory, the party calling the witness can have the document made evidence.

Section 6(5) has the effect that where a previous statement becomes evidence under any of the rules made or retained by section 6, it may be admitted, like any other out of court statement, as evidence of the matter stated and not merely as evidence that the statement was made. However if the statement is to be used as evidence that the matter stated, its admissibility will be governed by section 1 of the 1995 Act. Accordingly it will be subject where reasonably practicable to the notice provisions in section 2, as well as the guidance provisions in section 4 and potentially the competence rules of section 5.

Section 7

Section 7 provides for the superseding of some, and the preservation of other, common law exceptions to the hearsay rule. It should be noted that where exceptions are preserved by this section, the hearsay in question is admissible apart from section 1 of the Civil Evidence Act 1995, so the notice and guidance provisions of sections 2 to 6 of the 1995 Act are of no application. Section 7(1) abolishes the common law rule under which a statement adverse to the interest of the person making it was admissible as an exception to the hearsay rule. Such statements are no longer to be given special treatment. They are admissible under section 1 of the 1995 Act and are subject to the notice and guidance provisions of sections 2 to 6 of the Act.

Section 7(2) of the 1995 Act provides that three exceptions to the hearsay rule, which were expressly preserved by the Civil Evidence Act 1968 (which applies in the Falkland Islands under the Evidence Ordinance 1994) shall continue to have effect apart from section 1 of the 1995 Act. In the case of published works dealing with matters of a public nature (section 7(2)(a)) it is not appropriate to apply the notice provisions because the published works mentioned in the provision are available to everybody and it is unlikely that there would be any real doubt about the evidential weight to be attached to the statements in such works. There is a need to preserve the common law rules mentioned in section 7(2)(b) and (c) because the statutory exceptions preserved in section 14(3)(d) and (e) presuppose the existence of the common law rules about public registers.

Section 7(3) of the 1995 Act continues the preservation of rules preserved by the Civil Evidence Act 1968. Section 7(4) provides that the description of rules of law in the section is not to have effect so as to alter the rule in question. A result of this is that the definition of "document" in section 13 does not apply in section 7(2)(b).

Section 8

This section deals with the proof of statements contained in documents. It should be noted that many documents are relevant in civil proceedings not because of the statements they contain but because of the operative effect of the documents themselves (written contracts, licences, wills and Crown Grants for example). The section itself makes no provision allowing oral evidence of the contents of a document. Under subsection (1), both original documents and copies of documents are to be authenticated but no form of authentication is prescribed. "Copy" is defined in broad terms in section 13 of the Act and the provisions of section 8(2), reversing the common law rule that a copy of a copy of a document is not admissible in evidence have the effect that a copy before the court far removed from the original document, if authenticated, may be admitted in evidence. It may be that in those circumstances the court because of its remoteness from the original may give it less weight than would otherwise be the case.

Section 9

Under the Rules contained in sections 4, 5 and 10 of the 1968 Act, a cumbersome process of proof had to be followed in respect of business documents, particularly in

the case of documents produced by computer. Section 9 of the 1995 Act, however, provides for “fast (or past) track” proof of documents which are part of the documents of a business of public authority as defined by section 9(4). However, the section applies only to the proof of the documents themselves and not to the proof of any facts stated in the documents.

Under subsection (1) of the section it is necessary to show that the document in question forms part of the records of the business of public authority. Subsection (2) deals with the method by which a document may be shown to fall within subsection (1). If a certificate provided for by the subsection is produced, then unless the court decides to the contrary under subsection (5) there is a conclusive presumption in favour of the admission of the document in evidence.

Subsection (3) provides that the absence of an entry in business or official records may be proved by an affidavit of an officer of the business or public authority to which the records belong. Subsection (4) contains definitions for the purposes of the section. “Business” is defined so as to include any activity regularly carried out over a period of time by anybody or an individual. For that reason, the activities of the honorary treasurer and secretary of a club will count as a “business” for those purposes. “Officer” is defined in such a way as to include not only a person holding a responsible position in relation to the concern as a whole, but also a person holding such a position in relation to its records.

Subsection (5) would allow the court to direct that the provisions of the section should not apply in the particular case. An example of when this might happen would be if other evidence before the court raised a real level of doubt as to the genuineness of a certificate produced under subsection (2). It should be noted that section 9 is not concerned with any statements in the documents, but with the documents themselves. Section 1 of the 1995 Act removes the need for special treatment of statements in business documents, because all statements in documents are admissible in all proceedings to which the 1995 Act applies. The Act recognises the special reliability of business documents by making them easy to prove, whether or not they contain statements. In the result, if a business document is relied upon other than for any statement in it, it can be received in evidence under section 9. If however it is desired to persuade the court to place reliance on statements in business documents, the statements are still subject to the notice and guidance requirements of sections 2 to 6.

Section 10

This section makes special provision in relation to admissibility and proof of Ogden Tables in personal injury actions. A court assessing lump sum damages for future pecuniary loss arising by reason of personal injury needs to look to the future and take into account various contingencies in order to fix an appropriate sum to be paid in damages. These contingencies include the probable length of the life of the person injured. One method of calculating the probable life of the person injured is the actuarial one - relying on the experience and skill of an actuary to calculate the effect of such matters as general life expectancy. The United Kingdom Government Actuaries Department produces and publishes tables, with explanatory notes, which are designed for this purpose. These tables are known as the “Ogden Tables”. Up to

now it has been necessary to prove the tables by having an actuary give evidence in court. This section provides that an HMSO copy of the Ogden Tables shall be admissible in evidence. This enables the court to use the information contained in the Tables to the extent that the court considers it appropriate to do so.

Section 11

Section 11 of the 1995 Act defines "civil proceedings" for the purposes of the Act. The Act will not apply to the proceedings of those statutory tribunals which are not bound by the strict rules of evidence, nor to other jurisdictions where hearsay has traditionally been received - for example Coroner's Courts and the wardship jurisdiction of the Supreme Court.

Sections 12 and 13

Section 12 makes provision in relation to rules of court and section 13 is a general definition section.

Section 14

Section 14(1) simply provides that nothing in the 1995 Act undermines the operation of rules excluding evidence on grounds other than that the evidence is hearsay and that section 14(2) preserves the rules relating to the proof of documents (as distinct from the proof of statements in them) except where those rules are modified by the operation of sections 8 and 9 of the 1995 Act.

Evidence (Amendment) Bill 1997

(No: of 1997)

ARRANGEMENT OF PROVISIONS**Clause**

1. Short title and commencement.
2. Amendment of the Schedule to the Evidence Ordinance 1994.
3. Consequential amendments and repeal.

Schedule

EVIDENCE (AMENDMENT) BILL 1997

(No: of 1997)

A BILL

for

AN ORDINANCE

(assented to: 1997)

(commencement: in accordance with section 1)

(published: 1997)

To amend the Evidence Ordinance 1994

BE IT ENACTED by the Legislature of the Falkland Islands as follows—

Short title and commencement

1. This Ordinance may be cited as the Evidence (Amendment) Ordinance 1997 and shall come into operation on such date as is appointed by the Governor by notice published in the *Gazette*.

Amendment of the Schedule to the Evidence Ordinance 1994

2. The Schedule to the Evidence Ordinance 1994 is amended—

- (a) in paragraph 3, by the insertion at the beginning of the paragraph of the words "Part I and";
- (b) by the insertion, immediately after paragraph 7, of the following new paragraphs—

"8. The Civil Evidence Act 1995 ("the 1995 Act") is adopted as law of the Falkland Islands subject to the modifications and adaptations specified in paragraphs 9 and 10 of this Schedule.

9. The reference in section 5(1) of the 1995 Act to section 96(2)(a) and (b) of the Children Act 1989 shall be construed as if it were a reference to the corresponding provision of the law of the Falkland Islands, that is to say to section 40(2) (a) and (b) of the Children Ordinance 1994;

10. The reference in section 12(2) of the 1995 Act to the High Court shall be construed as if it were a reference to the Supreme Court of the Falkland Islands."

Consequential amendments and repeal

3. The amendments specified in Part I of the Schedule to this Ordinance and the repeal specified in Part II of that Schedule shall each have effect.

SCHEDULE

PART I

CONSEQUENTIAL AMENDMENTS

Criminal Justice Ordinance 1989

1. In section 70B(1) of the Criminal Justice Ordinance 1989—

(a) insert the following definition before the definition of "document"—

"'copy', in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly,"; and

(b) replace the definition of "statement" with the following definition—

"'statement' " means any representation of fact, however made".

Children Ordinance 1994

2. In section 40(6) of the Children Ordinance 1994 (evidence given by, or with respect to children: interpretation), replace the the definition of "civil proceedings" and "court" with the following—

"'civil proceedings' means civil proceedings, before any tribunal, in relation to which the strict rules of evidence apply, whether as a matter of law or by

agreement of the parties, and the reference to 'the court' shall be construed accordingly;".

PART II

REPEAL

Criminal Justice Ordinance 1989

3. Section 70B(2) of the Criminal Justice Ordinance 1989 is repealed.

Currency (Amendment) Bill 1997

(No: of 1997)

ARRANGEMENT OF PROVISIONS**Clause**

1. Short title.
2. Amendment of section 9(1) of the Currency Ordinance 1987

CURRENCY (AMENDMENT) BILL 1997

(No. of 1997)

A BILL

for

AN ORDINANCE

| | |
|-----------------------|--------------|
| <i>(assented to:</i> | <i>1997)</i> |
| <i>(commencement:</i> | <i>1997)</i> |
| <i>(published:</i> | <i>1997)</i> |

To amend the Currency Ordinance 1987

BE IT ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Currency (Amendment) Ordinance 1997.

Amendment of section 9(1) of the Currency Ordinance 1987

2. Section 9(1)(e) of the Currency Ordinance 1987 is amended by inserting the words “or copper-plated steel” between the words “bronze” and “coins” in the first line of that paragraph.

OBJECTS AND REASONS

The purpose of this Bill is to make legal tender coins minted in copper-plated steel instead of bronze. Section 9(1)(e) provides that bronze coins are legal tender for any amount not exceeding twenty pence. The effect of the amendment which would be made by the Bill, if enacted, would be to make copper-plated steel coins legal tender up to the same amount.

Abattoirs Bill 1997

(No: of 1997)

ARRANGEMENT OF PROVISIONS

Clause

1. **Short title and commencement.**
2. **Interpretation.**
3. **Designation of abattoirs.**
4. **Slaughterhouses Ordinance not to apply to designated abattoirs.**
5. **Application of legislation of the United Kingdom relating to abattoirs, etc.**

ABATTOIRS BILL 1997

(No. _____ of 1997)

A BILL

for

AN ORDINANCE

(assented to: 1997)
(commencement: in accordance with section 1)
(published: 1997)

To make provision in relation to the operation of designated abattoirs

BE IT ENACTED by the Legislature of the Falkland Islands as follows—

Short title and commencement

1. This Ordinance may be cited as the Abattoirs Ordinance 1997 and shall come into force on such date as notified by the Governor by notice published in the *Gazette*.

Interpretation

2. In this Ordinance—

“abattoir” means a place for slaughtering animals, the flesh of which is intended for human consumption, and includes any place available in connection with such a place for the confinement of animals while awaiting slaughter there or for keeping, or subjecting to any treatment or process, products of the slaughtering of animals there;

“animal” includes a bird and every creature except a fish;

“designated abattoir” means an abattoir which has been designated by the Governor by an Order made under section 3;

“fish” includes crustaceans and molluscs;

“meat” means the soft tissue, flesh and organs of an animal and, in relation to an animal which has bones, its bones and any material surrounded by bone, and any other part of any animal which is edible, or edible after being subjected to any treatment;

“treatment”, in relation to meat, includes subjecting it to heat or cold;

Designation of abattoirs

3. The Governor may by Order under this section designate any abattoir as an abattoir to and in relation to which the subsequent sections of this Ordinance shall apply and any such Order may be revoked by a further Order under this section.

Slaughterhouses Ordinance not to apply to designated abattoirs

4. Nothing in the Slaughterhouses Ordinance shall apply in respect of any abattoir which is for the time being a designated abattoir.

Application of legislation of the United Kingdom relating to abattoirs, etc.

5.(1) The Governor may by Order apply, subject to such modifications and exceptions as he considers necessary, to and in relation to designated abattoirs, meat or meat products originating therefrom and to animals intended to be slaughtered thereat any legislation of the United Kingdom appearing to him to give effect to any obligation of the United Kingdom under European Community law in relation to the health, treatment or welfare of animals intended for human consumption, meat or meat products intended for human consumption in the United Kingdom or for export to any other Member State of the European Community or any matter appearing to him to be connected with any of the foregoing matters.

(2) In subsection (1), “legislation of the United Kingdom” includes legislation having effect in a constituent part of the United Kingdom and any Regulation of the Commission of the European Community having direct effect as law in the United Kingdom.

(3) The Governor may, by Order under this subsection apply, subject to such modifications and exceptions, if any, as are stated in that Order, to and in respect of every designated abattoir any code of practice in force in any part of the United Kingdom under by virtue of or for the purposes of any legislation of the United Kingdom.

Misuse of Drugs (Amendment) Bill 1997

(No: of 1997)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title and commencement
2. Amendment of the principal Ordinance

MISUSE OF DRUGS (AMENDMENT) BILL 1997

(No: of 1997

A BILL

for

AN ORDINANCE

(assented to: 1997)

(commencement: in accordance with section 1)

(published: 1997)

To amend the Misuse of Drugs Ordinance 1987

Short title and commencement

1. This Ordinance may be cited as the Misuse of Drugs (Amendment) Ordinance 1997 and shall come into force on such date as may be appointed by the Governor by notice published in the *Gazette*.

Amendment of the principal Ordinance

2. The Misuse of Drugs Ordinance 1987 is amended—

(a) by the addition of the following subsections to section 2 of that Ordinance—

“(4) The Governor may by Order make such amendments in the Schedule to this Ordinance as may be requisite for the purpose of adding any substance or product to, or removing any substance or product from, any of Parts 1 to 3 of that Schedule, including amendments for securing that no substance or product for the time being specified in a particular one of those Parts or for inserting any

substance into any of those Parts in which no substance or product is for the time being specified.

(5) An Order under this section may amend Part 4 of the Schedule, and may do so whether or not it amends any other Part of that Schedule."

(b) in the Schedule—

(i) in paragraph 1 of Part 1 —

(A) by inserting the word "N-Hydroxy-tenamphetamine" immediately below the word "2,5-Dimethoxy-a, 4-dimethylphenethylamine"; and

(B) by inserting the word "4-Methyl-aminorex" immediately below the word "2-Methyl-3-morpholino-1, 1-diphenylpropanecarboxylic acid"; and

(ii) in paragraph 1 of Part 3—

(A) by inserting "(a)" immediately before the word "Alprazolam" in the list of substances and products beginning with the word "Alprazolam" and ending with the word "N-Ethylamphetamine" (and so as to designate the existing paragraph 1 of Part 3 as sub-paragraph (a) of that paragraph);

(B) by inserting the word "Buprenorphine" immediately below the word "Bromazepam" in that sub-paragraph;

(C) by inserting the word "Midazolam" immediately below the word "Methypylone";

(D) by inserting the word "Pemoline" immediately below the word "Oxazolam" in that sub-paragraph;

(E) by deleting the word "Propylhexedrine" in that sub-paragraph;

(F) by inserting the following sub-paragraphs immediately after sub-paragraph (a)—

"(b) Atamestane
Bolandirol
Bolasterone
Bolazine
Boldenone
Bolenol
Bolmantelate
Calusterone

4-Chloromethandienone
 Clostebol
 Drostanolone
 Enestebol
 Epiostanol
 Ethyloestrenol
 Fluoxymesterone
 Formebolone
 Furazabol
 Mebolazine
 Mepitiostane
 Mesabolone
 Mestanolone
 Methandienone
 Methandriol
 Methenolene
 Methyltestosterone
 Metribolone
 Mibolerone
 Nandrolone
 Norboletone
 Norcostebol
 Norethandrolone
 Ovandrotone
 Oxabolone
 Oxandrolone
 Oxymesterone
 Oxymetholone
 Prasterone
 Propetandrol
 Quinbolone
 Roxibolone
 Silandrone
 Stanolone
 Stanozolol
 Stenbolone
 Testosterone
 Thiomesterone
 Trenbolone

(c) any compound (not being Trilostane or a compound for the time being specified in sub-paragraph (b) of this paragraph) structurally derived from 17-hydroxyandrostane-3-one or from 17-hydroxyestrane-3-one by modification in any of the following ways—

(i) by further substitution at position 17 by a methyl or ethyl group;

(ii) by substitution to any extent at one or more of positions 1, 2, 4, 6, 7, 9, 11 or 16 but at no other position;

(iii) by unsaturation in the carbocyclic ring system to any extent, provided that there are no more than two ethylenic bonds in any one carbocyclic ring;

(iv) by fusion of ring A with a heterocyclic system;

(d) any substance which is an ester or ether (or, where more than one hydroxyl function is available, both an ester or an ether) of a substance specified in sub-paragraph (b) of this paragraph or described in sub-paragraph (c) of this paragraph;

(e) Chorionic Gonadotrophin (HCG)

Clenbuterol

Non-human chorionic gonadotrophin

Somatotropin

Somatrem

Somatropin"

OBJECTS AND REASONS

The Schedule to the Misuse of Drugs Ordinance 1987 lists in Parts 1 to 3 the classes of drugs which are controlled drugs. These are dangerous drugs which, under the relevant conventions sponsored by the United Nations, are required to be controlled. From time to time, in the light of developments, international agreement is reached for the addition or deletion of drugs from these lists, or the transfer of a drug from one list to another. The amendment to section 2 of that Ordinance which would be made by clause 2 (1) of the above Bill would enable the Schedule to that Ordinance to be amended by an Order instead of having to await the enactment of a Bill passed by the Legislative Council. An example of an amendment which, in future, would be made by such an Order is the deletion of Propylhexedrine from Part III of the Schedule to the 1987 Ordinance which would be made by clause 2(b) of the Bill. This deletion is appropriate because there is no reason to believe its use needs to be prohibited. As will be seen, clause 2(b) would also insert a number of substances in the various parts of the Schedule to the 1987 Ordinance.

Clause 2(b)(ii) (F) would add to Part 3 of the Schedule to the 1987 Ordinance (which specifies the Class C drugs which are subject to control under the 1987 Ordinance) the anabolic and adrogenic steroids and derivatives, the adrenoceptor stimulant and polypeptide hormones specified in the provision.



THE FALKLAND ISLANDS GAZETTE Supplement

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The following is published in this Supplement -

The Land Charges Fees Rules 1997, (S.R. & O. No. 3 of 1997);

The Land Charges Rules 1997, (S.R. & O. No. 4 of 1997);

The Misuse of Drugs Regulations Order 1997, (S.R. & O. No. 5 of 1997);

Fines (Increase in Standard Scale) Order 1997, (S.R. & O. No. 6 of 1997).

SUBSIDIARY LEGISLATION

LAND CHARGES

The Land Charges Fees Rules 1997

S. R. & O. No. 3 of 1997

Made: 4th April 1997

Published: 18th April 1997

Coming into force: 5th May 1997

IN EXERCISE of the powers conferred on me by section 17 of the Land Charges Ordinance 1996(a), I make the following Order—

Citation and commencement

1. These Rules may be cited as the Land Charges Fees Rules 1997 and shall come into force on 5th May 1997.

Interpretation

2. In these Rules, unless the context otherwise requires—

“credit account” means an account authorised by the Registrar for the purpose of providing credit facilities for the payment of fees;

“fee” means a fee specified in Schedule 1;

“the Ordinance” means the Land Charges Ordinance 1996;

“Schedule” means a schedule to these Rules;

“written application” in Schedule 1 does not include an application made by facsimile transmission.

3. The fees specified in Schedule 1 are payable under the Ordinance.

4. Every fee which accompanies an application is to be paid in money in accordance with the Land Charges (Fees) Order 1997 and shall, except as mentioned in Rule 4 or as the Registrar may otherwise allow, be paid in cash.

5. (1) Any person or firm having a credit account may request the Registrar, on any application, to debit the requisite fee to that account.

(2) When a person or firm having a credit account makes an application which is not accompanied by any fee and does not contain a request for the fee to be debited to that account, the Registrar may, if he thinks fit, nevertheless accept the application and debit the fee to that person's or that firm's account.

(3) If the Registrar debits a fee to a credit account, this shall be treated as due payment of that fee.

(4) Credit accounts shall be authorised and maintained in accordance with the provisions set out in Schedule 2.

SCHEDULE 1

Rule 3

| Service | | Amount of Fee |
|---------|---|-----------------|
| 1. | Registration, renewal, rectification or cancellation of an entry in any register | per name £2.00 |
| 2. | Certificate of cancellation | per name £2.00 |
| 3. | Entry of priority notice | per name £2.00 |
| 4. | Inspection of an entry in the register | per entry £2.00 |
| 5. | Office copy of an entry in the register (including any plan) whether the application is made in writing or by telephone or facsimile transmission | per copy £2.00 |
| 6. | Official search in the index (including issue of printed certificate of result):- | |
| | written application | per name £2.00 |
| | telephone application | per name £3.00 |
| | facsimile transmission application | per name £3.00 |
| 7. | Official search in the index (including visual display of result of search and issue of printed certificate of such result) | per name £3.00 |

Rule 5(4)

SCHEDULE 2

PROVISION OF CREDIT ACCOUNTS

1. The Registrar may with the consent of the Financial Secretary authorise any person or firm to use a credit account for the purpose of payment of fees but may withdraw or suspend any such authorisation at any time without giving any reason therefor.

2. The Registrar may also at any time terminate or suspend all credit accounting facilities generally.
3. A statement of account shall be sent by the Registrar to each account holder at the end of each calendar month or at such other period as the Registrar shall direct either in any particular case or generally.
4. On receipt of the statement and if no question arises thereon the account holder shall pay by cheque any sum due on his account promptly, and in any event within ten days of its receipt.
5. Cheques shall be made payable to the Falkland Islands Government and sent to the Treasury, Stanley, Falkland Islands.

Made this 4th day of April 1997

R P Ralph
Governor

EXPLANATORY NOTE
(not forming part of the above Rules)

These Rules prescribe the fees payable in respect of the services provided in connection with the Land Charges Register and the methods of payment of such fees.

SUBSIDIARY LEGISLATION

LAND CHARGES

The Land Charges Rules 1997

S. R. & O. No. 4 of 1997

Made: 4th April 1997

Published: 18th April 1997

Coming into force: 5th May 1997

IN EXERCISE of the powers conferred on me by section 17 of the Land Charges Ordinance 1996(a), I hereby make the following Rules—

Citation, commencement and interpretation

1. These Rules may be cited as the Land Charges Rules 1997 and shall come into operation on 5th May 1997.

2.(1) In these Rules, unless the context otherwise requires—

“the Ordinance” means the Land Charges Ordinance 1996 and “section” means section of the Ordinance;

“application” includes requisition;

“credit account” means an account authorised by the registrar for the purpose of providing credit facilities for the payment of fees;

“day” means a day on which the principal office is open to the public;

“index” means the index kept pursuant to section 1;

“the office” means the office of the Registrar General at the Town Hall, Stanley or such other place as may be notified by the Governor by notice published in the *Gazette*;

“the registrar” means the Registrar General;

“register” means a register kept pursuant to section 1;

“relevant particulars” means particulars specified in Schedule 1 to these Rules which have been furnished in an application under these Rules.

(a) No 24 of 1996

(2) A form referred to by number means the form so numbered in Schedule 2 to these Rules.

The Registers

3.(1) The registrar shall, in respect of each land charge or other matter for the registration of which an application is made in accordance with these Rules, record in the appropriate register the relevant particulars, the date on which the entry is registered and the date (if any) on which the registration is renewed.

(2) Any person may, upon completion of Form LC18 and on payment of the prescribed fee, inspect an entry in the register at the office or at such other office as the registrar shall direct.

Priority notices and applications for registration

4. A priority notice shall be given in Form LC5.

5. An application for registration or renewal of registration shall be made in Form LC1, LC2, LC3, LC4 or LC6 whichever is appropriate.

6. An application for registration or rectification (other than an application made by a legal practitioner) shall, unless the registrar otherwise directs, be supported by a statutory declaration in Form LC11 by the person on whose behalf the application is made.

7. Where an application for registration has been duly made pursuant to a priority notice it shall, in order to comply with the requirements of section 13(3), refer to that notice by citing the official reference number allocated thereto.

8.(1) Every priority notice and application for registration or renewal of registration or rectification given or made in accordance with these Rules shall, having been received in the principal office between 15.00 hours on one day and 15.00 hours on the next day, be deemed to have been given or made at the same time, namely immediately before 15.00 hours on the second of those days.

(2) The date of registration recorded on a register under rule 3(1) above shall be the date of the day on which the application is deemed to have been made, notwithstanding that the entry is made pursuant to a priority notice.

Cancellation

9. Where the registrar is satisfied that an application to cancel the whole or part of an entry in the register has been properly made, he shall—

(i) if the application relates to the whole of an entry, cancel that entry and remove from the index the reference thereto;

- (ii) if the application relates to part only of an entry, note on the register the effect of the cancellation and amend the index accordingly.

10. An application to cancel an entry shall be made in Form LC9 and shall be accompanied by—

- (i) sufficient evidence of the applicant's title to apply for cancellation, unless he is the person on whose behalf the registration was made and is entitled to the benefit of the entry; or
- (ii) such office copies of orders of the court as shall justify cancellation:

Provided that if the registrar has first been consulted and is satisfied that the applicant would suffer exceptional hardship or expense by reason of the foregoing provisions of this rule, he may allow the application to be made in Form LC10, supported by sufficient evidence that the land charge or other matter has been discharged or overreached or is of no effect.

11. An application for a certificate that an entry in the register has been cancelled shall be made in Form LC17.

Rectification and amendment

12.(1) Where it appears that an error in an application has led to a corresponding error in the register, application may be made—

- (i) in accordance with rule 10 for cancellation of the original entry, and, in accordance with rule 5, for the registration of a fresh entry; or
- (ii) for rectification of the original entry.

(2) Where an application for rectification has been duly made, the registrar shall rectify the register so as to indicate the original entry and the amendments and shall record on the register the date of rectification.

(3) An application for rectification shall be made in Form LC7 and shall be signed by or on behalf of the person on whose behalf the original application was made or, subject to production of sufficient evidence of title, by or on behalf of any successor in title of that person.

(4) No person who has obtained a certificate of the result of an official search in the index or an office copy of the register, dated in either case before the date of rectification, shall, in respect of that search of office copy, be affected by the rectification.

Official searches

13.(1) A written application for an official search in the index pursuant to section 12(1) shall be made in Form LC12 or LC13 whichever is appropriate.

(2) An application for an official search in the index made by telephone shall provide, in such order as may be requested, the same particulars as are required for an application made in Form LC12 or LC13.

(3) An application for an official search in the index transmitted by facsimile shall be made in the form set out in Part I of Schedule 3 or if the applicant chooses, in Form LC12 or LC13.

14.(1) The certificate of the result of a search issued pursuant to section 12(3)(a) shall be in Form LC14 or LC15, whichever is appropriate, and shall bear a date which shall be the date of the certificate for the purpose of section 13(5).

(2) The date of the certificate shall be the date of the day on which the search is commenced or such earlier day as may be necessary to enable the registrar to comply with paragraph (3) below.

(3) The certificate shall extend to all entries bearing dates of registration up to and including the date of the certificate.

15. Without prejudice to section 12(3)(a) (issue of certificate), where an applicant for an official search in the index—

(a) makes his application by telephone and requests the result of search to be given to him orally as part of the same telephone call; or

(b) delivers Form LC12 in person at the office and requests the result of search to be displayed to him,

the registrar may comply with the request in such manner and on such conditions as he may determine.

Office copies

16.(1) A written application for an office copy of an entry in a register shall be made in Form LC16.

(2) Where the applicant has a credit account and the prescribed fee is debited by the registrar to that account, an application for an office copy of an entry in a register may also be made by facsimile in the form set out in Part II of Schedule 3.

(3) Where an application has been made by telephone for an official search in the index and the result has been given orally in accordance with rule 15 above, the applicant may, as part of the same telephone call, request that an office copy of an entry disclosed and identified in the result of search be sent to him whereupon the fee shall be debited to his credit account.

(4) Where the applicant has a credit account and the prescribed fee is debited by the Registrar to that account, an application for an office copy of an entry in a register may also be made by facsimile transmission in Form LC16.

Applications generally

17.(1) Every written application shall, unless the registrar otherwise directs, be sent by prepaid post, or delivered by hand, to the principal office.

(2) Every such application shall be accompanied by the prescribed fee, unless that fee is debited by the registrar to a credit account.

(3) An application for an official search pursuant to rule 13(3) or for an office copy pursuant to rule 14(2) shall be transmitted by facsimile to the office.

(4) An application for an official search pursuant to rule 13(2) or for an office copy pursuant to rule 16(3) above shall be made by telephone to the office or such other office as the registrar shall direct.

18. No application shall, unless these Rules or the appropriate form so provides, be accompanied or supported by any deed, document or plan.

19. Except in the case of an application for cancellation or rectification and without prejudice to the provisions of rule 13 above, the registrar shall not be concerned to inquire into or otherwise verify the accuracy or validity of any matter or thing stated or appearing in any notice given or application made to him.

20. Every application for registration, or for renewal, cancellation or rectification of registration and every priority notice shall be acknowledged by the registrar in Form LC19.

Forms

21.(1) The prescribed forms may be used with such variations as in the opinion of the registrar are required for the purposes of the Ordinance or these Rules.

(2) Nothing in this rule shall prejudice any powers of the registrar to promulgate additional forms for use under the Ordinance or these Rules.

22. Unless the registrar otherwise directs, a separate form of application or priority notice shall be used for each entry in a register and for each full name in respect of which an entry is required to be made, renewed, cancelled or rectified.

Made this 4th day of April 1997

R P Ralph
Governor

SCHEDULE 1

Contents of Registers

| REGISTER | RELEVANT PARTICULARS |
|--------------------------------|---|
| 1. Register of Land Charges | <p>(i) Name and address of person on whose behalf application is made.</p> <p>(ii) Date of and parties to instrument (if any) creating charge or (where charge not created by instrument) particulars sufficient to identify charge.</p> <p>(iii) Class and sub-class (if any) into which charge falls under section 4.</p> <p>(iv) Name and address of estate owner whose estate is affected.</p> <p>(v) Location of land charged together with short description identifying land so far as practicable.</p> <p>(vi) Official reference number of priority notice (if any) pursuant to which application is expressed to be made.</p> |
| 2. Register of Pending Actions | <p><i>(a) Pending land actions—</i></p> <p>(i) Name and address of person on whose behalf application is made.</p> <p>(ii) Nature of action or proceeding.</p> <p>(iii) Court in which and day on which action or proceeding was commenced or filed and title of action or proceeding.</p> <p>(iv) Name and address of estate owner whose estate is intended to be affected.</p> <p>(v) Location of land affected situated together with short description identifying land so far as practicable.</p> <p>(vi) Official reference number of priority notice (if any) pursuant to which application is expressed to be made.</p> <p><i>(b) Petitions in bankruptcy—</i></p> <p>(i) Name and address of petitioner.</p> <p>(ii) Court in which and day on which petition was filed.</p> <p>(iii) Name, address and description of debtor, and, in case of debtor firm, of each partner.</p> |

| REGISTER | RELEVANT PARTICULARS |
|-------------------------------------|---|
| 3. Register of Writs and Orders | <p><i>(a) Writs and orders other than receiving orders in bankruptcy—</i></p> <p>(i) Name and address of person on whose behalf application is made.</p> <p>(ii) Nature and date of writ or order.</p> <p>(iii) Court by which writ or order was issued or made and title of action or matter.</p> <p>(iv) Name and address of estate owner whose land is affected.</p> <p>(v) Location of land together with short description identifying land so far as practicable.</p> <p>(vi) Official reference number of priority notice (if any) pursuant to which application is expressed to be made.</p> <p><i>(b) Receiving orders in bankruptcy—</i></p> <p>(i) Name and address of petitioner.</p> <p>(ii) Court in which and day on which receiving order was made.</p> <p>(iii) Name, address and description of debtor.</p> |
| 4. Register of Deeds of Arrangement | <p>(i) Name and address of person on whose behalf application is made.</p> <p>(ii) Date of deed and names of parties, or, where creditors are numerous, of at least three creditors.</p> <p>(iii) Name, address and description of debtor whose land is affected.</p> <p>(iv) Where practicable, location of land is situated together with short description identifying land.</p> <p>(v) Official reference number of priority notice (if any) pursuant to which application is expressed to be made.</p> |

SCHEDULE 2

Forms

Form LC1

PAYMENT OF FEE EITHER

insert a cross (X) in
this box if the fee is to
be paid through a
credit account

☐

OR

enclose payment

APPLICATION FOR REGISTRATION OF A LAND CHARGE

Application is hereby made for the registration of a Land Charge in
respect of the following particulars.

PARTICULARS OF CHARGE

Name

Address

PARTICULARS OF CHARGE

Enter

(1) date of and full names of the
parties to instrument creating the
charge

OR

(2) short particulars of effect of
charge

Enter Class and Sub-class of
Charge

Class Sub-class

If application is made pursuant to a
Priority Notice state its official
reference number

PARTICULARS OF LAND AFFECTED

Situation of land

Short Description

| | | |
|--|-------------------|-------------------------|
| PARTICULARS OF ESTATE OWNER | | |
| Forename(s) | | |
| Surname | | |
| Title, Trade of Profession | | |
| Address | | |
| PARTICULARS OF APPLICANT'S LEGAL PRACTITIONER(S) If no legal practitioner acting, the name and address of the applicant must be supplied | KEY NUMBER | NAME AND ADDRESS |
| | | |
| Legal Practitioners' reference: | | |

I/We certify that the foregoing particulars are correct

SIGNATURE OF LEGAL PRACTITIONER Date

Form LC2

| | |
|--|--|
| <p>PAYMENT OF FEE EITHER</p> <p>insert a cross (X) in this box if the fee is to be paid through a credit account</p> <div></div> <p>OR enclose payment</p> | <p>APPLICATION FOR REGISTRATION OF A PENDING ACTION</p> <p>Application is hereby made for the registration of a Pending Action in respect of the following particulars.</p> |
| <p>PARTICULARS OF CHARGE</p> <p>Name</p> <p>Address</p> | |
| <p>PARTICULARS OF ACTION OR PROCEEDING</p> <p>Nature of action or proceeding</p> <p>Name of court and official reference number</p> <p>Title of action or proceeding</p> <p>Date commenced or filed</p> | |
| | <p>If application is made pursuant to a Priority Notice state the official reference number</p> <p>.....</p> |
| <p>PARTICULARS OF LAND AFFECTED</p> <p>Situation of land</p> <p>Short Description</p> | |
| <p>PARTICULARS OF ESTATE OWNER</p> <p>Forename(s)</p> <p>Surname</p> <p>Title, Trade or Profession</p> <p>Address</p> | <p>.....</p> <p>.....</p> |

| PARTICULARS OF APPLICANT'S LEGAL PRACTITIONER | NAME AND ADDRESS |
|---|---------------------------------|
| If no legal practitioner acting, the name and address of the applicant must be supplied | Legal Practitioner's reference: |

SIGNATURE OF LEGAL PRACTITIONER OR APPLICANT Date

Form LC3

PAYMENT OF FEE

If the fee is to be paid
through a credit
account insert a cross
(X) in this box

☐

OR

enclose payment

APPLICATION FOR REGISTRATION OF A WRIT OR ORDER

Application is hereby made for the registration of a Writ or Order in
respect of the following particulars.

PARTICULARS OF CHARGE

Name

Address

PARTICULARS OF ACTION
OR MATTER

Nature of writ or order

Name of court and official reference
number

Title of action

Date of writ or order

If application is made pursuant to a Priority Notice state official reference
number

PARTICULARS OF LAND
AFFECTED

Situation of land

Short Description

PARTICULARS OF ESTATE
OWNER

Forename(s)

Surname

Title, Trade or Profession

Address

| PARTICULARS OF APPLICANT'S LEGAL PRACTITIONER | NAME AND ADDRESS |
|---|---------------------------------|
| If no legal practitioner acting, the name and address of the applicant must be supplied | Legal Practitioner's reference: |

I/We certify that the above particulars are correct

SIGNATURE OF LEGAL PRACTITIONER OR APPLICANT Date

Form LC4

PAYMENT OF FEE

EITHER

insert a cross (X) in
this box if the fee is
to be paid through a
credit account

OR

enclose payment

☐

APPLICATION FOR REGISTRATION OF A DEED OF ARRANGEMENT

Application is hereby made for the registration of a Deed of Arrangement in
respect of the following particulars.

PARTICULARS OF
CHARGE

Name

Address

PARTICULARS OF DEED

Date of Deed

Parties

(if there are numerous creditors,
name first three and add "and
others")

If application is made pursuant to a Priority Notice state its official
reference number

PARTICULARS OF LAND
AFFECTED

Situation of land

Short Description

PARTICULARS OF
DEBTOR

Forename(s)

Surname

Title, Trade or Profession

Address

| PARTICULARS OF APPLICANT'S LEGAL PRACTITIONER | NAME AND ADDRESS |
|---|---------------------------------|
| If no legal practitioner acting, the name and address of the applicant must be supplied | Legal Practitioner's reference: |

SIGNATURE OF LEGAL PRACTITIONER OR APPLICANT Date

Form LC5

PAYMENT OF FEE

EITHER

insert a cross (X) in this
box if the fee is to be paid
through a credit account

☐

OR

enclose payment

APPLICATION FOR REGISTRATION OF A PRIORITY NOTICE

Application is hereby made for the entry of a Priority Notice in respect
of the following particulars.

PARTICULARS OF CHARGE

Name

Address

PARTICULARS OF INTENDED
REGISTRATION

State register to
which intended
application for
registration will relate

If intended registration
is a land charge enter class
and sub-class

LAND CHARGES

PENDING ACTIONS

WRITS OR ORDERS

DEEDS OF ARRANGEMENT

}

}

}

}

(Delete words not applicable).

Class Sub-class

PARTICULARS OF LAND
AFFECTED

Situation of land

Short Description

PARTICULARS OF ESTATE
OWNER

Forename(s)

Surname

Address

| PARTICULARS OF APPLICANT'S LEGAL PRACTITIONERS | KEY NUMBER | NAME AND ADDRESS |
|---|---------------------------------|------------------|
| If no legal practitioner acting, the name and address of the applicant must be supplied | | |
| | Legal Practitioner's reference: | |

I/We certify that the estate owner's title is not registered at the Land Registry.

SIGNATURE OF LEGAL PRACTITIONER OR APPLICANT Date

Form LC6

PAYMENT OF FEE

EITHER

insert a cross (X) in this
box if the fee is to be paid
through a credit account

OR

enclose payment

APPLICATION FOR THE RENEWAL OF A REGISTRATION

Application is hereby made for the renewal of a registration in respect
of the particulars given below.

PARTICULARS OF CHARGE

Name

Address

PARTICULARS OF ENTRY

PENDING ACTION }
WRIT OR ORDER } *(Delete*
DEED OF } *words not*
ARRANGEMENT } *applicable)*

Number and date of
the original registrationOfficial
reference no.Date of
registrationPARTICULARS OF ESTATE
OWNER OR DEBTOR

Forename(s)

Surname

PARTICULARS OF
APPLICANT'S LEGAL
PRACTITIONERS

If no legal practitioner acting, the
name and address of the applicant
must be supplied

NAME AND ADDRESS

Legal Practitioner's reference:

SIGNATURE OF LEGAL PRACTITIONER OR APPLICANT Date

Form LC7

| <p>PAYMENT OF FEE EITHER</p> <p>insert a cross (X) in this box if the fee is to be paid through a credit account <input type="checkbox"/></p> <p>OR</p> <p>enclose payment</p> | <p>APPLICATION FOR RECTIFICATION OF AN ENTRY IN THE REGISTER</p> <p>Application is hereby made for the rectification of an entry in the register in respect of the particulars given below.</p> | | | | | |
|--|---|---|--|--|------------------------|----------------------|
| <p>PARTICULARS OF APPLICANT</p> <p>Name</p> <p>Address</p> | | | | | | |
| <p>CERTIFICATE</p> <p>Delete words in <i>italics</i> which are not applicable</p> | <p><i>I/We as Legal Practitioners acting for the above-mentioned applicant(s) hereby apply for rectification of an entry in the Register as shown below.</i></p> <p>I/We certify that:</p> <p><i>(a) the applicant is the person entitled to the benefit of the entry, and is named as the chargee in the original registration.</i></p> <p><i>(b) the applicant is the successor in title to the original chargee, and evidence of the applicant's title is enclosed.</i></p> <p>Signature (or attested seal of company) _____ Date _____</p> <p>Address _____</p> | | | | | |
| <p>DETAILS OF RECTIFICATION</p> | <p>Particulars of the error and of the rectification required</p> | | | | | |
| <p>PARTICULARS OF ENTRY</p> | <p>LAND CHARGE (Class Sub-class) PENDING ACTION WRIT OR ORDER DEED OF ARRANGEMENT</p> <p>(Delete words not applicable)</p> | <table border="1"> <tr> <th colspan="2">Number and date of the original registration</th> </tr> <tr> <td>Official reference no.</td> <td>Date of registration</td> </tr> </table> | Number and date of the original registration | | Official reference no. | Date of registration |
| Number and date of the original registration | | | | | | |
| Official reference no. | Date of registration | | | | | |
| <p>PARTICULARS OF ESTATE OWNER</p> <p>Forename(s)</p> <p>Surname</p> | <p>.....</p> <p>.....</p> | | | | | |
| <p>PARTICULARS OF APPLICANT'S LEGAL PRACTITIONERS</p> <p>If no legal practitioner acting, the name and address of the applicant must be supplied</p> | <p>NAME AND ADDRESS</p> <p>Legal Practitioner's reference:</p> | | | | | |

Form LC8

CONTINUATION OF AN APPLICATION

| | |
|--|----------|
| (1) State type of application and number of form to which this continuation relates (eg LC1) | (1)..... |
| (2) State "Land Charge", "Writ or Order", etc. as the case may be. | (2)..... |
| (3) Give name of the estate owner or debtor. | (3)..... |

Form LC9

PAYMENT OF FEE
EITHER

insert a cross (X) in this box if the fee is to be paid through a credit account

☐

OR

enclose payment

APPLICATION FOR CANCELLATION OF
AN ENTRY IN THE REGISTER

Application is hereby made for the cancellation of an entry in the register in respect of the particulars given below.

PARTICULARS OF APPLICANT

Name

Address

CERTIFICATE

Delete words in *italics* which are not applicable

I/We *as Legal Practitioners acting for* the above-mentioned applicant(s) hereby apply for cancellation of an entry in the Register as shown below.

I/We certify that:

- (a) *the applicant(s) is/are the person(s) entitled to the benefit of the entry, and is/are named as the chargee(s) in the original registration.*
 (b) *the applicant(s) is/are the successor(s) in title to the original chargee(s), and evidence of the applicant's title is enclosed.*
 (c) *the application is made pursuant to an order of the Court directing vacation of the entry and an office copy of the order is attached.*

Signature (or attested seal of company)

Date

Address

PARTICULARS OF THE ENTRY

(Delete (a) or (b) as appropriate)

Please cancel the undermentioned entry as to

(a) the whole
OR

(b) the following part.....

| | | | |
|---|--|---|-------------------------|
| PARTICULARS OF THE ENTRY (continued) | LAND CHARGE (Class Sub-class) ANNUITY PENDING ACTION WRIT OR ORDER DEED OF ARRANGEMENT (Delete words not applicable) | Number and date of the original registration | |
| | | Official reference no. | Date of registration |
| PARTICULARS OF ESTATE OWNER Forename(s) Surname | | | |
| PARTICULARS OF APPLICANT'S LEGAL PRACTITIONERS If no legal practitioner acting, the name and address of the applicant must be supplied | NAME AND ADDRESS | | |
| | Legal Practitioner's reference: | | |

Form LC10

PAYMENT OF FEE
EITHER

insert a cross (X) in this
box if the fee is to be paid
through a credit account

☐

OR

enclose payment

APPLICATION FOR CANCELLATION OF AN ENTRY IN THE
REGISTER UNDER SPECIAL DIRECTION OF THE REGISTRAR

Application is hereby made for the cancellation of an entry in the
register under special direction of the Registrar in respect of the
particulars given below.

I/We hereby apply for cancellation in the register of the entry referred
to below on behalf of

Full name(s)

Exceptional hardship or expense would be caused if this application
were made on form LC9 because:

Signature

Date

Address

LAND CHARGE (Class
Sub-class)

ANNUITY
PENDING ACTION
WRIT OR ORDER
DEED OF ARRANGEMENT

(Delete words not applicable)

Number and date of the
registration

Official
reference no.

Date of
registration

PARTICULARS OF ESTATE
OWNER

Forename(s)

Surname

PARTICULARS OF
APPLICANT'S LEGAL
PRACTITIONERS

If no legal practitioner acting, the
name and address of the applicant
must be supplied

NAME AND ADDRESS

Legal Practitioner's reference:

Form LC11
DECLARATION IN SUPPORT OF AN APPLICATION FOR
REGISTRATION OR RECTIFICATION

(1) Full Name
and address

I(1)
of
.....
.....
.....

(2) Description

(2)
solemnly and sincerely declare that I am

(3) Description of interest (eg
agreement for sale, restrictive
covenant) which is to be
registered or the registration
of which is to be rectified.

entitled to the benefit of (3)
which is registrable as a (4)
..... and which is the subject of the application

(4) Land Charge, Pending
Action, Writ or Order, or
Deed of Arrangement as the
case may be.

made in form and marked "A" which is now
produced and shown to me.

The title to the property affected by this application is not registered at the
Land Registry.

I make this solemn declaration, conscientiously believing the same to be true,
by virtue of the provisions of the Statutory Declarations Act 1835 in its
application to the Falkland Islands.

Declared by the said

at

this day of 19 , before me

A Commissioner for Oaths or
Justice of the Peace
(Delete whichever is not applicable)

Form LC12
APPLICATION FOR AN OFFICIAL SEARCH

Application is hereby made for an official search in the index to the registers kept pursuant to the Land Charges Ordinance 1996 for any subsisting entries in respect of the undermentioned particulars.

PAYMENT OF FEE

EITHER

insert a cross (X) in this box if the fee is to be paid through a credit account

OR

enclose payment

| NAMES TO BE SEARCHED | | PERIOD OF YEARS | |
|--------------------------|------------------|-------------------------------------|----|
| | | From | To |
| Forename(s) | | | |
| Surname | | | |
| Forename(s) | | | |
| Surname | | | |
| Forename(s) | | | |
| Surname | | | |
| Forename(s) | | | |
| Surname | | | |
| Forename(s) | | | |
| Surname | | | |
| Situation of land | | | |
| Description of land | | | |
| PARTICULARS OF APPLICANT | | ADDRESS FOR DESPATCH OF CERTIFICATE | |
| KEY NUMBER | NAME AND ADDRESS | | |
| | | | |
| Applicant's Reference: | | | |
| Date | | | |

Form LC13
APPLICATION FOR AN OFFICIAL SEARCH
(BANKRUPTCY ONLY)

| | |
|--|-------------|
| PAYMENT OF FEE EITHER insert a cross (X) in this box if the fee is to be paid through a credit account OR enclose payment | <div></div> |
|--|-------------|

Application is hereby made for an official search in the index to the registers kept pursuant to the Land Charges Ordinance 1996 in respect of the under-mentioned names for any subsisting entries of:

- (i) petitions in bankruptcy in the register of pending actions
- (ii) receiving orders in bankruptcy in the register of writs and orders
- (iii) deeds of arrangement in the register of deeds of arrangement.

NAMES TO BE SEARCHED

| | |
|-------------|--|
| Forename(s) | |
| Surname | |
| Forename(s) | |
| Surname | |
| Forename(s) | |
| Surname | |
| Forename(s) | |
| Surname | |
| Forename(s) | |
| Surname | |
| Forename(s) | |
| Surname | |

| PARTICULARS OF APPLICANT | | ADDRESS FOR DESPATCH OF CERTIFICATE |
|--------------------------|------------------|--|
| KEY NUMBER | NAME AND ADDRESS | |
| | | |
| Applicant's Reference: | Date | |

Form LC14

Certificate of the Result of Search

CERTIFICATE No.

CERTIFICATE DATE

PROTECTION ENDS ON

It is hereby certified that an official search in respect of the undermentioned particulars has been made in the index to the registers which are kept pursuant to the Land Charges Ordinance 1996. The result of the search is that there are NO SUBSISTING ENTRIES.

| PARTICULARS SEARCHED | | | |
|--------------------------|--|--------|-----------|
| SITUATION OF LAND | | | |
| NAME(S) | | PERIOD | Fees £ |
| | | | |
| | | | |
| | | | |
| | | | |
| APPLICANT'S REFERENCE | | £ | |

Form LC16

**PAYMENT OF FEE
EITHER**

 insert a cross (X) in this
box if the fee is to be paid
through a credit account

☐

OR

enclose payment

**APPLICATION FOR AN OFFICE COPY OF AN ENTRY IN THE
REGISTER**

Application is made for an office copy of the entry described below.

 If a copy of any plan filed in the register is required
state "YES" here.

| | | | |
|--|--|--|-------------------------|
| PARTICULARS OF ENTRY | LAND CHARGE (Class Sub-class) ANNUITY PENDING ACTION WRIT OR ORDER DEED OF ARRANGEMENT (Delete words not applicable) | Number and date of the registration | |
| | | Official reference no. | Date of registration |
| PARTICULARS OF ESTATE OWNER Forename(s) Surname | | | |
| PARTICULARS OF LEGAL PRACTITIONERS OR OTHER PERSON APPLYING | NAME AND ADDRESS Applicant's reference: | | |

NAME AND ADDRESS TO WHICH COPY IS TO BE SENT

| |
|--|
| |
|--|

Applicant's Reference:

| Form LC17 | | |
|--|--|--|
| PAYMENT OF FEE EITHER | | APPLICATION FOR A CERTIFICATE OF THE CANCELLATION OF AN ENTRY IN THE REGISTER |
| insert a cross (X) in this box if the fee is to be paid through a credit account | <input type="checkbox"/> | |
| OR | | |
| enclose payment | | |
| Please certify that the entry described below has been cancelled in the register. | | |
| PARTICULARS OF ENTRY | LAND CHARGE (Class Sub-class) | Number and date of the registration |
| | ANNUITY PENDING ACTION WRIT OR ORDER DEED OF ARRANGEMENT (Delete words not applicable) | Official reference no. Date of registration |
| PARTICULARS OF ESTATE OWNER | | |
| Forename(s) | | |
| Surname | | |
| PARTICULARS OF LEGAL PRACTITIONERS OR OTHER PERSONS APPLYING | KEY NUMBER | NAME AND ADDRESS |
| | | |
| Applicant's reference: | | |
| Date | | |
| CERTIFICATE OF CANCELLATION | | FORM LC17 |
| It is hereby certified that the entry in the register of | | |
| under official reference number dated | | |
| was cancelled on under official reference number | | |
| NAME AND ADDRESS TO WHICH CERTIFICATE IS TO BE SENT | | |
| <div></div> | | |
| Applicant's Reference: | | |

Form LC18

APPLICATION FOR AN INSPECTION OF THE REGISTER

| | | | |
|------------|--|---------------------------|-------------------------|
| FEE STAMPS | | | |
| | I apply to inspect the undermentioned entry/entries in the register. | | |
| | REGISTER | OFFICIAL REFERENCE NO. | DATE OF REGISTRATION |
| | | | |

Signature Date

Form LC19

ACKNOWLEDGEMENT OF AN APPLICATION

The Registrar General acknowledges receipt of the under-mentioned application to which effect has been given on the date and under the reference number shown below.

| | | | | | | |
|---|------------------------------|------|---------------------|--|--------------------------|--|
| TYPE OF APPLICATION | OFFICIAL REFERENCE NUMBER | DATE | | | | |
| <table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">NAME OF THE CHARGOR</td> <td></td> </tr> <tr> <td style="font-size: small;">Particulars of the entry</td> <td></td> </tr> </table> | | | NAME OF THE CHARGOR | | Particulars of the entry | |
| NAME OF THE CHARGOR | | | | | | |
| Particulars of the entry | | | | | | |
| APPLICANT'S REFERENCE | | £ | | | | |

SCHEDULE 3

PART 1

FORM OF APPLICATION BY FACSIMILE FOR AN OFFICIAL SEARCH IN THE INDEX

Each item must be set out on a separate line (with double line spacing between lines) thus:-

[Applicant's name, address and facsimile number; date in brackets]

NAME TO BE SEARCHED¹:

YEARS TO BE SEARCHED:

[First year to be covered by the search to last years to be covered by the search]

(Repeat preceding two items in respect of each name to be searched)

SITUATION OF LAND:

SHORT DESCRIPTION OF LAND²:

APPLICANT'S REFERENCE:

¹ For the name of an individual, the forename(s) must precede the surname and be separated from it by an oblique stroke.

² It is not essential to give this item. If it is given, any relevant former description should be added on a separate line and enclosed in brackets.

PART II

FORM OF APPLICATION BY FACSIMILE FOR AN OFFICE COPY OF AN ENTRY IN
THE REGISTER

Each item must be set out on a separate line (with double line spacing between lines), thus:-

[Applicant's name, address and facsimile number]

OFFICE COPY

[The register affected]¹

[Official reference number and date of registration of relevant entry]

[Name against which entry registered]

[Applicant's reference]

[Name and address to which office copy to be sent]

¹ State the relevant register: for example, LAND CHARGES OR PENDING ACTIONS.

SUBSIDIARY LEGISLATION

DANGEROUS DRUGS

The Misuse of Drugs Regulations Order 1997

S. R. & O. No. 5 of 1997

Made: 4th April 1997

Published: 18th April 1997

Coming into force: 1st April 1997

IN EXERCISE of my powers under section 7, 11 of the Misuse of Drugs Ordinance 1987(a), I make the following Order—

Citation and commencement

1. This Order may be cited as the Misuse of Drugs Regulations Order 1997 and shall come into operation on 1st April 1997.

Interpretation

2.(1) In these Regulations, unless the context otherwise requires, the expression—

“the Ordinance” means the Misuse of Drugs Ordinance 1987;

“document” has the same meaning as in Part I of the Civil Evidence Act 1968(b);

“health prescription” means a prescription issued by a medical practitioner;

“installation manager” and “offshore installation” have the same meaning as in the Offshore Minerals Ordinance 1994(c);

“master” and “seamen” have the same meanings as in the Merchant Shipping Act 1894(d);

“medicinal product” has the same meaning as in the Medicines Act 1968(e);

“the Merchant Shipping Acts” means the Merchant Shipping Acts 1894 to 1984;

(a) No 16 of 1987

(b) 1968 c.64.

(c) No 16 of 1994

(d) 1894 c.60.

(e) 1968 c.67.

"customs officer" has the same meaning as it has in the Customs Ordinance(a);

"prescription" means a prescription issued by a doctor for the medical treatment of a single individual, by a dentist for the dental treatment of a single individual or by a veterinary surgeon or veterinary practitioner for the purposes of animal treatment;

"register" means a bound book and does not include any form of loose leaf register or card index;

"retail dealer" means a person lawfully conducting a retail pharmacy business;

"sister or acting sister" includes any male nurse occupying a similar position;

"wholesale dealer" means a person who carries on the business of selling drugs to persons who buy to sell again.

(2) In these Regulations any reference to a regulation or Schedule shall be construed as a reference to a regulation contained in these Regulations or, as the case may be, to a Schedule thereto; and any reference in a regulation or Schedule to a paragraph shall be construed as a reference to a paragraph of that regulation or Schedule.

(3) Nothing in these Regulations shall be construed as derogating from any power or immunity of the Crown, its servants or agents.

Specification of controlled drugs for purposes of Regulations

3. Schedules 1 to 5 shall have effect for the purpose of specifying the controlled drugs to which certain provisions of these Regulations apply.

Exceptions for drugs in Schedules 4 and 5 and poppy-straw

4.(1) Section 3(1) of the Ordinance (which prohibits the importation and exportation of controlled drugs) shall not have effect in relation to the drugs specified in Schedules 4 and 5.

(2) Section 5(1) of the Ordinance (which prohibits the possession of controlled drugs) shall not have effect in relation to—

(a) any drug specified in Schedule 4 which is contained in a medicinal product;

(b) the drugs specified in Schedule 5.

(3) Sections 4 (which prohibits the production and supply of controlled drugs) and 5(1) of the Act (Ordinance) shall not have effect in relation to poppy-straw.

Licences to produce etc. controlled drugs

5. Where any person is authorised by a licence of the Governor issued under this regulation and for the time being in force to produce, supply, offer to supply or have in his possession any controlled drug, it shall not by virtue of section 4 or 5(1) or (2) of the Ordinance be unlawful for that person to produce, supply, offer to supply or have in his possession that drug in accordance with the terms of the licence and in compliance with any conditions attached to the licence.

General authority to supply and possess

6.(1) Notwithstanding the provisions of section 4(c) of the Ordinance, any person who is lawfully in possession of a controlled drug may supply that drug to the person from whom he obtained it.

(2) Notwithstanding the provisions of section 4(c) of the Ordinance, any person who has in his possession a drug specified in Schedule 2, 3, 4 or 5 which has been supplied by or on the prescription of a practitioner for the treatment of that person, or of a person whom he represents, may supply that drug to any doctor, dentist or pharmacist for the purpose of destruction.

(3) Notwithstanding the provisions of section 4(c) of the Ordinance, any person who is lawfully in possession of a drug specified in Schedule 2, 3, 4 or 5 which has been supplied by or on the prescription of a veterinary practitioner or veterinary surgeon for the treatment of animals may supply that drug to any veterinary practitioner, veterinary surgeon or pharmacist for the purpose of destruction.

(4) Notwithstanding the provisions of section 4(c) of the Ordinance, any of the persons specified in paragraph (6) may supply any controlled drug to any person who may lawfully have that drug in his possession.

(5) Notwithstanding the provisions of section 5(1) of the Ordinance, any of the persons so specified may have any controlled drug in his possession.

(6) The persons referred to in paragraphs (4) and (5) are—

(a) a police officer when acting in the course of his duty as such;

(b) a person engaged in the business of a carrier when acting in the course of that business;

(c) a person engaged in the business of the Falkland Islands Post Office when acting in the course of that business;

(d) an officer of customs and excise when acting in the course of his duty as such;

(e) a person engaged in the work of any laboratory to which the drug has been sent for forensic examination when acting in the course of his duty as a person so engaged;

(f) a person engaged in conveying the drug to a person who may lawfully have that drug in his possession.

Administration of drugs in Schedules 2, 3, 4 and 5

7.(1) Any person may administer to another any drug specified in Schedule 5.

(2) A doctor or dentist may administer to a patient any drug specified in Schedule 2, 3 or 4.

(3) Any person other than a doctor or dentist may administer to a patient, in accordance with the directions of a doctor or dentist, any drug specified in Schedule 2, 3 or 4.

Production and supply of drugs in Schedules 2 and 5

8.(1) Notwithstanding the provisions of section 4(a) of the Ordinance—

(a) a practitioner or pharmacist, acting in his capacity as such, may manufacture or compound any drug specified in Schedule 2 or 5.

(b) a person lawfully conducting a retail pharmacy business and acting in his capacity as such may, at the registered pharmacy at which he carries on that business, manufacture or compound any drug specified in Schedule 2 or 5.

(2) Notwithstanding the provisions of section 4(c) of the Ordinance, any of the following persons, that is to say:—

(a) a practitioner;

(b) a pharmacist;

(c) a person lawfully conducting a retail pharmacy business;

(d) the person in charge or acting person in charge of a hospital or nursing home which is wholly or mainly maintained by a public authority out of public funds or by a charity or by voluntary subscriptions;

(e) in the case of such a drug supplied to her by a person responsible for the dispensing and supply of medicines at the hospital or nursing home, the sister or acting sister for the time being in charge of a ward, theatre or other department in such a hospital or nursing home as aforesaid,

may, when acting in his capacity as such, supply or offer to supply any drug specified in Schedule 2 or 5 to any person who may lawfully have that drug in his possession:

Provided that nothing in that paragraph authorises—

(i) the person in charge or acting person in charge of a hospital or nursing home, having a pharmacist responsible for the dispensing and supply of medicines, to supply or offer to supply any drug;

(ii) a sister or acting sister for the time being in charge of a ward, theatre or other department to supply any drug otherwise than for administration to a patient in that ward, theatre or department in accordance with that directions of a doctor or dentist.

(3) Notwithstanding the provisions of section 4(c) of the Ordinance, a person who is authorised by a written authority issued by the Governor under and for the purposes of this paragraph and for the time being in force may, at the premises specified in that authority and in compliance with any conditions so specified, supply or offer to supply any drug specified in Schedule 5 to any person who may lawfully have that drug in his possession.

(4) Notwithstanding the provisions of section 4(c) of the Ordinance—

(a) the owner of a ship, or the master of a ship which does not carry a doctor among the seamen employed in it;

(b) the installation manager of an offshore installation,

may supply or offer to supply any drug specified in Schedule 2 or 5—

(i) for the purpose of compliance with any of the provisions specified in paragraph (5), to any person on that ship or installation;

(ii) to any person who may lawfully supply that drug to him;

(iii) to any constable for the purpose of the destruction of that drug.

(5) The provision referred to in paragraph (4) are any provision of, or of any instrument which is in force under—

(a) the Merchant Shipping Acts;

(b) the Offshore Minerals Ordinance 1994; or

(c) the Health and Safety at Work etc. Act 1974(a)

Production and supply of drugs in Schedules 3 and 4

9.(1) Notwithstanding the provisions of section 4 of the Ordinance—

(a) a practitioner or pharmacist, acting in his capacity as such, may manufacture or compound any drug specified in Schedule 3 or 4;

(a) 1974 c.37.

(b) a person lawfully conducting a retail pharmacy business and acting in his capacity as such may, at the registered pharmacy at which he carries on that business, manufacture or compound any drug specified in Schedule 3 or 4;

(c) a person who is authorised by a written authority issued by the Governor under and for the purposes of this sub-paragraph and for the time being in force may, at the premises specified in that authority and in compliance with any conditions so specified, produce any drug specified in Schedule 3 or 4.

(2) Notwithstanding the provisions of section 4(c) of the Ordinance, any of the following persons, that is to say—

(a) a practitioner,

(b) a pharmacist,

(c) a person lawfully conducting a retail pharmacy business.

(3) Notwithstanding the provisions of section 4(c) of the Ordinance—

(a) a person who is authorised as a member of a group, under and in accordance with the terms of his group authority and in compliance with any conditions attached thereto;

(b) the person in charge or acting person in charge of a hospital or nursing home;

(c) in the case of such a drug supplied to her by a person responsible for the dispensing and supply of medicines at that hospital or nursing home, the sister or acting sister for the time being in charge of a ward, theatre or other department in a hospital or nursing home,

may, when acting in his capacity as such, supply or offer to supply any drug specified in Schedule 3, or any drug specified in Schedule 4 which is contained in a medicinal product, to any person who may lawfully have that drug in his possession:

Provided that nothing in this paragraph authorises—

(i) the person in charge or acting person in charge of a hospital or nursing home, having a pharmacist responsible for the dispensing and supply of medicines, to supply or offer to supply any drug;

(ii) a sister or acting sister for the time being in charge of a ward, theatre or other department to supply any drug otherwise than for administration to a patient in that ward, theatre or department in accordance with the directions of a doctor or dentist.

(4) Notwithstanding the provisions of section 4(c) of the Ordinance—

(a) a person who is authorised by a written authority issued by the Governor under and for the purposes of this sub-paragraph and for the time being in force may, at the premises specified in that authority and in compliance with any conditions so specified, supply or offer to supply any drug specified in Schedule 3 or 4 to any person who may lawfully have that drug in his possession;

(b) a person who is authorised under paragraph (1)(c) may supply or offer to supply any drug which he may, by virtue of being so authorised, lawfully produce to any person who may lawfully have that drug in his possession.

(5) Notwithstanding the provisions of section 4(c) of the Ordinance—

(a) the owner of a ship, or the master of a ship which does not carry a doctor among the seamen employed in it;

(b) the installation manager of an offshore installation,

may supply or offer to supply any drug specified in Schedule 3, or any drug specified in Schedule 4 which is contained in a medicinal product—

(i) for the purpose of compliance with any of the provisions specified in regulation 8(5), to any person on that ship or installation; or

(ii) to any person who may lawfully supply that drug to him.

(6) Notwithstanding the provisions of section 4(c) of the Ordinance, a person in charge of a laboratory may, when acting in his capacity as such, supply or offer to supply any drug specified in Schedule 3 which is required for use as a buffering agent in chemical analysis to any person who may lawfully have that drug in his possession.

Possession of drugs in Schedules 2, 3 and 4

10.(1) Notwithstanding the provisions of section 5(1) of the Ordinance—

(a) a person specified in one of sub-paragraphs (a) to (e) of regulation 8(2) may have in his possession any drug specified in Schedule 2;

(b) a person specified in one of sub-paragraphs (a) to (c) of regulation 9(2) may have in his possession any drug specified in Schedule 3 or 4;

(c) a person specified in regulation 9(3)(b) or (c) or regulation 9(6) may have in his possession any drug specified in Schedule 3,

for the purpose of acting in his capacity as such a person:

Provided that nothing in this paragraph authorises—

(i) a person specified in sub-paragraph (e) of regulation (8)2;

(ii) a person specified in sub-paragraph (c) of regulation 9(3); or

(iii) a person specified in regulation 9(6),

to have in his possession any drug other than such a drug as is mentioned in the paragraph or sub-paragraph in question specifying him.

(2) Notwithstanding the provisions of section 5(1) of the Ordinance, a person may have in his possession any drug specified in Schedule 2 or 3 for administration for medical, dental or veterinary purposes in accordance with the directions of a practitioner:

Provided that this paragraph shall not have effect in the case of a person to whom the drug has been supplied by or on the prescription of a doctor if—

(a) that person was then being supplied with any controlled drug by or on the prescription of another doctor and failed to disclose that fact to the first mentioned doctor before the supply by him or on his prescription; or

(b) that or any other person on his behalf made a declaration or statement, which was false in any particular, for the purpose of obtaining the supply or prescription.

(3) Notwithstanding the provisions of section 5(1) of the Ordinance, a person who is authorised as a member of a group may, under and in accordance with the terms of his group authority and in compliance with any conditions attached thereto, have any drug specified in Schedule 2 or 3 in his possession.

(4) Notwithstanding the provisions of section 5(1) of the Ordinance—

(a) a person who is authorised by a written authority issued by the Governor under and for the purposes of this sub-paragraph and for the time being in force may, at the premises specified in that authority and in compliance with any conditions so specified, have in his possession any drug specified in Schedule 3 or 4;

(b) a person who is authorised under regulation 9(1)(c) may have in his possession any drug which he may, by virtue of being so authorised, lawfully produce;

(c) a person who is authorised under regulation 9(4)(a) may have in his possession any drug which he may, by virtue of being so authorised, lawfully supply or offer to supply.

(5) Notwithstanding the provisions of section 5(1) of the Ordinance—

(a) any person may have in his possession any drug specified in Schedule 2 or 3 for the purpose of compliance with any of the provisions specified in regulation 8(5);

(b) the master of a foreign ship which is in a port in the Falkland Islands may have in his possession any drug specified in Schedule 2 or 3 so far as necessary for the equipment of the ship.

(6) The foregoing provisions of this regulation are without prejudice to the provisions of regulation 4(2)(a).

Exemption for midwives

11.(1) Notwithstanding the provisions of sections 4(c) and 5(1) of the Ordinance, a registered midwife may, subject to the provisions of this regulation—

- (a) so far as necessary to her professional practice, have in her possession;
- (b) so far as necessary as aforesaid, administer; and
- (c) surrender to the appropriate medical officer such stocks in her possession as are no longer required by her of,

any controlled drug which she may lawfully administer.

(2) Nothing in paragraph (1) authorises a midwife to have in her possession any drug which has been obtained otherwise than on a midwife's supply order signed by the Chief Medical Officer.

(3) In this regulation, the expression "midwife's supply order" means an order in writing specifying the name and occupation of the midwife obtaining the drug, the purpose for which it is required and the total quantity to be obtained.

Documents to be obtained by supplier of controlled drugs

12.(1) Where a person (hereafter in this paragraph referred to as "the supplier"), not being a practitioner, supplies a controlled drug otherwise than on a prescription, the supplier shall not deliver the drug to a person who—

- (a) purports to be sent by or on behalf of the person to whom it is supplied (hereafter in this paragraph referred to as "the recipient"); and
- (b) is not authorised by any provision of these Regulations other than the provisions of regulations 6(5) and (6)(f) to have that drug in his possession,

unless that person produces to the supplier a statement in writing signed by the recipient to the effect that he is empowered by the recipient to receive that drug on behalf of the recipient, and the supplier is reasonably satisfied that the document is a genuine document.

(2) Where a person (hereafter in this paragraph referred to as "the supplier") supplies a controlled drug, otherwise than on a prescription or by way of administration, to any of the persons specified in paragraph (4), the supplier shall not deliver the drug—

- (a) until he has obtained a requisition in writing which—

(i) is signed by the person to whom the drug is supplied (hereafter in this paragraph referred to as "the recipient");

(ii) states the name, address and profession or occupation of the recipient;

(iii) specifies the purpose for which the drug supplied is required and the total quantity to be supplied; and

(iv) where appropriate, satisfies the requirements of paragraph (5);

(b) unless he is reasonably satisfied that the signature is that of the person purporting to have signed the requisition and that that person is engaged in the profession or occupation specified in the requisition:

Provided that where the recipient is a practitioner and he represents that he urgently requires a controlled drug for the purpose of his profession, the supplier may, if he is reasonably satisfied that the recipient so requires the drug and is, by reason of some emergency, unable before delivery to furnish to the supplier a requisition in writing duly signed, deliver the drug to the recipient on an undertaking by the recipient to furnish such a requisition within the twenty-four hours next following.

(3) A person who has given such an undertaking as aforesaid shall deliver to the person by whom the controlled drug was supplied a signed requisition in accordance with the undertaking.

(4) The persons referred to in paragraph (2) are—

(a) a practitioner;

(b) the person in charge or acting person in charge of a hospital or nursing home;

(c) a person who is in charge of a laboratory;

(d) the owner of a ship, or the master of a ship which does not carry a doctor among the seamen employed in it;

(e) the master of a foreign ship in a port in the Falkland Islands;

(f) the installation manager of an offshore installation.

(5) A requisition furnished for the purposes of paragraph (2) shall—

(a) where furnished by the person in charge or acting person in charge of a hospital or nursing home, be signed by a doctor or dentist employed or engaged in that hospital or nursing home;

(b) where furnished by the master of a foreign ship, contain a statement, signed by the Chief Medical Officer that the quantity of the drug to be supplied is the quantity necessary for the equipment of the ship.

(6) Where the person responsible for the dispensing and supply of medicines at any hospital or nursing home supplies a controlled drug to the sister or acting sister for the time being in charge of any ward, theatre or other department in that hospital or nursing home (hereafter in this paragraph referred to as "the recipient") he shall—

(a) obtain a requisition in writing, signed by the recipient, which specifies the total quantity of the drug to be supplied; and

(b) mark the requisition in such manner as to show that it has been complied with,

and any requisition obtained for the purposes of this paragraph shall be retained in the dispensary at which the drug was supplied and a copy of the requisition or a note of it shall be retained or kept by the recipient.

(7) Nothing in this regulation shall have effect in relation to the drugs specified in Schedule 4 and 5 or poppy-straw.

Form of prescriptions

13.(1) Subject to the provisions of this regulation, a person shall not issue a prescription containing a controlled drug other than a drug specified in Schedule 4 or 5 or temazepam unless the prescription complies with the following requirements, that is to say, it shall—

(a) be in ink or otherwise so as to be indelible and be signed by the person issuing it with his usual signature and dated by him;

(b) insofar as it specifies the information required by sub-paragraph (e) and (f) below to be specified, be written by the person issuing it in his own handwriting;

(c) except in the case of a health prescription, specify the address of the person issuing it;

(d) have written thereon, if issued by a dentist, the words "for dental treatment only" and, if issued by a veterinary surgeon or a veterinary practitioner, a declaration that the controlled drug is prescribed for an animal or herd under his care;

(e) specify the name and address of the person for whose treatment it is issued or, if it is issued by a veterinary surgeon or veterinary practitioner, of the person to whom the controlled drug prescribed is to be delivered;

(f) specify the dose to be taken and—

(i) in the case of a prescription containing a controlled drug which is a preparation, the form and, where appropriate, the strength of the preparation, and either the total quantity (in both words and figures) of the preparation or the number (in both words and figures) of dosage units, as appropriate, to be supplied;

(ii) in any other case, the total quantity (in both words and figures) of the controlled drug to be supplied;

(g) in the case of a prescription for a total quantity intended to be supplied by instalments, contain a direction specifying the amount of the instalments of the total amount which may be supplied and the intervals to be observed when supplying.

(2) Paragraph (1)(b) shall not have effect in relation to—

(a) a prescription issued by a person approved (whether personally or as a member of a class) for the purposes of this paragraph by the Governor; or

(b) a prescription containing no controlled drug other than—

(i) phenobarbitone;

(ii) phenobarbitone sodium; or

(iii) a preparation containing a drug specified in paragraph (i) or (ii) above.

(3) In the case of a prescription issued for the treatment of a patient in a hospital or nursing home, it shall be a sufficient compliance with paragraph (1)(e) if the prescription is written on the patient's bed card or case sheet.

Provisions as to supply on prescription

14.(1) A person shall not supply a controlled drug other than a drug specified in Schedule 4 or 5 on a prescription—

(a) unless the prescription complies with the provisions of regulation 15;

(b) unless the address specified in the prescription as the address of the person issuing it is an address within the Falkland Islands;

(c) unless he either is acquainted with the signature of the person by whom it purports to be issued and has no reason to suppose that it is not genuine, or has taken reasonably sufficient steps to satisfy himself that it is genuine;

(d) before the date specified in the prescription;

(e) subject to paragraph (3), later than thirteen weeks after the date specified in the prescription.

(2) Subject to paragraph (3), a person supplying on prescription a controlled drug other than a drug specified in Schedule 4 or 5 shall, at the time of the supply, mark on the prescription the date on which the drug is supplied and, unless it is a health prescription, shall retain the prescription on the premises from which the drug was supplied.

(3) In the case of a prescription containing a controlled drug other than a drug specified in Schedule 4 or 5, which contains a direction that specified instalments of the total amount may be supplied at stated intervals, the person supplying the drug shall not do so otherwise than in accordance with that direction and—

(a) paragraph (1) shall have effect as if for the requirement contained in subparagraph (e) thereof there were substituted a requirement that the occasion on which the first instalment is supplied shall not be later than thirteen weeks after the date specified in the prescription;

(b) paragraph (2) shall have effect as if for the words “at the time of the supply” there were substituted the words “on each occasion on which the instalment is supplied”.

Marking of bottles and other containers

15.(1) Subject to paragraph (2), no person shall supply a controlled drug otherwise than in a bottle, package or other container which is plainly marked—

(a) in the case of a controlled drug other than a preparation, with the amount of the drug contained therein;

(b) in the case of a controlled drug which is a preparation—

(i) made up into tablets, capsules or other dosage units, with the amount of each component (being a controlled drug) of the preparation in each dosage unit and the number of dosage units in the bottle, package or other container;

(ii) not made up as aforesaid, with the total amount of the preparation in the bottle, package or other container and the percentage of each of its components which is a controlled drug.

(2) Nothing in this regulation shall have effect in relation to—

(a) the drugs specified in Schedules 4 and 5 or poppy-straw; or

(b) the supply of a controlled drug by or on the prescription of a practitioner.

(3) In this regulation, the expressions “clinical trial” and “medicinal test on animals” have the same meanings as in the Medicines Act 1968.

Recording-keeping requirements in respect of drugs in Schedules 1 and 2

16.(1) Subject to paragraph (3) and regulation 18, every person authorised by or under regulation 5 or 8 to supply any drug specified in Schedule 1 or 2 shall comply with the following requirements, that is to say—

(a) he shall, in accordance with the provisions of this regulation and of regulation 20, keep a register and shall enter therein in chronological sequence in the form

specified in Part I or Part II of Schedule 6, as the case may require, particulars of every quantity of a drug specified in Schedule 1 or 2 obtained by him and of every quantity of such a drug supplied (whether by way of administration or otherwise) by him whether to persons within or outside the Falkland Islands;

(b) he shall use a separate register or separate part of the register for entries made in respect of each class of drugs, and each of the drugs specified in paragraphs 1 and 3 of Schedule 1 and paragraphs 1, 3 and 6 of Schedule 2 together with its salts and any preparation or other product containing it or any of its salts shall be treated as a separate class, so however that any stereoisomeric form of a drug or its salts shall be classed with that drug.

(2) Nothing in paragraph (1) shall be taken as preventing the use of a separate section within a register or separate part of a register in respect of different drugs or strengths of drugs comprised within the class of drugs to which that register or separate part relates.

(3) The foregoing provisions of this regulation shall not have effect in relation to—

(a) in the case of a drug supplied to him for the purpose of destruction in pursuance of regulation 6(2) or (3), a practitioner or pharmacist;

(b) a person licensed under regulation 5 to supply any drug, where the licence so directs; or

(c) the sister or acting sister for the time being in charge of a ward, theatre or other department in a hospital or nursing home.

Requirements as to registers

17. Any person required to keep a register under regulation 16 shall comply with the following requirements, that is to say—

(a) the class of drugs to which the entries on any page of any such register relate shall be specified at the head of that page;

(b) every entry required to be made under regulation 16 in such a register shall be made on the day on which the drug is obtained or, as the case may be, on which the transaction in respect of the supply of the drug by the person required to make the entry takes place or, if that is not reasonably practicable, on the day next following that day;

(c) no cancellation, obliteration or alteration of any such entry shall be made, and a correction of such an entry shall be made only by way of marginal note or footnote which shall specify the date on which the correction is made;

(d) every such entry and every correction of such an entry shall be made in ink or otherwise so as to be indelible;

(e) such a register shall not be used for any purpose other than the purposes of these Regulations;

(f) a separate register shall be kept in respect of each premises at which the person required to keep the register carries on his business or occupation, but subject to that not more than one register shall be kept at one time in respect of each class of drugs in respect of which he is required to keep a separate register, so, however, that a separate register may, with the approval of the Governor, be kept in respect of each department of the business carried on by him;

(g) every such register in which entries are currently being made shall be kept at the premises to which it relates.

Record-keeping requirements in respect of drugs in Schedule 2 in particular cases

18.(1) Where a drug specified in Schedule 2 is supplied in accordance with regulation 8(5)(a)(i) to any person on a ship, an entry in the official log book required to be kept under the Merchant Shipping Acts or, in the case of a ship which is not required to carry such an official logbook, a report signed by the master of the ship, shall, notwithstanding anything in these Regulations, be a sufficient record of the supply if the entry or report specifies the drug supplied and, in the case of a report, it is delivered as soon as may be to a superintendent at a Marine Office established and maintained under the Merchant Shipping Acts.

(2) Where a drug specified in Schedule 2 is supplied in accordance with regulation 8(5)(b)(i) to a person on an offshore installation, an entry in the installation logbook required to be maintained under the Offshore Installations (Logbooks and Registration of Death) Regulations 1972(a) in their application to the Falkland Islands which specifies the drug supplied shall, notwithstanding anything in these Regulations, be a sufficient record of the supply.

(3) A midwife authorised by regulation 11(1) to have any drug specified in Schedule 2 in her possession shall—

(a) on each occasion on which she obtains a supply of such a drug, enter in a book kept by her and used solely for the purposes of this paragraph the date, the name and address of the person from whom the drug was obtained, the amount obtained and the form in which it was obtained; and

(b) on administering such a drug to a patient, enter in the said book as soon as practicable the name and address of the patient, the amount administered and the form in which it was administered.

Record-keeping requirements in respect of drugs in Schedules 3 and 4

19. (1) Every person who is authorised under regulation 5 or 9(1)(c) to produce any drug specified in Schedule 3 or 4 shall make a record of each quantity of such a drug produced by him.

(2) Every person who is authorised by or under any provision of the Ordinance to import or export any drug specified in Schedule 3 shall make a record of each quantity of such a drug imported or exported by him.

(3) Every person who is authorised under regulation 9(4) to supply any drug specified in Schedule 4 shall make a record of each quantity of such a drug imported or exported by him.

(4) Paragraph (2) shall not have effect in relation to a person licensed under the Ordinance to import or export any drug where the licence so directs.

Preservation of registers, books and other documents

20.(1) All registers and books kept in pursuance of regulation 16 or 18(3) shall be preserved for a period of two years from the date on which the last entry therein is made.

(2) Every record made in pursuance of regulation 19 shall be preserved for a period of two years from the date on which the record was made.

(3) Every requisition, order or prescription (other than a health prescription) on which a controlled drug is supplied in pursuance of these Regulations shall be preserved for a period of two years from the date on which the last delivery under it was made.

Preservation of records relating to drugs in Schedules 3 and 5

21.(1) A producer of any drug specified in Schedule 3 or 5 and a wholesale dealer in any such drug shall keep every invoice or other like record issued in respect of each quantity of such a drug obtained by him and in respect of each quantity of such a drug supplied by him.

(2) A person who is authorised under regulation 9(4)(a) to supply any drug specified in Schedule 3 shall keep every invoice or other like record issued in respect of each quantity of such a drug obtained by him and in respect of each quantity of such a drug supplied by him.

(3) A retail dealer in any drug specified in Schedule 3, a person in charge or acting person in charge of a hospital or nursing home and a person in charge of a laboratory shall keep every invoice or other like record issued in respect of each quantity of such a drug obtained by him and in respect of each quantity of such a drug supplied by him.

(4) A retail dealer in any drug specified in Schedule 5 shall keep every invoice or other like record issued in respect of each quantity of such a drug obtained by him.

(5) Every invoice or other record which is required by this regulation to be kept in respect of a drug specified in Schedule 3 shall contain information sufficient to identify the date of the transaction and the person by whom or to whom the drug was supplied.

(6) Every document kept in pursuance of this regulation (other than a health prescription) shall be preserved for a period of two years from the date on which it is issued:

Provided that the keeping of a copy of the document made at any time during the said period of two years shall be treated for the purposes of this paragraph as if it were the keeping of the original document.

Furnishing of information with respect to controlled drugs

22.(1) The persons specified in paragraph (2) shall on demand made by the Governor or by any person authorised in writing by the Governor in that behalf—

(a) furnish such particulars as may be requested in respect of the producing, obtaining or supplying by him of any controlled drug or in respect of any stock of such drugs in his possession;

(b) for the purpose of confirming any such particulars, produce any stock of such drugs in his possession;

(c) produce any register, book or document required to be kept under these Regulations relating to any dealings in controlled drugs which is in his possession.

(2) The persons referred to in paragraph (1) are—

(a) any person authorised by or under these Regulations to produce any controlled drug;

(b) any person authorised by or under any provision of the Ordinance to import or export any controlled drug;

(c) a wholesale dealer;

(d) a retail dealer;

(e) a practitioner;

(f) the person in charge or acting person in charge of a hospital or nursing home;

(g) a person who is in charge of a laboratory;

(h) a person who is authorised under regulation 9(4)(a) to supply any controlled drug.

(3) Nothing in this regulation shall require the furnishing of personal records which a person has acquired or created in the course of his profession or occupation and which he holds in confidence; and in this paragraph "personal records" means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating to his physical or mental health.

Destruction of controlled drugs

23.(1) No person who is required by any provision of, or by any term or condition of a licence having effect under, these Regulations to keep records with respect to a drug specified in Schedules 1, 2, 3 or 4 shall destroy such a drug or cause such a drug to be destroyed except in the presence of and in accordance with any directions given by a person authorised (whether personally or as a member of a class) for the purposes of this paragraph by the Governor (hereafter in this regulation referred to as an "authorised person").

(2) An authorised person may, for the purposes of analysis, take a sample of a drug specified in Schedule 1, 2, 3 or 4 which is to be destroyed.

(3) Where a drug specified in Schedule 1, 2, 3 or 4 is destroyed in pursuance of paragraph (1) by or at the instance of a person who is required by any provision of, or by any term or condition of a licence have effect under, these Regulations to keep a record in respect of the obtaining or supply of that drug, that record shall include particulars of the date of destruction and the quantity destroyed and shall be signed by the authorised person in whose presence the drug is destroyed.

(4) Where the master or owner of a ship or installation manager of an offshore installation has in his possession a drug specified in Schedule 2 which he no longer requires, he shall not destroy the drug or cause it to be destroyed but shall dispose of it to a constable, or to a person who may lawfully supply that drug to him.

(5) Nothing in paragraph (1) or (3) shall apply to any person who is required to keep records only by virtue of regulation 19(2) or (3) or 21(3).

(6) Nothing in paragraph (1) or (3) shall apply to the destruction of a drug which has been supplied to a practitioner or pharmacist for that purpose in pursuance of regulation 6(2) or (3).

Misuse of Drugs Regulations 1985

24.(1) From the commencement of this Order the Misuse of Drugs Regulations 1985(a) (as amended) of the United Kingdom shall cease to have effect by virtue of Article 2 of the Misuse of Drugs Regulations Order 1989(b).

(2) Notwithstanding paragraph (1), any register, record, book, prescription or other document required to be preserved under regulation 22 or 23 of the Misuse of Drugs

(a) SI 1985/2066

(b) SR&O No 6 of 1989

Regulations 1985 shall be preserved for the same period of time as if these Regulations had not been made.

Regulation 3

SCHEDULE 1

Controlled drugs subject to the requirements of regulations 12, 13, 14, 15, 16, 17, 20, 22 and 23

1. The following substances and products, namely:—

- (a) Bufotenine
- Cannabinol
- Cannabinol derivatives not being dronabinol or its stereoisomers
- Cannabis and cannabis resin
- Cathinone
- Coca leaf
- Concentrate of poppy-straw
- Eticyclidine
- Lysergamide
- Lysergide and other *N*-alkyl derivatives of lysergamide
- Mescaline
- Psilocin
- Raw opium
- Rolicyclidine
- Tenocyclidine
- 4-Bromo-2,5-dimethoxy- α -methylphenethylamine
- N,N*-Diethyltryptamine
- N,N*-Dimethyltryptamine
- 2,5-Dimethoxy- α ,4-dimethylphenethylamine
- N*-Hydroxytenamphetamine
- 4-Methyl-aminorex

(b) any compound (not being a compound for the time being specified in subparagraph (a) above) structurally derived from tryptamine or from a ring-hydroxy tryptamine by substitution at the nitrogen atom of the sidechain with one or more alkyl substituents but no other substituent;

(c) any compound (not being methoxyphenamine or a compound for the time being specified in subparagraph (a) above) structurally derived from phenethylamine, an *N*-alkylphenethylamine, α -methylphenethylamine, an *N*-alkyl- α -methylphenethylamine, α -ethylphenethylamine, or an *N*-alkyl- α -ethylphenethylamine by substitution in the ring to any extent with alkyl, alkoxy, alkylendioxy or halide substituents, whether or not further substituted in the ring by one or more other univalent substituents.

(d) any compound (not being a compound for the time being specified in Schedule 2) structurally derived from fentanyl by modification in any of the following ways, that is to say,

- (i) by replacement of the phenyl portion of the phenethyl group by any heteromonocycle whether or not further substituted in the heterocycle;
 - (ii) by substitution in the phenethyl group with alkyl, alkenyl, alkoxy, hydroxy, halogeno, haloalkyl, amino or nitro groups;
 - (iii) by substitution in the piperidine ring with alkyl or alkenyl groups;
 - (iv) by substitution in the aniline ring with alkyl, alkoxy, alkylendioxy, halogeno or haloalkyl groups;
 - (v) by substitution at the 4-position of the piperidine ring with any alkoxycarbonyl or alkoxyalkyl or acyloxy group;
 - (vi) by replacement of the *N*-propionyl group by another acyl group;
- (e) any compound (not being a compound for the time being specified in Schedule 2) structurally derived from pethidine by modification in any of the following ways, that is to say,
- (i) by replacement of the 1-methyl group by an acyl, alkyl whether or not unsaturated, benzyl or phenethyl group, whether or not further substituted;
 - (ii) by substitution in the piperidine ring with alkyl or alkenyl groups or with a propano bridge, whether or not further substituted;
 - (iii) by substitution in the 4-phenyl ring with alkyl, alkoxy, aryloxy, halogeno or haloalkyl groups;
 - (iv) by replacement of the 4-ethoxycarbonyl by any other alkoxycarbonyl or any alkoxyalkyl or acyloxy group;
 - (v) by formation of an *N*-oxide or of a quaternary base.
2. Any stereoisomeric form of a substance specified in paragraph 1.
 3. Any ester or ether of a substance specified in paragraph 1 or 2.
 4. Any salt of a substance specified in any of paragraphs 1 to 3.
 5. Any preparation or other product containing a substance or product specified in any of paragraphs 1 to 4, not being a preparation specified in Schedule 5.

Regulation 3

SCHEDULE 2

Controlled drugs subject to the requirements of regulations 12, 13, 14, 15, 16, 17, 20, 22 and 23

1. The following substances and products, namely:—

| | |
|-----------------------------------|---------------------------------------|
| Acetorphine | Levophenacymorphan |
| Alfentanil | Levorphanol |
| Allylprodine | Lofentanil |
| Alphacetylmethadol | Medicinal opium |
| Alphameprodine | Metazocine |
| Alphamethadol | Methadone |
| Alphaprodine | Methadyl acetate |
| Anileridine | Methyldesorphine |
| Benzethidine | Methyldihydromorphine |
| Benzylmorphine (3-benzylmorphine) | (6-methyldihydromorphine) |
| Betacetylmethadol | Metopon |
| Betameprodine | Morpheridine |
| Betamethadol | Morphine |
| Betaprodine | Morphine methobromide, morphine |
| Bezitramide | <i>N</i> -oxide and other pentavalent |
| Carfentanil | nitrogen morphine derivatives |
| Clonitazene | Myrophine |
| Cocaine | Nicomorphine |
| Desomorphine | Noracymethadol |
| Dextromoramide | Norlevorphanol |
| Diamorphine | Normethadone |
| Diampromide | Normorphine |
| Diethylthiambutene | Norpipanone |
| Difenoxin | Oxycodone |
| Dihydrocodeinone | Oxymorphone |
| <i>O</i> -carboxymethylloxime | Pethidine |
| Dihydromorphine | Phenadoxone |
| Dimenoxadole | Phenampromide |
| Dimepheptanol | Phenazocine |
| Dimethylthiambutene | Phencyclidine |
| Dioxaphetyl butyrate | Phenomorphane |
| Diphenoxylate | Phenoperidine |
| Dipipanone | Piminodine |
| Dronabinol | Piritramide |
| Drotebanol | Proheptazine |
| Ecgonine, and any derivative of | Properidine |
| ecgonine which is convertible | Racemethorphan |
| to ecgonine or to cocaine | Racemoramide |
| Ethylmethylthiambutene | Racemorphane |
| Etonitazene | Sufentanil |
| Etorphine | Thebacon |
| Etoxadine | Thebaine |
| Fentanyl | Tilidate |
| Furethidine | Trimeperidine |
| Hydrocodone | 4-Cyano-2-dimethylamino-4, |
| Hydromorphanol | 4-diphenylbutane |
| Hydromorphone | 4-Cyano-1-methyl-4-phenylpiperidine |

Hydroxypethidine
Isomethadone
Ketobemidone
Levomethorphan
Levomoramide

1-Methyl-4-phenylpiperidine-4-
carboxylic acid
2-Methyl-3-morpholino-1,
1-diphenylpropanecarboxylic acid
4-Phenylpiperidine-4-carboxylic acid
ethyl ester

2. Any stereoisomeric form of a substance specified in paragraph 1 not being dextromethorphan or dextrorphan.
3. Any ester or ether of a substance specified in paragraph 1 or 2, not being a substance specified in paragraph 6.
4. Any salt of a substance specified in any of paragraphs 1 to 3.
5. Any preparation or other product containing a substance or product specified in any of paragraphs 1 to 4, not being a preparation specified in Schedule 5.
6. The following substances and products, namely:—

| | |
|---------------------------------|--|
| Acetyldihydrocodeine | Methylphenidate |
| Amphetamine | Nicocodine |
| Codeine | Nicodicodine (6-nicotinoyldihydroco- deine) |
| Dextropropoxyphene | Norcodeine |
| Dihydrocodeine | Phenmetrazine |
| Ethylmorphine (3-ethylmorphine) | Pholcodine |
| Fenethylline | Propiram |
| Glutethimide | |
| Lefetamine | |
| Mecloqualone | |
| Methaqualone | |
| Methylamphetamine | |

7. Any stereoisomeric form of a substance specified in paragraph 6.
8. Any salt of a substance specified in paragraph 6 or 7.
9. Any preparation or other product containing a substance or product specified in any of paragraphs 6 to 8, not being a preparation specified in Schedule 5.

Regulation 3

SCHEDULE 3

Controlled drugs subject to the requirements of
regulations 12, 13, 14, 15, 16, 17, 20, 22 and 23

1. The following substances, namely:—

(a) Benzphetamine

Meprobamate

| | |
|------------------|----------------------|
| Cathine | Methylphenobarbitone |
| Chlorphentermine | Methypylone |
| Diethylpropion | Pentazocine |
| Ethchlorvynol | Phendimetrazine |
| Ethinamate | Phentermine |
| Mazindol | Pipradol |
| Mephentermine | Temazepam |

(b) any 5,5 disubstituted barbituric acid.

2. Any stereoisomeric form of a substance specified in paragraph 1, not being phenylpropanolamine.
3. Any salt of a substance specified in paragraph 1 or 2.
4. Any preparation or other product containing a substance specified in any of paragraphs 1 to 3, not being a preparation specified in Schedule 5.

Regulation 3

SCHEDULE 4

Controlled drugs excepted from the prohibition on importation, exportation and, when in the form of a medicinal product, possession and subject to the requirements of regulations 19, 20, 22 and 23

1. The following substances and products, namely:—

| | |
|-------------------|--------------------|
| Alprazolam | Haloxazolam |
| Bromazepam | Ketazolam |
| Camazepam | Loprazolam |
| Chlordiazepoxide | Lorazepam |
| Clobazam | Lormetazepam |
| Clonazepam | Medazepam |
| Clorazepic acid | Mefenorex |
| Clotiazepam | Midazolam |
| Cloxazolam | Nimetazepam |
| Delorazepam | Nitrazepam |
| Diazepam | Nordazepam |
| Estazolam | Oxazepam |
| Ethyl loflazepate | Oxazolam |
| Fencamfamin | Pinazepam |
| Fenproporex | Prazepam |
| Fludiazepam | Pyrovalerone |
| Flunitrazepam | Tetrazepam |
| Flurazepam | Triazolam |
| Halazepam | N-Ethylamphetamine |

2. Any stereoisomeric form of a substance specified in paragraph 1.

3. Any salt of a substance specified in paragraph 1 or 2.
4. Any preparation or other product containing a substance or product specified in any of paragraphs 1 to 3, not being a preparation specified in Schedule 5.

Regulation 3

SCHEDULE 5

Controlled drugs excepted from the prohibition on importation, exportation and possession and subject to the requirements of regulations 22 and 23

- 1.(1) Any preparation of one or more of the substances to which this paragraph applies, not being a preparation designed for administration by injection, when compounded with one or more other active or inert ingredients and containing a total of not more than 100 milligrammes of the substance or substances (calculated as base) per dosage unit or with a total concentration of not more than 2.5 per cent. (calculated as base) in undivided preparations.
- (2) The substances to which this paragraph applies are acetyldihydrocodeine, codeine, dihydrocodeine, ethylmorphine, nicocodine, nicodicodine (6-nicotinoyldihydrocodeine), norcodeine, pholcodine and their respective salts.
2. Any preparation of cocaine containing not more than 0.1 per cent. of cocaine calculated as cocaine base, being a preparation compounded with one or more other active or inert ingredients in such a way that the cocaine cannot be recovered by readily applicable means or in a yield which would constitute a risk to health.
3. Any preparation of medicinal opium or of morphine containing (in either case) not more than 0.2 per cent. of morphine calculated as anhydrous morphine base, being a preparation compounded with one or more other active or inert ingredients in such a way that the opium or, as the case may be, the morphine, cannot be recovered by readily applicable means or in a yield which would constitute a risk to health.
4. Any preparation of dextropropoxyphene, being a preparation designed for oral administration, containing not more than 135 milligrammes of dextropropoxyphene (calculated as base) per dosage unit or with a total concentration of not more than 2.5 per cent. (calculated as base) in undivided preparations.
5. Any preparation of difenoxin containing, per dosage unit, not more than 0.5 milligrammes of difenoxin and a quantity of atropine sulphate equivalent to at least 5 per cent. of the dose of difenoxin.
6. Any preparation of diphenoxylate containing, per dosage unit, not more than 2.5 milligrammes of diphenoxylate calculated as base, and a quantity of atropine sulphate equivalent to at least 1 per cent. of the dose of diphenoxylate.
7. Any preparation of propiram containing, per dosage unit, not more than 100 milligrammes of propiram calculated as base and compounded with at least the same amount (by weight) of methylcellulose.

8. Any powder of ipecacuanha and opium comprising—
 10 per cent. opium, in powder,
 10 per cent. ipecacuanha root, in powder, well mixed with
 80 per cent. of any other powdered ingredient containing no controlled drug.
9. Any mixture containing one or more of the preparations specified in paragraphs 1 to 8, being a mixture of which none of the other ingredients is a controlled drug.

Regulation 3

SCHEDULE 6

Form of register

PART I

Entries to be made in case of obtaining

| Date on which supply received | NAME | ADDRESS | Amount obtained | Form in which obtained |
|----------------------------------|---|---------|--------------------|---------------------------|
| | Of person or firm from whom obtained | | | |
| | | | | |

PART II

Entries to be made in case of supply

| Date on which the transaction was effected | NAME | ADDRESS | Particulars as to licence or authority of person or firm supplied to be in possession | Amount supplied | Form in which supplied |
|--|-------------------------------|---------|--|--------------------|------------------------------|
| | Of person or firm supplied | | | | |
| | | | | | |

Made this 4th day of April 1997

R P Ralph
Governor

SUBSIDIARY LEGISLATION

CRIMINAL LAW

Fines (Increase in Standard Scale) Order 1997

(S. R. & O. No. 6 of 1997)

Made: 4th April 1997

Published: 18th April 1997

Coming into force: in accordance with article 1

IN EXERCISE of my powers under section 4(5) of the Criminal Justice Ordinance 1989(a), I make the following Order—

Citation and commencement

1. This Order may be cited as the Fines (Increase in Standard Scale Order) 1997 and shall come into force on such date as is fixed by the Governor by notice published in the *Gazette*.

Variation of standard scale of fines

2. The amounts of some of the fines appearing in the first column of the table appearing in section 4(2) of the Criminal Justice Ordinance 1989 (the standard scale of fines) are hereby varied by substitution of different amounts so that the table as a whole, after such substitution, reads—

| <i>Amount of fine</i> | <i>Level on the scale</i> |
|-----------------------|---------------------------|
| £200 | Level 1 |
| £350 | Level 2 |
| £800 | Level 3 |
| £1,500 | Level 4 |
| £3,000 | Level 5 |
| £7,500 | Level 6 |
| £12,500 | Level 7 |
| £17,500 | Level 8 |
| £25,000 | Level 9 |
| £50,000 | Level 10 |
| £100,000 | Level 11 |
| £250,000 | Level 12 |

Made this 4th day of April 1997

R P Ralph
Governor

EXPLANATORY NOTE
(not forming part of the Order)

Section 4(2) of the Criminal Justice Ordinance 1989 sets out a standard scale of fines. Provisions in various Ordinances and Acts dealing with criminal offences specify fines by reference to the standard scale (e.g. "a person convicted of an offence under this section shall be liable to a fine not exceeding the maximum of level 4 on the standard scale"). The purpose of the standard scale is to enable the amount of fines to be adjusted by revising the table instead of having to amend hundreds of provisions referring to amounts of fines. The levels of fines of the lower levels on the standard scale prior to this Order were inadequate, particularly since the standard scale provides for the *maximum* fine which may be imposed in relation to an offence to which any level mentioned in it applies. The courts are obliged to take into account the circumstances of the offence and the means of the offender and this, in most cases, results (and is intended to result) in a fine well below the permitted maximum for the offence being imposed. The maximum fine might be appropriate (subject to the means and other circumstances of the offender) in a case where the circumstances of the offence or the record of the offender call for it to be imposed.



**THE
FALKLAND ISLANDS GAZETTE
Supplement**

PUBLISHED BY AUTHORITY

Vol. 8

23rd April 1997

No. 9

The following is published in this Supplement -

The Falkland Islands Constitution (Amendment) Order 1997.

STATUTORY INSTRUMENTS

1997 No. 864

SOUTH ATLANTIC TERRITORIES

**The Falkland Islands Constitution
(Amendment) Order 1997**

| | | |
|-------------------------------|---------|---------------------------|
| <i>Made</i> | - - - - | <i>19th March 1997</i> |
| <i>Laid before Parliament</i> | | <i>26th March 1997</i> |
| <i>Coming into Operation</i> | | <i>1st September 1997</i> |

At the Court at Buckingham Palace, the 19th day of March 1997

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by the British Settlements Acts 1887 and 1945(a), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, construction and commencement

1.—(1) This Order may be cited as the Falkland Islands Constitution (Amendment) Order 1997 and shall be construed as one with the Falkland Islands Constitution Order 1985(b).

(2) The Falkland Islands Constitution Order and this Order may be cited together as the Falkland Islands Constitution Order 1985 to 1997.

(3) This Order shall come into operation on 1st September 1997.

Interpretation

2. In this Order, “the Constitution” means the Constitution of the Falkland Islands set out in Schedule 1 to the Falkland Islands Constitution Order 1985.

Amendment of Section 17 of the Constitution

3. Section 17 of the Constitution is amended by substituting for subsection (5) the following—

“(5) For the purposes of the foregoing provisions of this Chapter a person shall be regarded as belonging to the Falkland Islands if he enjoys Falkland Islands status and a person enjoys such status if that person is—

(a) a citizen who was born in the Falkland Islands; or

(b) a citizen who was born outside the Falkland Islands—

(i) whose father or mother was born in the Falkland Islands; or

(a) 1887 c.54 and 1945 c.7 (9 and 10 Geo 6).

(b) S.I. 1985/444.

- (ii) who is domiciled in the Falkland Islands and whose father or mother became, while resident in the Falkland Islands, a citizen by virtue of having been naturalised or registered as such or as a British subject or as a citizen of the United Kingdom and Colonies; or
- (c) a citizen by virtue of having been so naturalised or registered while resident in the Falkland Islands; or
- (d) a Commonwealth citizen who is domiciled in the Falkland Islands who either
 - (i) was ordinarily resident in the Falkland Islands for the seven years immediately preceding 1st September 1997; or
 - (ii) has been granted such status under the provisions of an Ordinance providing for the grant of that status to Commonwealth citizens who have been ordinarily resident in the Falkland Islands for a period of at least seven years and has not, in accordance with the provisions of that Ordinance, lost or been deprived of such status; or
- (e) The spouse, widow or widower of such a person as is referred to in any of the preceding paragraphs of this subsection, and, in the case of a spouse, is not living apart from her husband or his wife, as the case may be, under a decree of a competent court or a deed of separation; or
- (f) under the age of eighteen years and is the child, stepchild or child adopted in a manner recognised by law, of such a person as is referred to in any of the preceding paragraphs of this subsection.”.

Amendment of Section 21 of the Constitution

4. Section 21 of the Constitution is amended by substituting for subsection (2) the following—

“(2) The Legislative Council shall consist of eight elected members and two *ex-officio* members, namely, the Chief Executive and the Financial Secretary, and at any time when there is a person holding the office of Speaker, the Speaker.”.

Amendment of Section 22 of the Constitution

5. Section 22 of the Constitution is amended by substituting for subsection (1) the following—

“(1) The Falkland Islands shall be divided into two constituencies, Camp and Stanley. Camp shall return three elected members to the Legislative Council and Stanley five elected members and the members shall be elected in such a manner as shall be prescribed by Ordinance.”.

Amendment of Section 24 of the Constitution

6. Section 24 of the Constitution is amended by substituting for subsection (1)(f) the following—

“(f) at the date of election, is under sentence of death imposed on him by a court of law in any part of the Commonwealth, or is serving or has at any time within the period of five years immediately preceding that date been serving any part of a sentence of imprisonment (by whatever name called) of at least twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or is under such a sentence of imprisonment the execution of which has been suspended;”.

Amendment of Section 27 of the Constitution

7. Section 27 of the Constitution is amended by substituting for subsection (1) the following—

“(1) Subject to the provisions of subsection (2) of this Section, a person shall be qualified to be registered as an elector for the purpose of the election of members of the Legislative Council if he is a Commonwealth citizen who has attained the age of 18 years and either—

- (a) he enjoys Falkland Island status; or
 - (b) his name appeared on the register of electors for a constituency in force on 1st September 1997.
- and, in either case, he was resident in the Falkland Islands on the qualifying date in relation to which his entitlement to be registered as an elector falls to be considered and had on that qualifying date been so resident for the qualifying period.”.

Replacement of Section 33 of the Constitution

8. Section 33 of the Constitution is replaced by the following—

“33.—(1) There shall preside at each sitting of the Legislative Council—

- (a) the Governor; or
 - (b) at any time when there is a person holding the office of Speaker, the Speaker; or
 - (c) in the absence of the Governor or, as the case may be, of the Speaker, such member of the Legislative Council as the Governor, acting in his discretion, may appoint to preside at that sitting; or
 - (d) if no such appointment has been made, such person as shall be prescribed by the Standing Orders of the Council.
- (2) The Legislative Council may elect a Speaker of the Council, who shall be a person, whether or not a member of the Council, who is qualified and not disqualified to be a member of the Council.
- (3) The Speaker shall be elected for the life of the Council and shall be removable by a vote of no less than six of the elected members voting in favour of the motion.”.

Amendment of Section 37 of the Constitution

9. Subsection (2) of Section 37 of the Constitution is amended by substituting the number “six” for “five” and deleting the proviso.

Amendment of Section 50 of the Constitution

10. Section 50 of the Constitution is amended by inserting after subsection (2) the following subsection—

“(3) The Governor, acting in his discretion but after consultation with the members of the Legislative Council, may assign to one or more members of the Legislative Council responsibility for the conduct of any business in the Legislative Council.”.

Amendment of Section 51 of the Constitution

11. Section 51 of the Constitution is amended by adding the following at the end of the section—

“The *ex-officio* members shall have no right to vote on any matter that is put to the vote at a meeting of the Executive Council.”.

Amendment of Annex A to the Constitution

12. Paragraph 2 of Annex A to the Constitution is amended by the deletion of the words, “in the margin”.

N. H. Nicholls
Clerk of the Privy Council

EXPLANATORY NOTE

(*This note is not part of the Order*)

This Order makes a number of amendments to the Constitution of the Falkland Islands following a constitutional review of that territory and the report on that review by a Select Committee of the Legislative Council of the Falkland Islands.



**THE
FALKLAND ISLANDS GAZETTE
Supplement**

PUBLISHED BY AUTHORITY

Vol. 8

30th April 1997

No. 10

The following is published in this Supplement -

The United Nations Arms Embargoes (Dependent Territories) (Amendment) Order 1997.

1997 No. 272

UNITED NATIONS

The United Nations Arms Embargoes (Dependent Territories) (Amendment) Order 1997

Made - - - - - 12th February 1997

Laid before Parliament 24th February 1997

Coming into force 1st March 1997

At the Court at Buckingham Palace, the 12th day of February 1997

Present,

The Queen's Most Excellent Majesty in Council

Whereas under Article 41 of the Charter of the United Nations the Security Council of the United Nations has, by resolutions adopted on 17th May 1994, 9th June 1995 and 16th August 1995, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to a decision of that Council in relation to Rwanda:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement

1.—(1) This Order may be cited as the United Nations Arms Embargoes (Dependent Territories) (Amendment) Order 1997 and shall come into force on 1st March 1997.

(2) In this Order “the Order” means the United Nations Arms Embargoes (Dependent Territories) Order 1995(b).

Amendment of the Order

2.—(1) In paragraph (1) of article 3 of the Order, the words after “any goods specified in Schedule 2 to this Order” shall be replaced by the following:

- “(i) to a prohibited destination, or
- (ii) to, or to the order of, any person connected with a prohibited destination, or
- (iii) to any destination for the purpose of delivery, directly or indirectly, to a prohibited destination or to, or to the order of, any person connected with a prohibited destination, or
- (iv) to any person in Burundi, Tanzania, Uganda or Zaire, knowing or suspecting that the goods in question are intended for use within Rwanda, or

(a) 1946 c.45.

(b) S.I. 1995/1032.

- (v) to any destination for the purpose of delivery, directly or indirectly, to any person in Burundi, Tanzania, Uganda or Zaire, knowing or suspecting that the goods in question are intended for use within Rwanda.”.

(2) In article 4 of the Order the words after “exported from the Territory” shall be replaced by the following:

- “(i) to a prohibited destination, or
- (ii) to, or to the order of, any person connected with a prohibited destination, or
- (iii) to any destination for the purpose of delivery, directly or indirectly, to a prohibited destination or to, or to the order of, any person connected with a prohibited destination, or
- (iv) to any person in Burundi, Tanzania, Uganda or Zaire in the knowledge or suspicion that the goods in question are intended for use within Rwanda, or
- (v) to any destination for the purpose of delivery, directly or indirectly, to any person in Burundi, Tanzania, Uganda or Zaire in the knowledge or suspicion that the goods in question are intended for use within Rwanda.”.

(3) After paragraph (1) of article 8 of the Order there shall be inserted the following paragraph—

“(1A) Except under the authority of a licence granted by the Governor under this article, and without prejudice to the generality of article 3 of this Order, no ship or aircraft to which this article applies, and no vehicle within the Territory, shall be used for the carriage of goods specified in Schedule 2 to this Order if the person specified in sub-paragraph (a), (b) or (c) of paragraph (3) of this article in relation to the ship, aircraft or vehicle in question knows or suspects that the carriage is or forms part of carriage from any place outside Burundi, Tanzania, Uganda or Zaire to any person therein and that the goods in question are intended for use within Rwanda.”.

(4) After paragraph (3) of article 8 of the Order, there shall be inserted the following paragraph—

“(3A) If any ship, aircraft or vehicle is used in contravention of paragraph (1A) of this article, the person specified in sub-paragraph (a), (b) or (c) of paragraph (3) of this article in relation to the ship, aircraft or vehicle in question shall be guilty of an offence.”.

(5) In paragraphs (1), (3) and (5) of article 9 of the Order, after the words “paragraph (1)”, in each place where they occur, there shall be inserted “or (1A)”.

(6) In article 11(1) of the Order, after the words “article 8(3)”, there shall be inserted “or (3A)”.

N. H. Nicholls
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, implements in the dependent territories decisions of the Security Council of the United Nations in Resolutions 918 (1994) of 17th May 1994, 997 (1995) of 9th June 1995 and 1011 (1995) of 16th August 1995, which provided for States to prohibit the sale and supply of arms and related materiel to persons in the States neighbouring Rwanda, if such sale or supply is for the purpose of the use of such arms or materiel within Rwanda.

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**THE
FALKLAND ISLANDS GAZETTE
Supplement**

PUBLISHED BY AUTHORITY

Vol. 8

8th May 1997

No. 11

The following are published in this Supplement -

The Electoral (Amendment) Ordinance 1997;

The Supplementary Appropriation (1996-1997) Ordinance 1997.

ELIZABETH II



Colony of the Falkland Islands

RICHARD PETER RALPH, C.V.O.,
Governor.

Electoral (Amendment) Ordinance 1997

(No: 2 of 1997)

ARRANGEMENT OF PROVISIONS

Section

1. Short title and commencement
2. Replacement of sections 3 and 4(1) of the Electoral Ordinance 1988
3. Replacement of section 53 of the Electoral Ordinance 1988
4. Other amendments to the Electoral Ordinance 1988

Schedule

ELIZABETH II



Colony of the Falkland Islands

RICHARD PETER RALPH, C.V.O.,
Governor.

ELECTORAL (AMENDMENT) ORDINANCE 1997

(No: 2 of 1997)

AN ORDINANCE

(assented to: 2 May 1997)
(commencement: in accordance with section 1)
(published: 8 May 1997)

To amend the Electoral Ordinance 1988

ENACTED by the Legislature of the Falkland Islands as follows—

Short title and commencement

1. (1) This Ordinance may be cited as the Electoral (Amendment) Ordinance 1997.
- (2) This section and section 2 shall come into force on 1st May 1997 and the remaining provisions of this Ordinance shall come into force on 1st September 1997.

Replacement of sections 3 and 4(1) of the Electoral Ordinance 1988

2. Section 3 and subsection (1) of section 4 of the Electoral Ordinance 1988 are replaced by the following—

“Meaning of “resident” for the purpose of qualification to be registered as an elector

3. (1) Subject to subsection (3), for the purpose of qualification to be registered as an elector, a person is to be treated as being resident in the Falkland Islands—

(a) during such part or parts of the period of twelve months ending on the qualifying date as he was in the Falkland Islands; and

4

(b) during such part or parts of the period of twelve months ending on the qualifying date as his absence from the Falkland Islands was by reason of subsection (2) a permitted absence for the purposes of this section.

(2) Subject to subsection (3), a person's absence from the Falkland Islands shall for the purposes of subsection (1) be regarded as a permitted absence to the extent that it was occasioned by one or more of the following—

(a) the performance of duties as a public officer in the employment of the Falkland Islands Government;

(b) the performance of duties as a member of the Legislative Council or as a member or an employee of the Corporation;

(c) service in Her Majesty's regular armed forces;

(d) service as a member of the Falkland Islands Defence Force;

(e) undergoing a course of education or training overseas;

(f) undergoing a course of medical treatment overseas;

(g) accompanying a spouse absent overseas for a reason mentioned in paragraphs (a) to (e) of this subsection;

(h) any other absence for a period or periods not exceeding six months in the period of twelve months immediately preceding the qualifying date.

(3) A person's absence from the Falkland Islands shall not be regarded as a permitted absence if he has not had a home in the Falkland Islands at any time during the five years preceding the qualifying date.

Meaning of "resident for the qualifying period"

4. (1) Subject to the provisions of this subsection, for the purposes of the provisions of this Ordinance as to the qualification of a person to be registered as an elector, a person is to be regarded as being resident in the Falkland Islands for the qualifying period if under the provisions of section 3 he is to be treated as being resident in the Falkland Islands for the period of twelve months immediately preceding the qualifying date. Notwithstanding the foregoing, a person not born in the Falkland Islands shall not, in respect of any electoral register prepared in relation to the qualifying date in 1997 (that is to say, 15th May 1997), be treated as resident in the Falkland Islands for the qualifying period unless on that date he had been ordinarily resident in the Falkland Islands for a period of not less than five years expiring on that date. For the purposes of this subsection, "ordinarily resident" has the same meaning as it has at common law."

Replacement of section 53 of the Electoral Ordinance 1988

3. Subsections (1) and (2) of section 53 of the Electoral Ordinance 1988 are replaced by the following—

“ (1) A person is qualified to be elected as a member of the Legislative Council if he is declared to be so qualified by section 23 of the Constitution and is not declared to be disqualified for being so elected by or pursuant to any provision of section 24 of the Constitution.

(2) For the purposes of section 24(1)(c) of the Constitution (removal of disqualification for election of holders of specified public offices) all public offices are specified except the following public offices that is to say—

(i) the offices of President or Justice of the Court of Appeal, Chief Justice, Chief Executive, Government Secretary, Financial Secretary, Deputy Financial Secretary, Economic Advisor, Attorney General, Principal Auditor, Senior Crown Counsel, Senior Solicitor, Crown Counsel, Registrar General, Senior Magistrate, Court Administrator, Chief Medical Officer, Deputy Chief Medical Officer, Director of Agriculture, Director of Civil Aviation, Director of Education, Director of Fisheries, Director of Human Resources, Deputy Director of Human Resources, Director of Oil, Director of Public Works, Deputy Director of Public Works, Chief Police Officer, Superintendent of Posts and Telegraphs, Chief Fire Officer, Collector of Customs and Manager Falkland Islands Broadcasting Service and Clerk of the Councils;

(ii) all offices in the Royal Falkland Islands Police Force except that of reserve police officer;

(iii) the offices of General Manager and Assistant General Manager in the Falkland Islands Development Corporation;

(iv) all offices in the service of Her Majesty's Government in right of the United Kingdom;

and sub-paragraph (iii) shall be taken to have been enacted pursuant to section 24(4)(b) of the Constitution.

(2A) The Governor may by Order under this subsection amend subsection (2) so as to vary the offices the holders of which are disqualified from election to the Legislative Council.”

Other amendments to the Electoral Ordinance 1988

4. The Electoral Ordinance 1988 is further amended in the manner specified in the Schedule to this Ordinance.

SCHEDULE

General

1. Any reference in this Schedule to a section shall be construed as a reference to the section of that number of the Electoral Ordinance 1988.

Provision for voting in institutions

2. Section 59A is amended by adding the following words at the end of subsection (2) (definition of "institution")—

"or any other building by Order made by the Governor under this under this subsection declared to be an institution for the purposes of this section".

Voting procedure

3. Section 112 is amended by insertion of the following subsection immediately after subsection (2)—

“(2A) A voter may, by marking his ballot paper in such manner as is prescribed or permitted by law, vote for as many candidates whose names appear on that ballot paper as there are members of the Legislative Council to be elected in respect of the relevant constituency at that election, but his ballot paper is not to be held to be invalid merely because he voted for one such candidate only or for a lesser number of such candidates than that which pursuant to this subsection he could lawfully have voted. Nor, subject to the foregoing provisions of this subsection, shall a ballot paper be held to be invalid merely because the voter has indicated by the manner in which he has marked his ballot paper his order of preference in relation to the candidates for whom he has voted.”

The count

4. Section 121 is amended by the insertion of the following subsection after subsection (6)—

“(6A) There shall be counted in favour of a candidate all votes which, having regard to section 112(2A), were validly cast for him at the election.”

Manner of determining the result of an election

5. Section 125 is replaced by the following—

"Determination of the result of an election

125. (1) In a contested election, there shall be declared to be elected as members of the Legislative Council the same number of candidates whose names appear on the ballot paper for that election as there are persons to be so elected at that election. The candidate or candidates who shall be declared by the returning officer to be so elected at such an election is that candidate who has received, or (as the case may be) are those candidates who have received, a greater number of valid votes than any candidate whose name appears on the ballot paper who is not declared to be so elected at that election.

(2) Where after the counting of the votes (including any re-count) is completed, an equality of votes is found to exist between two or more candidates and the addition of a vote would entitle one or more of those candidates to be declared to be elected, the returning officer shall forthwith decide by lot which one or more of those candidates is to be declared to be elected and proceed as if the candidate on whom the lot falls had received an additional vote or, as the case may be, shall proceed as if the candidates on whom the lots fall had each received an additional vote."

Passed by the Legislature of the Falkland Islands this 25th day of April 1997.

C. ANDERSON,
Clerk of Councils.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council and is found by me to be a true and correctly printed copy of the said Bill.

C. ANDERSON,
Clerk of Councils.

ELIZABETH II



Colony of the Falkland Islands

RICHARD PETER RALPH, C.V.O.,
Governor.

Supplementary Appropriation (1996-1997) Ordinance 1997

(No: 3 of 1997)

ARRANGEMENT OF PROVISIONS

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ELIZABETH II



Colony of the Falkland Islands

RICHARD PETER RALPH, C.V.O.,
Governor.

SUPPLEMENTARY APPROPRIATION (1996-1997) ORDINANCE 1997

(No. 3 of 1997)

AN ORDINANCE

(assented to: 2 May 1997)
(commencement: on publication)
(published: 8 May 1997)

To appropriate and authorise the withdrawal from the Consolidated Fund of the additional sum of £2,458,610 for the service of the financial year ending on 30th June 1997.

ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Supplementary Appropriation (1996-1997) Ordinance 1997.

Appropriation of further sum

2. The Financial Secretary may for the purposes specified in Schedules 1 and 2 cause to be withdrawn from the Consolidated Fund and applied to the service of the year commencing on 1st July 1996 and ending on 30th June 1997 ("the financial year") the further sum of £2,458,610 in addition to sums already appropriated by Ordinance.

Replenishment of Contingencies Fund

3. The Financial Secretary shall out of the sums appropriated by section 2 replenish the Contingencies Fund to the extent that sums specified in Schedule 1, prior to the commencement of this Ordinance, have been withdrawn from the Contingencies Fund by the authority of Contingencies Fund Warrants Numbers 4 to 8 of 1996-1997, the authority of which lapses on the commencement of this Ordinance.

SCHEDULE 1

HEAD OF SERVICE

PART I OPERATING EXPENDITURE

| | | |
|-----|---|----------------|
| 100 | Aviation | 8,540 |
| 200 | Health & Social Services | 78,000 |
| 250 | Education & Training | 6,100 |
| 300 | Customs & Immigration | 1,000 |
| 350 | Public Works | 70,000 |
| 390 | Fox Bay Village | 26,500 |
| 400 | Agriculture | 33,500 |
| 500 | Falkland Islands Defence Force | 4,000 |
| 600 | Central Administration | 3,100 |
| 620 | Oil Department | 4,000 |
| 750 | The Governor | 3,200 |
| 850 | Falkland Islands Government Office - London | 4,050 |
| | TOTAL OPERATING BUDGET | 241,990 |

PART II CAPITAL BUDGET

| | | |
|-----|--|----------------|
| 950 | Expenditure | 250,500 |
| | TOTAL SUPPLEMENTARY EXPENDITURE | 492,490 |

SCHEDULE 2

HEAD OF SERVICE

PART I OPERATING EXPENDITURE

| | | |
|-----|---|----------------|
| 100 | Aviation | 36,940 |
| 150 | Posts & Telecommunications | 13,760 |
| 200 | Health & Social Services | 20,000 |
| 250 | Education & Training | 104,260 |
| 300 | Customs & Immigration | 9,230 |
| 320 | Fisheries | 9,720 |
| 350 | Public Works | 240,620 |
| 400 | Agriculture | 58,800 |
| 500 | Falkland Islands Defence Force | 4,160 |
| 551 | Police & Prisons | 26,580 |
| 552 | Fire & Rescue Service | 6,260 |
| 600 | Central Administration | 79,550 |
| 620 | Oil Department | 3,030 |
| 650 | Pensions & Gratuities | 28,200 |
| 750 | The Governor | 7,330 |
| 800 | Legislature | 3,780 |
| 850 | Falkland Islands Government Office - London | 11,800 |
| | TOTAL OPERATING BUDGET | 664,020 |

PART II CAPITAL BUDGET

| | | |
|-----|--|------------------|
| 950 | Expenditure | 1,302,100 |
| | TOTAL SUPPLEMENTARY EXPENDITURE | 1,966,120 |

Passed by the Legislature of the Falkland Islands this 25th day of April 1997.

C. ANDERSON,
Clerk of Councils.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council and is found by me to be a true and correctly printed copy of the said Bill.

C. ANDERSON,
Clerk of Councils.



**THE
FALKLAND ISLANDS GAZETTE
Supplement**

PUBLISHED BY AUTHORITY

Vol. 8

16th May 1997

No. 12

The following is published in this Supplement -

The Taxes Bill 1997.

TAXES BILL 1997

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TAXES BILL 1997

(No. of 1997)

A Bill
for
An Ordinance

To consolidate the enactments relating to income tax and corporation tax with minor amendments to improve the law

BE IT ENACTED by the Legislature of the Falkland Islands as follows:—

PART I GENERAL PROVISIONS

*Short title
and commencement.*

1.—(1) This Ordinance may be cited as the Taxes Ordinance 1997.

(2) Except as otherwise provided, this Ordinance shall apply in relation to the charge to income tax for years of assessment beginning on or after 1st January 1997 and for the charge to corporation tax for corporation tax years beginning on or after 1st January 1997.

*General
interpretation of
Ordinance.*

2.—(1) In this Ordinance, unless the context otherwise requires—
"accounting period" has the meaning given by section 26;
"ACT" has the meaning given by section 35;
"bank" means a financial institution licensed under the Banking Ordinance 1987;
"base lending rate" means the rate of interest payable in respect of loans to customers in the Falklands Islands for the time being as announced by the Standard Chartered Bank, Stanley Branch;
"body of persons" means any body politic or corporate, and any company or partnership or society of persons whether corporate or unincorporate;
"business" means any trade, business, profession or vocation;
"chargeable gain" has the meaning given by section 141(2);
"chargeable income", in relation to any chargeable period, means the aggregate amount of the income of any person for that period (less any amounts which may be deducted or allowed in accordance with this

- Ordinance) in respect of which income tax or corporation tax is chargeable under this Ordinance;
- "chargeable period" means, in relation to income tax, a year of assessment and, in relation to corporation tax, a corporation tax year;
- "Commissioner" means the Commissioner of Taxation but any reference to a decision or determination of the Commissioner includes a reference to a decision or determination of the Tribunal on appeal from the Commissioner and a reference to a decision or determination of the Supreme Court on a further appeal from the Tribunal on a point of law;
- "company" means any body corporate or unincorporated association but does not include a partnership or a local authority;
- "controlled waters" has the meaning given by section 2(1) of the Offshore Minerals Ordinance 1994;
- "corporation tax year" means the period of 12 months beginning on 1st January in any calendar year;
- "designated area" has the meaning given by Proclamation No.1 of 1991;
- "director" has the meaning given by subsections (2) and (3) below;
- "earned income" has the meaning given by section 206;
- "earned income relief" means relief under section 15(1);
- "exploration or exploitation activities" means activities carried on in connection with the exploration or exploitation of so much of the bed and subsoil and their natural resources as is situated beneath controlled waters;
- "exploration or exploitation rights" means a petroleum licence or any interest or share in a petroleum licence or any other right to, or to the benefit of, or interest in, assets (including intellectual property) to be produced by exploration or exploitation activities;
- "incapacitated person" means any person under the age of 18 years or any person under a mental incapacity;
- "intellectual property" includes any data, computer programme, patent, know-how, design or similar property;
- "know-how" means any industrial information and techniques likely to assist in the working of a source of mineral deposits (including the searching for, discovery of testing of deposits or the winning of access thereto);
- "licensed area" means an area which is subject to a petroleum licence;
- "licensee" includes any person with an interest or share in a petroleum licence and, where the context permits, includes any other person with an interest or share in any petroleum won or to be won in a licensed area, and references to a licence shall be construed accordingly;
- "magistrate" means the Senior Magistrate;

- "maintenance payments" has the meaning given by section 8(3);
- "notice" means notice in writing;
- "notice of assessment" has the meaning given by section 175;
- "ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company;
- "period of account", in relation to a company or a business, means a period for which the accounts of the company or business are made up;
- "person" includes a body of persons;
- "petroleum licence" means a licence granted under section 6 of the Offshore Minerals Ordinance 1994 in accordance with the Offshore Petroleum Licensing Regulations 1995;
- "pipe-line" means a pipe-line as defined in section 38(1) of the Offshore Minerals Ordinance 1994;
- "prescribed" means prescribed by rule under this Ordinance;
- "recognised stock exchange" means—
- (a) the Stock Exchange of the United Kingdom; and
 - (b) any such stock exchange outside the United Kingdom as is for the time being designated for the purposes of this section as a recognised stock exchange by order made by the Commissioner;
- "registered co-operative society" means a co-operative society registered under the Co-operative Societies Ordinance 1987;
- "relevant accounting period", in relation to any chargeable period, means, for corporation tax purposes, the accounting period or periods, and for income tax purposes, the period of account, on the income of which tax for that period falls to be charged;
- "return of income" means a return of income under section 12(1);
- "ring fence income" and "ring fence trade" have the meanings given by section 140;
- "tax", except where the context otherwise requires, means either income tax or corporation tax;
- "the Tribunal" means the Tax Appeal Tribunal constituted in accordance with section 180;
- "unquoted shares" means shares which are not listed in the official list of a recognised stock exchange;
- "year of assessment" means the period of 12 months beginning on 1st January in any year.

(2) In this Ordinance "director" means—

- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that board or similar body,
- (b) in relation to a company whose affairs are managed by a single director or similar person, that director or

person, and

(c) in relation to a company whose affairs are managed by the members themselves, a member of the company.

(3) In this Ordinance "director", in relation to a company, also includes any person in accordance with whose directions or instructions the company's directors (as defined in subsection (2) above) are accustomed to act; but for this purpose a person is not to be deemed to be a person in accordance with whose directions or instructions the company's directors are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.

(4) An order made by the Commissioner designating a stock exchange may designate the exchange—

- (a) by name, or by reference to any class or description of stock exchanges including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom;
- (b) may contain such transitional and other supplemental provisions as appear to the Commissioner to be necessary or expedient;
- (c) may be varied or revoked by a subsequent order so made.

(5) For the avoidance of doubt it is hereby declared that any reference in this Ordinance to an employment includes a reference to an office, and references to an employee shall be construed accordingly.

(6) In this Ordinance references to the higher rate or to the lower rate shall be construed in accordance with section 10.

(7) In this Ordinance—

- (a) any reference to a person being connected with another person, shall be construed in accordance with section 208;
- (b) any reference to a person being in control of another, shall be construed in accordance with section 209 or 210, as the context may require; and
- (c) any reference to a subsidiary shall be construed in accordance with section 207.

(8) For the purposes of income tax and corporation tax a source of income is within the charge to income tax or corporation tax if that tax is chargeable on the income arising from it, or would be so chargeable if there were any such income, and references to a person, or to income, being within the charge to tax shall be similarly construed.

*Territorial sea,
designated areas
and controlled
waters.*

3.—(1) This section has effect for all purposes of income tax and corporation tax.

(2) The territorial sea of the Falkland Islands shall be deemed to be part of the Falkland Islands.

(3) Any profits or gains from exploration or exploitation activities or

from exploration or exploitation rights shall be treated as profits or gains from activities or property in the Falkland Islands.

(4) Profits or gains within subsection (3) above which accrue to a company which—

(a) is not resident in the Falkland Islands, and

(b) carries on a business otherwise than through a branch or agency in the Falkland Islands,

shall be deemed not to be profits or gains directly or indirectly arising through or from or accruing to that business.

(5) Any emoluments from an employment in respect of duties performed in a designated area in connection with exploration or exploitation activities shall be treated for the purposes of this Ordinance as emoluments in respect of duties performed in the Falkland Islands.

(6) Gains accruing on the disposal of unquoted shares in companies which derive any part of their value directly or indirectly from exploration or exploitation assets or exploration or exploitation rights shall be deemed to be gains accruing on the disposal of assets situated in the Falkland Islands.

(7) Any reference in this section to gains includes a reference to capital gains.

Transitional provisions.

4.—(1) The continuity of the law relating to income tax shall not be affected by the substitution of this Ordinance for the enactments repealed by this Ordinance and earlier enactments repealed by and corresponding to any of those enactments ("the repealed enactments").

(2) Any reference, whether express or implied, in any enactment, instrument or document (including this Ordinance or any Ordinance amended by this Ordinance) to, or to things done or falling to be done under or for the purposes of, any provision of this Ordinance shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments has or had effect, a reference to, or as the case may be, to things done or falling to be done under or for the purposes of, that corresponding provision.

(3) Any reference, whether express or implied, in any enactment, instrument or document (including the repealed enactments and enactments, instruments and documents passed or made or otherwise coming into existence after the commencement of this Ordinance) to, or to things done or falling to be done under or for the purposes of, any of the repealed enactments shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Ordinance has effect, a reference to, or as the case may be to things done or falling to be done under or for the purposes of, that corresponding provision.

(4) Where an offence for the continuation of which a penalty was provided has been committed under an enactment repealed by this Ordinance,

proceedings may be taken under this Ordinance in respect of the continuance of the offence after the commencement of this Ordinance in the same manner as if the offence had been committed under the corresponding provision of this Ordinance.

*Appointment and
duties of
Commissioner of
Taxation, Deputy
Commissioner etc.*

5.—(1) The Governor shall appoint a public officer to be Commissioner of Taxation ("the Commissioner"), and income tax and corporation tax shall be under the care and management of the Commissioner.

(2) The Governor shall appoint such collectors and officers as may be necessary to collect, assess, receive and account for income tax and corporation tax, and generally to assist the Commissioner and the Deputy Commissioner in the performance of their functions

(3) The Commissioner shall generally carry out the provisions of and exercise the powers delegated to or vested in him under this Ordinance and may in particular prescribe the form of returns, claims, statements and notices under this Ordinance.

(4) The Governor may appoint a Deputy Commissioner of Taxation to whom the Commissioner may delegate any of his functions under this Ordinance or under any instrument made under this Ordinance or under any other enactment relating to taxation.

*Impeding or
obstructing
Commissioner or
officers.*

6. Any person who obstructs or impedes or molests the Commissioner or a collector or other officer lawfully authorized by this Ordinance in the discharge of his duties or in his official capacity or in the exercise of his powers commits an offence under this Ordinance.

Power to remit.

7.—(1) The Governor in Council may remit the whole or any part of the tax payable by any person if he is satisfied that it would be just and equitable to do so.

(2) Notice of any remission of tax under this section shall be published in the Gazette.

(3) The Commissioner may in his discretion mitigate any penalty, or stay or compound any proceedings for a penalty, and may also after judgment further mitigate or entirely remit the penalty.

PART II
THE CHARGE TO INCOME TAX AND CORPORATION TAX
CHAPTER I
INCOME TAX

The charge to income tax

The charge to income tax.

8.—(1) Subject to the provisions of this Ordinance, income tax shall be payable for a year of assessment at the rate or rates specified in section 10 for that year on the income of any person accruing in or derived from the Falkland Islands or elsewhere, and whether received in the Falkland Islands or not in respect of—

- (a) gains or profits from any business carried on by or exercised by that person;
- (b) gains or profits from any employment received in money;
- (c) the prescribed annual value of any prescribed benefit received otherwise than in money in respect of any employment;
- (d) the prescribed annual value of land and improvements thereon;
- (e) dividends, interest, or discounts;
- (f) any pension, charge or annuity;
- (g) rents, royalties, premiums, and any other profits arising from property;
- (h) maintenance payments paid in pursuance of an order of a court in the Falkland Islands made before 1st January 1994 in pursuance of an application made before 1st July 1993.

(2) In subsection (1)(d) above the reference to land and improvements thereon includes housing used rent-free or for which a token rent is paid by the occupier for enjoyment, but does not include any land or housing which is not provided to or for the benefit of that person by reason of his employment.

(3) In this Ordinance "maintenance payments" means payments under an order of the court in the Falkland Islands or the United Kingdom—

- (a) by one of the parties to a marriage (whether subsisting, dissolved or annulled) for the maintenance of the other party; or
- (b) to any person for the benefit, maintenance or education of a person under the age of 21 years not being a payment mentioned in paragraph (a);

and for the purposes of this Ordinance a court order which varies, supplements or replaces an earlier court order shall be taken to be made on the day that earlier order was made, or if that earlier order itself fell within this provision, on the day that earlier order was taken to have been made.

(4) Rules made by the Governor in Council prescribing benefits and annual values for the purposes of subsection (1)(c) and (d) above shall not come into effect unless they are confirmed by the Legislative Council at the meeting next following the publication of the rules.

(5) It is hereby declared that for the purposes of determining the amount of tax payable in accordance with this Ordinance in respect of any

net sum, the net sum shall be deemed to be increased to such gross amount as will, after deduction of the amount of tax so payable in respect of an amount equal to that gross amount produce an amount equal to the net sum.

(6) In subsection (5) above a "net sum" is a sum payable to or in respect of a person under any agreement or arrangement which (however expressed) provides for the sum to be paid wholly or partly free of tax.

Basis of assessment.

9.—(1) Income tax shall be charged, levied and collected for each year of assessment on the chargeable income of any person for the year immediately preceding the year of assessment.

(2) Where the Commissioner is satisfied that any person usually makes up the accounts of his business to a date other than 31st December, the Commissioner shall permit the gains or profits of that business to be computed, for the purposes of income tax, on the income of the year terminating on the business's accounting date in the year immediately preceding the year of assessment.

(3) In subsection (2) "accounting date" means the date to which the accounts in question have usually been made up.

(4) Subject to any provision to the contrary in this Ordinance, the date to which the accounts of any business the profits of which are within the charge to income tax are made up shall not be changed by any voluntary act (excepting voluntary liquidation or bankruptcy or ceasing to carry on the business), unless the Commissioner so requires or approves.

Rates of income tax.

10. Income tax shall be charged on the chargeable income of a person at the following rates—

- (a) in the case of any person other than a company, on the first £22,000 of his chargeable income, at 20 per cent. and on the remainder, at 25 per cent; and
- (b) in the case of a company trading through a branch or agency in the Falkland Islands, on all its chargeable income, at the rate of 32.5 per cent;
- (c) in the case of any other company, on any part of its income which the company pays to any person not ordinarily resident or company not resident in the Falkland Islands, at the rate of 32.5 per cent. and on all other income, whether distributed or undistributed, at the rate of 25 per cent;

and in this Ordinance any reference to the lower rate or the higher rate, in relation to income tax, is a reference to the lower or the higher rate specified in paragraph (a) respectively.

Time for payment of income tax and interest on overdue tax.

11.—(1) Income tax charged in an assessment for a year of assessment shall be payable before—

- (a) the expiry of the period of 90 days beginning with the date of service of the notice of assessment, or
- (b) if later the 1st August in that year.

(2) Interest shall be due on any income tax remaining unpaid after the date on which it is due at the rate of 3 per cent. per annum over base lending rate.

Notice of chargeability and tax returns.

12.—(1) The Commissioner may by notice require any person chargeable to income tax to furnish him within 60 days of the date of issue of the notice with a return relating to his income which shall include such particulars as the Commissioner may require for the purposes of this Ordinance.

(2) The Commissioner may by notice require any person chargeable to income tax for a year of assessment, who claims to be or the Commissioner believes is carrying on a business in the Falkland Islands, to lodge with his return under subsection (1) above or within such period thereafter as may be specified in the notice—

(a) accounts of that business for the period of account last ending before the commencement of that year of assessment in such form as may be specified in the notice, and

(b) any notes to the accounts and an explanation of any matter which may be necessary to enable the accounts to be understood;

and the accounts shall if the notice so requires be audited by an auditor approved by the Commissioner.

(3) Every person chargeable to income tax for any year of assessment shall not later than 4 months after the beginning of that year give notice to the Commissioner that he is so chargeable, specifying each source of income separately, unless he has previously received a notice under subsection (1) above or made a return of his income for that year.

(4) Any person who fails or neglects to lodge any accounts or other information in accordance with subsection (2) shall be liable to a penalty—

(a) if the accounts or other information are delivered not more than 3 months after the due time, of £100;

(b) if the accounts or other information are delivered more than 3 months after the due time, of £200.

Income from sources outside Falkland Islands.

13.—(1) This section applies to income which arises from a source outside the Falkland Islands.

(2) Income tax chargeable for any year of assessment shall not be payable in respect of income to which this section applies if it accrues to a person who is neither resident nor ordinarily resident in the Falkland Islands at the time the income accrues to him.

(3) Income tax chargeable for any year of assessment shall not be payable in respect of income to which this section applies if the income—

(a) is not remitted to the Falkland Islands, and

(b) accrues to a person who either—

(i) is not domiciled in the Falkland Islands at the time the income accrues to him, or

(ii) if he is domiciled in the Falkland Islands, is not ordinarily resident in the Falkland Islands at the time the income accrues to him.

(4) Where the source of income is an employment then, for the purposes of this section—

- (a) a source of income is outside the Falkland Islands if it is an office or employment the duties of which are performed outside the Falkland Islands, and
- (b) if the duties of the office or employment are performed partly outside and partly within the Falkland Islands, the amount of the remuneration from that office or employment which is to be taken as arising from a source outside the Falkland Islands shall be such part of the total remuneration for the period in question as the Commissioner shall determine having regard in particular to the amount of time devoted to the performance of the duties outside the Falkland Islands as compared to the amount of time devoted to the duties performed within the Falkland Islands.

(5) Where an employment is in substance one the duties of which fall in the year of assessment to be performed in the Falkland Islands, then for the purposes of this section there shall be treated as so performed any duties performed outside the Falkland Islands the performance of which is merely incidental to the performance of other duties in the Falkland Islands.

(6) In this section any reference to an employment includes a reference to a contract for services.

Married women.

14.—(1) Subject to the following provisions of this section, the income of a married woman shall for the purposes of this Ordinance be deemed to be the income of her husband and shall be charged in the name of the husband and not in her name nor in that of her trustee.

(2) So much of the total amount of tax charged upon the husband as bears the same proportion to that total amount as the amount of the income of the wife bore to the amount of the total income of husband and wife may, if necessary, be collected from the wife, notwithstanding that an assessment has not been made on her.

(3) A married woman separated from her husband—

- (a) under an order of a court of competent jurisdiction, or
 - (b) under a written agreement, or
 - (c) in such circumstances that the Commissioner considers that the separation is likely to be permanent,
- shall be treated as an unmarried person.

(4) A married woman in receipt of earned income and her husband may elect to be assessed separately, and where an election is made under this section the following provisions shall apply—

- (a) both husband and wife shall be assessed for tax as single persons and shall be entitled to the personal relief for

- single persons under section 16(1);
- (b) the additional relief for a wife under section 17(1) shall not be granted;
- (c) relief under section 18 shall be granted to the husband only;
- (d) the question whether a person is eligible for relief under section 19 shall be determined without regard to paragraph (a) above; and
- (e) the husband's income shall include all income of his wife other than her earnings.

(5) An election for separate assessment under this section shall be made jointly by the husband and wife in writing to the Commissioner not later than 1st April in the year of assessment as respects which the election is first to have effect.

(6) If no election has been made by the parties concerned, the Commissioner may tax both parties individually or jointly, whichever is to the advantage of the taxpayers, subject to the agreement of both parties.

(7) When an election is made in respect of any year of assessment it shall be irrevocable in respect of that year and such election shall continue to apply in respect of subsequent years until the election is jointly revoked by the husband and wife.

(8) When an election is revoked after 1st April in any year the revocation shall not have effect in respect of that year but shall affect subsequent years.

(9) Revocation of an election shall not be a bar to further election.

Ascertainment of chargeable income of individuals

Earned income relief and other deductions.

15.—(1) In computing the chargeable income of an individual, an amount equal to 15 per cent. of the earned income of that individual shall first be deducted from that earned income ("earned income relief") and, subject to subsection (2), the deductions allowed under subsection (3) below or section 58 or 97 shall be allowed against earned income after the deduction of earned income relief.

(2) Any deduction allowed under subsection (3) or section 58 or 97 shall be allowed against an individual's unearned income only to the extent (if any) that his earned income (after deduction of earned income relief) is insufficient.

(3) There shall be deducted from an individual's income—

- (a) any maintenance payment paid by him in pursuance of an order of a court in the Falkland Islands made before 1st January 1994 in pursuance of an application made before 1st July 1993;
- (b) sums payable by him by way of interest upon any housing loan, provided that the Commissioner shall have discretion to disallow the same, in whole or in part, in

respect of any period that the house is unoccupied by that person;

- (c) subject to subsection (4) below, any annual subscription paid to a body of persons approved for the purposes of this section by the Commissioner;
- (d) any sums paid by the individual in respect of himself or his wife under the Old Age Pensions Ordinance and any contributions made by the individual or his wife under the Retirement Pensions Ordinance 1996 which are deductible in accordance with section 16 of that Ordinance.

(4) A subscription shall not be deducted under subsection (3) above unless—

- (a) it is deducted from the emoluments of an office or employment, and
- (b) it is paid to a body the activities of which, so far as they are directed at the objects mentioned in subsection (5) below, are relevant to the office or employment, that is to say, the performance of the duties of the office or employment is directly affected by the knowledge concerned or involves the exercise of the profession concerned.

(5) The Commissioner shall not approve any body of persons for the purposes of subsection (3)(c) above unless the activities of the body are carried on otherwise than for profit and are solely or mainly directed to all or any of the following objects—

- (a) the advancement or spreading of knowledge (whether generally or among persons belonging to the same or similar professions or occupying the same or similar positions);
- (b) the maintenance or improvement of standards of conduct and competence among the members of any profession.

(6) In this section "housing loan" means such part of any principal sum advanced for the purpose of purchasing, building, adding to or altering a dwelling house in the Falkland Islands as does not exceed £50,000.

*Personal allowance
and dependent
relative allowances.*

16.—(1) In computing the chargeable income of an individual there shall be allowed a deduction of £5,500.

(2) In computing the chargeable income for a year of assessment of an individual who proves to the satisfaction of the Commissioner that during the year immediately preceding that year that he maintained at his own expense a dependent relative whose total income from all sources for that preceding year did not exceed £4,000, there shall be made a deduction not exceeding £1,500 a year in respect of each dependent relative whom he so maintains.

Where two or more persons jointly maintain a dependent relative the deduction to be made under this subsection shall be apportioned between them in proportion to the amount or value of their respective contributions towards the maintenance of that person.

(3) In computing the chargeable income for a year of assessment of an individual who proves to the satisfaction of the Commissioner that during the year immediately preceding that year, by reason of old age or infirmity, he was compelled to depend upon the service of a son or daughter resident with and maintained by him, there shall be made a deduction not exceeding £1,500 a year.

(4) In this section "dependent relative", in relation to any person, means a relative of that person or of his spouse who is incapacitated by old age or infirmity from maintaining himself.

Married man's allowance and wife's earnings relief.

17.—(1) In ascertaining the chargeable income for a year of assessment of a man who proves to the satisfaction of the Commissioner that he had during the year immediately preceding that year of assessment his wife living with him or wholly maintained by him a deduction shall be made of £2,450.

(2) In ascertaining the chargeable income for a year of assessment of a husband in any case where he is assessed jointly with his wife who has earned income arising during the year immediately preceding that year of assessment, then, subject to subsection (3), a deduction shall be made of £5,500 or the amount of the wife's earned income, whichever is the less.

(3) In any case where a loss arises in the year immediately preceding a year of assessment in the exercise of any business carried on by the husband or the wife or a loss is brought forward under section 126 and set against the profits of such a business or other income of the husband arising in that preceding year, the amount of the deduction made under subsection (2) shall not exceed the amount (if any) by which the wife's earned income for that preceding year exceeds the amount (or aggregate amount) of any such loss.

(4) In this section, any reference to earned income is a reference to earned income after making any deductions allowed by sections 15 and 58 and Chapters I and II of Part V.

Age allowance.

18.—(1) In computing the chargeable income for a year of assessment of any married man who proves that at any time during the year immediately preceding that year he was of the age of 60 years or upwards and that his wife was living with him or was wholly maintained by him, there shall be deducted an amount equal (whether or not he actually receives the same) to twice the annual value of the standard weekly rate of pension payable under the Retirement Pensions Ordinance 1996 for the year in question.

(2) In computing the chargeable income for a year of assessment of any individual who is not entitled to a deduction under subsection (1) in making that computation, and who proves that at any time within the year immediately preceding the year of assessment he was of the age of 60 years or upwards, a deduction shall be made of an amount equal (whether or not he actually receives the same) to the annual value of the standard weekly rate of pension payable under the Retirement Pensions Ordinance 1996 for the year in question.

*Additional
allowance in
respect of children.*

19.—(1) In ascertaining the chargeable income for any year of assessment—

- (a) of any individual who was not throughout the year preceding the year of assessment either married and living with his spouse or wholly maintaining his spouse; and
- (b) of any man who for the whole or any part of the year preceding the year of assessment is married to and living with a wife who is totally incapacitated by physical or mental infirmity throughout the year,

a deduction may be made in accordance with subsection (2) below.

(2) The amount of the deduction to be made under this section for any year of assessment—

- (a) if the person proves that a qualifying child was resident with him for the whole of the preceding year, shall be £1,500, and
- (b) if the person proves that a qualifying child was resident with him for only part of the preceding year, shall be an amount which bears the same proportion to £1,500 as that part of the year bears to the whole.

(3) An individual is entitled to only one deduction under this section for any year of assessment irrespective of the number of qualifying children resident with him in the preceding year.

(4) An individual shall not be entitled to relief under this section for a year of assessment if during any part of the preceding year he is married and living with his spouse unless the child in respect of whom the relief is claimed is resident with that individual during a part of the preceding year when he is not married and living with his spouse.

(5) Where—

- (a) a man and a woman who are not married to each other live together as husband and wife for the whole or any part of the year preceding the year of assessment, and
 - (b) apart from this subsection each of them would on making a claim be entitled to a deduction under this section,
- neither of them shall be entitled to such a deduction except in respect of the youngest of the children concerned (that is to say, the children in respect of whom either would otherwise be entitled to a deduction).

(6) For the purposes of this section a qualifying child means, in relation to an individual and any year, a child who—

- (a) is born in, or is under the age of 16 years at the commencement of, the year or, being over that age at the commencement of that year, is receiving full-time instruction at any university, college, school or other educational establishment; and
- (b) is a child of the individual or, not being such a child, is born in, or is under the age of 18 years at the commencement of, the year and maintained for the whole or part of that year by the individual at his own

expense.

*Provisions
supplementary to
section 19.*

20.—(1) In section 19(6)(a) the reference to a child receiving full-time instruction at an educational establishment includes a reference to a child undergoing training by any person ("the employer") for any trade, profession or vocation in such circumstances that the child is required to devote the whole of his time to the training for a period of not less than two years.

(2) In section 19(6)(b) the reference to a child of an individual includes a reference to a stepchild of his, an illegitimate child of his if he has married the other parent after the child's birth and an adopted child of his if the child was under the age of 18 years when he was adopted.

(3) For the purposes of section 19(6) a child whose birthday falls on 1st January shall be taken to be over the age of 16 at the commencement of the year which begins with his 16th birthday and over the age of 18 at the commencement of the year which begins with his 18th birthday.

(4) Where for any year of assessment two or more individuals are entitled to relief under section 19 in connection with the same child—

(a) the amount of the deduction under that section shall be apportioned between them; and

(b) the deduction to which each of them is entitled under that section shall, subject to subsection (5) below, be equal to so much of that amount as is apportioned to him.

(5) Where for any year of assessment amounts are apportioned to an individual under this section in respect of two or more children, the deduction to which he is entitled for that year under section 19 shall be equal to the sum of those amounts or the amount specified in subsection (2)(a) of that section, whichever is the less.

(6) Any amount required to be apportioned under this section shall be apportioned between the individuals concerned in such proportions as may be agreed between them or, in default of agreement, in proportion to the length of the periods for which the child in question is resident with them respectively in the year preceding the year of assessment; and where the proportions are not so agreed, the apportionment shall be made by the Commissioner.

(7) For the purposes of this section an individual shall not be regarded as entitled to relief under section 19 for any year of assessment in connection with the same child as another individual if there is another child in connection with whom he, and he is alone, is entitled to relief under that section for that year.

Deceased persons.

21.—(1) In any case where—

(a) any person dies during the year immediately preceding a year of assessment and such person would but for his death have been chargeable to tax for that year of assessment, or

(b) any person dies during the year of assessment as respects

which no assessment has been made on him, or a person dies within 2 years after the expiration of such a year of assessment,

the personal representative of that person shall be liable to and charged with the payment of the tax with which that person would have been chargeable, and shall be answerable for doing all such acts, matters and things as that person would if he were alive be liable to do under this Ordinance.

(2) If, in a case falling within subsection (1)(a)—

(a) the personal representative distributes the deceased's estate before 1st January immediately following the death, and

(b) the rate of tax for the year of assessment has not been fixed at the date of distribution of the estate,

the personal representative shall pay the tax at the rate or rates in force at that date.

Workers supplied by agencies.

22.—(1) Subject to the provisions of this section, where—

(a) an individual ("the worker") renders or is under an obligation to render personal services to another person ("the client") and is subject to, or to the right of, supervision, direction or control as to the manner in which he renders those services; and

(b) the worker is supplied to the client by or through a third person ("the agency") and renders or is under an obligation to render those services under the terms of a contract between the worker and the agency ("the relevant contract"); and

(c) remuneration receivable under or in consequence of that contract would not, apart from this section, be chargeable to income tax as the emoluments of an office or employment,

then, for all the purposes of this Ordinance, the services which the worker renders or is under an obligation to render to the client under that contract shall be treated as if they were the duties of an office or employment held by the worker, and all remuneration receivable under or in consequence of that contract shall be treated as emoluments of that office or employment and shall be assessable to income tax accordingly.

(2) Subsection (1)(b) above includes cases in which the third person is an unincorporated body of which the worker is a member.

(3) Subsection (1) above shall apply whether or not the worker renders or is under an obligation to render the services in question as a partner in a firm or a member of an unincorporated body; and where, in any case in which that subsection applies, the worker is a partner in a firm or a member of such a body, remuneration receivable under or in consequence of the relevant contract shall be treated for all the purposes of this Ordinance as income of the worker and not as income of the firm or body.

(4) For the purposes of this section, any remuneration which the client pays or provides by reason of the worker being a person who renders or is under an obligation to render the services in question shall be treated as

receivable in consequence of the relevant contract.

(5) Subsection (1) above shall not apply—

- (a) if the services in question are services as an actor, singer, musician or other entertainer or as a fashion, photographic or artist's model; or
- (b) if the services in question are rendered wholly in the worker's own home or at other premises which are neither under the control or management of the client nor premises at which the worker is required, by reason of the nature of the services, to render them.

(6) Where an individual enters into arrangements with another person with a view to the rendering of personal services by the individual, being arrangements such that, if and when he renders any such services as a result of the arrangements, those services will be treated under subsection (1) above as if they were the duties of an office or employment held by him, then for all purposes of this Ordinance any remuneration receivable under or in consequence of the arrangements shall be treated as emoluments of an office or employment held by the individual and shall be assessable to income tax accordingly.

(7) In this section "remuneration", in relation to an individual, does not include anything in respect of which he would not have been chargeable to tax as an emolument of an office or employment if it had been receivable in connection with an office or employment held by him but, subject to that, includes every form of payment and all prescribed benefits (within the meaning of section 8).

CHAPTER II

CORPORATION TAX

The charge to corporation tax

The charge to corporation tax and exclusion of income tax.

23.—(1) Corporation tax shall be charged on income of companies, and the enactments relating to corporation tax shall apply, for any corporation tax year beginning on or after 1st January 1997.

(2) The provisions of this Ordinance relating to the charge of income tax shall not apply to income of a company (not arising to it in a fiduciary or representative capacity) if—

- (a) the company is resident in the Falkland Islands, or
- (b) the income is, in the case of a company not so resident, within the chargeable income of the company by virtue of section 34.

(3) Subject to the provisions of the enactments relating to corporation tax, where a company resident in the Falkland Islands receives any payment on which it bears income tax by deduction, the income tax thereon shall be set off against any corporation tax assessable on the company by an assessment made for the accounting period in which that payment falls to be taken into account for corporation tax (or would fall to be taken into account but for any exemption from corporation tax).

(4) References in this section to payments received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person.

(5) A company shall not be entitled to a repayment of income tax by virtue of subsection (2) above or to set off any amount of income tax under subsection (3) above except on a claim made in that behalf, and effect shall also be given to any other exemption from income tax conferred by the corporation tax legislation which calls for repayment of tax, by means of a claim.

Basis of assessments, and chargeable income.

24.—(1) Except as otherwise provided by this Ordinance, corporation tax for any corporation tax year shall be charged on a company on the full amount of its income for that year, wherever the income arises and whether or not it is received in or transmitted to the Falkland Islands, without any other deduction than is authorized by this Ordinance.

(2) The amount of a company's income for a corporation tax year shall be determined by reference to accounting periods of the company and where an accounting period of a company falls in more than one corporation tax year, the amount chargeable shall, where necessary and after making any deduction authorized by this Ordinance, be apportioned between those years.

(3) A company shall be chargeable to corporation tax on income accruing for its benefit under any trust, or arising under any partnership, in any case in which it would be so chargeable if the income accrued to it directly; and a company shall be chargeable to corporation tax on income arising in the winding up of the company, but shall not otherwise be

chargeable to corporation tax on income accruing to it in a fiduciary or representative capacity except as respects its own beneficial interest (if any) in that income.

*Computation of
income: application
of income tax
principles.*

25.—(1) Except as otherwise provided by this Ordinance, the amount of any income shall for purposes of corporation tax be computed in accordance with income tax principles, all questions as to the amounts which are or are not to be taken into account as income, or in computing income, or charged to tax as a person's income, or as to the time when any such amount is to be treated as arising, being determined in accordance with income tax law and practice as if accounting periods were years of assessment.

(2) For the purposes of this section "income tax law" means, in relation to any accounting period, the law applying, for the year of assessment in which the period ends, to the charge on individuals of income tax, except that it does not include so much of any enactment as makes special provision for individuals in relation to matters referred to in subsection (1) above, and in particular does not include sections 13 to 22 of this Ordinance.

(3) Without prejudice to the generality of subsection (1) above, any enactment which confers an exemption from income tax, or which provides for a person to be charged to income tax on any amount (whether expressed to be income or not, and whether an actual amount or not), shall, except as otherwise provided, have the like effect for purposes of corporation tax.

(4) Where, by virtue of this section or otherwise, any enactment applies both to income tax and to corporation tax—

(a) it shall not be affected in its operation by the fact that they are distinct taxes but, so far as is consistent with the enactments relating to corporation tax, shall apply in relation to income tax and corporation tax as if they were one tax, so that, in particular, a matter which in a case involving two individuals is relevant for both of them in relation to income tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax; and

(b) for that purpose, references in any enactment applying to both taxes to a relief from or charge to income tax, or to a specified enactment relating to income tax, shall, in the absence of or subject to any express adaptation, be construed as being or including a reference to any corresponding relief from or charge to corporation tax, or to any corresponding enactment relating to corporation tax.

Accounting periods.

26.—(1) This section has effect in relation to corporation tax for the purpose of determining when an accounting period of a company begins and ends.

(2) An accounting period of a company begins, unless the

Commissioner otherwise approves, whenever—

- (a) the company, not then being within the charge to corporation tax, comes within it, whether by the company becoming resident in the Falkland Islands or acquiring a source of income, or otherwise; or
- (b) an accounting period of the company ends without the company then ceasing to be within the charge to corporation tax.

(3) An accounting period of a company shall end for the purposes of corporation tax on the occurrence of the first of the following—

- (a) the expiration of 12 months from the beginning of the accounting period;
- (b) an accounting date of the company or the end of any period for which the company does not make up accounts;
- (c) the company beginning or ceasing to trade or to be, in respect of the trade or (if more than one) of all the trades carried on by it, within the charge to corporation tax;
- (d) the company beginning or ceasing to be resident in the Falkland Islands;
- (e) the company ceasing to be within the charge to corporation tax.

(4) For the purposes of corporation tax a company resident in the Falkland Islands, if not otherwise within the charge to corporation tax, comes within the charge to corporation tax at the time when it commences to carry on business.

(5) If a company carrying on more than one trade makes up accounts of any of them to different dates, and does not make up general accounts for the whole of the company's activities, subsection (3)(b) shall apply with reference to the accounting date of such one of the trades as the Commissioner may determine.

(6) Notwithstanding anything in subsections (1) to (5) above, where a company is wound up, an accounting period shall end and a new one begin with the commencement of the winding up and thereafter, subject to section 29, an accounting period shall not end otherwise than by the expiration of 12 months from its beginning or by the completion of the winding up.

(7) For the purposes of subsection (6), a winding up is to be taken to commence on the passing by the company of a resolution for the winding up of the company, or on the presentation of a winding-up petition if no such resolution has previously been passed and a winding-up order is made on the petition, or the doing of any other act for a like purpose in the case of a winding up otherwise than under the Companies Act 1948 in its application to the Falkland Islands.

Time for payment of tax.

27. Subject to section 32, corporation tax for a corporation tax year charged on the income of an accounting period shall be due and payable on the day following the expiry of 8 months from the end of that accounting

period (whether or not the tax has been assessed).

Corporation tax rates.

28.—(1) Where in any accounting period the chargeable income of a company does not exceed the lower maximum amount, the company may claim that its chargeable income for that period shall be charged to tax at the rate of 25 per cent. ("the small companies' rate of corporation tax").

(2) Where in any accounting period the chargeable income of a company exceeds the lower maximum amount but does not exceed the higher maximum amount, the company may claim that the amount of corporation tax charged on its chargeable income for that period shall be equal to—

$$EL + M(I - L),$$

where L is the lower maximum amount,
E is the small companies' rate of corporation tax,
M is the marginal tax rate, and
I is the amount of its chargeable income for that period.

(3) Any reference in subsections (1) and (2) above to a company's chargeable income for any period is a reference to the amount of that income less the amount of any ring fence income and any franked investment income of the company for that period.

(4) Subject to subsections (1) and (2) above, the chargeable income of any company, including any ring fence income, shall be charged to tax at the rate of 32.5 per cent.

(5) In this section, in relation to the accounting period of a company—

(a) the lower maximum amount for that period—

(i) if at any time in that period the company has any associated companies is—

$$\frac{\pounds 1,000,000}{1 + A},$$

where A is the number of associated companies; or

(ii) if sub-paragraph (i) does not apply, £1,000,000;

(b) the higher maximum amount for that period—

(i) if at any time in that period the company has any associated companies is—

$$\frac{\pounds 3,000,000}{1 + A},$$

where A is the number of associated companies; or

(ii) if sub-paragraph (i) does not apply, £3,000,000; and

(c) the marginal tax rate is—

$$\frac{BC - DE}{B - D} \text{ per cent.}$$

where B is the higher maximum amount,
 C is the rate of corporation tax specified in subsection (4) above;
 D is the lower maximum amount, and
 E is the small companies' rate of corporation tax.

- (6) For the purposes of subsection (5)(a) and (b) above—
- (a) a company is associated with another at any time if at that time one of them has control of the other or both are controlled by the same person or persons; and
 - (b) an associated company which has not carried on any business during the accounting period in question or, if associated for part only of that period, during that part, shall be disregarded.

Section 210 shall apply for the purposes of this subsection.

(7) In relation to any accounting period of less than 12 months, the higher maximum amount and the lower maximum amount shall be proportionately reduced.

Tax on company in liquidation.

29.—(1) In this section references to a company's final year are references to the financial year in which the affairs of the company are completely wound up, and references to a company's penultimate year are references to the last financial year preceding its final year.

(2) Subject to subsection (3) below, corporation tax shall be charged on the profits of the company arising in the winding-up in its final year at the rate of corporation tax fixed for the penultimate year by an Ordinance passed before the completion of the winding-up.

(3) If, before the affairs of the company are completely wound up, the rate mentioned in subsection (2) above has been fixed for the final year, that subsection shall have effect in relation to that rate as if for the references to the penultimate year there were substituted references to the final year.

(4) An assessment on the company's profits for an accounting period which falls after the commencement of the winding-up shall not be invalid because made before the end of the accounting period.

(5) In making an assessment after the commencement of the winding-up of the company but before the date when its affairs are completely wound up, the Commissioner may, with the concurrence of the liquidator, act on an assumption as to when that date will fall, so far as it governs section 26(6).

(6) The assumption of the wrong date shall not alter the company's final and penultimate year, and, if the right date is later, an accounting period shall end on the date assumed, and a new accounting period shall begin and section 26(6) shall thereafter apply as if that new accounting period began with the commencement of the winding-up.

(7) Where the winding-up commenced before the company's final year, subsection (2) (but not subsection (3)) above shall apply in relation to the company's profits arising at any time in its penultimate year.

*Filing of accounts
etc.*

30.—(1) Subject to section 32, a company which is chargeable to corporation tax for any corporation tax year—

- (a) a return of its income and profits in such form as the Commissioner may prescribe, and
 - (b) the accounts of the company for the period of account which is or includes the whole or any part of the accounting period by reference to which the company is chargeable to tax for that year,
- within 9 months of the end of that period of account.

(2) The reference in subsection (1) above to the accounts of a company—

- (a) if the company is required by the Companies Act 1948 as it applies in the Falkland Islands or by the Companies Act 1985 (whether as it applies in the United Kingdom or elsewhere) to prepare accounts for that period of account, is a reference to those accounts together with any documents annexed to those accounts;
- (b) in any other case, is a reference to accounts which give a true and fair view of the company's affairs and its profit and loss for that period of account.

(3) The Commissioner may, if he thinks fit, extend the period for delivery of accounts by any company.

(4) The Commissioner may by notice require a company to submit such other information in writing as may be specified in the notice, which, in relation to a company which is trading through a branch or agency (whether situated in the Falkland Islands or elsewhere) for the whole or part of a period of account of the company, may include the trading accounts of that branch or agency, and the company shall comply with the notice within 60 days of the date of service of the notice.

(5) Every person making a return under subsection (1) or submitting information under subsection (4) shall include in the return or with the information a declaration made by him to the effect that the return or information is to the best of his knowledge correct and complete.

(6) Different returns may be prescribed in relation to different descriptions of company.

(7) Subject to the provisions of this Ordinance, a company shall make any claim, election or disclaimer under or for the purposes of this Ordinance relating to the company's liability to corporation tax for any period—

- (a) by notice delivered to the Commissioner together with the accounts of the company referred to in subsection (1) above, or
- (b) by notice delivered later, which shall include any necessary amendments to the accounts,

but (notwithstanding any other provision of this Ordinance) the company may not in any case make such a claim, election or disclaimer after an assessment for that period has been made except with the consent of the Commissioner.

*Accounts, and
payment of tax, in
US dollars.*

31.—(1) Except as provided by this section, a company within the charge to corporation tax shall keep its accounting records, make up its accounts and account for tax in sterling.

(2) Subject to subsection (3) below, where a company is carrying on a ring fence trade—

- (a) the company may elect to keep its accounting records, to compute the profits and losses of that trade in United States dollars and to comply with the requirements of section 30, as respects that trade, by delivering accounts made up in that currency instead of in sterling; and
- (b) if an election under this subsection is in force, the company shall account for corporation tax in respect of its ring fence trade in that currency instead of in sterling.

(3) An election under subsection (2) above made by a company which is or becomes a member of a group of companies shall have effect in relation to any other member of that group to whom the ring fence trade of the first company is transferred in whole or in part.

For the purposes of this subsection, references to a group shall be construed as a reference to a 75 per cent. group within the meaning of section 139 disregarding subsection (5)(c) of that section and section 131(2).

(4) In any case where a company carrying on a ring fence trade also carries on any other business as respects which it is within the charge to corporation tax in the Falkland Islands—

- (a) subsection (2) shall not apply; but
- (b) the company may elect to keep its accounting records and to compute the profits and losses of that trade in United States dollars;

and the profits or losses of the ring fence trade shall be converted into sterling for the purposes of the company's accounts submitted in accordance with section 30 at the London closing rate for the last day of the accounting period to which the accounts relate or such other rate as may be prescribed under rules made by the Commissioner for the purposes of this section.

(5) An election under subsection (2) or (4) above—

- (a) shall be made by notice to the Commissioner and shall be accompanied by such information as the Commissioner may require;
- (b) shall be of no effect if the Commissioner notifies the company that he has decided not to accept the election, subject to the company's right to appeal against such a notice to the Tax Appeal Tribunal under section 181(1)(e);
- (c) shall be of no effect unless it is made before the expiry of

- the period of 9 months beginning on the day the company began to carry on its ring fence trade;
- (d) shall have effect from that day, and
- (e) shall be irrevocable.

(6) A notice under subsection (5)(b) above shall not be given more than 90 days after the notice of election is delivered to the Commissioner.

(7) Where a company has made an effective election under subsection (2) above, any assessment on that company in respect of its ring fence trade shall be expressed in United States dollars (in accordance with the preceding provisions of this section) and any interest or penalty calculated by reference to an amount of United States dollars shall accordingly also be payable in dollars.

Transitional provisions for companies within charge to income tax before 1.1.96.

32.—(1) This section applies in relation to any company which was within the charge to income tax for the year of assessment 1996 in respect of the income of a period ending on an accounting date of the company falling in the year of assessment 1995.

(2) In relation to any company to which this section applies—

- (a) corporation tax charged on the income of an accounting period ending in the corporation tax year 1997 shall be due and payable on the day following the expiry of the period of 7 months following the end of that year or the day found under section 27, whichever is the later;
- (b) corporation tax charged on the income of an accounting period ending in the corporation tax year 1998 shall be due and payable on the day following the expiry of the period of 6 months following the end of that year or the day found under section 27, whichever is the later;

and so on for subsequent accounting periods, subject to subsection (3).

(3) Subsection (2) shall not apply in relation to the company for determining the day for payment of tax charged on the income of an accounting period if the day as found under that subsection is the same as that found under section 27, or as respects any later period.

(4) Any reference in this Ordinance (however expressed) to the requirements of section 27 as to the time within which corporation tax is due and payable includes, where appropriate, a reference to the requirements of subsection (2) above.

(5) A company to which this section applies shall not be in breach of section 30(1) if it delivers the accounts required by that section—

- (a) where the period of account in question is the company's first as respects which it is within the charge to corporation tax, before the expiry of the period of 18 months beginning with the end of that period;
- (b) where the period of account in question is the company's second as respects which it is within the charge to corporation tax, before the expiry of the period of 12

months beginning with the end of that period.

(6) In any case where subsection (5) above applies the Commissioner may, if he thinks fit, extend the period within which the company is required by that subsection to deliver its accounts.

(7) Any reference in this Ordinance (however expressed) to the requirements of section 30 as to the time within which accounts are to be delivered includes, where appropriate, a reference to the requirements of subsection (5) above (read with subsection (6)).

*Interest on tax paid
late, and penalties
for late filing of
accounts etc. and
late payment of tax.*

33.—(1) Interest shall be due on any corporation tax (including ACT) remaining unpaid after the date on which it is due at the rate of 3 per cent. per annum over base lending rate.

(2) A company which does not deliver its accounts for an accounting period within the time allowed by section 30 ("the due time") shall be liable—

- (a) if the accounts are delivered not more than 3 months after the due time, to a penalty of £100;
- (b) if the accounts are delivered more than 3 months after the due time, to a penalty of £200;
- (c) if the accounts are delivered more than 6 months but not more than 12 months after the due time and any corporation tax for the period is unpaid at the time immediately before the accounts are delivered, to a penalty (in addition to any other penalty) equal to 10 per cent. of that unpaid tax;
- (d) if the accounts are delivered more than 12 months after the due time and any corporation tax for the period is unpaid on the day immediately following the end of that 12 month period, to a penalty (in addition to any other penalty) equal to 20 per cent. of that unpaid tax.

(3) In any case where a company does not deliver its accounts within the due time for any 3 consecutive accounting periods, subsection (2) above shall apply as respects the third accounting period—

- (a) with the substitution in paragraph (a) of "£500" for "£100", and
- (b) with the substitution in paragraph (b) of "£1,000" for "£200".

(4) Any penalty to which a company may be liable under subsection (2) above is in addition to any liability to which the company may also be subject under subsection (1) above as respects the payment of interest on tax remaining unpaid after the date on which it is due.

(5) Any company which fails to comply with a notice under section 30(4) shall be liable—

- (a) if the company is not more than 3 months late in complying with the requirements of section 30(4), to a penalty of £100;
- (b) in any other case, to a penalty of £200.

*Companies not
resident in Falkland
Islands.*

34. Subject to any exceptions provided for by the enactments relating to corporation tax, a company not resident in the Falkland Islands shall be within the charge to corporation tax in respect of all its profits or gains wherever arising or accruing except—

- (a) if the company carries on a business otherwise than through a branch or agency in the Falkland Islands, any profits or gains directly or indirectly arising through or from or accruing to that business and not directly or indirectly arising through or from, or accruing to, a business which it carries on in the Falkland Islands;
- (b) any profits or gains directly or indirectly arising or accruing from a source outside the Falkland Islands or any designated area and neither excepted by paragraph (a) above nor directly or indirectly arising through or from, or accruing to, a business which it carries on through a branch or agency in the Falkland Islands;
- (c) distributions received from companies resident in the Falkland Islands.

CHAPTER III ADVANCE CORPORATION TAX, FRANKED INVESTMENT INCOME AND TAX CREDITS *Advance corporation tax and franked investment income*

*ACT and qualifying
distributions.*

35.—(1) Where a company resident in the Falkland Islands makes a distribution in an accounting period as respects which the company is within the charge to corporation tax it shall be liable to pay an amount of corporation tax ("ACT") in accordance with subsection (2) below.

(2) Subject to section 39, ACT shall be payable on an amount equal to the amount or value of the distribution, and shall be so payable at a rate which shall be fixed by the fraction—

$$\frac{I}{100-I}$$

where I is the percentage at which income tax at the lower rate is charged for the year of assessment which coincides with that corporation tax year.

(3) The provisions of this Ordinance as to the charge, calculation and payment of corporation tax (including provisions conferring any exemption) shall not be construed as affecting the charge, calculation or payment of ACT, and the enactments relating to corporation tax shall apply for the purposes of ACT whether or not they are for the time being applicable for the purposes of corporation tax other than ACT.

*Interpretation of
Chapter III.*

36.—(1) In this Chapter—

"ACT" means advance corporation tax, that is to say, corporation tax payable in accordance with section 35;

"franked investment income" means income of a company

resident in the Falkland Islands which consists of a distribution in respect of which the company is entitled to a tax credit (and which accordingly represents income equal to the aggregate of the amount or value of the distribution and the amount of that credit);

"franked payment" means the sum of the amount or value of a qualifying distribution and such proportion of that amount or value as corresponds to the rate of ACT in force for the corporation tax year in which the distribution is made;

"surplus ACT" has the meaning given by section 37(2);

"surplus of franked investment income" means any such excess as is mentioned in section 39(3) (calculated without regard to franked investment income which by virtue of subsection (4) of that section cannot be used to frank distributions);

"tax credit" means a tax credit under section 49;

and references to any accounting or other period in which a franked payment is made are references to the period in which the distribution in question is made.

(2) References in this Chapter to distributions or payments received by a company apply to any received by another person on behalf of or in trust for the company but not to any received by the company on behalf of or in trust for another person.

(3) References in this Chapter to using franked investment income to frank distributions of a company shall be construed in accordance with section 39(4).

(4) References in this Chapter to an amount of income on which corporation tax falls finally to be borne are references to the amount of that income after making all deductions and giving all reliefs that for the purposes of corporation tax are made or given from or against that income, including deductions and reliefs which under any provision are treated as reducing it for those purposes.

*Set-off of ACT
against liability to
corporation tax.*

37.—(1) Subject to section 153, ACT paid by a company (and not repaid) in respect of any distribution made by it in an accounting period shall be set against its liability to corporation tax on any income charged to corporation tax for that accounting period and shall accordingly discharge a corresponding amount of that liability.

(2) Where in the case of any accounting period of a company there is an amount of surplus ACT, the company may, within 2 years after the end of that period, claim to have the whole or any part of that amount treated for the purposes of this section (but not of any further application of this subsection) as if it were ACT paid in respect of distributions made by the company in any of its accounting periods beginning in the 6 years preceding that period (but so that the amount which is the subject of the claim is set, so far as possible, against the company's liability for a more recent accounting period before a more remote one) and corporation tax shall, so far as may be

required, be repaid accordingly.

In this subsection "surplus ACT", in relation to any accounting period of a company, means ACT which cannot be set against the company's liability to corporation tax for that period because the company has no income charged to corporation tax for that period or because of section 168(3).

(3) Where in the case of any accounting period of a company there is an amount of surplus ACT which has not been dealt with under subsection (2) above, that amount shall be treated for the purposes of this section (including any further application of this subsection) as if it were ACT paid in respect of distributions made by the company in the next accounting period.

(4) Effect shall be given to subsections (1) and (3) above as if on a claim in that behalf by the company and, for that purpose, accounts or other information submitted to the Commissioner in pursuance of section 30 containing particulars of ACT or surplus ACT which falls to be dealt with under those subsections shall be treated as a claim.

(5) For the purposes of this section the income of a company charged to corporation tax for any period shall be taken to be the amount of its income for that period on which corporation tax falls finally to be borne.

(6) Nothing in subsection (2) above shall be construed as authorising any amount of ACT to be set off against a company's liability to income tax.

(7) This section has effect subject to the following provisions of this Chapter.

*Set-off of company's
ACT against
subsidiary's liability
to corporation tax.*

38.—(1) Where a company ("the surrendering company") has paid an amount of ACT in respect of a dividend or dividends paid by it in an accounting period and the ACT has not been repaid, it may, on making a claim, surrender the benefit of the whole or any part of that amount—

- (a) to any company which was a 51 per cent. subsidiary of the surrendering company throughout that accounting period, or
- (b) in such proportions as the surrendering company may determine, to any 2 or more companies which were 51 per cent. subsidiaries of the surrendering company throughout that period.

(2) Subject to subsections (4) and (5) below, where the benefit of any amount of ACT ("the surrendered amount") is surrendered under this section to a subsidiary, then—

- (a) if the ACT mentioned in subsection (1) above was paid in respect of one dividend only or of dividends all of which were paid on the same date, the subsidiary shall be treated for the purposes of section 37 as having paid an amount of ACT equal to the surrendered amount in respect of a distribution made by it on the date on which the dividend or dividends were paid;
- (b) if the ACT mentioned in subsection (1) above was paid in

respect of dividends paid on different dates, the subsidiary shall be treated for the purposes of section 37 as having paid an amount of ACT equal to the appropriate part of the surrendered amount in respect of a distribution made by it on each of those dates.

(3) For the purposes of paragraph (b) of subsection (2) above "the appropriate part of the surrendered amount", in relation to any distribution treated as made on the same date as that on which a dividend was paid, means such part of that amount as bears to the whole of it the same proportion as the amount of that dividend bears to the total amount of the dividends mentioned in that paragraph.

(4) ACT which a subsidiary is treated as having paid by virtue of subsection (2) above shall not be set against the subsidiary's liability to corporation tax under section 37(2), but in determining for the purposes of section 37(2) and (3) what (if any) amount of surplus ACT there is in any of its accounting periods, an amount so treated as having been paid shall be set against its liability to corporation tax before any ACT paid in respect of any distribution made by the subsidiary.

(5) ACT which a subsidiary is treated as having paid by virtue of subsection (2) above shall not be set against the subsidiary's liability to corporation tax for any accounting period in which, or in any part of which, it was not a 51 per cent. subsidiary of the surrendering company unless throughout that period or part both companies were 51 per cent. subsidiaries of a third company.

(6) Any claim under this section shall be made within 6 years after the end of the accounting period to which it relates and shall require the consent, notified to the Commissioner in such form as he may require, of the subsidiary or subsidiaries concerned.

(7) An amount of ACT which has been dealt with under section 37(2) shall not be available for the purposes of a claim under this section; and an amount of ACT the benefit of which has been surrendered under this section shall not be treated for the purposes of that section as ACT paid by the surrendering company.

(8) A payment made by a 51 per cent. subsidiary to a surrendering company in pursuance of an agreement between them as respects the surrender of the benefit of an amount of ACT, being a payment not exceeding that amount—

- (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes; and
- (b) shall not for any of the purposes of this Ordinance be regarded as a distribution.

(9) For the purposes of this section—

- (a) references to a company apply only to bodies corporate resident in the Falkland Islands; and
- (b) in determining whether one body corporate is a 51 per cent. subsidiary of that other, that other shall be

treated as not being the owner of any share capital—

(i) which it owns directly in a body corporate if a profit on the sale of the shares would be treated as a trading receipt of its trade; or

(ii) which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or

(iii) which it owns directly or indirectly in a body corporate not resident in the Falkland Islands.

(10) Notwithstanding that, apart from this subsection, a company ("the subsidiary company") would at any time be a 51 per cent. subsidiary of another company ("the parent company") for the purposes of this section, the subsidiary company shall not be treated at that time as a 51 per cent. subsidiary for those purposes—

(a) if arrangements are in existence (whether in writing or not) by virtue of which any person has or could obtain, or any persons together have or could obtain, control of the subsidiary company but not of the parent company; and

(b) unless the following conditions are also fulfilled, namely—

(i) that the parent company is beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary company; and

(ii) that the parent company would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding up.

(11) Schedule 1 shall have effect for the purposes of subsection (10)(b) above, and in that Schedule "the relevant accounting period" means the accounting period current at the time in question.

Calculation of ACT where company receives franked investment income.

39.—(1) Where in any accounting period a company receives franked investment income the company shall not be liable to pay ACT in respect of qualifying distributions made by it in that period unless the amount of the franked payments made by it in that period exceeds the amount of that income.

(2) If in an accounting period there is such an excess, ACT shall be payable on an amount which, when the ACT payable thereon is added to it, is equal to the excess.

(3) If the amount of franked investment income received by a company in an accounting period exceeds the amount of the franked payments made by it in that period, the excess shall be carried forward to the next accounting period and treated for the purposes of this section (including

any further application of this subsection) as franked investment income received by the company in that period.

(4) Franked investment income shall not be used to frank distributions of a company (that is to say, used in accordance with this Chapter so as to relieve the company from, or obtain repayment of, ACT for which the company would otherwise be liable) if the amount of the tax credit comprised in it has been paid under section 49(3); and no payment shall be made under that subsection in respect of the tax credit comprised in franked investment income which has been so used.

*Set-off of losses
against surplus of
franked investment
income.*

40.—(1) Subject to section 153, where a company has a surplus of franked investment income for any accounting period—

- (a) the company may, on making a claim for the purpose, require that the amount of the surplus shall for the purpose of setting off trading losses against income under section 128(1) be treated as if it were a like amount of income chargeable to corporation tax; and
- (b) this section shall apply to reduce the amount of the surplus for purposes of section 39(3); and
- (c) the company shall be entitled to have paid to it the amount of the tax credit comprised in the amount of franked investment income by which the surplus is so reduced.

(2) Where a company makes a claim under this section for any accounting period, the reduction falling to be made in income of that accounting period shall be made, as far as may be, in income chargeable to corporation tax rather than in the amount treated as income so chargeable under this section.

(3) Where—

- (a) on a claim made under this section for any accounting period relief is given in respect of the whole or part of any loss incurred in a business; and
- (b) in a later accounting period the franked payments made by the company exceed its franked investment income;

then (unless the company has ceased to carry on the business or to be within the charge to corporation tax in respect of it) the company shall, for the purposes of section 128(2), be treated as having, in the accounting period ending immediately before the beginning of the later accounting period mentioned in paragraph (b) above, incurred a loss equal to whichever is the lesser of—

- (i) the excess referred to in paragraph (b) above; and
- (ii) the amount in respect of which relief was given as mentioned in paragraph (a) above or so much of that amount as remains after deduction of any part of it dealt with under this subsection in relation to an earlier accounting period.

(4) A claim under this section shall be made within the time limit that would, by virtue of section 128(6), be applicable in the case of a claim under section 128(1) in respect of the losses in question.

(5) For the purposes of a claim under this section for any accounting period, the surplus of franked investment income for that accounting period shall be calculated without regard to the part, if any, carried forward from an earlier accounting period; and for the purposes of subsection (3) above franked investment income which by virtue of section 39(4) cannot be used to frank distributions of a company shall be left out of account.

*Set-off of loss
brought forward.*

41.—(1) Where a company has a surplus of franked investment income for any accounting period, the company, instead of or in addition to making a claim under section 40, may on making a claim for the purpose require that the surplus shall be taken into account for relief under section 128(2); and the following subsections shall have effect where the company makes a claim under this section for any accounting period.

(2) The amount to which the claim relates shall for the purposes of the claim be treated as trading income of the accounting period.

(3) The reduction falling to be made in trading income of an accounting period shall be made as far as possible in trading income chargeable to corporation tax rather than in the amount treated as trading income so chargeable under this section.

(4) Section 40(3) shall apply in relation to the claim.

(5) A claim under this section shall be made before the expiry of the period of 6 years from the end of the accounting period for which the claim is made.

(6) For the purposes of a claim under this section for any accounting period, the surplus of franked investment income for that period shall be calculated without regard to the part, if any, carried forward from an earlier accounting period.

*Further provisions
relating to claims
under section 40 or
41.*

42.—(1) Without prejudice to section 40(5) or 41(6), the surplus of franked investment income for an accounting period for which a claim is made under either of those sections shall be calculated without regard to any part of that surplus which, when the claim is made, has been used to frank distributions made by the company in a later accounting period.

(2) Where in consequence of a claim under section 40 or 41 for any accounting period a company is entitled to payment of a sum in respect of tax credit—

- (a) an amount equal to that sum shall be deducted from any ACT which apart from this subsection would fall, under section 37, to be set against the company's liability to corporation tax for the next accounting period; and
- (b) if that amount exceeds that ACT or there is no such ACT, that excess or that amount (as the case may be) shall be carried forward and similarly deducted in relation to the following accounting period and so on.

*Calculation etc. of
ACT on change of
ownership of
company.*

43.—(1) This section applies if—

- (a) within any period of 3 years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade or business carried on by the company; or
- (b) at any time after the scale of the activities in a trade or business carried on by a company has become small or negligible, and before any considerable revival of the trade or business, there is a change in the ownership of the company.

(2) Sections 37, 39 and 44 to 48 shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods; and for that purpose the income of the company charged to corporation tax for the accounting period (as defined in section 37(5)) shall be apportioned between those parts.

(3) ACT paid by the company in respect of distributions made in an accounting period beginning before the change of ownership shall not be treated under section 37(3) as paid by it in respect of distributions made in an accounting period ending after the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(4) Advance corporation tax paid by the company in respect of distributions made in an accounting period ending after the change of ownership shall not be treated under section 37(2) as paid by it in respect of distributions made in an accounting period beginning before the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(5) Sections 129(4), (7) and (8) and 130 shall apply also for the purposes of this section and as if in section 130(3) the reference to the benefit of the losses were a reference to the benefit of ACT.

*Changes in rate of
ACT and payment of
ACT.*

44.—(1) If ACT for any corporation tax year is charged otherwise than as it has been paid or assessed, the necessary adjustment shall be made by discharge or repayment of tax or by a further assessment.

(2) Subject to the following provisions of this section and sections 45 to 48, where a company makes a distribution in respect of which it is liable to pay ACT, the ACT shall be due and payable 30 days after the end of the calendar month in which the distribution is made, whether or not the ACT has been assessed, and the following provisions of this section shall have effect to determine the amount of ACT payable.

(3) Where subsection (2) above applies and the company has in that month made a franked payment, the company shall make a return to the

Commissioner before the expiry of the period of 30 days following that month of—

- (a) the franked payments made by it in that month, and
- (b) any franked investment income received by it in that month,

and ACT shall be payable by the company for that month on an amount equal to the amount of the franked payments made in that month less the amount of any franked investment income received by it in that month.

(4) For the purposes of subsection (3) above the company may include in the amount of the franked investment income received by it in the month any franked investment income not previously set against franked payments made by the company before the beginning of the month in question, but this subsection shall not be taken to permit a company to include in any return under this section any payment made or income received before the company came within the charge to corporation tax.

(5) Subject to section 47(2), ACT in respect of franked payments required to be included in a return under this section shall be due at the time by which the return for that period is to be made, and ACT so due shall be payable without the making of any assessment.

(6) ACT which has become so due may be assessed on the company (whether or not it has been paid when the assessment is made) if that tax, or any part of it, is not paid on or before the due date.

(7) If it appears to the Commissioner that there is a franked payment which ought to have been and has not been included in a return, or if the Commissioner is dissatisfied with any return, he may make an assessment on the company to the best of his judgment; and any ACT due under an assessment made by virtue of this subsection shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if a correct return had been made.

Receipt of franked investment income after payment of ACT.

45.—(1) This section shall have effect where—

- (a) a return has been made of franked payments made in any return period falling within an accounting period and ACT has been paid in respect of those payments; and
- (b) the company receives franked investment income after the end of the return period but before the end of the accounting period.

(2) The company shall make a return under section 44 for the return period in which the franked investment income is received whether or not it has made any franked payments in that period, and, subject to subsection (3) below, shall be entitled to repayment of any ACT paid (and not repaid) in respect of franked payments made in the accounting period in question.

(3) If no franked payments were made by the company in the return period for which a return is made by virtue of subsection (2) above the amount of the repayment shall not exceed the amount of the tax credit comprised in the franked investment income received; and in any other case the repayment shall not exceed the amount of the tax credit comprised in so

much of that franked investment income, if any, as exceeds the amount of the franked payments made in that return period.

Claims for set-off in respect of franked investment income received by a company.

46.—(1) Where under section 44 or 45 franked investment income received by a company falls to be taken into account in determining—

(a) whether ACT is payable or repayable, or

(b) the amount of ACT which is payable or repayable,

the inclusion of that franked investment income in the appropriate return shall be treated as a claim by the company to have it so taken into account, and any such claim shall be supported by such evidence as the Commissioner may reasonably require.

(2) Where a claim has been made under subsection (1) above, proceedings for collecting ACT which would fall to be discharged if the claim were allowed shall not be instituted pending the final determination of the claim, but this subsection shall not affect the date when the ACT is due.

(3) When the claim is finally determined any ACT underpaid in consequence of subsection (2) above shall be paid.

(4) Where proceedings are instituted for collecting ACT assessed, or interest on ACT assessed, under any provision of this Chapter, effect shall not be given to any claim made after the institution of the proceedings so as to affect or delay the collection or recovery of the ACT charged by the assessment or of interest thereon, until the claim has been finally determined.

(5) When the claim is finally determined any ACT overpaid in consequence of subsection (4) above shall be repaid.

(6) References in this section to proceedings for the collection of ACT include references to proceedings by way of distraint for ACT.

Distributions which are not payments and payments of uncertain nature.

47.—(1) This section applies to—

(a) any distribution which is not a payment; and

(b) any payment in respect of which the company making it would be liable to pay ACT if, but only if, it amounted to or involved a distribution and it is not in the circumstances clear whether or how far it does so.

(2) No amount shall be shown in respect of the distribution or payment under section 44(3), and section 44(5) shall not apply to the payment of ACT in respect of the distribution.

(3) Particulars of the distribution or payment shall be given separately in the return for the return period in which it is made and if, apart from that distribution or payment, no franked payment is made in that period, a return containing those particulars shall be made for that period under section 44.

(4) Any ACT payable in respect of the distribution or payment shall be assessed on the company and shall be so assessed without regard to any franked investment income received by the company but—

(a) relief shall be given from the ACT assessed (by way of

discharge) to the extent, if any, to which that ACT exceeds the ACT that would have been payable if the amount of the franked payment comprising the distribution or payment, calculated on its amount or value shown in the assessment, had been included in the return under section 44(3) and the ACT had been calculated in accordance with section 44(3); and

- (b) for the purposes of the application of section 44(4) to any subsequent return period, the amount of that franked payment shall be taken to be the amount so calculated.

*Assessments and
due date of ACT.*

48.—(1) The enactments relating to corporation tax which make provision as to the time within which an assessment may be made, shall, so far as they refer or relate to the accounting period for which an assessment is made, or the accounting period to which an assessment relates, apply in relation to an assessment to ACT notwithstanding that the assessment may relate to a month or other period which is not an accounting period.

(2) ACT assessed on a company shall be due within 14 days after the issue of the notice of assessment (unless due earlier under section 44(5)).

(3) Subsection (2) above has effect subject to any appeal against the assessment, but no such appeal shall affect the date when ACT is due under section 44(5).

(4) On the determination of an appeal against an assessment, any ACT overpaid shall be repaid.

(5) Where more than one amount of ACT is assessable on a company, it may all be included in one assessment if the ACT so included is all due on the same date (whether or not it is all assessable under the same provision).

Tax credits and Falkland Islands company distributions

*Tax credits for
certain recipients of
qualifying
distributions.*

49.—(1) Where a company resident in the Falkland Islands makes a distribution and the person receiving the distribution is another such company or a person resident in the Falkland Islands, not being a company, the recipient of the distribution shall be entitled to a tax credit equal to such proportion of the amount or value of the distribution as corresponds to the rate of ACT in force for the corporation tax year in which the distribution is made.

(2) For the purposes of this Ordinance any such distribution in respect of which a person is entitled to a tax credit shall be treated as representing income equal to the aggregate of the amount of the distribution and the amount of the credit, and income tax shall be charged on that aggregate in accordance with the provisions of this Ordinance.

(3) Subject to section 39(4), a company resident in the Falkland Islands which is entitled to a tax credit in respect of a distribution may claim to have the amount of the credit paid to it if—

- (a) the company is wholly exempt from corporation tax or is

- only not exempt in respect of trading income; or
- (b) the distribution is one in relation to which express exemption is given, whether specifically or by virtue of a more general exemption from tax, under any provision of this Ordinance.

(4) A person, not being a company resident in the Falkland Islands, who is entitled to a tax credit in respect of a distribution may claim to have the credit set against the income tax chargeable on his income for the year of assessment in which the distribution is made and where the credit exceeds that income tax, to have the excess paid to him.

(5) Where a distribution mentioned in subsection (1) above is, or falls to be treated as, or under any provision of this Ordinance is deemed to be, the income of a person other than the recipient, that person shall be treated for the purposes of this section as receiving the distribution (and accordingly the question whether he is entitled to a tax credit in respect of it shall be determined by reference to where he, and not the actual recipient, is resident).

*Dividends etc. paid
by one member of a
group to another.*

50.—(1) Where—

- (a) a company ("the receiving company") receives dividends from another company ("the paying company"), both being bodies corporate resident in the Falkland Islands, and
- (b) the paying company is a 51 per cent. subsidiary of the other or of a company so resident of which the other is a 51 per cent. subsidiary,

then, subject to the following provisions of this section, the receiving company and the paying company may jointly elect that this subsection shall apply to the dividends received from the paying company by the receiving company ("the election dividends").

(2) So long as an election under subsection (1) above is in force the election dividends shall be excluded from sections 35(1) and 49 and are accordingly not included in references to franked payments made by the paying company or the franked investment income of the receiving company but are in this Ordinance referred to as "group income" of the receiving company.

(3) Where an election under subsection (1) above is in force the paying company may by notice to the Commissioner state that it does not wish the election to have effect in relation to any amount of dividends specified in the notice and this Ordinance shall then have effect in relation to that amount as if there had been no such election.

(4) Subsections (1) to (3) above shall not apply—

- (a) to dividends received by a company on any investments, if a profit on the sale of those investments would be treated as a trading receipt of that company, or
- (b) to a dividend in any case where, if those subsections do not apply to it, the receiving company will be entitled by virtue of any exemption to claim payment of the

tax credit to which it is entitled in respect of the dividend.

(5) Where—

(a) the paying company purports by virtue of an election under subsection (1) above to pay any dividends without paying ACT, and

(b) ACT ought to have been paid,

the Commissioner may make such assessments, adjustments or set-offs as may be required for securing that the resulting liabilities to tax (including interest on unpaid tax) of the paying company and the receiving company are, so far as possible, the same as they would have been if the ACT had been duly paid.

(6) Where tax assessed under subsection (5) above on the paying company is not paid by that company before the expiry of the period of 3 months from the date on which that tax is payable, that tax shall, without prejudice to the right to recover it from that company, be recoverable from the receiving company.

(7) In determining for the purposes of this section whether one body corporate is a 51 per cent. subsidiary of another, that other shall be treated as not being the owner—

(a) of any share capital which it owns directly or indirectly in a body corporate not resident in the Falkland Islands, or

(b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

(8) Notwithstanding that at any time a company ("the subsidiary company") is a 51 per cent. subsidiary of another company ("the parent company") it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—

(a) the parent company would be beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary company; and

(b) the parent company would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

(9) Schedule 1 shall apply for the purposes of subsection (8) above as it applies for the purposes of section 38(10)(b).

(10) References in this section to dividends received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person, and references to "group income" shall be construed accordingly.

*Provisions
supplementary to
section 50.*

51.—(1) The Governor in Council may make regulations with respect to the procedure to be adopted for giving effect to section 50 and as to the information and evidence to be furnished by a company in connection with that section and, subject to the provisions of such regulations, an election under that section ("the election") shall be made by notice to the Commissioner which shall set out the facts necessary to show that the companies are entitled to make the election.

(2) The election shall not have effect in relation to dividends paid less than 3 months after the giving of the notice and before the Commissioner is satisfied that the election is validly made, and has so notified the companies concerned; but shall be of no effect if within those 3 months the Commissioner notifies the companies concerned that the validity of the election is not established to his satisfaction.

(3) The companies concerned shall have the like right of appeal against any decision that the validity of the election is not established as the company paying the dividends would have if it were an assessment made on that company, and Part IX shall apply accordingly.

(4) The election shall cease to be in force if at any time the companies cease to be entitled to make the election, and on that happening each company shall forthwith notify the Commissioner.

(5) Either of the companies making the election may at any time give the Commissioner notice revoking the election; and any such notice shall have effect from the time it is given.

*Falkland Island
company
distributions not
chargeable to
corporation tax.*

52. Except as otherwise provided by this Ordinance, corporation tax shall not be chargeable on distributions of a company resident in the Falkland Islands nor shall any such distribution be taken into account in computing income for corporation tax.

*Tax credits for non-
residents.*

53.—(1) An individual who, having made a claim in that behalf, is entitled to relief under Chapter I of Part II by virtue of section 195(3) in respect of any year of assessment shall be entitled to a tax credit in respect of any qualifying distribution received by him in that year to the same extent as if he were resident in the Falkland Islands.

(2) Where a distribution is income of, or of the government of, any sovereign power or of any international organisation, that power, government or organisation shall be entitled to a tax credit in respect of the distribution to the same extent as a recipient mentioned in section 49(1).

In this subsection "international organisation" means an organisation of which two or more sovereign powers, or the governments of two or more sovereign powers, are members; and if in any proceedings a question arises whether a person is within this subsection, a certificate issued by or under the authority of the Governor stating any fact relevant to that question shall be conclusive evidence of that fact.

Taxation of certain recipients of distributions.

54. Where in any year of assessment the income of any person, not being a company resident in the Falkland Islands, includes a distribution in respect of which that person is not entitled to a tax credit—

- (a) an assessment shall not be made on that person in respect of income tax at the lower rate on the amount or value of the distribution;
- (b) that person's liability under any assessment made in respect of income tax at a higher rate on the amount or value of the distribution or on any part of the distribution shall be reduced by a sum equal to income tax at the lower rate on so much of the distribution as is assessed at that higher rate;
- (c) the amount or value of the distribution shall be treated as income which is not chargeable at the lower rate.

Information relating to distributions.

55.—(1) A company which makes a distribution shall, if the recipient so requests in writing, furnish to him a statement in writing showing the amount or value of the distribution and (whether or not the recipient is a person entitled to a tax credit in respect of the distribution) the amount of the tax credit to which a recipient who is such a person is entitled in respect of that distribution.

(2) The duty imposed by subsection (1) above shall be enforceable at the suit or instance of the person requesting the information.

Taxation of dividends prior to introduction of corporation tax.

56.—(1) Where a company registered in the Falkland Islands pays a dividend to a shareholder in a year of assessment and section 35 does not apply in relation to that dividend, the shareholder shall be entitled to a tax credit equal to one-quarter of the dividend in relation to that year of assessment, but no credit shall be allowed unless the income of the company out of which the dividend is paid suffered tax under the provisions of this Ordinance.

(2) In computing the shareholder's chargeable income for tax purposes the amount of the dividend and the tax credit shall be added to the other income of the shareholder.

(3) There shall be deducted from the amount of tax assessed on the shareholder for the year of assessment in which the dividend was paid an amount equal to the amount of the tax credit and, should the net amount of tax then payable be less than the amount of the tax credit, the difference shall be refunded to him.

CHAPTER IV MISCELLANEOUS PROVISIONS

Exemptions.

- 57.—(1) There shall be exempt from tax—
- (a) the emoluments of the Governor;
 - (b) the income of any local authority in so far as such income is not derived from a business carried on by the local authority;
 - (c) the income of any ecclesiastical, charitable or educational institution or trust of a public character;
 - (d) the emoluments payable to members of the permanent Consular Services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity;
 - (e) any emoluments paid out of United Kingdom Government funds by way of remuneration to—
 - (i) any person serving in Her Majesty's Armed Forces;
 - (ii) any person in the service of Her Majesty in a civil capacity under Her Government in the United Kingdom;
 - (f) wound and disability pensions granted to members of Her Majesty's Armed Forces;
 - (g) gratuities granted to members of Her Majesty's Armed Forces in respect of war services;
 - (h) in so far as relates to income received for the provision of services connected with the defence of the Falkland Islands, any person being an institution, corporation or contractor to Her Majesty's Government in the United Kingdom notified to the Commissioner by the Governor as being entitled to exemption under this paragraph;
 - (i) the income of any statutory or registered friendly society;
 - (j) any grant made from the public revenue of the Falkland Islands in respect of any person under the age of 26 years, who is receiving full-time instruction at a recognized educational establishment outside the Falkland Islands;
 - (k) the income of the Falkland Islands Development Corporation or any company wholly owned by the Falkland Islands Development Corporation;
 - (l) interest receivable in respect of any funds deposited in an interest-bearing account maintained at a bank or branch of a bank in the Falkland Islands or with a registered co-operative society;
 - (m) any allowance paid to any elected member of the Legislative Council under the provisions of the Elected Councillors' Allowances Ordinance 1990 by reference to an annual rate;
 - (n) any allowance paid to a public officer in addition to his salary which the Commissioner is satisfied is paid to that public officer in order to enable him to meet the

increased expenses incurred or to be incurred by him and arising wholly or mainly by virtue of the fact that he is required to perform the duties of his office outside the Falkland Islands;

- (o) allowances paid under the Family Allowances Ordinance 1960 or any allowances substituted therefor;
- (p) maintenance payments other than any maintenance payment falling within section 8(1)(h);
- (q) any sum paid by way of bounty under the Falkland Islands Defence Force Ordinance 1991 to a member of the Falkland Islands Defence Force.

(2) Subsection (1)(c) above does not apply to any income derived by any such institution or trust as is mentioned in that paragraph from a business carried on by it unless the profits are applied solely to the purposes of the institution or trust and either—

- (a) the business is carried on in the course of the actual carrying out of a primary purpose of the institution or trust; or
- (b) the people working in the business are wholly or mainly the beneficiaries of the institution or trust.

(3) The Governor may by proclamation published in the *Gazette* provide that interest payable on any loan charged on the public revenue of the Falkland Islands shall be exempt from tax, either generally or only in respect of interest payable to persons not resident in the Falkland Islands; and such interest shall as from the date and to the extent specified in the proclamation be exempt accordingly.

(4) Except where with the context otherwise requires, nothing in this section shall be construed as exempting in the hands of the recipients any dividends, interest, bonuses, salaries or wages paid wholly or partly out of income which is exempt from tax under subsection (1).

Other allowable deductions.

58.—(1) In computing a person's chargeable income for any period there shall be deducted from the person's income all outgoings and expenses wholly and exclusively incurred by him during that period in the production of the income, including—

- (a) sums payable by him by way of interest upon any money borrowed by him, where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income;
- (b) rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income;

and any other deduction prescribed by rules made under this Ordinance.

(2) An amount shall not be deducted under subsection (1) if it is deductible under section 97(1).

*Deductions not
allowed.*

59. Subject to any contrary provision of this Ordinance, no deduction in respect of—

- (a) domestic or private expenses;
- (b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;
- (c) any capital withdrawn or any sum employed or intended to be employed as capital;
- (d) any capital employed in improvements;
- (e) any sum recoverable under an insurance or contract of indemnity;
- (f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing the income;
- (g) interest paid under section 11(2) or 33(1) and any civil penalty paid under this Ordinance;
- (h) any amounts paid or payable in respect of tax imposed in a country or territory outside the Falkland Islands (but without prejudice to Part VIII); or
- (i) any amount paid or payable under section 5 of the Medical Services Levy Ordinance 1979,

shall be allowed in computing a person's chargeable income.

Partnerships.

60.—(1) In computing for any chargeable period the chargeable income of any person carrying on a business in partnership, his income from the partnership for any period shall be deemed to be the share in the income of the partnership to which he was entitled for that period (such income being ascertained in accordance with the provisions of this Ordinance).

(2) The partner's income from a partnership for a chargeable period shall be included—

- (a) in the case of a corporate partner, in the company accounts delivered in accordance with section 30 for that period; or
- (b) in any other case, in his return of income for that period.

(3) The precedent partner shall, when required by the Commissioner, make a return to the Commissioner—

- (a) of the income of the partnership for any year, such income being ascertained in accordance with the provisions of this Ordinance, and
- (b) of the names and addresses of the other partners in the firm together with the amount of the share of the partnership income to which each partner was entitled for period to which the return relates.

(4) In this section "precedent partner" means in relation to any partnership, the partner who is resident or ordinarily resident in the Falkland Islands and—

- (a) who is first named in the agreement of partnership; or
- (b) if there is no agreement, whose name is or is the first in the usual name of the partnership;

but for the purposes of this definition any partner who would apart from this

provision be the precedent partner shall be disregarded if he is not an active partner.

(5) In any case where none of the partners is resident or ordinarily resident in the Falkland Islands, the Commissioner may require the return to be made by any attorney, agent, manager or factor of the partnership who is resident in the Falkland Islands.

(6) Any person who fails to comply with a requirement of the Commissioner under subsection (3) or (5) above shall be liable—

(a) if the person is not more than 3 months late in complying with the requirements of subsection (3), to a penalty of £100;

(b) in any other case, to a penalty of £200.

Royalties.

61.—(1) Notwithstanding anything to the contrary in any other provision of this Ordinance, royalties arising in the Falkland Islands and paid to a person not resident in the Falkland Islands shall be subject to tax at the rate of 10 per cent. of the gross amount of the royalties.

(2) For the purpose of this section "royalties" means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and rights to variable or fixed payments as consideration for the working of or the right to work mineral or mineral oil deposits sources and other natural resources, but does not include any expenditure falling within section 154.

(3) Tax charged under this section shall be payable by and recoverable from the person paying the royalty and shall be paid to the Commissioner within 30 days of the date of payment of the royalty.

(4) Interest shall be due on any such tax remaining unpaid after the date on which it is due at the rate of 3 per cent. per annum over base lending rate.

(5) Any person who is liable to make a payment in accordance with subsection (3) shall within 30 days of the date on which the royalty is paid give notice to the Commissioner that he is so liable, and the Commissioner may prescribe the form by which the notice is to be given.

(6) Any person who fails to comply with subsection (5) above commits an offence and shall be liable on conviction to a fine not exceeding level 7 on the standard scale.

Company reconstructions without a change of ownership.

62.—(1) Where, on a company ("the predecessor") ceasing to carry on a business, another company ("the successor") begins to carry it on, and—

(a) on or at any time within 2 years after that event the business or an interest amounting to not less than a

three-fourths share in it belongs to the same persons as the business or such an interest belonged to at some time within a year before that event; and

- (b) the business is for the whole of those 3 years carried on by a company which is within the charge to tax in respect of it;

then this Ordinance shall have effect subject to subsections (2) to (6) below.

In paragraphs (a) and (b) above references to the business shall apply also to any other business of which the activities comprise the activities of the first mentioned business.

(2) The business shall not be treated as permanently discontinued nor a new business as set up and commenced for the purpose of the allowances and charges provided for by Chapter II of Part V (depreciation allowances) but—

- (a) there shall be made to or on the successor in accordance with that Chapter all such allowances and charges as would, if the predecessor had continued to carry on the business, have fallen to be made to or on it; and

- (b) the amount of any such allowance or charge shall be computed as if—

- (i) the successor had been carrying on the business since the predecessor began to do so, and

- (ii) everything done to or by the predecessor had been done to or by the successor (but so that no sale or transfer which on the transfer of the business is made to the successor by the predecessor of any assets in use for the purpose of the business shall be treated as giving rise to any such allowance or charge).

(3) Subject to subsection (4) below, the successor shall be entitled to relief under section 128(2), as for a loss sustained by the successor in carrying on the business, for any amount for which the predecessor would have been entitled to claim relief if it had continued to carry on the business.

(4) Where the amount of relevant liabilities exceeds the value of relevant assets, the successor shall be entitled to relief by virtue of subsection (3) above only if, and only to the extent that, the amount of that excess is less than the amount mentioned in that subsection.

(5) Where the successor ceases to carry on the business within the 3 year period referred to in subsection (1)(a) above and on its doing so a third company begins to carry on the business, then no relief shall be given to the predecessor by virtue of subsection (4) above by reference to that event, but, subject to that, subsections (2) to (4) above shall apply both in relation to that event (together with the new predecessor and successor) and to the earlier event (together with the original predecessor and successor), but so that—

- (a) in relation to the earlier event "successor" shall include the successor at either event; and
- (b) in relation to the later event "predecessor" shall include the predecessor at either event;

and if the conditions of this subsection are thereafter again satisfied, it shall apply again in like manner.

(6) Where, on a company ceasing to carry on a business, another company begins to carry on the activities of the business as part of its business, then that part of the business carried on by the successor shall be treated for the purposes of this section as a separate business, if the effect of so treating it is that subsection (1) or (5) above has effect on that event in relation to that separate business.

(7) Where, on a company ceasing to carry on part of a business, another company begins to carry on the activities of that part as its business or part of its business, the predecessor shall for purposes of this section be treated as having carried on that part of its business as a separate business if the effect of so treating it is that subsection (1) or (5) above has effect on that event in relation to that separate business.

(8) Where under subsection (6) or (7) above any activities of a company's business fall, on the company ceasing or beginning to carry them on, to be treated as a separate business, such apportionments of receipts, expenses, assets or liabilities shall be made as may be just.

(9) Where, by virtue of subsection (8) above, any item falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of 2 or more companies, any question which arises as to the manner in which the item is to be apportioned shall, for the purposes of the tax of all those companies, be determined by the Commissioner, after giving all of them an opportunity to make representations to him in writing and taking account of any such representations.

(10) Any relief obtainable under this section by way of discharge or repayment of tax shall be given on the making of a claim.

*Company
reconstructions:
supplemental.*

63.—(1) For the purposes of section 62—

- (a) a business carried on by two or more persons shall be treated as belonging to them in the shares in which they are entitled to the profits of the business;
- (b) a business or interest in a business belonging to any person as trustee (otherwise than for charitable or public purposes) shall be treated as belonging to the persons for the time being entitled to the income under the trust; and
- (c) a business or interest in a business belonging to a company shall, where the result of so doing is that subsection (1) or (5) of section 62 has effect in relation to an event, be treated in any of the ways permitted by subsection (2) below.

(2) For the purposes of section 62, a business or interest in a business which belongs to a company engaged in carrying it on may be regarded—

- (a) as belonging to the persons owning the ordinary share capital of the company and as belonging to them in proportion to the amount of their holdings of that capital, or
- (b) in the case of a company which is a subsidiary company, as

belonging to a company which is its parent company, or as belonging to the persons owning the ordinary share capital of that parent company, and as belonging to them in proportion to the amount of their holdings of that capital,

and any ordinary share capital owned by a company may, if any person or body of persons has the power to secure by means of the holding of shares or the possession of voting power in or in relation to any company, or by virtue of any power conferred by the articles of association or other document regulating any company, that the affairs of the company owning the share capital are conducted in accordance with his or their wishes, be regarded as owned by the person or body of persons having that power.

(3) For the purposes of subsection (2) above—

- (a) references to ownership shall be construed as references to beneficial ownership;
- (b) a company shall be deemed to be a subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies;
- (c) the amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies, shall be determined in accordance with section 207(5) to (10); and
- (d) where any company is a subsidiary of another company, that other company shall be considered as its parent company unless both are subsidiaries of a third company.

(4) In determining, for the purposes of section 62, whether or to what extent a business belongs at different times to the same persons, persons who are relatives of one another and the persons from time to time entitled to the income under any trust shall respectively be treated as a single person, and for this purpose "relative" means husband, wife, ancestor, lineal descendant, brother or sister.

(5) For the purposes of section 62(4), relevant assets are—

- (a) assets which were vested in the predecessor immediately before it ceased to carry on the business, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 62, were not by virtue of subsection (8) of that section apportioned to a business carried on by the company which was the successor on that application; and
- (b) consideration given to the predecessor by the successor in respect of the change of company carrying on the business;

and for the purposes of paragraph (b) above the assumption by the successor

of any liabilities of the predecessor shall not be treated as the giving of consideration to the predecessor by the successor.

(6) For the purposes of section 62(4), relevant liabilities are liabilities which were outstanding and vested in the predecessor immediately before it ceased to carry on the business, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 62, were not by virtue of subsection (8) of that section apportioned to a business carried on by the company which was the successor on that application; but a liability representing the predecessor's share capital, share premium account, reserves or relevant loan stock is not a relevant liability.

(7) For the purposes of section 62(4)—

- (a) the value of assets (other than money) shall be taken to be the price which they might reasonably be expected to have fetched on a sale in the open market immediately before the predecessor ceased to carry on the business; and
- (b) the amount of liabilities shall be taken to be their amount at that time.

(8) Where the predecessor transferred a liability to the successor but the creditor concerned agreed to accept settlement of part of the liability as settlement of the whole, the liability shall be treated for the purposes of subsection (6) above as not having been transferred to the successor except as to that part.

(9) A liability representing the predecessor's share capital, share premium account, reserves or relevant loan stock shall, for the purposes of subsection (6) above, be treated as not doing so if, in the period of one year ending with the day on which the predecessor ceased to carry on the business, the liability arose on a conversion of a liability not representing its share capital, share premium account, reserves or relevant loan stock.

(10) Where a liability of the predecessor representing its relevant loan stock is not a relevant liability for the purposes of section 62(4) but is secured on an asset of the predecessor not transferred to the successor, the value of the asset shall, for the purposes of section 62(4), be reduced by an amount equal to the amount of the liability.

(11) In this section "relevant loan stock" means any loan stock or similar security (whether secured or unsecured) except any in the case of which subsection (12) below applies.

(12) This subsection applies where, at the time the liability giving rise to the loan stock or other security was incurred, the person who was the creditor was carrying on a business of lending money.

PART III

LIFE ASSURANCE, PENSION SCHEMES, ANNUITIES ETC

CHAPTER I

GENERAL PROVISIONS

"Approved schemes" and other definitions.

64.—(1) this Part, except in so far as the context otherwise requires—
"approved"—

(a) in relation to a scheme, means approved by the Commissioner in accordance with this Part; and

(b) in relation to arrangements, means made in accordance with a scheme which is for the time being, and was when the arrangements were made, an approved scheme;

but does not refer to cases in which approval has been withdrawn;

"employee" includes—

(a) in relation to a company, any officer or director of the company and any other person taking part in the management of the affairs of the company, and

(b) past and future employees,
and related expressions shall be construed accordingly;

"member", in relation to a personal pension scheme, means an individual who makes arrangements in accordance with the scheme;

"pension" includes an annuity;

"personal pension arrangements" means arrangements made by an individual in accordance with a personal pension scheme;

"personal pension scheme" means a scheme whose sole purpose is the provision of annuities or lump sums under arrangements made by individuals in accordance with the scheme;

"relevant benefits" means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death, or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question, but does not include any benefit payable solely on the disablement or death of the employee by accident occurring during his employment;

"retirement benefits scheme" means a scheme for the provision of relevant benefits;

"scheme" includes a deed, agreement, series of agreements or other arrangements providing for relevant benefits for or in respect of one or more employees;

"administrator", in relation to any scheme, means the person resident in the Falkland Islands who is responsible for the management of the scheme.

(2) For the purposes of this Part the cash equivalent of a benefit in kind is—

- (a) the amount which would be the annual value of the benefit under section 8 if it were chargeable under that section, or
- (b) if that benefit is not a prescribed benefit for the purposes of section 8, such amount as, in the opinion of the Commissioner, may fairly and reasonably be taken to be the cash equivalent of the benefit,

treating, in either case, any sum made good by the recipient as made good by the employee.

(3) In this Part any reference to the provision for employees of an employer of relevant benefits under a scheme includes a reference to provision made in pursuance of a contract made by the scheme administrator or the employer or the employee with another person, and any reference to payments under a scheme includes a reference to payments in accordance with such a contract.

(4) An application for approval under this Part shall be made in such form and manner and within such time limits as the Commissioner may prescribe, and shall be accompanied by such information as may be so prescribed.

(5) In sections 73(5), 74(3) and 80(1)(e) each reference to the Falkland Islands shall be construed as including a reference to a designated area.

Meaning of

"relevant earnings". 65.—(1) References in this Part to relevant earnings shall be construed in accordance with this section.

(2) In relation to premiums or contributions paid by an individual under a policy of life assurance or personal pension arrangements, "relevant earnings" means—

- (a) any earned income (including any amount which is deemed to be earned income) of his for the year of assessment in question, less
- (b) the amount of any deductions, other than a deduction under this Part or under Chapter I of Part II in respect of the individual or the individual's wife, which fall to be made from that earned income in computing for the purposes of income tax his chargeable income for that year;

but does not include any relevant benefit or any amount paid on account of a person's disablement.

(3) In relation to contributions made by an employee or his employer to a retirement benefits scheme, "relevant earnings" means the earned income

of that employee arising from his employment with that employer.

(4) In the case of a married couple —

(a) if the husband makes a claim under section 66 or 68 in respect of any payment made by him, then, whether or not an election for separate assessment is in force under section 14(4), in computing his relevant earnings for the purposes of that claim, there shall be disregarded any earned income of the wife;

(b) if the wife makes any payment within section 66(1) or 68(1) or makes a contribution to a scheme within section 67(1)—

(i) if such an election is not in force, the husband may claim relief in respect of that payment but for this purpose the wife's relevant earnings shall be deemed to be his (and any earned income of his shall be disregarded);

(ii) if such an election is in force, the wife may claim relief in respect of the payment (by reference to her own relevant earnings).

(5) Sums received by an individual on account of the termination of an employment or the alteration in any of the terms and conditions of his employment are not income within subsection (2) above.

CHAPTER II

TAX RELIEF

Life assurance premiums

Deduction in respect of life insurance.

66.—(1) Any person who pays in any year a premium under a policy of insurance on his own life or on the life of his spouse shall, on a claim being made, be allowed a deduction in computing his chargeable income for the year of assessment following that year of an amount equal to the annual amount of that premium.

(2) A deduction shall not be allowed under this section in respect of any amount in so far as it exceeds an amount equal to 35 per cent. of that person's relevant earnings.

(3) In any case where a person is entitled to relief under this section and to relief under section 67 or 68, a deduction shall not be allowed under this section in so far as the aggregate of the amounts claimed under this section and section 67 or 68 exceeds an amount equal to 35 per cent. of his relevant earnings.

(4) In the case of a married couple where the husband makes more than one claim under this section for the same year of assessment, subsections (3) and (4) above shall apply with any necessary modifications separately in relation to each claim.

Retirement benefit schemes

Retirement benefit schemes.

67.—(1) This section has effect as respects—

- (a) any approved retirement benefit scheme which is shown to the satisfaction of the Commissioner to be established under irrevocable trusts; or
- (b) any other approved retirement benefits scheme as respects which the Commissioner, having regard to any special circumstances, directs that this section shall apply.

(2) In computing an employee's chargeable income for a year of assessment, any contribution paid by him under the scheme in the year preceding that year shall, on a claim, be allowed to be deducted from his relevant earnings.

(3) The amount allowed to be deducted by virtue of subsection (2) above in respect of contributions paid by an employee in any year (whether under a single scheme or under two or more schemes) shall not exceed 20 per cent. of his relevant earnings for that year.

(4) A lump sum paid to a person (whether on retirement or otherwise) in pursuance of the scheme shall not be chargeable to income tax (if it otherwise would be).

(5) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of income derived from investments or deposits if, or to such extent as the Commissioner is satisfied that, it is income from investments or deposits held for the purposes of the scheme.

(6) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of underwriting commissions if, or to such extent as the Commissioner is satisfied that, the underwriting commissions are applied for the purposes of the schemes and would, but for this subsection, be chargeable to tax otherwise than as trading income.

(7) Any sum paid by an employer by way of contribution under the scheme shall for the purposes of income tax or corporation tax be allowed to be deducted as an expense incurred in the chargeable period in which the sum is paid.

(8) The amount of an employer's contributions in respect of any employee which may be deducted under subsection (7) above shall not exceed—

- (a) in the case of an ordinary annual contribution, 35 per cent. of the employee's relevant earnings for the chargeable period in question;
- (b) in the case of any other contribution—
 - (i) £25,000, or
 - (ii) 35 per cent. of the aggregate of employee's relevant earnings for that chargeable period and the preceding 6 chargeable periods;
 whichever is the lower, or such higher amount as the Commissioner may allow.

Personal pension schemes

Members' contributions, and payments under schemes.

68.—(1) Where contributions are paid in any year by an individual under approved personal pension arrangements made by him then, subject to the provisions of this Part—

- (a) in computing his chargeable income for the year of assessment following that year an amount equal to the aggregate of those contributions or to so much of that aggregate as does not exceed the maximum permitted deduction for that year shall be deducted from any relevant earnings of his; and
- (b) in so far as the amount of the contributions paid in that year (aggregated with any amounts carried forward under this provision from an earlier year) exceeds the maximum permitted deduction for that year, the excess shall be carried forward and treated as if it were a contribution paid by the individual under the arrangements in the next year.

(2) For the purposes of subsection (1) above, the maximum permitted deduction, in relation to any contributions paid by an individual in a year means the lesser of—

- (a) £10,000, or
- (b) an amount equal to 20 per cent. of his relevant earnings in that year,

less an amount equal to the aggregate of any contributions made by his employer (or employers) in that year, or such greater sum as the Commissioner may agree in writing with the individual for that year.

(3) A lump sum paid to a person (whether on retirement or otherwise) in pursuance of approved personal pension arrangements shall not be chargeable to income tax (if it otherwise would be).

(4) Where relief under subsection (1) above for any year of assessment is claimed and allowed (whether or not it then falls to be given for that year), and afterwards an assessment, alteration of an assessment, or other adjustment of the claimant's liability to tax is made, there shall also be made such consequential adjustments in the relief allowed or given under this section for that or any subsequent year as are appropriate.

(5) Without prejudice to subsection (1)(b) above, where a person makes contributions under an approved retirement benefits scheme or schemes and under approved personal pension arrangements in any year, the aggregate of the amounts he may deduct under this section and section 67 in respect of those contributions shall not exceed an amount equal to A minus B where—

- A is equal to 20 per cent. of his relevant earnings in that year (calculated for the purposes of this section) or such greater amount as the Commissioner may have agreed, and
- B is the aggregate amount of any contributions made by his employer (or employers) in that year under approved personal pension arrangements.

(6) In the case of a married couple where the husband makes more

than one claim under this section for the same year of assessment, subsections (4) and (5) above shall apply with any necessary modifications separately in relation to each claim.

(7) Where relief under this section is claimed and allowed for any year of assessment in respect of a contribution, relief shall not be given in respect of it under any other provision of this Ordinance for the same or any subsequent year, nor (in the case of a contribution under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

Employers' contributions.

69. Where contributions are paid by an employer under approved personal pension arrangements made by his employee, those contributions shall not be regarded as remuneration of the employee for the purposes of this Ordinance.

Carry-forward of relief

Carry-forward of relief.

70.—(1) Where—

- (a) an individual's chargeable income of any year includes relevant earnings from any business or employment carried on or held by him, and
- (b) there is an amount of unused relief for the year of assessment following that year,

relief may be given under this Part up to the amount of the unused relief, in respect of so much of any contributions paid by him under an approved scheme in any of the 6 years following that year as exceeds the amount permitted to be deducted for that year under this Part.

(2) In this section, any reference to an amount of unused relief for any year of assessment is to an amount which could have been deducted from the individual's relevant earnings under this Part if—

- (a) the individual had paid contributions under an approved scheme in the year preceding that year; or
- (b) any such contributions paid by him in that preceding year had been greater.

(3) Relief by virtue of this section shall be given for an earlier year rather than a later year, the unused relief taken into account in giving relief for any year being deducted from that available for giving relief in subsequent years and unused relief derived from an earlier year being exhausted before unused relief derived from a later year.

(4) Where a relevant assessment to tax in respect of a year of assessment becomes final and conclusive more than 6 years after the end of that year and there is an amount of unused relief for that year which results from the making of the assessment—

- (a) that amount shall not be available for giving relief by virtue of this section for any of the 6 years following that year; but
- (b) the individual may, within the period of 6 months beginning with the date on which the assessment becomes final and conclusive, elect that relief shall be

given, up to that amount, in respect of so much of any contributions paid by him under an approved scheme within that period as exceeds the amount permitted to be deducted under this Part from his income for the year in which they are paid;

and to the extent to which relief in respect of any contributions is given by virtue of this subsection it shall not be given by virtue of subsection (1) above.

(5) In this section—

- (a) "a relevant assessment to tax" means an assessment on the individual's relevant earnings or on the profits or gains of a partnership from which the individual derives relevant earnings, and
- (b) "an approved scheme" includes a policy within section 66.

CHAPTER III

CHARGE TO TAX IN CERTAIN CASES

Retirement benefit schemes

Non-approved schemes: payments by employers.

71.—(1) Subject to the provisions of this Chapter, where, pursuant to a retirement benefits scheme within subsection (2) below, the employer in any year of assessment pays a sum with a view to the provision of any relevant benefits for any employee of that employer, then (whether or not the accrual of the benefits is dependent on any contingency)—

- (a) the sum paid, if not otherwise chargeable to income tax as income of the employee, shall be deemed for the purposes of income tax to be income of that employee for that year of assessment and assessable to tax accordingly; and
- (b) where the payment is made under such an insurance as is mentioned in section 66, relief, if not otherwise allowable, shall be given to that employee under that section in respect of the payment to the extent, if any, to which such relief would have been allowable to him if the payment had been made by him and the insurance under which the payment is made had been made with him.

(2) Subsection (1) above applies to any retirement benefits scheme other than a scheme for the time being approved for the purposes of this Part or a scheme set up by a government outside the Falkland Islands for the benefit, or primarily for the benefit, of its employees.

(3) Where the employer pays any sum as mentioned in subsection (1) above in relation to more than one employee, the sum so paid shall, for the purpose of that subsection, be apportioned among those employees by reference to the separate sums which would have had to be paid to secure the separate benefits to be provided for them respectively, and the part of the sum apportioned to each of them shall be deemed for that purpose to have been paid separately in relation to that one of them.

(4) Any reference in this section to the provision for an employee of relevant benefits includes a reference to the provision of benefits payable to that employee's wife or widow, children, dependants or personal representatives.

*Non-approved
schemes: taxation
of benefits received.*

72.—(1) Where in any chargeable period a person receives a benefit provided under a retirement benefits scheme to which section 71(1) applies, tax shall be charged in accordance with the provisions of this section.

(2) The recipient of the benefit shall be charged to tax for that period in an amount determined in accordance with subsection (3) below.

(3) The amount to be charged to tax is—

- (a) in the case of a cash benefit, the amount received, and
- (b) in the case of a benefit in kind, an amount equal to whatever is the cash equivalent of the benefit.

(4) In any case where the benefit is chargeable to income tax under this section and under another provision of this Ordinance—

- (a) if the amount chargeable to income tax apart from this section is less than the amount which would be chargeable to tax under this section, the amount chargeable to tax under this section shall be reduced by the amount chargeable to tax apart from this section;
- (b) if paragraph (a) does not apply, tax shall not be charged under this section in the case of the benefit.

(5) Tax shall not be charged under this section to the extent that the benefit received is attributable to the payment of a sum—

- (a) which is deemed to be the income of a person by virtue of section 71(1), and
 - (b) in respect of which that person has been assessed to tax;
- and for this purpose the provision of a benefit shall be presumed not to be attributable to the payment of such a sum unless the contrary is shown.

*Repayment of
employee's
contributions.*

73.—(1) Subject to the provisions of this section, tax shall be charged under this section on any repayment to an employee during his lifetime of any contributions (including interest on contributions, if any) if the repayment is made under a scheme which is or has at any time been an approved scheme within section 67.

(2) Where any repayment is chargeable to tax under this section—

- (a) it shall be added to the chargeable income of the employee for the year of assessment following the year in which the payment is made, or
- (b) if the employee elects, amounts equal to the contributions (if any) made in the year of assessment in which the repayment is made and in each of the preceding 6 years shall be added to the income of the employee in each of those years and charged to tax accordingly, and if the repayment exceeds the aggregate of those

amounts an amount equal to the excess shall be added to his chargeable income for the year following the year in which the repayment is made.

(3) An election under subsection (2) above may not be made more than 2 years after the end of the year in which the payment is made, and all adjustments shall be made, whether by way of repayment of tax or otherwise, as may be necessary to give effect to any such election.

(4) Subsection (1) above shall not apply in relation to a contribution made after the scheme ceases to be an exempt approved scheme (unless it again becomes an approved scheme within section 67).

(5) This section shall not apply where the employee's employment was carried on outside the Falkland Islands.

Commutation of pension.

74.—(1) Where a retirement benefits scheme which is or has at any time been an approved scheme contains a rule allowing a payment in commutation of the whole or part of an employee's pension, and any pension is commuted, whether wholly or not, under the rule, income tax shall be charged on the amount by which the sum receivable exceeds one-quarter of the total value as at the time the sum is paid of the benefits to be provided for the employee under the scheme.

(2) Where any amount is chargeable to tax under this section the administrator of the scheme shall be charged to income tax on that amount.

(3) This section shall not apply where the employee's employment was carried on outside the Falkland Islands.

(4) In applying subsection (1) above—

- (a) the same considerations shall be taken into account, including the provisions of any other relevant scheme, as would have been taken into account by the Commissioner in applying section 80; and
- (b) where the scheme has ceased to be an approved scheme, account shall only be taken of the rules in force when the scheme was last an approved scheme.

Payments out of surplus funds of retirement benefits schemes.

75.—(1) Any payment made to or for the benefit of an employee or to his personal representatives by way of a return of surplus funds which are or have been held for the purposes of a scheme which is or has at any time been an approved scheme within section 67 shall be treated as income of that employee for the year in which it is made (whether or not he is the recipient).

(2) Subsection (1) above shall apply to a transfer of assets or money's worth as it applies to a payment but in the case of any such transfer, an amount equal to the cash equivalent of whatever is transferred shall be treated as income of the employee for the year in which the transfer took place.

Unauthorised payments under retirement benefit schemes to or for employees.

76.—(1) In any case where—

- (a) a payment is made to or for the benefit of an employee, otherwise than in course of payment of a pension, and
- (b) the payment is made out of funds which are held for the purposes of a retirement benefit scheme which is an approved scheme, and
- (c) the payment is not expressly authorised by the rules of the scheme,

the employee (whether or not he is the recipient of the payment) shall be chargeable to tax on the amount of the payment for the year of assessment in which the payment is made.

(2) Any payment chargeable to tax under this section shall not be chargeable to tax under section 73 or 74.

(3) References in this section to any payment include references to any transfer of assets or other transfer of money's worth.

Payments to employers.

77.—(1) Where any payment is made or becomes due to an employer out of funds which are or have been held for the purposes of a scheme which is or has at any time been an approved scheme within section 67 then—

- (a) if the scheme relates to a business carried on by the employer, the payment shall be treated for the purposes of the enactments relating to income tax or corporation tax as a receipt of that business receivable when the payment falls due or on the last day on which the business is carried on by the employer, whichever is the earlier;
- (b) if the scheme does not relate to such a business, the employer shall be charged to tax on the amount of the payment as the income of the employer.

This subsection shall not apply to a payment which fell due before the scheme became an approved scheme within section 67.

(2) Subsection (1) above shall apply to a transfer of assets or money's worth as it applies to a payment but in the case of any such transfer, the value of whatever is transferred shall be taken to be equal to its cash equivalent.

Personal pension schemes

Unauthorised payments.

78.—(1) Where any payment within subsection (2) below is made—

- (a) out of funds which are or have been held for the purposes of a personal pension scheme which is or has at any time been approved; and
- (b) to or for the benefit of an individual who has made personal pension arrangements in accordance with the scheme,

that individual, whether or not he is the recipient of the payment, shall be chargeable to tax on the amount of the payment for the year of assessment in which the payment is made.

(2) A payment is within this subsection if—

- (a) it is not expressly authorised by the rules of the scheme;

or

- (b) it is made at a time when the scheme or the arrangements are not approved and it would not have been expressly authorised by the rules of the scheme or by the arrangements when the scheme, or as the case may be the arrangements, were last so approved.

(3) This section applies to a transfer of assets or other transfer of money's worth as it applies to a payment, and in relation to such a transfer the reference in subsection (1) above to the amount of the payment shall be read as a reference to the value of the transfer.

Contributions under unapproved personal pension arrangements.

79. Where contributions are paid by an employer under personal pension arrangements made by his employee then, if those arrangements are not approved arrangements and the contributions are not otherwise chargeable to income tax as income of the employee, the contributions shall be regarded for all the purposes of income tax as emoluments of the employment chargeable to income tax.

CHAPTER IV

APPROVAL OF SCHEMES

Retirement benefit schemes

Conditions for approval of retirement benefit schemes.

80.—(1) Subject to subsections (2) and (3) below, the Commissioner shall not approve any retirement benefits scheme for the purposes of this Part unless the scheme satisfies all of the following conditions—

- (a) that the scheme is bona fide established for the sole purpose of providing relevant benefits in respect of service as an employee, being benefits payable to the employee or to the widow, widower, children or dependants or personal representatives of the employee;
- (b) that the scheme is recognised by the employer and employees to whom it relates, and that every employee who is, or has a right to be, a member of the scheme has been given written particulars of all essential features of the scheme which concern him;
- (c) that there is a person resident in the Falkland Islands who will be responsible for the discharge of all duties imposed on the administrator of the scheme under this Part;
- (d) that the employer is a contributor to the scheme;
- (e) that the scheme is established in connection with some trade or undertaking carried on in the Falkland Islands.

(2) The Commissioner shall not approve any retirement benefits

scheme which provides for a lump sum payment on the death of a member if the lump sum exceeds the greater of the following amounts—

- (a) £100,000;
- (b) an amount equal to 4 times the annual remuneration of the member at the time of his retirement or, if he dies before retirement, at the time of his death.

(3) The conditions set out in subsections (1) and (2) above are referred to below as "the prescribed conditions".

(4) The Commissioner may, if he thinks fit having regard to the facts of a particular case, and subject to such conditions, if any, as he thinks proper to attach to the approval, approve a retirement benefits scheme for the purposes of this Part notwithstanding that it does not satisfy one or more of the prescribed conditions.

(5) If in the opinion of the Commissioner the facts concerning any scheme or its administration cease to warrant the continuance of his approval of the scheme, he may at any time by notice to the administrator withdraw his approval on such grounds, and from such date (which shall not be earlier than the date when those facts first ceased to warrant the continuance of his approval), as may be specified in the notice.

(6) Where an alteration has been made in a retirement benefits scheme, any approval given as regards the scheme before the alteration shall not apply after the date of the alteration unless the alteration has been approved by the Commissioner.

(7) Subsections (8) to (10) below apply where the Commissioner is considering whether a retirement benefits scheme satisfies or continues to satisfy the prescribed conditions.

(8) For the purpose of determining whether the scheme, so far as it relates to a particular class or description of employees, satisfies or continues to satisfy the prescribed conditions, that scheme shall be considered in conjunction with—

- (a) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) approved for the purposes of this Part, and
- (b) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) at the same time before the Commissioner in order for him to decide whether to give approval for the purposes of this Part.

(9) If those conditions are satisfied in the case of both or all of those schemes taken together, they shall be taken to be satisfied in the case of the scheme mentioned in subsection (7) above (as well as the other or others).

(10) If those conditions are not satisfied in the case of both or all of those schemes, they shall not be taken to be satisfied in the case of the scheme mentioned in subsection (7) above.

*Personal pension schemes**Requirements relating to contributions.*

- 81.—(1) The Commissioner shall not approve a personal pension scheme which permits the acceptance of contributions other than—
- (a) contributions by members;
 - (b) contributions by employers of members.

(2) The Commissioner shall not approve a scheme unless it makes provision for ensuring—

- (a) that the aggregate of contributions made by an employee and by his employer in a year of assessment does not exceed the lesser of—
 - (i) £10,000, or
 - (ii) an amount equal to 20 per cent. of the employee's relevant earnings in that year, or such greater sum as the Commissioner may agree in writing with the employee for that year, and
- (b) that any excess is repaid to the employer.

CHAPTER V

TRANSITIONAL PROVISIONS

Commissioner's discretion to allow continuation of existing relief.

82.—(1) The Commissioner may if he thinks fit permit relief from tax to be given in relation to—

- (a) premiums paid on or after 1st January 1994 under any policy of life assurance made before that date; and
- (b) contributions made after that date under schemes for the provision of relevant benefits to or in respect of persons who were members of the scheme before that date,

as if this Ordinance, the Taxes (Amendment) Ordinance 1996 and the Taxes Ordinance 1994 had not been enacted.

(2) If the Commissioner so directs in relation to any particular approved personal pension arrangements which were approved before 21st June 1996, this Part shall apply in relation to those arrangements—

- (a) with the substitution for section 68(2) of the following—

“(2) For the purposes of subsection (1) above, the maximum permitted deduction, in relation to any contributions paid by an individual in a year, means an amount equal to 35 per cent. of his relevant earnings in that year or such greater amount as the Commissioner may agree in writing with the individual for that year”;

- (b) with the substitution for section 68(5) of the following—

“(5) In any case where a person is entitled to relief for any year of assessment under subsection (1) above and to relief under section 67, a deduction shall not be allowed under this section in so far as the aggregate of the amounts claimed under this section and that section exceeds the aggregate of an amount

equal to 20 per cent. of his relevant earnings for the purposes of that section and an amount equal to 35 per cent. of his relevant earnings for the purposes of this section less those relevant earnings.”; and

(c) with the substitution for section 81(2)(a) of the following—

“(a) that the aggregate of contributions made by an employee and by his employer in a year of assessment does not exceed 50 per cent. of the employee's relevant earnings in that year or such greater amount as the Commissioner may agree in writing with the employee for that year; and”.

PART IV

PAYMENTS ON ACCOUNT OF TAX BY EMPLOYEES

Amounts to be deducted from earned income etc.

83.—(1) Subject to subsections (2) to (4) below, every person who makes a payment to which this subsection applies to an employee or former employee of his in any year of assessment shall—

- (a) before making the payment, deduct from the payment such sum as he is required to deduct by the POAT regulations, and
- (b) account to the Commissioner for all sums so deducted in the manner and at the time or times required by the POAT regulations.

(2) Subject to subsection (4) below, subsection (1) above applies to any payment of any sum which is earned income of the employee or former employee but only in respect of sums paid by an employer to any of his employees exclusively related to and arising out of a contract of service or expired contract of service (in writing or not) between the employer and the employee, whether paid by way of remuneration or otherwise.

(3) No deduction is required to be made from any payment of any pension or annuity (voluntary or otherwise) by virtue of subsection (1) above unless the person making the payment has reason to believe that the total amount of such payments when aggregated with other earned income paid by him or any other person on his behalf to the recipient will in the year in question exceed £4,400 or such other higher amount prescribed by the POAT regulations.

(4) Subsection (1) above does not apply in relation to any pension or annuity paid by a person not resident in the Falkland Islands (whether or not any part of that pension is paid in or subsequently transferred to the Falkland Islands).

Payments by intermediaries or to employees of non-resident employers.

84.—(1) Subject to subsection (2) below, where—

- (a) a payment of or on account of assessable income of an employee is made by an intermediary of his employer, and

- (b) section 83(1) would have applied to it if the payment had been made by the employer,

then for the purposes of this Part the employer shall be deemed to have made that payment to the employee at the time it was made by the intermediary.

(2) The employer shall not be required to make a deduction under subsection (1) above if and to the extent that the intermediary (whether or not he is a person to whom section 83 and the POAT regulations apply) makes a deduction from the payment he makes and accounts for it in accordance with the POAT regulations.

(3) This subsection applies where—

- (a) an employee during any period works for a person ("the relevant person") who is not his employer;
- (b) any payment of, or on account of, assessable income of the employee in respect of work done in that period is

made by a person who is the employer or an intermediary of the employer;

(c) the POAT regulations do not apply to the person making the payment or, if he makes the payment as an intermediary of the employer, the employer; and

(d) a deduction is not made or accounted for in accordance with this Part by the person making the payment or, if he makes the payment as an intermediary of the employer, the employer.

(4) Where subsection (3) above applies, for the purposes of this Part—

(a) the payment of assessable income shall be deemed to have been made by the relevant person,

(b) the relevant person shall be deemed to be the employer of the employee,

and accordingly the payment shall be treated as falling within section 83(2).

(5) Where a payment within subsection (1)(a) or (3)(b) (“a section 84 payment”) is deemed to be made by any person—

(a) any deduction required to be made by the POAT regulations shall be made from any payment he actually makes of or on account of, assessable income of the person to whom that section 84 payment is made, or

(b) if the amount of any payment actually made is less than the amount of the deduction required to be made, he shall account to the Commissioner in accordance with the POAT regulations for an amount equal to the amount of the deduction which he is unable to make.

(6) POAT regulations may make provision—

(a) with respect to the time when any section 84 payment (or description of section 84 payment) is to be treated as having been made;

(b) applying (with or without modifications) any specified provisions of the regulations for the time being in force in relation to deductions from actual payments to amounts accounted for in respect of any section 84 payments;

(c) with respect to the collection and recovery of amounts accounted for in respect of section 84 payments.

*Non-resident
employees etc.*

if—

85.—(1) This section applies in relation to an employee in a year only

(a) he is not resident or, if resident, not ordinarily resident in the Falkland Islands in that year, and

(b) he works or will work in the Falkland Islands and also works or is likely to work outside the Falkland Islands in that year.

Any reference in this subsection to a person working in the Falkland Islands includes a reference to a person working in any designated area.

(2) Where in relation to any year it appears to the Commissioner at any time that—

(a) some of the emoluments of an employee to whom this section applies are payable in respect of duties performed in the Falkland Islands during a year in which he is not resident, or if resident not ordinarily resident, in the Falkland Islands, but

(b) a proportion of the income, which at that time is unascertainable, may prove not to be assessable,

the Commissioner may, on an application made by the employer, give a direction determining what proportion of any payment made in that year of, or on account of, income of the employee shall be treated for the purposes of this Part as a payment of assessable income of the employee.

(3) An application for a direction under subsection (2) above shall provide such information as is available and is relevant to the giving of the direction.

(4) A direction under subsection (2) above—

(a) shall specify the employee to whom and the year to which it relates;

(b) shall be given by notice to the employer; and

(c) may be withdrawn by notice to the employer by a date specified in the notice, not being earlier than 30 days from the date on which the notice of withdrawal is given.

(5) The employer may designate a person to exercise his functions under subsections (2) and (4) above, and in any case where a person has been so designated any reference in this section to the employer (except this subsection) shall be read as a reference to that person.

(6) Where—

(a) a direction under subsection (2) above has effect in relation to an employee to whom this section applies, and

(b) a payment of, or on account of, the income of the employee is made in the year to which the direction relates,

the proportion of the payment determined in accordance with the direction shall be treated for the purposes of this Part as a payment to which section 83(1) applies.

(7) Where in any year—

(a) no direction under subsection (2) above has effect in relation to an employee to whom this section applies, and

(b) any payment is made of, or on account of, the income of the employee,

the entire payment shall be treated for the purposes of this Part as a payment to which section 83(1) applies.

- (a) that one person ("the contractor") has entered into or is likely to enter into an agreement that any of his employees shall in any period work for, but not as employees of, another person ("the relevant person"), and
 - (b) that payments of, or on account of, assessable income of the employees in respect of work done in that period are likely to be made by or on behalf of the contractor, and
 - (c) that section 83(1) would apply on the making of such payments but it is likely that deductions will not be made or accounted for in accordance with the POAT regulations,
- he may give a direction under subsection (2) below to the relevant person.

(2) A direction under this subsection is a direction, given by notice, that if—

- (a) any employees of the contractor work in any period for, but not as employees of, the relevant person, and
 - (b) any payment is made by the relevant person in respect of work done by the employees in that period,
- the relevant person shall make deductions in accordance with the notice.

(3) A direction under subsection (2) above—

- (a) shall specify the relevant person and the contractor to whom it relates; and
- (b) may at any time be withdrawn by a further notice to the relevant person.

(4) The Commissioner shall take such steps as are reasonably practicable to ensure that the contractor is supplied with a copy of any direction or notice given under subsection (2) or (3) above which relates to him.

Supplementary provisions.

87.—(1) For the purposes of this Part—

- (a) a person who is a public officer is deemed to be an employee employed under a contract of service with the Crown, and
 - (b) a director of a company is an employee of that company;
- and any reference in this Part to an employee, an employer, employment or a contract of service shall be construed accordingly.

(2) For the purposes of this Part, any payment to which this Part would apply if made to the employee in question shall be deemed to have been paid to the employee if it is paid to another person by the employer at the request or by authority of the employee or by order of any court, whether by reason of the employee's incapacity or otherwise.

(3) In any case where a person who was an employee of an employer has died and the employer makes a payment of a pension or annuity or any other payment to the deceased's widow, widower, personal representative or dependants, this Part (apart from this subsection) shall have effect as if any reference to an employee were or included (as the context requires) a

reference to the widow, widower, personal representative or dependants of the deceased person.

(4) Any contract, agreement or arrangement whatsoever between any person on whom any obligation is imposed under this Part and any other person (whether or not also under such an obligation) which is inconsistent with that obligation (or obligations as the case may be) shall, to the extent of that inconsistency, be void.

(5) Any sum required by the POAT regulations to be deducted from any payment, but not paid to the Commissioner as required by such regulations, shall be recoverable from the employer by the Commissioner as a civil debt; and the Senior Magistrate shall have jurisdiction to try and determine any action brought by the Commissioner by virtue of this subsection and to make any order that the Supreme Court could have made in civil proceedings in that court in respect of that sum, and notwithstanding that the amount claimed would otherwise be beyond his jurisdiction.

(6) Without prejudice to section 88(2), in any case where—

- (a) an employer has failed to comply with any requirement of the POAT regulations to account to the Commissioner for any sum on account of the liability of an employee of his to income tax, and
- (b) the Commissioner has not recovered that sum from the employer under subsection (5) above or section 92 or otherwise,

then subsection (5) does not have effect to prevent the Commissioner from recovering any such income tax as is mentioned in paragraph (a).

(7) Any sum not paid to the Commissioner in accordance with the POAT regulations shall bear interest in favour of the Crown on the sum for the time being remaining unpaid, before as well as after any judgment, at the rate of 3 per cent. per annum over the base lending rate, and subsection (5) above shall also apply in respect of such interest.

(8) Nothing in subsection (5) shall operate so as to prevent proceedings being brought in the Supreme Court, but if so brought subsection (7) shall apply in respect of interest claimed.

*Liability of
employer with
respect to sums
deducted etc.*

88.—(1) It shall be a defence to any action brought by an employee against his employer to recover any sum which the employer is obliged to deduct under this Part for the employer to show that he was obliged to deduct that sum, and a certificate of the Commissioner that the employer was so obliged to deduct any sum shall, as between employer and employee, be conclusive in accordance with its tenor.

(2) Subject to subsection (3), as between an employee and the Commissioner or the Crown, any deduction made under this Part shall be deemed to have been paid to the Commissioner by the employee on account of his liability to income tax, and irrespective of whether the deduction has been accounted for to the Commissioner or not.

(3) Subject to subsections (4) and (5) below, subsection (2) above

shall apply only in relation to any deduction made in respect of an employee by his employer where the employer—

- (a) is resident in the Falkland Islands or trading through a branch or agency in the Falkland Islands at the time the deduction is made, and
- (b) fails to account to the Commissioner for the deduction in accordance with the POAT regulations or otherwise, and
- (c) before the end of the second year of assessment following the year in which the deduction was made, is either adjudicated bankrupt or (in the case of a company) is insolvent and has had a winding-up order made in respect of it.

(4) Subsection (2) above shall not apply in relation to any deduction as respects which the Commissioner notifies the employer and the employee that the Commissioner has determined that subsection (2) shall not apply.

(5) Subsection (3) above shall not apply in relation to any deduction as respects which the Commissioner notifies the employer and the employee that the Commissioner has determined that subsection (3) shall not apply.

(6) If any sum deducted in accordance with this Part is lost, mislaid or destroyed before it is received by the Commissioner, the person liable to make the deduction and not the Commissioner or the Crown shall bear the loss; and accordingly that person in such an event remains liable to pay the same to the Commissioner.

(7) An employer shall within 7 days of the expiration or determination of an employee's contract of service, or, if the employee is a former employee paid a pension or annuity, or the employee continues in the employer's employment, within 7 days of 31st December, furnish to the employee a certificate of the total amount deducted under this Part up to the relevant date, and shall send a copy of the certificate to the Commissioner.

(8) The certificate referred to in subsection (7) shall contain the following information—

- (a) the name of the employer and his principal place of business in the Falkland Islands or, if he has no place of business in the Falkland Islands, outside the Falkland Islands;
- (b) the full name of the employee and, if known, his address;
- (c) the aggregate amount of all the income, in money, gross of all deductions, of the employee under that employer during the year in question or (where appropriate) up to the date of the certificate; and
- (d) the aggregate amount of deductions from that income made by that employer during the year in question under this Part.

(9) In subsections (7) and (8), "relevant date" means the date of determination or expiration of the employee's contract of service in the year in question or, in the case of a contract of service which continues thereafter, 31st December in that year.

*Payments on
account of tax:
application.*

89.—(1) For the avoidance of doubt, it is hereby declared that sums deducted in accordance with this Part—

- (a) are not income tax, but are on account of the liability to income tax, whether determined or yet to be determined, of the employee in respect of whom they are made, and
- (b) may be applied at any time by the Commissioner in payment or reduction of that person's liability to tax in respect of the year of assessment in which the deduction was made or the immediately following year or any earlier year.

(2) Where an employee is liable to income tax for any year of assessment preceding the year in which the sum is deducted, and the amount of that liability has been determined, the Commissioner shall apply such sums so that any such liability in respect of an earlier year of assessment is wholly discharged before any such sums are applied in satisfaction (or partial satisfaction) of any such liability in respect of any later year of assessment.

*Repayment of sums
deducted.*

90. If an individual who is resident or ordinarily resident in the Falkland Islands satisfies the Commissioner, by his return of income or otherwise, that the deductions made under this Part from his earned income for any year of assessment exceed the aggregate of—

- (a) his liability to income tax in respect of that earned income; and
- (b) any outstanding liability of his to tax in respect of any preceding year of assessment,

the Commissioner shall repay to him the excess without undue delay.

*The POAT
regulations.*

91.—(1) In this Part "the POAT regulations" means regulations under this section.

(2) The Governor may make regulations for determining the sums which an employer is, under this Part, required to deduct from payments to any employee of that employer in any year.

(3) Regulations under this section may require sums to be deducted in accordance with tables prepared, or directions given, by the Commissioner from time to time.

(4) Sums to be deducted under this Part from payments made by an employer to an employee in any year shall be related to the earned income of the employee under that employer, in such manner as is calculated so far as is possible to achieve the result that the total sum deducted in respect of any employee does not exceed the likely liability of that employee for income tax in respect of that income (but, nevertheless, the regulations, tables or directions, as the case may be, shall not be invalid merely because, for any reason, they fail to achieve that result).

(5) The amounts to be deducted in respect of any pay period in respect of any employee shall be calculated having regard either—

(a) to that employee's gross earnings from that employment during the calendar year to date; or

(b) to the amount of the cash or money earned from that employment during that pay period;

and for the purposes of this subsection "pay period" means the period in respect of which an employee is paid, but the regulations may make such provision as may be necessary to cater for pay periods of differing length and shall, in any case, make provision for monthly and weekly pay periods.

(6) Regulations under this section may prescribe the times at which employers shall submit information to the Commissioner as to deductions made, the information to be submitted and the time or times at which employers shall pay over to the Commissioner sums deducted under this Part.

(7) Regulations under this section—

(a) shall exempt from liability to suffer deduction the earnings of any employee of an employer (not being a pensioner or annuitant of that employer) who has not worked for that employer or, in the case of an employee with more than one employer, for all his employers—

(i) in the case of weekly paid employees at least 15 hours during that pay period and who has not worked 84 hours in aggregate during that pay period and the 3 pay periods preceding that pay period;

(ii) in the case of monthly paid employees, at least 60 hours during the month constituting the pay period; and

(b) may provide for exemptions from deductions under this Part; and

(c) may prescribe different rates of deductions in respect of employees who are resident in the Falkland Islands and those who are not.

(8) Regulations under this section shall not require deductions to be made from any payment which is not a payment of earned income.

(9) Regulations under this section may make provision requiring information to be provided to the Commissioner by any person employing or intending to employ any other person in the Falkland Islands or a designated area with respect to arrivals in and departures from the Falkland Islands or a designated area of such other persons.

(10) Regulations under this section may provide for any other matter necessary or convenient to be prescribed in the regulations, and in particular but without prejudice to the generality of the foregoing the regulations may—

(a) make provision with respect to the preservation and production to employees of records and other information relating to deductions,

(b) make provision with respect to the confidentiality of information, and

(c) prescribe acts or omissions which shall be offences

punishable with imprisonment for a term not exceeding 3 months or a fine not exceeding level 7 on the standard scale or both such imprisonment and fine.

Bankruptcy and liquidation.

92. If an employer—

- (a) being an individual, is adjudicated bankrupt, or
- (b) being a company, has a winding-up order made in respect of it and is insolvent,

then, notwithstanding any other provision of law, sums deducted under this Part from the earned income of the employees of that employer and not paid to the Commissioner by that employer shall rank in priority to all debts which are not secured debts of the employer and shall be discharged in full before any other unsecured debts, preferred or unpreferred, of the individual or company may rank for dividend or otherwise be paid in whole or in part.

Non-resident employees.

93.—(1) In any case where, in accordance with this Part, an amount—

- (a) has been deducted from the earned income for a year of assessment of an employee who is not, or not ordinarily, resident in the Falkland Islands for the whole of the year immediately preceding that year, and
- (b) has been applied in payment or reduction of the liability to income tax of that employee for that year of assessment,

the amount deducted shall, subject to subsection (2), be deemed for all purposes to be the amount of income tax due in respect of that earned income and, accordingly, the employee may not assert in any proceedings whatsoever that his liability to income tax in respect of that earned income was less than the amount deducted.

(2) Subsection (1) shall not prevent the Commissioner from repaying the whole or any part of an amount deducted in any year to the employee in accordance with section 90 if the employee submits a return of income for that year before the end of the year immediately following that year.

(3) In any case where, before the commencement of the Taxes Ordinance 1994—

- (a) an amount has been deducted in accordance with sections 32A to 32F of the Income Tax Ordinance from the earned income for any year of assessment of an employee who was not, or not ordinarily, resident in the Falkland Islands for the whole of the year immediately preceding that year, and
- (b) the liability of that employee to income tax for that year has not been finally determined,

the amount deducted shall, subject to subsection (4), be deemed for all purposes to be the amount of income tax due in respect of that earned income and, accordingly, the employee may not assert in any proceedings whatsoever that his liability to income tax in respect of that earned income was less than the amount deducted.

(4) If the employee makes a claim before the sixth anniversary of the end of the year of assessment referred to in subsection (3)(a) above, the Commissioner may repay the whole or any part of the amount deducted if, having regard to the claim and any other information available, he is satisfied that a repayment would be just and equitable.

(5) Subsections (1) to (4) above shall not apply in any case where in the opinion of the Commissioner the amount deducted from any earned income for a year of assessment is less than the liability to income tax of the employee for that year.

Time when payment is made.

94.—(1) For the purposes of this Part, a payment of, or on account of, any payment in relation to which any person is under an obligation to make a deduction under this Part, shall be treated as being made at the time found in accordance with the following rules (taking the earlier or earliest time in a case where more than one rule applies)—

- (a) the time when the payment is actually made;
- (b) the time when a person becomes entitled to the payment;
- (c) in a case where the income is income from an employment with a company, the holder of the employment is a director of the company and sums on account of the income are credited in the company's accounts or records, the time when sums on account of the income are so credited;
- (d) in a case where the income is income from an employment with a company, the holder of the employment is a director of the company and the amount of the income for a period is determined before the period ends, the time when the period ends;
- (e) in a case where the income is income from an employment with a company, the holder of the employment is a director of the company and the amount of the income for a period is not known until the amount is determined after the period has ended, the time when the amount is determined.

(2) Subsection (1)(c), (d) or (e) above applies whether or not the employment concerned is that of director.

(3) Paragraph (c), (d) or (e) of subsection (1) above applies if the holder of the employment is a director of the company at any time in the year of assessment in which the time mentioned in the paragraph concerned falls.

(4) For the purposes of the rule in subsection (1)(c) above, any restriction on the right to draw the sums is to be disregarded.

Interpretation of Part IV.

95. In this Part—

- (a) "work", in relation to an employee, means the performance of any duties of the employment of the employee, and any reference to his working shall be construed accordingly;
- (b) a payment is made by an intermediary of the employer if

it is made—

- (i) by a person acting on behalf of the employer and at the expense of the employer or a person connected with him; or
- (ii) by trustees holding property for any persons who include, or class of persons which, includes the employee;
- (c) any reference to assessable income is a reference to income which is assessable to income tax under this Ordinance as the emoluments of an employment;
- (d) any reference to an employer in relation to an employee is a reference to an employer who is liable to tax under this Ordinance in respect of the profits and gains of the business in the course of which the employee performs the duties of his employment with that employer.

Criminal penalties.

96.—(1) Any person who fails to comply with any requirement of the POAT regulations or of a direction under section 86 to pay any sum to the Commissioner commits an offence and shall be liable on conviction to a fine not exceeding level 7 on the standard scale.

(2) Subsection (1) above does not apply in relation to any failure which is a criminal offence by virtue of any provision of the regulations.

(3) Any person who fails to comply with any requirement of the POAT regulations to pay any sum to the Commissioner shall be liable to a penalty equal in amount to that sum.

PART V
TAXATION OF BUSINESSES
CHAPTER I
GENERAL PROVISIONS

*Deductions
allowable.*

97.—(1) Subject to the following provisions of this Chapter, in computing the income of a business for any relevant accounting period there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period for the purposes of the business, including—

- (a) sums payable by way of interest upon borrowed money where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income;
- (b) rent paid for any land or buildings occupied for the purposes of the business;
- (c) any sum expended for repair of premises, plant and machinery employed in the business or for the renewal, repair or alteration of any implement, utensil or article so employed;
- (d) subject to subsection (2) below, bad and doubtful debts incurred in any business;

and any other deduction prescribed by rules made under this Ordinance.

(2) Bad and doubtful debts incurred in any business may be deducted under subsection (1) above from income arising in the relevant accounting period notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period if but only if—

- (a) they have been proved to the satisfaction of the Commissioner to have become bad during that period or, in the case of a doubtful debt, to the extent that it is estimated to the satisfaction of the Commissioner to have become bad during that period, and
- (b) the Commissioner is satisfied that all steps that ought reasonably to have been taken to recover the debts have in fact been taken;

and all sums recovered during the period on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Ordinance be treated as receipts of the business for that period.

(3) The Governor in Council may by rules provide for the method of calculating or estimating the deductions allowed or prescribed under this section.

*Restriction on
deduction of
emoluments before
payment.*

98.—(1) Subsection (2) below applies where—

- (a) a calculation is made of profits or gains which are within the charge to tax and are for a period of account beginning on or after 1st January 1996, and
- (b) relevant emoluments would (apart from subsection (2)) be deducted in making the calculation, and
- (c) the emoluments are not paid before the end of the period of 9 months beginning with the end of that period of account;

and in this section that period of 9 months is referred to as the permitted payment period.

(2) The emoluments—

- (a) shall not be deducted in making the calculation mentioned in subsection (1)(a) above, but
- (b) shall be deducted in calculating profits or gains which are within the charge to tax and are for the period of account in which the emoluments are paid.

(3) Where—

- (a) a calculation such as is mentioned in subsection (1)(a) above is made,
- (b) the calculation is made before the end of the permitted payment period,
- (c) relevant emoluments would (apart from subsection (2) above) be deducted in making the calculation, and
- (d) the emoluments have not been paid when the calculation is made.,

it shall be assumed for the purpose of making the calculation that the emoluments will not be paid before the end of the permitted payment period.

(4) A calculation made in accordance with subsection (3) shall be adjusted if—

- (a) the emoluments are paid after the calculation is made but before the end of the permitted payment period,
- (b) a claim to adjust the calculation is made to the Commissioner, and
- (c) the claim is made before the end of the period of two years beginning with the end of the period of account concerned.

(5) For the purposes of this section "relevant emoluments" are emoluments for a period beginning on or after 1st January 1996 allocated either—

- (a) in respect of particular offices or employments (or both),
or
- (b) generally in respect of offices or employments (or both).

(6) This section applies in relation to potential emoluments as it applies in relation to relevant emoluments, and for this purpose—

- (a) potential emoluments are amounts or benefits reserved in the accounts of an employer, or held by an intermediary, with a view to their becoming relevant emoluments;
- (b) potential emoluments are paid when they become relevant emoluments which are paid.

(7) In deciding for the purposes of this section whether emoluments are paid at any time, section 94 shall apply as it applies for the purposes of Part IV.

*Entertainment
expenses.*

99. Any item of expenditure incurred in entertainment by a person carrying on a business shall be wholly disallowed in ascertaining the profits of the business unless the Commissioner is satisfied that it was reasonably incurred for the purpose of that business.

*Special provisions
relating to
insurance
companies.*

100.—(1) The following provisions of this section shall have effect notwithstanding any provision to the contrary in this Ordinance.

(2) In any case where the gains or profits of an insurance company (other than a life insurance company) accrue in part outside the Falkland Islands, the gains or profits on which tax is chargeable for a chargeable period shall be ascertained by—

- (a) taking the gross premiums and interest and other income received or receivable in the Falkland Islands (less any premiums returned to the insured and premiums paid on re-insurances), and
- (b) deducting from the balance so arrived at, a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the relevant accounting period, and
- (c) adding thereto a reserve similarly calculated for unexpired risks outstanding at the beginning of the relevant accounting period, and
- (d) from the net amount so arrived at deducting the actual losses (less the amount recovered in respect thereof under re-insurance), the agency expenses in the Falkland Islands and a fair proportion of the expenses of the head office of the company.

(3) Subject to subsection (4) below, the gains or profits of a life insurance company, whether mutual or proprietary, on which tax is payable shall be the investment income less the management expenses (including commission).

(4) Where such a company received premiums outside the Falkland Islands, the gains or profits shall be the same proportion of the total investment income of the company as the premiums received in the Falkland Islands bore to the total premiums received after deducting from the amount so arrived at the agency expenses in the Falkland Islands and a fair proportion of the expenses of the head office of the company.

*Excess benefits in
kind, and
remuneration of
non-resident
directors.*

101.—(1) Where—

- (a) in any relevant accounting period an employer carrying on a business provides a benefit which is a prescribed benefit to or in respect of any employee of his employed in that business in that period, and
- (b) the prescribed value of that benefit (or aggregate values if more than one is provided to the employee) exceeds the employee's remuneration or a prescribed percentage of his remuneration, or exceeds such other

amount as may be prescribed,
 an amount equal to the amount of that excess shall be treated as a trading receipt of the business for that period.

(2) In subsection (1) above "remuneration", in relation to any accounting period of any business, means earned income of an employee which as respects his employment in that business in that period falls within section 83(2) and any amount which by reason of that employment—

- (a) is for the year of assessment beginning in that accounting period chargeable to tax by virtue of rules made under section 8, or
- (b) is otherwise treated as his income in that period for the purposes of income tax.

(3) The Governor in Council may make rules for the purposes of subsection (1) above which shall not come into effect unless they are confirmed by the Legislative Council at the meeting next following publication of the rules.

(4) Where during the whole or any part of an accounting period of a company ("the relevant period")—

- (a) any of its directors are non-resident, and
- (b) more than 50 per cent. of the ordinary share capital is held by its directors,

the deduction permitted to be made from the company's profits and gains for the relevant period or any other accounting period in respect of any remuneration of a director attributable to any time during the relevant period when he is non-resident shall not exceed—

- (i) 15 per cent. of the company's chargeable income for that accounting period (computed before making any deduction in respect of the remuneration of the directors), or
- (ii) £7,500,

whichever is the greater, so however that the deduction shall in no case exceed £15,000.

(5) For the purposes of subsection (4)—

- (a) shares are held by a director if they are held by the director himself or by any person connected with him; and
- (b) "non-resident" means not resident in the Falkland Islands.

(6) Subsection (4) does not apply in relation to the remuneration of any director if that remuneration (after making any deduction permitted by any provision of this Ordinance apart from this section) is chargeable income in the hands of the director.

*Augmented
 deduction of
 training expenses.*

102.—(1) Where the Commissioner is satisfied—

- (a) that any expenditure has reasonably been incurred by a person carrying on a business on the training or education of a person employed or intended to be employed in that business; and

(b) that the training or education was incurred for the purpose of improving the value of that person as an employee in that business or of fitting him (if not already employed) for employment in the business, the Commissioner shall, in addition to the actual amount of that expenditure, allow a further sum equal to one-half of that amount to be deducted from the profits of the business.

(2) For the purposes of subsection (1)—

(a) a sole owner of and any partner in any business shall be taken to be employed, as an employee, in that business, and

(b) "training or education" does not include education at any school, college, institution or establishment however described which a person attends for the purpose of non-vocational education below the tertiary education level.

Relief for pre-

trading expenditure. 103.—(1) Where a person incurs expenditure, not being expenditure to which any provision of Chapter II of this Part applies, for the purposes of a business before he commences to carry on that business, then subject to subsection (2) he shall be deemed for all the purposes of income tax and corporation tax, to have incurred that expenditure on the first day on which he commences to carry on that business.

(2) Relief under subsection (1) shall be given on a claim but the Commissioner may disallow any claim for the relief in any case where he is satisfied that the expenditure was not incurred in good faith for the purposes of the business.

Certain payments of interest not deductible.

104.—(1) Any payment of interest by a company in respect of securities issued by the company—

(a) where the securities are held by a non-resident company and either—

(i) that company owns (directly or indirectly) not less than 75 per cent. of the ordinary share capital of the issuing company, or

(ii) another non-resident company owns (directly or indirectly) not less than 75 per cent. of the ordinary share capital of both companies; or

(b) where—

(i) the securities are held by a non-resident company, and

(ii) a resident company directly owns less than 90 per cent. of the share capital of the issuing company and another resident company owns (directly or indirectly) not less than 75 per cent. of the ordinary share capital of both the issuing company and the company holding the securities,

shall not be deductible in ascertaining the chargeable income of the company unless and to the extent that the Commissioner directs the company that the payment may be deducted.

(2) In this section—

"non-resident company" means a company which is not resident in the Falkland Islands;

"resident company" means a company which is resident in the Falkland Islands, and

"securities" includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company.

CHAPTER II DEPRECIATION ALLOWANCES

General

*Initial and writing
down allowances:
general provisions.*

105.—(1) In ascertaining the chargeable income of any person carrying on a business, there shall, subject to the provisions of this Ordinance, be made allowances and charges in accordance with this Chapter.

(2) Subject to section 111(4) to (6), allowances and charges shall not be made under any provision of this Chapter in relation to a petroleum licence.

(3) Effect shall be given—

- (a) to any allowance and deduction authorized by this Chapter on a claim being made in that behalf by the person entitled to the allowance or deduction.;
- (b) to an allowance claimed by a company for any accounting period, by treating the amount of the allowance as a trading expense of the company in that period; and
- (c) to any balancing charge under this Chapter, by treating the amount of the charge as a trading receipt of the business concerned.

(4) Subject to any contrary provision—

- (a) in any case where, because a person has no (or insufficient) chargeable income for any chargeable period, the whole or part of an allowance cannot be made for that period, the allowance, or that part of the allowance to which effect has not been given, shall be carried forward and, so far as may be, shall be made in subsequent periods, and
- (b) where paragraph (a) applies in respect of allowances claimed in respect of expenditure incurred in more than one basis period, effect shall be given to the allowances in the order in which the expenditure was

incurred, taking the most recently incurred expenditure first.

(5) Where—

- (a) expenditure is incurred otherwise than in the open market, and
 - (b) apart from this subsection, an allowance could be claimed under this Chapter in relation to the expenditure, and
 - (c) the amount of the expenditure exceeds what it would have been if it had been incurred in the open market,
- then, for the purposes of this Chapter, the amount of that expenditure shall be taken to be the amount of the expenditure less the amount of that excess.

(6) A person may elect not to take the benefit of the whole or part of any allowance or deduction to which he is entitled under this Chapter.

*Interpretation for
purposes of Chapter
II*

106.—(1) Any reference in this Chapter to assets representing any expenditure includes any results obtained from any search, exploration or inquiry upon which the expenditure was incurred.

(2) Any reference in this Chapter to an asset includes a reference to a part of an asset or a share in an asset and—

- (a) subject to section 123, where an apportionment of any expenditure is required for the purposes of any provision of this Chapter, whether the requirement is express or implied, the apportionment shall be made on a just and reasonable basis; and
- (b) for the purposes of this Chapter, a share in an asset of any description shall be deemed to be used for the purposes of a business so long as, and only so long as, the asset is used for those purposes.

(3) Where a person has claimed or may claim an allowance under this Chapter in respect of expenditure incurred on the provision of an asset or represented by an asset, then for the purposes of this Chapter (but subject to section 114) "relevant event", in relation to that person and that asset, means any one of the following events, namely—

- (a) it ceases to belong to him; or
- (b) he loses possession of it in circumstances where it is reasonable to assume that the loss is permanent; or
- (c) it ceases to exist as such (as a result of destruction, dismantling or otherwise); or
- (d) it begins to be used wholly or mainly otherwise than for the purposes of the trade; or
- (e) the trade is permanently discontinued (or is treated by virtue of any provision of this Ordinance as permanently discontinued); or
- (f) that person ceases to be within the charge to tax in the Falkland Islands in respect of the business for the purposes of which the asset is used; or
- (g) the asset ceases to be situated in the Falkland Islands or any designated area, unless its absence is only temporary and not for the purposes of any business

carried on (wholly or partly) outside the Falkland Islands and the designated areas; or

- (h) in the case of computer software or the right to use or otherwise deal with computer software, he grants to another person a right to use or otherwise deal with the whole or part of the computer software concerned in circumstances where the consideration in money for the grant constitutes (or if there were consideration in money for the grant would constitute) a capital sum;

but the disposal of a petroleum licence or its surrender or determination in accordance with the terms of the licence or the disposal of any intellectual property shall not be a relevant event for the purposes of this Chapter.

(4) In this Chapter—

"basis period" in relation to a chargeable period, means the period on the income of which income tax or corporation tax for that chargeable period falls to be computed;

"building" does not include land;

"expenditure", in relation to the acquisition of a capital asset, means, subject to subsection (5) below, the amount spent on the provision of that asset by the person claiming the depreciation deduction, subject to sections 121 and 122, but any amount spent on the provision of a building does not include the cost or value of the land on which it is built;

"market value", in relation to any asset at any time, means the price which the asset would have fetched if sold in the open market at that time; and

"written-down value", in relation to a capital asset, means the amount of the expenditure incurred in acquiring the asset less the sum of any initial and writing-down allowances made in respect of the asset for all earlier chargeable periods.

(5) In any case where—

- (a) a person claims an allowance under this Chapter as respects an asset the expenditure on the acquisition of which was incurred in a chargeable period earlier than the period in which the asset is first used for the purposes of a business, and

- (b) the asset was used for other purposes before first being using for the purposes of the business, and

- (c) the market value of the asset at the time it is first so used is less than the expenditure on its acquisition actually incurred by that person,

then, for the purposes of this Chapter, subject to any provision to the contrary, the expenditure on the acquisition of the asset shall be taken to be equal to the market value of that asset at the time it is so first used.

*Deductions in
respect of
expenditure on
scientific research*

107.—(1) The provisions of this section shall have effect subject to section 110(3) but, subject to that, shall have effect notwithstanding any other provision of this Ordinance.

(2) There shall be allowable as a deduction in ascertaining a person's chargeable income for a chargeable period an amount equal to the amount of—

- (a) expenditure (whether of a capital nature or not) on scientific research related to any business carried on by that person and directly undertaken by him or on his behalf, or
- (b) any sums paid to any scientific research association approved for the purposes of this section by the Governor being an association which has as its object the undertaking of scientific research related to the class of business to which the business he is carrying on belongs, or
- (c) any sums paid to any university, institute, association or other body approved for the purposes of this section by the Governor to be used to fund any such research, if the expenditure was incurred or the sums paid by that person in the basis period for that chargeable period.

(3) For the purposes of this section expenditure on the provision of a dwelling is not scientific research expenditure; but where—

- (a) part of a building is used for scientific research and part consists of a dwelling, and
- (b) the capital expenditure which it is just to apportion to the construction or acquisition of the dwelling is not more than one-quarter of the capital expenditure which is referable to the construction or acquisition of the whole building,

the whole building shall be treated for the purposes of this Chapter as used for scientific research.

(4) Where a person incurs capital expenditure which is partly within subsection (2) above and partly not, such apportionment of the expenditure shall be made for the purposes of this section as may be just and reasonable.

(5) Where a person who carries on any business has, before commencing to carry on that business, incurred expenditure on scientific research related to that business and directly undertaken by him or on his behalf, the expenditure incurred shall be deemed (for all purposes of the charge to tax) to have been incurred on the first day on which he does carry on that business.

(6) Subsection (5) above does not apply where the business is commenced before 1st January 1996 but, subject to that, applies to expenditure whenever incurred.

*Assets ceasing to
belong to
businesses etc.*

108.—(1) Subsections (2) and (3) below shall have effect where a relevant event occurs with respect to an asset of a capital nature which

represents allowable scientific research expenditure incurred by the person carrying on a business.

(2) If the relevant event occurs in or after the chargeable period for which an allowance in respect of the expenditure is made under section 107, then, subject to subsection (8) below—

(a) the sum by which the aggregate of the disposal value of the asset and the amount of the allowance exceeds the amount of the expenditure, or

(b) the amount of the allowance if it is less than that sum, shall be treated as a trading receipt of the business accruing at the time of the relevant event or, if the relevant event occurs on or after the date on which the business is permanently discontinued, accruing immediately before the discontinuance.

(3) If the relevant event occurs before the chargeable period for which an allowance in respect of the expenditure would fall to be made under section 107—

(a) that allowance shall not be made, but

(b) subject to subsection (8) below, if the disposal value of the asset is less than the expenditure, an amount equal to the difference shall be treated as a trading expense of the business for the chargeable period in which the relevant event occurs.

(4) For the purposes of this section the disposal value of an asset depends upon the nature of the relevant event, and—

(a) if that event is the actual sale of the asset at a price not lower than that which it would have fetched in the open market, equals the proceeds of that sale;

(b) if that event is the deemed sale of the asset under subsection (5) below, equals the deemed proceeds of sale under that subsection; and

(c) in any other event, equals the price which the asset would have fetched if sold in the open market.

(5) Where an asset is destroyed, it shall for the purposes of this section be treated as if it had been sold immediately before its destruction, and any insurance moneys or other compensation of any description received by the person carrying on the business in respect of the destruction, and any moneys received by him for the remains of the asset, shall be treated as if they were proceeds of that sale.

(6) Where subsection (5) above has effect on the demolition of an asset, the cost of demolition to the person carrying on the business shall, for the purposes of subsections (2) and (3) above, be added to the expenditure represented by the asset.

(7) Where—

(a) subsection (6) applies in a case falling within subsection (2), and

(b) by reason of the addition made under subsection (6), the

aggregate there referred to is less than the amount of the expenditure represented by the asset, and

- (c) the asset had not prior to its demolition begun to be used for purposes other than scientific research related to the business,

then, subject to subsection (8) below, a deduction equal to the difference shall be allowed in computing the chargeable income of the person carrying on the business for the chargeable period in which the asset is treated as having been sold or, if it is treated as having been sold on or after the date on which the business is permanently discontinued, for the last chargeable period in which the business was carried on before the discontinuance.

(8) No amount shall be allowed or charged by virtue of this section in respect of any relevant event if that event gives rise to a balancing allowance or balancing charge under any other provision of this Chapter.

Interpretation of sections 107 and 108.

109.—(1) In this Chapter—

- (a) "scientific research" means any activities in the fields of natural or applied science for the extension of knowledge;
- (b) "scientific research expenditure" means expenditure incurred on scientific research;
- (c) references to expenditure incurred on scientific research do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research, but, subject to that and to section 110(3), include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research;
- (d) references to scientific research related to a business or a class of businesses include—
 - (i) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, of businesses of that class;
 - (ii) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, of businesses of that class.

(2) The same expenditure shall not be taken into account for any of the purposes of sections 107 or 108 in relation to more than one business.

(3) Any reference in sections 107 and 108 to a business is, except in relation to a class of business, a reference to a business as respects which the person carrying on the business is within the charge to tax in the Falkland Islands.

(4) If any question arises under this Chapter as to whether, and if so to what extent, any activities constitute or constituted, or any asset is or was being used for, scientific research, the Commissioner shall refer the question

for decision to the Governor and his decision shall be final.

(5) Any reference in this section or section 107 or 108 to the time when an asset ceases to belong to a person shall, in the case of a sale, be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier.

(6) The cost to a person of the demolition of any property to which section 108(6) applies shall not be treated for the purposes of this Chapter as expenditure incurred in respect of any other property by which that property is replaced.

Petroleum extraction activities

*Petroleum
extraction
activities: general
provisions.*

110.—(1) In this Part—

"intangible drilling costs" means capital costs directly attributable to the drilling of development or production wells, other than costs which are directly attributable to the acquisition of any machinery or plant;

"petroleum" has the same meaning as in section 140(1); and
"petroleum exploration and appraisal" means searching for petroleum, ascertaining the characteristics of any petroleum-bearing area beneath controlled waters or ascertaining what are the petroleum reserves of any such area.

(2) For the purposes of this Chapter, expenditure on petroleum exploration and appraisal incurred by a person carrying on a ring fence trade in connection with that trade (whether before or after that trade begins to be carried on) shall be deemed to have been incurred for the purposes of that trade.

(3) Expenditure within section 111(1)(a), (b) or (c), whether incurred by a person carrying on a ring fence trade or not, shall not be eligible for an allowance or deduction under section 107 and accordingly is not expenditure within subsection (2) or (5) of that section.

(4) The following is not expenditure within section 111(1)—

- (a) any expenditure on buildings or structures provided for occupation by or for the welfare of workers;
- (b) any expenditure on a building where the whole of the building was constructed for use as an office; and
- (c) any expenditure on so much of a building or structure as was constructed for use as an office, if the capital expenditure on the construction of the part of the building or structure constructed for use as an office exceeded one-tenth of the capital expenditure incurred on the construction of the whole building or structure.

*Expenditure eligible
for allowances.*

111.—(1) Subject to section 110(4), in ascertaining the ring fence

income of a person carrying on a ring fence trade for a chargeable period, allowances and charges shall be made, in accordance with this section and sections 112 to 115, in respect of—

- (a) expenditure incurred by him on petroleum exploration and appraisal;
- (b) expenditure incurred by him on intangible drilling costs;
- (c) expenditure incurred by him on the provision of machinery or plant for the purposes of the trade other than any expenditure falling within paragraph (a) above.

(2) In any case where—

- (a) expenditure not falling within subsection (1)(a) or (c) above is incurred at any time by any person on the provision of an asset, and
- (b) at any later time that asset begins to be used by that person for the purposes of petroleum exploration and appraisal or for the purposes of a ring fence trade, without any relevant event having occurred in relation to that asset,

then, for the purposes of this Chapter, that person shall be treated as if at that later time he had acquired the asset for the purposes for which it is then used and had incurred expenditure on its acquisition equal to the market value of that asset at that time or equal to his original expenditure on that asset if less (and accordingly such expenditure shall be treated for the purposes of this Chapter as falling within subsection (1)(a) or (c) above, as the case may be).

(3) Subject to subsection (4) below, where expenditure falling within subsection (1)(a) or (b) above is incurred by any person before he begins to carry on a ring fence trade, then that person shall be treated for the purposes of this section as incurring, on the first day on which he begins to carry on that trade, an amount of expenditure on petroleum exploration and appraisal or on intangible drilling costs (as the case may be) equal to the amount of that expenditure, less any amount of such expenditure which is attributable to the provision of an asset which that person has disposed of before he begins to carry on that trade.

(4) Where—

- (a) a person who holds a petroleum licence or any interest or share in such a licence ("the seller") has incurred expenditure within subsection (1)(a) or (b) above in relation to the licensed area, and
- (b) the seller has not claimed any allowances under this Chapter in relation to that expenditure, and
- (c) before he begins to carry on a ring fence trade, the seller disposes of all or part of his interest or share in the licence to another person ("the buyer"), whether before or after the buyer begins to carry on a business,

then, subject to subsections (5) and (6) below, an amount equal to the amount of that expenditure shall, for all purposes of the charge to tax (including further applications of this subsection where the licence is subsequently disposed of by the buyer before claiming an allowance), be deemed not to have been incurred by the seller but to have been incurred by the buyer on

petroleum exploration and appraisal or on intangible drilling costs on the day on which the buyer acquired the licence.

(5) The amount of expenditure incurred by the seller which under subsection (4) above is to be deemed to be incurred by the buyer shall not include any expenditure attributable to any assets—

(a) expenditure on the provision of which by the seller does not fall within subsection (1)(a) or (b) above, or

(b) which either—

(i) belong to the seller immediately before the disposal, whether or not they are transferred to the buyer together with the licence or by a related transaction, or

(ii) have been disposed of before the disposal of the licence takes place, or

(c) where the seller retains an interest or share in the licence, any amount of expenditure which on a just and reasonable apportionment may be attributed to the interest or share retained.

(6) The amount of expenditure incurred by the seller which under subsection (4) above is to be deemed to be incurred by the buyer shall not exceed the lower of the following amounts—

(a) the amount of expenditure actually incurred by the seller as mentioned in subsection (4)(a) above, less any amount attributable to any asset within subsection (5) above,

(b) the amount or value of the consideration given by the buyer for the licence and any other asset disposed of by the same transaction, less any amounts excepted by subsection (5) above,

(c) the market value of the licence apart from any asset within subsection (5) above.

(7) In any case where—

(a) expenditure falling within subsection (1)(c) above is incurred by any person on the provision of any machinery or plant before he begins to carry on a ring fence trade, and

(b) when he does begin to carry on that trade the asset belongs to him,

then that person shall be treated for the purposes of this section as if he had incurred the expenditure on the first day on which he begins to carry on that trade.

Where an asset has been used otherwise than for the purposes of a ring fence trade, and the market value of the asset on the day he begins to carry on the ring fence trade is less than the amount of expenditure which he is deemed to have incurred, then he shall be deemed to have incurred expenditure equal to that market value on the provision on that asset.

(8) Where expenditure falling within subsection (1)(c) above is incurred by any person on the provision of any machinery or plant before he

begins to carry on a ring fence trade, then if—

- (a) that machinery or plant is sold, demolished, destroyed or abandoned before the ring fence trade is commenced, and
- (b) the amount of that expenditure exceeds the amount of any sale, insurance, salvage or compensation moneys resulting from the sale, demolition, destruction or abandonment of that machinery or plant,

that person shall be treated for the purposes of this section as incurring, on the first day on which he begins to carry on that trade, an amount of expenditure on the provision of plant and machinery equal to the amount of that excess.

(9) The provisions of subsections (4) to (6) above are without prejudice to the application of subsection (3) above in relation to any asset other than a petroleum licence.

Allowances and charges.

112.—(1) There shall be allowable as a deduction in ascertaining the ring fence income of a person carrying on a ring fence trade for a chargeable period an amount equal to the amount of expenditure incurred by that person—

- (a) on petroleum exploration and appraisal in the basis period for that chargeable period;
- (b) on intangible drilling costs in the basis period for that chargeable period.

(2) Where—

- (a) an allowance under this section has been made to a person in taxing his ring fence trade as respects expenditure within section 111(1)(a) or (b), and
- (b) a relevant event occurs in relation to an asset representing that expenditure (and a relevant event has not occurred earlier in relation to the asset),

there shall be made on that person a balancing charge on an amount equal to the amount of that expenditure or, if less, the amount of the disposal value of the asset on that relevant event.

(3) Where—

- (a) by virtue of section 111(4) an allowance has been made to a person with an interest or share in an oil licence in respect of expenditure falling within section 111(1)(a) or (b), and
- (b) that person disposes of his interest or share in the licence concerned,

then, unless the Commissioner is satisfied that that person did not acquire his interest or share in the licence wholly or mainly for the purpose of obtaining that allowance, there shall be made on that person a balancing charge on an amount equal to the amount of that expenditure or such lesser amount as the Commissioner may direct.

For the purposes of this subsection, the reference to a person disposing of his interest or share in a licence includes a reference to his surrendering that interest or share and to its termination in accordance with the terms of the

licence.

(4) A writing-down allowance shall be made for a chargeable period, in accordance with subsection (5) below, to a person carrying on a ring fence trade in relation to expenditure incurred by him on the acquisition of any machinery or plant (not falling within section 111(1)(a)) for the purposes of the trade by reference to the amount (if any) by which A exceeds (B + C) where as respects that chargeable period—

A is the amount of his expenditure on the acquisition of such machinery or plant in the basis period for that period or any earlier period;

B is the amount of any writing-down allowances previously made in respect of that expenditure; and

C is the disposal value of any asset—

(a) expenditure on the acquisition of which is qualifying expenditure taken into account under A above; and

(b) in respect of which, in the basis period for the chargeable period, any one of the relevant events first occurs;

and the amount of that excess is referred to in subsection (5) below as “the relevant amount”.

(5) The writing-down allowance to be made under subsection (4) above shall—

(a) where paragraph (b) does not apply, be equal to 25 per cent. of the relevant amount found under that subsection (proportionately reduced or increased if the period is a period of less or more than a year, or the trade has been carried on for part only of the period);

(b) where during the basis period for the chargeable period in question the trade is permanently discontinued, be equal to the whole of the relevant amount so found.

(6) In any case where—

(a) an allowance is made or to be made, by virtue of subsection (5)(b) above, for the chargeable period in which the person claiming the allowance ceases to carry on his ring fence trade, but

(b) the whole or part of the allowance cannot be made because of an insufficiency of ring fence income for that chargeable period,

the allowance, or that part of the allowance to which effect has not been given, shall be made for the 3 immediately preceding periods (but the allowance may only be made against ring fence income of an earlier period in so far as there is an insufficiency of ring fence income for later periods).

(7) For any chargeable period for which C exceeds (A - B), where C, A and B have the same meanings as in subsection (4), there shall be made on the person concerned a balancing charge on an amount equal to that excess.

section 112 the disposal value of any asset depends upon the relevant event by reason of which it falls to be taken into account and shall be found in accordance with the following provisions of this section.

(2) The disposal value of any asset shall in no case exceed the capital expenditure incurred by the person in question on the provision of the asset for the purposes of the trade.

(3) Where the relevant event is the sale of the asset, then if—

(a) the price is lower than that which it would have fetched if sold in the open market, and

(b) the buyer's expenditure on the acquisition of the asset cannot be taken into account in making allowances to him under section 112,

the disposal value equals the price which the asset would have fetched if sold in the open market.

(4) If the relevant event is the sale of the asset and subsection (3) above does not apply, the disposal value equals the net proceeds to the person in question of the sale, together with any insurance moneys received by him in respect of the asset by reason of any event affecting the price obtainable on the sale, and, so far as it consists of capital sums, any other compensation of any description so received.

(5) If the relevant event is the destruction of the asset (otherwise than by demolition), the disposal value equals the net amount received by the person in question for the remains of the asset, together with any insurance moneys received by him in respect of the destruction and, so far as it consists of capital sums, any other compensation of any description so received.

(6) If the relevant event is the permanent loss of the asset otherwise than in consequence of its demolition or destruction, the disposal value equals any insurance moneys received by him in respect of the loss, and, so far as it consists of capital sums, any other compensation of any description so received.

(7) If the relevant event is the permanent discontinuance of the trade before the occurrence of an event within subsection (3), (4), (5) or (6), the disposal value is the same as the disposal value for the last-mentioned event.

(8) If the relevant event is the grant of a right to use or otherwise deal with computer software for a consideration not consisting or not wholly consisting in money, the disposal value equals the consideration in money which would have been given if the right had been granted in the open market.

(9) If—

(a) the relevant event is the grant of a right to use or otherwise deal with computer software for no consideration or for a consideration in money lower than that which would have been given if the right had been granted in the open market, and

(b) the grantee's expenditure on the acquisition of the right

cannot be taken into account in making allowances to him under section 112,
 then, unless subsection (8) above applies, the disposal value equals the consideration in money which would have been given if the right had been granted in the open market.

(10) If the relevant event is the grant of a right to use or otherwise deal with computer software and subsection (8) or (9) above does not apply, the disposal value equals the aggregate of—

- (a) the net consideration in money received by the grantor in respect of the grant,
- (b) any insurance moneys received by him in respect of the computer software by reason of any event affecting the consideration obtainable on the grant, and
- (c) so far as it consists of capital sums, any other compensation of any description so received.

(11) In the case of any other relevant event (not falling within section 114), the disposal value equals the price which the asset would have fetched if sold in the open market at the time of the event.

(12) In deciding for the purposes of subsection (2) above whether the disposal value of computer software or the right to use or otherwise deal with computer software exceeds the capital expenditure incurred by a person on its provision, the disposal value shall (for the purposes of that subsection only) be taken to be increased by the amount of any disposal value which, in respect of that person and that software or right, falls or has fallen to be taken into account for the purposes of section 112 by virtue of any previous event falling within section 106(3)(h).

(13) Where the person mentioned in subsection (2) above has acquired the asset as a result of a transaction which was, or a series of transactions each of which was between connected persons, that subsection shall have effect as if it referred to the capital expenditure on the provision of the asset incurred by whichever party to that transaction, or to any of those transactions, incurred the greatest such expenditure.

*Demolition and
abandonment costs.*

114.—(1) The demolition or abandonment of any machinery or plant used for the purposes of a ring fence trade shall not be a relevant event for the purposes of sections 112 and 113 but the following provisions of this section shall have effect in relation to the demolition or abandonment.

(2) Where machinery or plant used for the purposes of a ring fence trade is demolished or abandoned, then—

- (a) if the person carrying on the trade replaces the machinery or plant by other machinery or plant, the net cost to him of the demolition or abandonment shall be treated for the purposes of this Chapter as expenditure incurred by him on the provision of that other machinery or plant (in addition to the expenditure actually incurred on its provision), and

- (b) if the person carrying on the trade does not replace the machinery or plant, the expenditure to be taken into account in accordance with section 112(4) under head A for the chargeable period related to the demolition or abandonment shall be treated as increased by the net cost to him of the demolition or abandonment.

(3) In subsection (2) above, any reference to the net cost of the demolition or abandonment of any machinery or plant is a reference to the excess, if any, of the cost of the demolition or abandonment over any moneys received for the remains of the machinery or plant.

(4) This subsection applies to abandonment expenditure, that is to say, expenditure incurred by any person which, apart from subsection (6) below, would fall within subsection (2)(b) above and which is incurred—

- (a) for the purposes of or in connection with the closing down of, or of any part of, that person's ring fence trade in the whole or any part of a licensed area, and
- (b) on the demolition or abandonment of machinery or plant which has been brought into use for the purposes of that trade and which is or forms part of an offshore installation or a submarine pipe-line, and
- (c) on demolition or abandonment which is carried out, wholly or substantially, in order to comply with an abandonment programme, or with any condition to which the approval of such a programme is subject.

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(5) In subsection (4) above "abandonment programme", "offshore installation" and "submarine pipe-line" have the same meaning as in Part V of the Offshore Minerals Ordinance 1994.

(6) If the abandonment expenditure exceeds any moneys received for the remains of the machinery or plant concerned and the person incurring the abandonment expenditure so elects, then—

- (a) an allowance shall be made to that person, for the chargeable period in which the expenditure is incurred, of an amount equal to that excess; and
- (b) subsection (2)(b) above shall not apply in relation to that excess.

(7) An election under this section—

- (a) shall specify the abandonment expenditure to which it relates and the amounts of any such moneys received as mentioned in subsection (6) above;
- (b) shall be made by notice in writing given to the Commissioner not later than two years after the end of the chargeable period in which the abandonment expenditure was incurred; and
- (c) shall be irrevocable.

(8) In any case where—

- (a) a person ("the former trader") ceases to carry on a ring fence trade, and

- (b) within the period of 3 years immediately following the last day on which he carried on that trade, the former trader incurs expenditure ("post-cessation expenditure") on the demolition or abandonment of machinery or plant which falls within subsection (4)(b), and
 - (c) the post-cessation expenditure would have been abandonment expenditure for the purposes of this section if the demolition had been carried out and the expenditure incurred before the cessation of the ring fence trade; and
 - (d) apart from this section, the post-cessation expenditure would not be deductible in computing the income of the former trader for any purpose of this Ordinance,
- then the former trader's expenditure on machinery or plant for the last chargeable period in which he carried on his ring fence trade shall be treated for the purposes of section 112 as increased by so much of the post-cessation expenditure as exceeds any moneys received in the 3 year period referred to in paragraph (b) above for the remains of the machinery or plant referred to in that paragraph.

(9) Where subsection (8) above applies, any moneys received as mentioned in that subsection shall not constitute income of the former trader for any purpose of this Ordinance.

(10) In any case where—

- (a) an allowance is made or to be made, by virtue of subsection (6) or (8) above, for any chargeable period, but
- (b) the whole or part of the allowance cannot be made because of an insufficiency of ring fence income for that chargeable period,

the allowance, or that part of the allowance to which effect has not been given, shall be made for the 3 immediately preceding periods (but the allowance may only be made against ring fence income of an earlier period in so far as there is an insufficiency of ring fence income for later periods).

(11) All such adjustments shall be made, whether by way of discharge or repayment of tax or otherwise, as may be required in consequence of the provisions of subsections (8) and (10) above.

Effect of use partly for trade etc and partly for other purposes.

115.—(1) Where a person carrying on a trade incurs capital expenditure on the provision of machinery or plant partly for the purposes of his ring fence trade and partly for other purposes, it shall be assumed for the purposes of sections 111, 112 and 114 that he incurred the expenditure on the provision of the machinery or plant wholly and exclusively for the purposes of another trade ("the notional trade") carried on by him separately from the ring fence trade and any other trade carried on by him.

(2) In any case where—

- (a) a person has incurred expenditure on the provision of

machinery or plant for the purposes of a ring fence trade, and

- (b) that person is required to bring the disposal value of the machinery or plant into account for any chargeable period because in that period the asset ceases to be used mainly for the purposes of that trade,

it shall be assumed for the purposes of sections 111, 112 and 114 that, immediately after the beginning of that chargeable period, that person incurred capital expenditure equal to that disposal value on the provision of the machinery or plant wholly and exclusively for the purposes of another trade carried on by him separately from the ring fence trade and any other trade carried on by him.

(3) Without prejudice to section 106(3)(a) to (c), it shall be assumed for the purposes of section 112 that the notional trade is permanently discontinued on the machinery or plant beginning to be used wholly for purposes other than those of the ring fence trade.

(4) The allowance or charge under section 112 which, on the above assumptions, and having regard to subsection (5) below, would fall to be made for any chargeable period in the case of the notional trade—

- (a) shall be reduced to such extent as may be just and reasonable having regard to all the relevant circumstances of the case and, in particular, to the extent to which the machinery or plant was used in that chargeable period otherwise than for the purposes of the actual trade; and
- (b) shall, as so reduced, be made for that chargeable period in the case of the actual trade.

(5) If an allowance under section 112 falling to be made by virtue of this section for any chargeable period in the case of the actual trade is not claimed or is reduced in amount in accordance with an election under section 105(6) then, in determining the allowance or charge under section 112 which would fall to be made for any subsequent chargeable period in the case of the notional trade, any allowance falling to be made in the case of that trade for the first-mentioned chargeable period shall be treated as not claimed or, as the case may require, as proportionately reduced.

Other depreciation allowances

Initial allowances and writing-down allowances for capital expenditure.

116.—(1) Where in the basis period for a chargeable period a person carrying on a business incurs expenditure in the acquisition of any capital asset mentioned in any of subsections (6) to (9) below which is or is to be used for the purposes of the business, in computing that person's chargeable income for that and subsequent chargeable periods there shall be allowed, subject to subsections (2) and (3) below and sections 105 and 106, an initial allowance or a writing-down allowance in that and subsequent chargeable periods in accordance with the subsection in question or section 117.

(2) An allowance may not be made under subsections (6) to (9) below or section 117 in relation to any expenditure on scientific research within the meaning of section 110 or any expenditure falling within section 111(1)(a),

(b) or (c).

(3) An initial allowance may not be made under subsections (6) to (9) below in relation to any expenditure (not falling within subsection (2) above) on an asset which is used in or in connection with exploration or exploitation activities.

(4) Where a person carrying on a business claims an allowance under this section in respect of a capital asset which is to be used partly for purposes other than the purposes of the business, the expenditure incurred on the acquisition of the asset shall be apportioned between the different uses.

(5) Where a person incurs expenditure on the acquisition of a capital asset which is to be used for the purposes of a business before he carries on that business, he shall be deemed for the purposes of this section to have incurred that expenditure on the first day on which he commences to carry on that business.

(6) Subject to subsections (2) and (3) above, if the asset is machinery or plant (including for this purpose ships and motor vehicles but not aircraft) an initial allowance of up to 100 per cent. of the expenditure may be made.

(7) If the asset is—

- (a) an industrial building used for the purpose of productive manufacturing or processing, or
 - (b) a commercial or agricultural building, or
 - (c) any building used for the purposes of mining or fishing,
- an initial allowance of up to 50 per cent. of the expenditure and a writing-down allowance of 10 per cent. per annum of the written-down value of the asset shall be made.

(8) If the asset is a hotel building, an initial allowance of up to 50 per cent. and a writing-down allowance of 10 per cent. per annum of the written-down value of the asset shall be made.

(9) Subject to subsection (10), if the asset is any other building, a writing-down allowance of 10 per cent. per annum of the written-down value of the asset shall be made, and, notwithstanding any provision to the contrary in this Ordinance, the excess of sale proceeds or insurance recoveries over the written-down value of a building which is occupied as a residence shall not give rise to a balancing charge.

(10) In the case of a building used as residential accommodation, an allowance shall not be made under subsection (9)—

- (a) except as provided by subsection (11), where the building is occupied by the person claiming the allowance or by a person connected with that person;
- (b) except as provided by subsection (11), where the building is occupied by a major shareholder of the person claiming the allowance or by a person connected with such a shareholder;
- (c) except as provided by subsection (12), where the freehold

title or lease out of which the tenancy or occupation of the building derives passes to the ownership of any person other than the person who originally incurred the expenditure involved in the construction of the building.

(11) Subsection (10)(a) and (b) do not apply where the Commissioner is satisfied that the building is or is to be occupied principally for agricultural purposes.

(12) Subsection (10)(c) does not apply where the Commissioner is satisfied—

- (a) that the new owner is engaged in the business of agriculture; and
- (b) that the building is or is to be occupied principally for agricultural purposes.

(13) In any case where a building is or is to be used for more than one purpose, this section shall apply in relation to each part separately and such apportionment of expenditure shall be made as between the different parts as is in the opinion of the Commissioner just and equitable.

Writing-down allowances and balancing charges for machinery and plant.

117.—(1) Subject to section 116(2), a writing-down allowance shall be made for a chargeable period in accordance with subsection (2) below to a person carrying on a business in relation to expenditure incurred by him on the acquisition of any machinery or plant which is or is to be used for the purposes of the business, by reference to the amount (if any) by which A exceeds (B + C) where as respects that chargeable period—

A is the amount of his expenditure on the acquisition of such machinery or plant in the basis period for that period or any earlier period;

B is the amount of any writing-down or initial allowances previously made in respect of that expenditure; and

C is the disposal value of any asset —

- (a) expenditure on the acquisition of which is qualifying expenditure taken into account under A above; and
- (b) in respect of which, in the basis period for the chargeable period, any one of the relevant events first occurs;

and section 113 shall apply for the purposes of this section as it applies for the purposes of section 111.

(2) The writing-down allowance to be made under subsection (1) above shall—

- (a) where paragraph (b) does not apply, be equal to 25 per cent. of the amount of the excess found under subsection (1) above (proportionately reduced or increased if the period is a period of less or more than a year, or the business has been carried on for part only of the period);

- (b) where during the basis period for the chargeable period in question the business is permanently discontinued, be equal to the whole of the amount of the excess so

found.

(3) In any case where—

- (a) an allowance is made or to be made, by virtue of subsection (2)(b) above, for the chargeable period in which the person claiming the allowance ceases to carry on his business, but
- (b) the whole or part of the allowance cannot be made because of an insufficiency of income for that chargeable period,

the allowance, or that part of the allowance to which effect has not been given, shall be made for the 3 immediately preceding periods (but the allowance may only be made against income of an earlier period in so far as there is an insufficiency of income for later periods).

(4) For any chargeable period for which C exceeds (A - B), where C, A and B have the same meanings as in subsection (1), there shall be made on the person concerned a balancing charge on an amount equal to that excess.

*Interpretation of
section 116.*

118. For the purposes of section 116—

"industrial building" includes—

- (i) a warehouse;
- (ii) any building used for the purpose of a transport or dock undertaking;
- (iii) any other building used for industrial purposes except any building occupied as a residence;
- (iv) works involved in preparing, cultivating, tunnelling or levelling land prior to or in connection with the construction or re-erection of a building which is an industrial building by virtue of paragraphs (i), (ii) or (iii) above;

"commercial building" includes—

- (i) a shop;
- (ii) a restaurant or café;
- (iii) an office;
- (iv) any other building which is not an industrial building, an agricultural building, hotel, house or other dwelling if, and only if, the Commissioner is satisfied that it is bona fide being used principally for the purposes of a business operated with a view to the

realization of profit;

(v) works involved in preparing, cultivating, tunnelling or levelling land prior to or in connection with the construction or re-erection of a building which is a commercial building by virtue of paragraph (i), (ii), (iii) or (iv) above;

"agricultural building" does not include any office or any shop on a farm settlement or any storehouse unless used solely to store agricultural produce;

"major shareholder", in relation to any company, means a person who is, or who together with any person connected to him is, the beneficial owner of 25 per cent. or more of the issued share capital of the company carrying voting rights at general meetings of the company.

Balancing charges and allowances.

119.—(1) This section applies where—

- (a) during the basis period for a chargeable period ("the relevant period") an event occurs in relation to a capital asset in respect of which a writing-down allowance has been made under section 116 (but not section 117) to any person carrying on a business, and
- (b) that event is a relevant event (disregarding section 114).

(2) Where subsection (1) above applies in relation to any asset—

- (a) if there are no sale, insurance, salvage or compensation moneys or those moneys are less than the written-down value of the asset, there shall be allowed in computing the owner's chargeable income for the relevant period a deduction equal to that value or, as the case may be, the excess of that value over those moneys;
- (b) if the sale, insurance, salvage or compensation moneys exceed the written-down value of the asset, a balancing charge shall be made on an amount equal to the excess for the relevant period.

(3) Subsection (2) shall have effect in relation to any sale or other disposition of any asset where the parties are not at arm's length and the consideration for the disposition is less than the market value of the asset as if the asset had been disposed of at market value.

(4) Where (by virtue of subsection (3) or otherwise) the moneys referred to in subsection (2) exceed the expenditure in respect of which the writing-down allowance was made, the amount of the excess shall be disregarded for the purposes of that subsection.

Supplementary provisions

Assets transferred on transfer of

120.—(1) In any case where—

- (a) on or after 1st January 1995, a business is transferred by

an individual, either alone or in partnership, to a company, and

- (b) the transfer includes the transfer of an asset used in that business as respects which an allowance under this Chapter has been made to or disclaimed by the transferor, and

- (c) section 127(1)(a) applies to the transfer,

then, whether or not the transferor makes a claim under that section and whether or not such a claim is allowed, the transferor may elect that the provisions of this section shall apply in relation to that asset.

(2) Section 108 or 119 shall not apply in relation to the transfer of the asset and the transfer of the asset shall not be a relevant event, but all such allowances and charges shall be made to and on the transferee under and in accordance with this Chapter as would have fallen to be made if the transferor had continued to carry on the business.

(3) Subject to subsection (4) below, an election under subsection (1) above shall be made by notice which shall be irrevocable, and where more than one asset is transferred, the transferor may make an election under this section with respect to all or any of those assets.

(4) An election under subsection (1) above shall be made before the expiry of the period of 6 years beginning with the date of the transfer.

(5) All such adjustments shall be made as may be necessary in consequence of an election being made under this section, whether by way of assessments to tax on the company or by repayment or discharge of tax or otherwise.

*Contributions to
acquisition costs*

121.—(1) Expenditure shall not be regarded for any of the purposes of this Chapter as having been incurred by any person in so far as it has been or is to be met directly or indirectly by any other person.

(2) In considering, for the purposes of this section how far any expenditure has been or is to be met directly or indirectly by any person other than the person incurring the expenditure, there shall be left out of account—

- (a) any insurance moneys or other compensation moneys payable in respect of any asset which has been demolished, destroyed or put out of use, and
- (b) any expenditure in respect of which, apart from the provisions of this section, an allowance could not be made under section 122 and not being expenditure which is allowed to be deducted in computing the profits or gains of a business carried on by that person.

(3) In determining for the purposes of subsection (2)(b) above whether an allowance could be made under the provisions of section 122, it shall be assumed that the person by whom expenditure has been or is to be met is within the charge to tax, whether or not that is in fact the case.

(4) Subsection (2)(b) shall not apply for the purposes of sections 107 to 109.

Allowances in respect of contributions to capital expenditure

122.—(1) Where a person, for the purposes of a business carried on or to be carried on by him contributes a capital sum to expenditure on the provision of an asset, being expenditure which, apart from the provisions of section 121—

(a) would have been regarded as wholly incurred by another person, and

(b) in respect of which an allowance would have been made under this Chapter,

then, subject to the following provisions of this section, such allowances, if any, shall be made to the contributor as would have been made to him if his contribution had been expenditure on the provision, for the purposes of that business, of that or a similar asset, as the context may require.

(2) For the purposes of any allowance given by virtue of subsection (1) above in respect of any asset which is machinery or plant, that asset shall be treated as belonging to the person making the contribution in respect of which the allowance is given at any time when it belongs, or is treated under this Chapter as belonging, to the recipient of the contribution.

(3) Subsection (1) above shall not apply where the person making the contribution and the person receiving it are connected persons.

(4) Subject to the following subsections, for the purpose of determining the amount of the allowances and the manner in which they are to be made, the asset shall be deemed to continue at all material times to be in use for the purposes of the business.

(5) Where, when the contribution was made, the business for the purposes of which it was made was carried on or to be carried on by the contributor, the following provisions shall have effect on any transfer of the business or any part of the business—

(a) where the transfer is of the whole business, writing-down allowances for chargeable periods ending after the date of transfer shall be made to the transferee, and shall not be made to the transferor,

(b) where the transfer is of part only of the business, paragraph (a) above shall have effect with respect to so much of the allowance as is properly referable to the part transferred.

Apportionment of sale etc. receipts.

123.—(1) This section applies in any case where a capital asset in respect of which a writing-down allowance under this Chapter has been made has been sold or destroyed together with or at the same time as any other property and—

(a) the consideration received on the sale or the insurance recoveries is a sum which relates to all the property sold or the insurance recoveries is a sum which relates to all the property destroyed or the subject of the

claim under the relevant insurance contract;

- (b) the total consideration received on the sale has by agreement or arrangement between the parties been apportioned between the various items sold at the same time by the same vendor to the same purchaser, and whether by or under the same contract or under separate contracts, or similarly insurance recoveries have been apportioned between insured and insurer.

(2) In any case falling within paragraph (a) of subsection (1)—

- (a) the Commissioner may agree with the former and new owners the apportionment of the sum referred to in that paragraph between the various items of property to which it relates;
- (b) if no such agreement is reached, the Commissioner may apportion the sum referred to in subsection (1)(a) between the various items of property to which it relates.

(3) In any case falling within paragraph (b) of subsection (1), the Commissioner may—

- (a) agree with the parties an apportionment of the sale consideration or insurance recoveries between the various items of property, or
- (b) if he considers that that apportionment would (if agreed by him) afford an unjust tax advantage to the new owner or former owner, apportion the sale consideration or the insurance recoveries between the various items of property in accordance with his view of the true value of such items.

(4) The values attributed to any items of property in accordance with this section shall apply for the purposes of this Chapter both in relation to the new owner and (as to the operation of section 119(2)(b)) in relation to the former owner.

(5) The Commissioner shall give notice to the persons affected of any apportionment made or agreed by him in pursuance of this section.

Transitional provisions.

124. Where a person is, on the coming into force of this Ordinance, entitled to an allowance or deduction under paragraph 3 of the Seventh Schedule of the Income Tax Ordinance, that allowance shall continue to be made in accordance with the provisions of that Ordinance and not in accordance with this Chapter.

CHAPTER III

LOSS RELIEF FOR BUSINESSES

Restrictions on loss relief.

125.—(1) Effect shall be given to this Chapter by a claim, but a claim may not be made in respect of a loss sustained in any business unless the

business was being carried on, during the period in which the loss was sustained, on a commercial basis and with a view to the realisation of profits.

(2) Relief shall not be given in respect of the same loss or the same portion of a loss under more than one provision of this Ordinance.

*Carry forward of
business losses for
individuals.*

126.—(1) Where a loss is sustained in any period of account of a business carried on (either alone or in partnership) by any person who is within the charge to income tax for the relevant year of assessment in respect of that business and the loss cannot be wholly set off against that person's income from other sources chargeable to tax for the same year, the amount of the loss shall, to the extent to which it is not set off against his income from other sources chargeable to tax for the same year, be carried forward and (so long as he continues to carry on the business)—

(a) shall be set off against the profits of that business arising in the following period of account, and

(b) in so far as it cannot or cannot wholly be set off against such profits, it shall be set off against income of that person from other sources chargeable to tax for the year of assessment following the relevant year,

and so on for subsequent years in succession until the amount of such loss is exhausted.

(2) A company may make a claim under this section in respect of a loss sustained in a period—

(a) as respects which the company was within the charge to income tax; or

(b) as respects which the company was exempt from tax by virtue of the Special Exemption Ordinance,

notwithstanding that the company is, as respects subsequent periods, within the charge to corporation tax.

(3) A claim may not be made under this section more than 6 years after the end of the period of account in which the loss was incurred.

(4) In this section "the relevant year of assessment", in relation to a period of account, is the year of assessment for which income arising in that period is chargeable to income tax.

*Allowance of
business losses for
individuals in cases
of transfer of
business.*

127.—(1) In any case where—

(a) a business carried on by an individual, either alone or in partnership, is transferred to a company and in consideration for the transfer the company issues shares in the company to that individual, and

(b) prior to the transfer a loss was sustained in the course of carrying on the business but not set off against the profits of the business, and

(c) the amount of the loss has not been and is not being set against any other income of the individual (either in that year or any earlier year),

then, subject to subsections (2) to (7) below, in computing his chargeable income for any year of assessment following the year in which the transfer takes place, the individual may set against any dividend he receives in respect of those shares in the immediately preceding year of assessment, an amount equal to the amount of that loss.

(2) The Commissioner may disallow any claim under subsection (1) above if in all the circumstances of the case he is of the opinion that it should not be allowed.

(3) Subject to subsection (7) below, where a business is transferred as mentioned in subsection (1), the acquiring company may not deduct any losses suffered in the course of the business prior to the date of the transfer from the profits of the business accruing on or after that date or from any other profits or income.

(4) Subject to subsection (5) below, a claim for relief under subsection (1) shall be irrevocable and have effect in relation to all losses sustained in the business by the individual not otherwise set off against any income of the individual.

(5) A claim for relief under subsection (1) above shall be made before the expiry of the period of 6 years beginning with the date of the transfer and shall have effect for all years of assessment beginning after the date of the transfer.

(6) All such adjustments shall be made as may be necessary in consequence of a claim being made under this section, whether by way of repayment or discharge of tax or otherwise.

(7) If a claim is not made by the individual under this section or such a claim is disallowed, the company to which the business is transferred may make a claim to set off the amount of the losses sustained in the business before the transfer in accordance with section 128, and that section shall apply in relation to any such loss as if it had been sustained in the business immediately after the transfer was effected; but—

- (a) a claim shall not be allowed by virtue of this subsection unless the individual has consented, in writing, to the claim being made; and
- (b) the individual may not make a claim under subsection (1) after giving his consent for the purposes of paragraph (a) above.

Loss relief for companies.

128.—(1) Subject to section 153, where, in any accounting period, a company carrying on a business incurs a loss in the business, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against income of that accounting period.

(2) Subject to section 153, where in any accounting period a company carrying on a business incurs a loss in the business, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against any income of the company in succeeding accounting periods; and where such a claim is made (and so long as the company continues to carry

on the business) the amount of the loss, or so much of that amount as cannot, on a claim (if made) under subsection (1) above, be set off against income of an earlier accounting period—

(a) shall be set off against the profits of that business arising in the following accounting period, and

(b) in so far as it cannot or cannot wholly be set off against such profits, it shall be set off against income from other sources arising in that period;

and so on for subsequent accounting periods in succession until the amount of such loss is exhausted.

(3) The amount of a loss incurred in a business in an accounting period shall be computed for the purposes of this section in the same way as business income from the business in that period would have been computed.

(4) For the purposes of this section "business income" means, in relation to any business, the income which falls or would fall to be included in respect of the business in the total profits of the company.

(5) In this section references to a company carrying on a business refer to the company carrying it on so as to be within the charge to corporation tax in respect of it.

(6) A claim under subsection (1) above may only be made within the period of 2 years immediately following the accounting period in which the loss is incurred or within such further period as the Commissioner may allow.

(7) A claim under subsection (2) above must be made within 6 years after the end of the accounting period in which the loss is incurred, and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of 6 years.

129.—(1) If—

(a) within any period of 3 years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a business carried on by the company, or

(b) at any time after the scale of the activities in a business carried on by a company has become small or negligible, and before any considerable revival of the business, there is a change in the ownership of the company,

relief shall not be given under section 128 by setting a loss incurred by the company in an accounting period beginning before the change of ownership against any income or other profits of an accounting period ending after the change of ownership.

(2) In applying this section to the accounting period in which the change of ownership occurs, the part ending with the change of ownership, and the part after, shall be treated as two separate accounting periods, and the profits or losses of the accounting period shall be apportioned to the two parts.

*Change in
ownership of
company:
disallowance of
trading losses.*

(3) The apportionment under subsection (2) above shall be on a time basis according to the respective lengths of those parts except that if it appears that that method would work unreasonably or unjustly such other method shall be used as appears just and reasonable.

(4) In subsection (1) above "major change in the nature or conduct of a business" includes—

- (a) a major change in the type of property dealt in, or services or facilities provided, in the business; or
- (b) a major change in customers, outlets or markets of the business;

and this section applies even if the change is the result of a gradual process which began outside the period of 3 years mentioned in subsection (1)(a) above.

(5) Where relief in respect of a company's losses has been restricted under this section then, in applying the provisions of Chapter II of this Part about balancing charges to the company by reference to any event after the change of ownership of the company, any allowance or deduction falling to be made under that Chapter for any chargeable period of the company before the change of ownership shall be disregarded unless the profits or gains of that chargeable period or of any subsequent chargeable period before the change of ownership were sufficient to give effect to the allowance or deduction.

(6) In applying subsection (5) above it shall be assumed that any profits are applied in giving effect to any such allowance or deduction in preference to being set off against any loss which is not attributable to such an allowance or deduction.

(7) Where the operation of this section depends on circumstances or events at a time after the change of ownership (but not more than 3 years after), an assessment to give effect to the provisions of this section shall not be out of time if made within 6 years from that time, or the latest of those times.

(8) Any person in whose name any shares, stock or securities of a company are registered shall, if required by notice by the Commissioner given for the purposes of this section, state whether or not he is the beneficial owner of those shares or securities and, if not the beneficial owner of those shares or securities or of any of them, shall furnish the name and address of the person or persons on whose behalf those shares, stock or securities are registered in his name.

*Rules for
ascertaining change
in ownership of
company.*

130.—(1) For the purposes of section 129 there is a change in the ownership of a company—

- (a) if a single person acquires more than half the ordinary share capital of the company; or
- (b) if two or more persons each acquire a holding of 5 per cent. or more of the ordinary share capital of the company, and those holdings together amount to more than half the ordinary share capital of the company; or
- (c) if two or more persons each acquire a holding of the

ordinary share capital of the company, and the holdings together amount to more than half the ordinary share capital of the company, but disregarding a holding of less than 5 per cent. unless it is an addition to an existing holding and the two holdings together amount to 5 per cent or more of the ordinary share capital of the company.

(2) In applying subsection (1) above—

- (a) the circumstances at any two points of time with not more than 3 years between may be compared, and a holder at the later time may be regarded as having acquired whatever he did not hold at the earlier time, irrespective of what he has acquired or disposed of in between;
- (b) to allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase;
- (c) to decide for the purposes of subsection (1)(b) or (c) above if any person has acquired a holding of at least 5 per cent., or a holding which makes at least 5 per cent. when added to an existing holding, acquisitions by, and holdings of, two or more persons who are connected persons shall be aggregated as if they were acquisitions by, and holdings of, one and the same person;
- (d) any acquisition of shares under the will or on the intestacy of a deceased person and, if it is shown that the gift is unsolicited and made without regard to the provisions of section 129, any gift of shares, shall be left out of account.

(3) Where, because persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, ownership of the ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the losses may ultimately enure, then, in considering whether there has been a change in the ownership of the company for the purposes of section 129, holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.

(4) Where section 129 has operated to restrict relief by reference to a change of ownership taking place at any time, no transaction or circumstances before that time shall be taken into account in determining whether there is any subsequent change of ownership.

(5) A change in the ownership of a company shall be disregarded for

the purposes of section 129 if—

- (a) immediately before the change the company is the 75 per cent. subsidiary of another company, and
- (b) (although there is a change in the direct ownership of the company) that other company continues after the change to own the first-mentioned company as a 75 per cent. subsidiary.

(6) If there is a change in the ownership of a company, including a change occurring by virtue of the application of this subsection but not a change which is to be disregarded under subsection (5) above, then—

- (a) in a case falling within subsection (1)(a) above, the person mentioned in subsection (1)(a) shall be taken for the purposes of this section to acquire at the time of the change any relevant assets owned by the company;
- (b) in a case falling within subsection (1)(b) above but not within subsection (1)(a) above, each of the persons mentioned in subsection (1)(b) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company; and
- (c) in any other case, each of the persons mentioned in paragraph (c) of subsection (1) above (other than any whose holding is disregarded under that paragraph) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company.

(7) In subsection (6) above—

"the appropriate proportion", in relation to one of two or more persons mentioned in subsection (1)(b) or (c) above, means a proportion corresponding to the proportion which the percentage of the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and

"relevant assets", in relation to a company, means—

- (a) any ordinary share capital of another company, and
- (b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.

(8) For the purposes of this section—

- (a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly;
- (b) the amount of ordinary share capital of one company owned by a second company through another company or other companies or partly directly and partly through another company or other companies

shall be determined in accordance with subsections (5) to (11) of section 207; and
(c) "shares" includes stock.

(9) If any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change of ownership of a company was made in pursuance of a contract of sale or option or other contract, or the acquisition was made by a person holding such a contract, then the time when the change in the ownership of the company took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of it was assigned to him so that, in the case of a person exercising an option to purchase shares, he shall be regarded as having purchased the shares when he acquired the option.

CHAPTER IV GROUP RELIEF

*Surrender of relief
between members of
groups.*

131.—(1) Subject to and in accordance with this Chapter, relief for trading losses and other amounts eligible for relief from corporation tax may be surrendered by a company ("the surrendering company") and, on the making of a claim by another company ("the claimant company") may be allowed to the claimant company by way of a relief from corporation tax called "group relief" in accordance with subsection (8) below.

(2) In this Chapter any reference to a company is a reference to a body corporate resident in the Falklands Islands.

(3) Group relief shall be available in a case where the surrendering company and the claimant company are both members of the same 75 per cent. group.

(4) Group relief shall also be available in a case where—

- (a) the surrendering company and the claimant company are both members of the same 51 per cent. group, and
- (b) none of the members of the group carries on a ring fence trade at any relevant time.

(5) Group relief shall also be available where—

- (a) the claimant company is one of two companies each of which directly and beneficially owns 50 per cent. of the ordinary share capital in the surrendering company, and
- (b) none of those three companies carries on a ring fence trade at any relevant time.

(6) For the purposes of subsections (4) and (5) above a time is relevant as respects any company if at that time the company is a member of a 51 per cent. group or is one of three companies two of which directly and beneficially own 50 per cent. of the ordinary share capital of the third.

(7) Subject to the provisions of this Chapter, two or more claimant companies may make claims relating to the same surrendering company, and

to the same accounting period of that surrendering company.

(8) If in any accounting period the surrendering company has incurred a loss in carrying on a business, the amount of the loss may be set off for the purposes of corporation tax against the total income of the claimant company for its corresponding accounting period.

(9) A payment for group relief—

- (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and
- (b) shall not for any of the purposes of the enactments relating to corporation tax be regarded as a distribution;

and in this subsection "a payment for group relief" means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them as respects an amount surrendered by way of group relief, being a payment not exceeding that amount.

Corresponding accounting periods. 132.—(1) For the purposes of group relief an accounting period of the claimant company which falls wholly or partly within an accounting period of the surrendering company corresponds to that accounting period.

(2) If an accounting period of the surrendering company and a corresponding accounting period of the claimant company do not coincide—

- (a) the amount which may be set off against the total income of the claimant company for the corresponding accounting period shall be reduced by applying the fraction—

$$\frac{A}{B}$$

(if that fraction is less than unity); and

- (b) the total profits of the claimant company for the corresponding accounting period shall be reduced by applying the fraction—

$$\frac{A}{C}$$

(if that fraction is less than unity);

where—

A is the length of the period common to the two accounting periods;
B is the length of the accounting period of the surrendering company;
and
C is the length of the corresponding accounting period of the claimant company.

Companies joining or leaving group. 133.—(1) Subject to the following provisions of this section, group relief shall be given if, and only if, either—

- (a) the surrendering company and the claimant company are

members of the same group, or
 (b) fulfill the requirements of section 131(5)(a) with respect to each other,
 throughout the whole of the surrendering company's accounting period to which the claim relates, and throughout the whole of the corresponding accounting period of the claimant company.

(2) Where on any occasion two companies become or cease to be members of the same group, or begin or cease to fulfill the requirements of section 131(5)(a), then, for the purposes specified in subsection (3) below, it shall be assumed as respects each company that—

- (a) on that occasion (unless a true accounting period of the company begins or ends then) an accounting period of the company ends and a new one begins, the new accounting period to end with the end of the true accounting period (unless before then there is a further break under this subsection); and
 - (b) the losses or other amounts of the true accounting period are apportioned to the component accounting periods; and
 - (c) the amount of total income for the true accounting period of the company against which group relief may be allowed in accordance with section 131(8) is also apportioned to the component accounting periods;
- and an apportionment under this subsection shall be on a time basis according to the respective lengths of the component accounting periods except that, if it appears that that method would work unreasonably or unjustly, such other method shall be used as appears just and reasonable.

(3) Where the one company is the surrendering company and the other company is the claimant company—

- (a) references in subsection (1) above and section 132 to accounting periods shall be construed in accordance with subsection (2) above (so that if the two companies are members of the same group in the surrendering company's accounting period, they must under that section also be members of the same group in any corresponding accounting period of the claimant company);
- (b) references in section 132 to income, and amounts to be set off against the income, shall be construed in accordance with subsection (2) above, (so that an amount apportioned under subsection (2) above to a component accounting period may fall to be reduced under subsection (2) of that section).

Exclusion of double allowances.

134.—(1) Without prejudice to section 125, relief shall not be given more than once in respect of the same amount, whether by giving group relief and by giving some other relief (in any accounting period) to the surrendering company, or by giving group relief more than once.

(2) In accordance with subsection (1) above, two or more claimant companies cannot, in respect of any one loss or other amount for which group relief may be given, and whatever their accounting periods corresponding to that of the surrendering company, obtain in all more relief than could be obtained by a single claimant company whose corresponding accounting period coincided with the accounting period of the surrendering company.

(3) Subject to subsections (4) and (5) below, if claims for group relief relating to the same accounting period of the same surrendering company are made by two or more claimant companies which themselves are members of a group of companies, and—

(a) all the claims so made are admissible only by virtue of subsection (2) and (3) of section 133, and

(b) there is a part of the surrendering company's accounting period during which none of those claimant companies is a member of the same group as the surrendering company,

those claimant companies shall not obtain in all more relief than could be obtained by a single claimant company which was not a member of the same group as the surrendering company during that part of the surrendering company's accounting period (but was a member during the remainder of that accounting period).

(4) If companies which are members of different groups make claims falling within subsection (3) above, that subsection shall apply separately in relation to the companies in each group.

(5) Subject to subsection (6) below, if claims as respects two or more surrendering companies which themselves are members of a group of companies are made by a claimant company for group relief to be set off against its total profits for any one accounting period, and—

(a) all the claims so made are admissible only by virtue of section 133(2) and (3), and

(b) there is a part of the claimant company's accounting period during which none of the surrendering companies by reference to which the claims are made is a member of the same group as the claimant company,

the claimant company shall not obtain in all more relief to be set off against its profits for the accounting period than it could obtain on a claim as respects a single surrendering company (with unlimited losses and other amounts eligible for relief) which was not a member of the same group as the claimant company during that part of the claimant company's accounting period (but was a member during the remainder of that accounting period).

(6) If claims falling within subsection (5) above are made as respects surrendering companies which are members of different groups, that subsection shall apply separately in relation to claims as respects the surrendering companies in each group.

*of substitution for
loss relief.*

notwithstanding that relief has been given in respect of it under section 128.

(2) Where group relief in respect of a loss is given by virtue of subsection (1) above, all such assessments or adjustments of assessments shall be made as may be necessary to withdraw the relief in respect of the loss given under section 128.

(3) An assessment under subsection (2) above shall not be out of time if it is made within one year from the date on which the surrendering company gave the Commissioner notice of consent to surrender relating to the loss.

(4) For the purposes of this section relief under section 128 shall be treated as given for losses incurred in earlier accounting periods before losses incurred in later accounting periods.

Claims.

136.—(1) A claim for group relief for an accounting period of a company, or the withdrawal of such a claim, may not be made if—

- (a) the company has been assessed to corporation tax for the period, and
- (b) the assessment has become final and conclusive.

(2) Subsection (1) above shall not apply in the case of a claim, or withdrawal of a claim, made before the end of 2 years from the end of the period.

(3) Subject to subsections (4) and (5) below, a claim for an accounting period of a company, or the withdrawal of such a claim, may not be made after the end of 6 years from the end of the period.

(4) Where under subsections (2) and (3) above a claim, or withdrawal of a claim, may not be made after a certain time, it may be made within such further time as the Commissioner may allow.

(5) A claim for an accounting period of a company, or the withdrawal of such a claim, may be made after the end of 6 years from the end of the period if—

- (a) the company has been assessed to corporation tax for the period before the end of 6 years from the end of the period,
- (b) the company has appealed against the assessment, and
- (c) the assessment has not become final and conclusive.

(6) A claim for an accounting period of a company, or withdrawal of such a claim, may not be made under subsection (5) after the end of 6 years and 3 months from the end of the period.

(7) A claim, or withdrawal of a claim, shall be made by being included in the accounts and other information submitted by the company in accordance with section 30 for the period for which the claim is made.

(8) A claim may be made for less than the full amount available.

(9) A claim, other than one under subsection (5) above, shall be for an amount which is quantified at the time the claim is made.

(10) A claim under subsection (5) above shall be expressed to be conditional, as to the amount claimed, on, and only on, the outcome of one or more relevant matters specified in the claim, and for the purposes of this subsection a matter is relevant if it is relevant to the determination of the assessment of the claimant company to corporation tax for the period for which the claim is made.

*Requirements as to
consent of
surrendering
companies.*

137.—(1) A claim shall require the consent of the surrendering company.

(2) Consent to surrender shall be of no effect unless, at or before the time the claim is made, notice of consent is given by the consenting company to the Commissioner.

(3) Notice of consent to surrender, in the case of consent by the surrendering company, shall be of no effect unless it contains the following particulars—

- (a) the name of the surrendering company;
- (b) the name of the company to which relief is being surrendered;
- (c) the amount of relief being surrendered;
- (d) the accounting period of the surrendering company to which the surrender relates.

(4) A claim shall be of no effect unless it is accompanied by a copy of the notice of consent to surrender given for the purposes of this section by the surrendering company.

(5) In the case of consent to surrender by the surrendering company, consent which relates to relief which is the subject of more than one claim under section 136(5) shall be of no effect unless it specifies an order of priority in relation to the claims.

*Recovery of excess
relief.*

138.—(1) If the Commissioner discovers that any group relief which has been given is or has become excessive he may make an assessment to corporation tax in the amount which ought in his opinion to be charged.

(2) Subsection (1) above is without prejudice to the making of an assessment under section 173 and to the making of all such adjustments by way of discharge or repayment of tax or otherwise as may be required where a claimant company has obtained too much relief, or a surrendering company has forgone relief in respect of a corresponding amount.

(3) All such assessments or adjustments of assessments shall be made as may be necessary to give effect to a claim or the withdrawal of a claim.

(4) An assessment under this paragraph shall not be out of time if it is made—

- (a) in the case of a claim, within one year from the date on which

- corporation tax for the period for which the claim is made becomes final and conclusive, and
- (b) in the case of the withdrawal of a claim, within one year from the date on which the claim is withdrawn.

*Interpretation of
Chapter IV.*

139.—(1) The following provisions of this section have effect for the interpretation of this Chapter.

(2) In this Chapter—

- "claimant company" has the meaning given by section 131(1);
- "claim" means a claim for group relief under section 131;
- "group relief" has the meaning given by section 131(1); and
- "surrendering company" has the meaning given by section 131(1).

(3) For the purposes of this Chapter—

- (a) two companies shall be deemed to be members of a 75 per cent. group of companies if one is the 75 per cent. subsidiary of the other or both are 75 per cent. subsidiaries of a third company;
- (b) two companies shall be deemed to be members of a 51 per cent. group if one is the 51 per cent subsidiary of the other or if both are 51 per cent subsidiaries of a third company;
- (c) "holding company" means a company the business of which consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent. subsidiaries and which are trading companies; and
- (d) "trading company" means a company the business of which consists wholly or mainly in the carrying on of a trade or trades.

(4) For the purposes of the application of section 207 in relation to any provision of this Chapter, any share capital of a registered industrial and provident society shall be treated as ordinary share capital.

(5) In determining for the purposes of this Chapter whether one company owns any share capital in another, the other company shall be treated as not being the owner—

- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
- (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on a sale of the shares would be a trading receipt; or
- (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the Falkland Islands.

(6) Notwithstanding that at any time a company ("the subsidiary company") is a 51 per cent. or 75 per cent. subsidiary or a 90 per cent.

subsidiary of another company ("the parent company") it shall not be treated at that time as such a subsidiary for the purposes of this Chapter unless, additionally at that time—

- (a) the parent company is beneficially entitled to not less than 51 per cent. or 75 per cent. or, as the case may be, 90 per cent. of any profits available for distribution to equity holders of the subsidiary company, and
- (b) the parent company would be beneficially entitled to not less than 51 per cent. or 75 per cent. or, as the case may be, 90 per cent. of any assets of the subsidiary company available for distribution to equity holders on a winding-up;

and Schedule 1 shall apply for the purposes of this subsection as it applies for the purposes of section 38(10)(b).

(7) Notwithstanding that at any time a company owns 50 per cent. of the ordinary share capital in another company it shall not be treated as the owner of that share capital for the purposes of this Chapter unless additionally at that time it is directly and beneficially entitled—

- (a) to 50 per cent. of any profits available for distribution to equity holders of the other company, and
- (b) to 50 per cent. of the assets of the other company available for distribution to equity holders on a winding-up;

and Schedule 1 shall have effect for the purposes of this subsection as it applies for the purposes of section 38(10)(b).

PART VI
SPECIAL PROVISIONS FOR RING FENCE TRADES AND
RELATED BUSINESSES
CHAPTER I
GENERAL PROVISIONS

*Interpretation of
Part VI.*

140.—(1) In this Part—

"crude", where the reference is to petroleum being disposed of or appropriated crude, refers to its being so dealt with without having been refined (whether or not it has previously undergone initial treatment);

"gas" means petroleum which is gaseous at a temperature of 15 degrees Celsius and pressure of one atmosphere;

"initial storage", in relation to petroleum won in pursuance of a petroleum licence, means the storage of a quantity of petroleum so won not exceeding a quantity equal to 10 times the maximum daily production rate of such petroleum as planned or achieved (whichever is the greater), but does not include—

(a) the storing of petroleum as part of or in conjunction with the operation of a petroleum refinery; or

(b) deballasting; or

(c) conveying petroleum in a pipe-line;

"initial treatment", in relation to any petroleum won under the authority of a petroleum licence, means any of the following things (wherever carried out), that is to say—

(a) subjecting the petroleum to any process the sole purpose of which is to enable the petroleum to be safely stored, safely loaded into a tanker or safely accepted by a petroleum refinery; or

(b) separating petroleum consisting of gas from other petroleum; or

(c) separating petroleum consisting of gas of a kind that is transported and sold in normal commercial practice from other petroleum consisting of gas; or

(d) liquefying petroleum consisting of such gas for the purpose of transporting it; or

(e) subjecting the petroleum to any process in order to secure that petroleum disposed of crude has the quality that is normal for petroleum got from the same source and disposed of crude;

but does not include—

(i) the storing of petroleum, even where this involves the doing to the petroleum of things within any of paragraphs (a) to (e) of this definition; or

(ii) any activity carried on as part of, or in association with, the refining of

petroleum not consisting of gas or any activity the sole or main purpose of which is to achieve a chemical reaction in respect of petroleum consisting of gas; or

(iii) deballasting;

"petroleum" means any substance won or capable of being won under the authority of a petroleum licence but does not include any substance which in its natural condition does not, or did not, exist in strata in the Falkland Islands or a designated area;

"petroleum extraction activities" means any activities of a person—

- (a) in searching for petroleum or causing such searching to be carried out for him; or
- (b) in extracting petroleum or causing petroleum to be extracted for him or by a company associated with him; or
- (c) in transporting petroleum or causing petroleum to be transported for him where the transportation is to the place at which the seller in a sale at arm's length could reasonably be expected to deliver it or, if there is more than one such place, the one nearest to the place of extraction; or
- (d) in effecting or causing to be effected for him the initial treatment or initial storage of petroleum;

"petroleum rights" means rights to petroleum to be extracted or to interests in or to the benefit of such petroleum;

"production purposes", in relation to a licensed area, means any of the following purposes, that is to say—

- (a) carrying on drilling or production operations within the field; or
- (b) pumping petroleum won under the licence to the place where the seller in a sale at arm's length could reasonably be expected to deliver it or, if there is more than one place at which he could reasonably be expected to deliver it, the one nearest to the place of extraction; or
- (c) the initial treatment of petroleum won under the authority of the licence;

"relevantly appropriated", in relation to any petroleum, means appropriated to refining or to any use except use for production purposes, and "relevant appropriation" shall be construed accordingly;

"refining", in relation to petroleum, does not include subjecting it to initial treatment and "refined" and "refinery" shall be construed accordingly;

"ring fence income" means income arising from a ring fence trade; and

"ring fence trade" means a trade consisting of any of the

activities referred to in section 150(1) (whether or not the trade is a separate trade by virtue of that provision).

(2) In this Part any reference to a company being a member of a group shall be construed as a reference to a 75 per cent. group within the meaning of section 139, disregarding subsection (5)(c) of that section and section 131(2).

(3) In any case where 2 or more persons each has an interest in the petroleum won under the authority of a licence, the definition of "initial storage" as it applies for the purposes of paragraph (d) of the definition of "petroleum extraction activities" shall have effect, in relation to each of those persons, as if the reference to the maximum daily production were a reference to an appropriate proportion of that maximum daily rate.

(4) For the purposes of this Part, 2 companies are associated with one another if—

- (a) one is a 51 per cent. subsidiary of the other;
- (b) each is a 51 per cent subsidiary of a third company; or
- (c) one is owned by a consortium of which the other is a member.

(5) For the purposes of subsection (4)(c) above, a company is owned by a consortium if three-quarters or more of the ordinary share capital of the company is beneficially owned between them by companies of which none beneficially owns less than one-twentieth of that capital.

(6) Without prejudice to subsection (5) above, for the purposes of this Part, 2 companies are also associated with one another if one has control of the other or both are under the control of the same person or persons; and section 210 shall apply for the purposes of this subsection.

CHAPTER II

TAXATION OF PETROLEUM-RELATED CAPITAL GAINS

*Chargeable gains
and allowable
losses.*

141.—(1) This Chapter has effect for imposing a charge to tax in respect of chargeable gains accruing to a person on the disposal of exploration or exploitation rights or of unquoted shares in a company deriving their value directly or indirectly from exploration or exploitation rights, but in this Chapter "exploration or exploitation rights" does not include intellectual property.

(2) Except as otherwise provided, every capital gain accruing on the disposal of exploration or exploitation rights or of unquoted shares in a company deriving their value directly or indirectly from exploration or exploitation rights is a chargeable gain.

(3) The amount of the gain accruing on a disposal shall be equal to the amount of the consideration for which the disposal is made, computed in accordance with the provisions of this Chapter, less any deductions permitted

under those provisions.

(4) Except as otherwise expressly provided, all losses accruing to a person on the disposal of exploration or exploitation rights or of unquoted shares in a company deriving their value directly or indirectly from exploration or exploitation rights shall be allowable losses, and the amount of a loss accruing on a disposal shall be computed in the same way as the amount of a gain accruing on a disposal is computed.

(5) Except as otherwise expressly provided, all the provisions of this Ordinance which distinguish gains which are chargeable gains from those which are not, or which make part of a gain a chargeable gain, and part not, shall apply also to distinguish losses which are allowable losses from those which are not, and to make part of a loss an allowable loss, and part not; and references in this Ordinance to an allowable loss shall be construed accordingly.

*Unquoted shares:
supplementary
provisions.*

142.—(1) Where unquoted shares in a company deriving part only of their value directly or indirectly from exploration or exploitation rights are disposed of at any time and either a gain or a loss accrues on the disposal, the amount of that gain or loss shall be apportioned on a just and reasonable basis between those rights and the other assets from which the shares derive their value.

(2) Section 141(2) and (4) shall not apply in relation to a disposal of shares which derive the whole of their value from an asset if the disposal of the shares is the occasion of the deemed disposal of the asset under section 148(2); and if the shares derive only part of their value from such an asset, then, for the purposes of this Chapter—

- (a) the value of the shares shall be apportioned as between that part of their value and the remainder, and
- (b) this Chapter shall apply only in relation to the remainder, all such apportionments of the consideration for their disposal being made as may be necessary to give effect to this paragraph.

(3) Where unquoted shares in a company deriving their value directly or indirectly from exploration or exploitation rights are disposed of at any time, the company shall by notice give the Commissioner within 30 days of the disposal particulars of the disposal; and the Commissioner may by notice given to any company which appears to him to be concerned in any such disposal require it to give him, within such time as may be specified in the notice (not being less than 30 days) such particulars of the disposal as are specified in the notice.

*Chargeable gains
taxed as income.*

143.—(1) There shall be computed in accordance with this Ordinance—

- (a) the total amount of chargeable gains accruing to a person in a chargeable period ("the relevant period"), and

- (b) the total amount of allowable losses accruing to a person in the relevant period, and
- (c) the amount (if any) by which the allowable losses which have accrued to that person in earlier chargeable periods beginning on or after 1st January 1996 exceed that person's total chargeable gains (so computed) for all such earlier chargeable periods.

(2) An allowable loss incurred by a company at any time shall not be taken into account under subsection (1) above at a later time unless—

- (a) at least three-quarters of the ordinary share capital of the company belongs to the persons to whom three-quarters of that share capital belonged at the time the loss accrued, and
- (b) if the company is a 51 per cent. subsidiary of another body corporate, at least three-quarters of the ordinary share capital of the parent company belongs to the persons to whom three-quarters of that share capital belonged at the time the loss accrued.

Section 63(2), (3) and (4) shall apply to determine for the purposes of this subsection any question relating to the ownership of any share capital.

(3) Where as respects any person the amount found under paragraph (a) of subsection (1) above exceeds the aggregate of the amounts found under paragraphs (b) and (c), an amount equal to the excess shall be deemed for all the purposes of this Ordinance to be an amount of income accruing to that person for the relevant period and subject to tax accordingly, but subject to the provisions of this Ordinance and in particular to subsection (4) below.

(4) In any case where an amount is deemed to be the income of any person by virtue of subsection (3) above—

- (a) that income shall, for the purposes of section 28, be deemed to be ring fence income of that person, whether or not that person carries on a ring fence trade at any time during the relevant period;
- (b) if that person is within the charge to tax for the relevant period by reason only of that income, then in relation to that person and that income—

- (i) for the purposes of the assessment and collection of tax on chargeable gains (including the imposition of any civil or criminal penalty), any reference to an accounting period shall be construed as a reference to the relevant period,

- (ii) in section 30(1), paragraph (b) shall not apply and for “that period of account” there shall be substituted “that year”, and

- (iii) in section 168(2) for the words from “Part)” to the end there shall be substituted “on that income”; and

- (c) if that person is within the charge to tax for the relevant period by reason of that and other income, then that income shall be deemed to have accrued to him immediately before the end of the accounting period which ends in or at the end of the relevant period.

(5) Section 24(2) shall not apply in relation to income which is deemed to accrue to a person for any period by virtue of this section.

(6) Any income which is deemed to accrue to a person for any period by virtue of this section—

- (a) shall not be reduced by reference to any other amount under any provision of this Ordinance, and
- (b) shall not be used to reduce any other amount under any provision of this Ordinance,

and, except where the context otherwise requires, any reference to a loss in any provision of this Ordinance not contained in this Chapter does not include an allowable loss.

(7) Any reference in Part VIII to income shall include a reference to capital gains, whether such gains are taxable as income or as capital, and references to tax on income shall be construed accordingly.

*Disposals and
acquisitions treated
as made at market
value.*

144.—(1) Subject to the provisions of this Ordinance, a person's acquisition or disposal of an asset shall for the purposes of this Ordinance be deemed to be for a consideration equal to the market value of the asset—

- (a) where he acquires or, as the case may be, disposes of the asset otherwise than by way of a bargain made at arm's length, or
- (b) where he acquires or, as the case may be, disposes of the asset wholly or partly for a consideration that cannot be valued, or for consideration which is past.

(2) In this Chapter "market value" in relation to any assets means the price which those assets might reasonably be expected to fetch on a sale in the open market, and where the assets concerned are unquoted shares, subsection (3) below shall apply.

(3) Where this subsection applies, it shall be assumed that, in the open market which is postulated for the purposes of determining the market value of the shares in question, there is available to any prospective purchaser of those shares, all the information which a prudent prospective purchaser of the shares might reasonably require if he were proposing to purchase them from a willing vendor by private treaty and at arm's length.

(4) Subsection (1) shall not apply to the acquisition of an asset if—

- (a) there is no corresponding disposal of it, and
- (b) there is no consideration in money or money's worth or the consideration is of an amount or value lower than the market value of the asset.

*Licences exchanged
for other licences or
work obligations*

145.—(1) In this section any reference to a disposal (including a part disposal) is a reference to a disposal of a petroleum licence made by way of a bargain at arm's length.

(2) To the extent that the consideration for the disposal consists of another licence or an interest in another licence or an obligation to undertake exploration work or appraisal work in an area which is or forms part of the licensed area in relation to the licence disposed of, the value of that consideration shall be treated as nil for the purposes of this Ordinance.

(3) If the disposal of a licence is part of a larger transaction under which one party makes to another disposals of 2 or more licences, the reference in subsection (2) above to the licensed area in relation to the licence disposed of shall be construed as a reference to the totality of the licensed areas in relation to those 2 or more licences.

(4) In relation to a disposal of a licence—

- (a) which is a part disposal of the licence in question, and
- (b) part of the consideration for which does not fall within subsection (2) above,

paragraph 3 of Schedule 2 shall not apply unless the amount or value of the part of the consideration which does not fall within subsection (2) is less than the aggregate of the amounts which, if the disposal were a disposal of the whole of the licence rather than a part disposal, would be deductible in the computation of the gain under paragraph 1(2) of Schedule 2.

(5) Where paragraph 3 of that Schedule has effect in relation to such a disposal as is referred to in subsection (4) above, it shall have effect as if, in sub-paragraph (5) of that paragraph, for all the words following paragraph (a) there were substituted—

“ (b) the aggregate referred to in section 145(4) on the other hand (call that aggregate C),
and the fraction of those sums allowable as a deduction in computing the amount of the gain (if any) accruing on the disposal shall be—

A
C

and the remainder shall be attributed to the part of the property which remains undisposed of.”

*Time of disposal
and acquisition
where asset
disposed of under
contract.*

146.—(1) Subject to paragraph 8 of Schedule 2, where an asset is disposed of and acquired under a contract, the time at which the disposal and acquisition is made is the time the contract is made (and not, if different, the time at which the asset is conveyed or transferred).

(2) If the contract is conditional (and in particular if it is conditional on the exercise of an option) the time at which the disposal and acquisition is made is the time when the condition is satisfied.

Supplementary provisions.

147.—(1) Any expenditure which has been or is to be met directly or indirectly by the Crown or by any Government or any public or local authority whether in the Falkland Islands, the United Kingdom or elsewhere shall be excluded from the computation of a gain.

(2) A deduction shall not be allowable in a computation of the gain more than once from any sum or from more than one sum.

(3) References in this Chapter to sums taken into account as receipts or as expenditure in computing profits or gains or losses for the purposes of tax on income shall include references to sums which would be so taken into account but for the fact that any profits or gains of a business or employment are not chargeable to tax on income or that losses are not allowable for those purposes.

(4) For the purposes of any computation of the gain, any necessary apportionments shall be made on a just and reasonable basis.

(5) Schedule 2 which contains further provisions relating to the charge to tax in respect of capital gains, shall have effect.

Disposals and acquisitions by members of groups.

148.—(1) Where a disposal of exploration or exploitation rights or of unquoted shares is made (not being a deemed disposal) by a company which is member of a group to a company which at the time of the disposal is a member of the same group, then the rights or shares shall be taken to have been disposed of, and acquired, for a consideration of such amount that neither a gain nor a loss occurs on the disposal.

(2) In any case where—

- (a) a company has acquired any exploration or exploitation rights on a disposal within subsection (1) above, and
- (b) at any time within 6 years of the date of that disposal the company ceases to be a member of the group concerned,

then the company shall be deemed to have disposed of those rights immediately before the time referred to in paragraph (b) above, and reacquired them, at their market value at the time of that deemed disposal.

(3) Where—

- (a) a company is assessed to tax, and
- (b) any amount of that tax is referable to chargeable gains which accrued at a time when the company was a member of a group, and
- (c) any of the assessed tax is not paid when due,

then any relevant company may be assessed to tax in the name of the company referred to in paragraph (a) above for an amount equal to the

unpaid tax (but not exceeding the amount of tax referred to in paragraph (b) above) within 2 years of the date when the unpaid tax was due.

(4) A relevant company which is assessed to tax under subsection (3) above and pays the tax (or any of it) shall be entitled to recover that amount from the company referred to in subsection (3)(a) or from any other relevant company, and a relevant company from which any amount is recovered under this subsection shall also be entitled to recover the amount from the company referred to in subsection (3)(a).

(5) In this section "relevant company", in relation to tax due on a disposal of an asset by a member of a group, means—

(a) a company which at the time of the disposal was a member of the group but which was not the subsidiary of any other member; and

(b) a company which at any time within the period of 2 years ending with the disposal, was a member of the group and the owner of the asset disposed of;

and in paragraphs (a) and (b) above the disposal referred to is the disposal referred to in subsection (1) above (even where the tax is due on a deemed disposal under subsection (2) above).

*Recovery of unpaid
tax in certain cases.*

149.—(1) This section applies where—

(a) a chargeable gain has accrued on the disposal of an asset by a person (the tax-payer) who was not resident in the Falkland Islands at the time of the disposal,

(b) the gain or any part of it forms part of the tax-payer's income for tax purposes by virtue of section 143, and

(c) any of the tax assessed on the tax-payer in respect of income which includes the whole or part of the gain is not paid within 30 days from the time when it becomes payable.

(2) The Commissioner may, at any time before the end of the period of 3 years beginning with the time when the amount of tax referred to in subsection (1)(c) above is finally determined, serve on any person to whom subsection (4) below applies a notice—

(a) stating the amount remaining unpaid of that tax and the date when the tax became payable, and

(b) requiring that person to pay the relevant amount within 30 days of the service of the notice.

(3) For the purposes of subsection (2) above the relevant amount is the lesser of—

(a) the amount which remains unpaid of the tax assessed on the tax-payer company for the accounting period in which the gain accrued, and

(b) an amount equal to corporation tax on the amount of the chargeable gain at the rate in force when the gain accrued.

(4) This subsection applies—

- (a) if the tax-payer is a company, to any person who is, or during that period was, a controlling director of the tax-payer or of a company which has, or within that period had, control over the tax-payer; and
- (b) in addition to any such controlling director, if the chargeable gain in question accrued on the disposal by the tax-payer of unquoted shares which derived any of their value from exploration or exploitation rights, any person who owns the rights.

(5) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him, and interest on the amount shall be payable by that person accordingly; and he may recover any such amount paid by him from the tax-payer company.

(6) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(7) Where more than one person may be given a notice under this section in respect of the same amount of unpaid tax, the liability of such persons to pay the amount specified in the notice shall be joint and several

(8) In this section—

"director", in relation to a company, includes any person who—

(i) is a manager of the company or otherwise concerned in the management of the company's business, and

(ii) is either on his own or with one or more associates the beneficial owner of or able directly or through the medium of other companies or by any other indirect means, to control 20 per cent. or more of the ordinary share capital of the company; and

"controlling director", in relation to a company, means a director of the company who has control of it (applying section 210 for the purposes of this definition).

For the purposes of paragraph (ii) above a person shall be treated as owning or controlling what his associates own or control, whether he owns or controls any share capital or not.

CHAPTER III RING-FENCE TRADES

*Ring-fencing of
petroleum
extraction activities*

150.—(1) Where a person carries on as part of a trade—

- (a) any petroleum extraction activities; or

etc. for tax purposes.

- (b) any of the following activities, namely, the acquisition, enjoyment or exploitation of petroleum rights; or
 - (c) activities of both those descriptions,
- those activities shall be treated for the purposes of this Ordinance as a separate trade, distinct from all other activities carried on by him as part of the trade.

(2) Unless the Commissioner gives a direction in writing that this subsection shall not apply in relation to any specified tariff receipt—

- (a) a tariff receipt of a person carrying on a ring fence trade shall, if it is not otherwise a receipt of that ring fence trade, be deemed to be such a receipt, and
- (b) the activities of a licensee or any person connected or associated with him, not otherwise being petroleum extraction activities, in providing assets in a way which gives rise to tariff receipts of the licensee, shall be deemed to be such activities.

A licensee is associated with another person if by acting together with another licensee he is able to secure or exercise control of that other person, and section 210 shall apply for the purposes of this subsection.

(3) For the purposes of subsection (2) above, a tariff receipt, in relation to a licensee, is the amount or value of any consideration in the nature of income for—

- (a) the use of an asset which has been used or is expected to be used in his ring fence trade, or
- (b) the provision of services or other business facilities of whatever kind (other than any loan or credit) in connection with the use of such an asset,

but does not include consideration for any asset or services or facilities used in connection with deballasting.

(4) An allowance under Chapter II of Part V shall not be made in respect of expenditure incurred for or in connection with a business which is a ring fence trade except by way of deduction from ring fence income.

(5) An allowance under Chapter II of Part V shall not be made in respect of expenditure incurred for or in connection with a business which is not a ring fence trade by way of deduction from ring fence income, and, accordingly, where a person's chargeable income includes ring fence income, the amount of that person's chargeable income against which the allowance may be made shall be reduced by an amount equal to the amount of that ring fence income.

(6) For the purposes of subsection (5) above the amount of a person's chargeable income and the amount of any ring fence income shall be the amount of that income after all deductions, allowances and reliefs which may be made have been made (other than any which have not been claimed or have been disclaimed).

(7) Relief in respect of a loss which arises from a ring fence trade shall not be given under Chapter III of Part V (loss relief) against any income except ring fence income.

(8) Relief in respect of a loss which does not arise from a ring fence trade shall not be given under Chapter III of Part V against ring fence income.

(9) In any case where—

(a) in any chargeable period a person incurs a loss in activities ("separate activities") which, for that or any subsequent chargeable period, are treated by virtue of subsection (1) above as a separate trade for the purposes specified in that subsection; and

(b) in any subsequent chargeable period any of his trading income is derived from activities ("related activities") which are not part of the separate activities but which, apart from subsection (1) above, would together with those activities constitute a single trade,

then, notwithstanding anything in that subsection, the amount of the loss may be set off, in accordance with section 126 or 128, against so much of his trading income in any subsequent chargeable period as is derived from the related activities.

(10) On a claim for group relief made by a claimant company in relation to a surrendering company—

(a) group relief shall not be allowed against the claimant company's ring fence income except to the extent that the claim relates to losses incurred by the surrendering company that arose from a ring fence trade; and

(b) group relief shall not be allowed against the claimant company's income which is not ring fence income to the extent that the claim relates to losses incurred by the surrendering company that arose from a ring fence trade.

*Non-arm's length
disposals and
appropriations:
valuation of
petroleum*

151.—(1) Where a person carrying on a ring fence trade disposes otherwise than by an arm's length sale of any petroleum in the course of that trade, then, for all purposes of this Ordinance, he shall be deemed to have disposed of the petroleum, at the time of the disposal, for a consideration equal to the market value of the petroleum.

(2) Where a person carrying on a ring fence trade makes a relevant appropriation of any petroleum in the course of that trade, then, for all purposes of this Ordinance, he shall be deemed—

(a) to have disposed of the petroleum in the course of his ring fence trade, and

(b) to have acquired the petroleum in the course of his trade other than the ring fence trade,

for a consideration equal to the market value of the petroleum at the time of

the appropriation.

(3) For the purposes of subsections (1) and (2) above—

(a) the market value of any petroleum shall be determined in accordance with regulations made by the Governor for the purposes of this section; and

(b) a sale is at arm's length if but only if—

(i) the contract price is the only consideration for the sale; and

(ii) the terms of the sale are not affected by any commercial relationship (other than that created by the contract itself) between the seller or any person connected with the seller and the buyer or any person connected with the buyer; and

(iii) neither the seller nor any person connected with him has, directly or indirectly, any interest in the subsequent resale or disposal of the petroleum or any product derived therefrom.

Payments of interest.

152.—(1) Interest paid by a company shall not be allowable under section 97 as a deduction against the company's ring fence income except to the extent permitted by subsection (2) below, but subject to subsections (3), (4) and (5) below and section 155.

(2) Interest may be deducted under this subsection if and to the extent that it is payable in respect of money borrowed by the company which is shown to have been used to meet expenditure incurred by the company in its ring fence trade or to have been appropriated to meeting expenditure to be so incurred by the company.

(3) Where it appears to the Commissioner that interest within subsection (2) above is paid at a time when the loan has not been reduced to the extent to which it is reasonable, having regard to all the circumstances including the original terms of the loan and the level of profitability of the ring fence trade, to expect it to have been reduced, he may direct that all or any of that interest shall not be allowable as a deduction under section 97 against the company's ring fence income.

(4) Interest paid by a company in respect of money borrowed to meet expenditure incurred or to be incurred in acquiring petroleum rights from a connected person shall not be allowable under section 97.

(5) Interest paid by a company shall not be allowable under section 97 as a deduction against income which is not ring fence income except to the extent that it was payable in respect of money borrowed by the company which is shown to have been used to meet expenditure incurred by the company otherwise than in its ring fence trade or to have been appropriated to meeting expenditure to be so incurred by the company.

*Restriction on
setting ACT against
income from
petroleum
extraction activities
etc.*

153.—(1) Sections 37, 40 and 128 shall have effect subject to the following provisions of this section.

(2) Subsection (3) below applies where ACT is paid by a company ("the distributing company")—

- (a) in respect of any distribution made by it to a company associated with it and resident in the Falkland Islands ("the receiving company"), or
- (b) in respect of any distribution which, in accordance with subsection (4) below, is made pursuant to a substitution scheme, or
- (c) where subsection (5) below applies, in respect of any distribution consisting of a dividend on a redeemable preference share.

(3) Where this subsection applies—

- (a) the ACT shall not be set against the distributing company's liability to corporation tax on any ring fence profits of the distributing company; and
- (b) if the benefit of any amount of that ACT is surrendered under section 38 to a subsidiary of the distributing company, the corresponding amount of ACT which under that section the subsidiary is treated for the purposes of section 37 as having paid shall not be set against the subsidiary's liability to corporation tax on any ring fence income of the subsidiary; and
- (c) if the receiving company carries on a ring fence trade, it may not make a claim under section 128(1) to set losses incurred in its ring fence trade against any of its surplus franked investment income by virtue of a claim under section 40, in so far as that surplus includes any amount referable to the distribution.

(4) For the purposes of subsection (2) above, a distribution ("the relevant distribution") is made pursuant to a substitution scheme if—

- (a) it is made in respect of shares or securities issued or transferred pursuant to or otherwise for the purposes of a scheme or arrangements; and
- (b) by virtue of the scheme or arrangements a person's entitlement to, or to any rights in, the relevant distribution arises, directly or indirectly, by way of substitution for or addition to any entitlement of his to, or any prospect of his of, a distribution in respect of shares in or securities of another company; and
- (c) at the time of the relevant distribution, that other company is associated with the distributing company and is resident in the Falkland Islands.

(5) Subject to subsection (6) below, this subsection applies in relation to the payment of a dividend on redeemable preference shares if—

- (a) at the time the shares are issued, or
- (b) at the time the dividend is paid,

the company paying the dividend is under the control of a company resident in the Falkland Islands, and section 210 shall apply for the purposes of this subsection.

(6) Subsection (5) above does not apply if or to the extent that it is shown that the proceeds of the issue of the redeemable preference shares—

- (a) were used to meet expenditure incurred by the company issuing them in carrying on petroleum extraction activities or in acquiring petroleum rights otherwise than from a connected person; or
- (b) were appropriated to meeting expenditure to be so incurred by that company.

(7) For the purposes of this section, shares in a company are redeemable preference shares either if they are so described in the terms of their issue or if, however they are described, they fulfill the condition in paragraph (a) below and either or both of the conditions in paragraphs (b) and (c) below—

- (a) that, as against other shares in the company, they carry a preferential entitlement to a dividend or to any assets in a winding up or both;
- (b) that, by virtue of the terms of their issue, the exercise of a right by any person or the existence of any arrangements, they are liable to be redeemed, cancelled or repaid, in whole or in part;
- (c) that, by virtue of any material arrangements, the holder has a right to require another person to acquire the shares or is obliged in any circumstances to dispose of them or another person has a right or is in any circumstances obliged to acquire them.

(8) For the purposes of subsection (7)(a) above, shares are to be treated as carrying a preferential entitlement to a dividend as against other shares if, by virtue of any arrangements, there are circumstances in which a minimum dividend will be payable on those shares but not on others.

(9) For the purposes of subsection (7)(c) arrangements relating to shares are material arrangements if the company which issued the shares or a company associated with that company is a party to the arrangements.

CHAPTER IV MISCELLANEOUS PROVISIONS

*Certain expenses
not deductible*

154.—(1) In any case where—

- (a) expenditure is incurred by a person, at a time when he is a licensee or is connected with a licensee, in making payments (in money or money's worth) to another person ("the recipient"), and
- (b) the amount or value of the payments is wholly or partly dependent on or determined by reference to the quantity, value or proceeds of, or the profits from, petroleum won in pursuance of the licence,

that expenditure shall not be deductible in computing the chargeable income of that person, but an amount equal to the payments shall be deducted from the chargeable income of the recipient for the chargeable period in which they are made.

(2) Section 210 shall apply for the purposes of this section.

Certain interest not deductible.

155.—(1) Any payment of interest by a company to which this section applies in respect of securities issued by the company—

- (a) where the securities are held by a company which owns (directly or indirectly) not less than 75 per cent. of the ordinary share capital of the issuing company, or
- (b) another company owns (directly or indirectly) not less than 75 per cent. of the ordinary share capital of both companies;

shall not be deductible in ascertaining the chargeable income of the company unless and to the extent that the Commissioner directs the company that the payment may be deducted.

(2) Where a loan of any amount is made by a person ("the lender") to a company to which this section applies ("the borrower") with whom the lender has a special relationship and subsection (1) above does not apply, then if—

- (a) the lender would not have made any loan or a loan of that amount to the borrower in the absence of that relationship, or
- (b) the rate or amount of interest charged in respect of the loan would have been different in the absence of that relationship, or
- (c) any other terms of the loan would have been different in the absence of that relationship,

any payment of interest by the borrower in respect of that loan shall not be deductible in ascertaining the chargeable income of the borrower if and to the extent that the Commissioner directs the company that the payment may not be deducted.

(3) Where a payment of interest falls within subsection (1) or (2) above and also within section 104 or section 152(3), subsection (1) or (2) above (as the case may be) shall apply to the exclusion of section 104 or section 152(3).

(4) Where a loan within subsection (2) above is made—

- (a) the borrower shall notify the Commissioner of that fact not later than 3 months after the loan or, where it is an instalment loan, the first payment of the loan, is made, and
- (b) it shall be for the borrower to show that the loan would have been made, and that the terms of the loan would not have been different, in the absence of the relationship.

(5) A special relationship shall be taken to exist where—

- (a) the borrower and the lender are members of the same group, or
- (b) they are connected or associated with each other or with a third person, or
- (c) there is a commercial relationship between them apart from the loan, or
- (d) for any other reason the terms of the loan are likely to

have been influenced by their relationship;
and where any question arises as to whether or not there is a special relationship between the borrower and the lender, it shall be for the borrower to show that there is no such relationship.

(6) This section applies in relation to any interest paid by a company carrying on any exploration or exploitation activities.

(7) In this section "securities" includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company.

(8) Section 210 shall apply for the purposes of this section.

PART VII

TAX AVOIDANCE

Transactions

between associated persons.

156.—(1) Subject to the provisions of this section and section 157, where any property is sold and—

- (a) the buyer is a body of persons over whom the seller has control or the seller is a body of persons over whom the buyer has control or both the buyer and the seller are bodies of persons over whom the same person or persons has or have control, and
- (b) the property is sold at a price ("the actual price") which is either—

- (i) less than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length ("the arm's length price"), or

- (ii) greater than the arm's length price,

then, in computing for tax purposes the income, profits or losses of the seller where the actual price was less than the arm's length price, and of the buyer where the actual price was greater than the arm's length price, the like consequences shall ensue as would have ensued if the property had been sold for the arm's length price.

(2) Subsection (1) above shall not apply—

(a) in any case where—

- (i) the actual price is less than the arm's length price, and

- (ii) the buyer is resident and carrying on a business in the Falkland Islands, and

- (iii) the price of the property falls to be taken into account as a deduction in computing the profits or gains or losses of that business for tax purposes; or

(b) in any case where—

- (i) the actual price is greater than the arm's length price, and

- (ii) the seller is resident and carrying on a business in the Falkland Islands, and

- (iii) the price of the property falls to be taken into account as a trading receipt in computing the profits or gains or losses of that business for tax purposes; or

(c) in relation to a disposal of petroleum to which section 151 applies; or

(d) in relation to any other sale, unless the Commissioner so directs.

(3) Where a direction is given under subsection (2)(d) above all such adjustments shall be made, whether by assessment, repayment of tax or otherwise, as are necessary to give effect to the direction.

*Transactions by
petroleum
companies.*

157.—(1) For the purposes of this section a company is a petroleum company if—

- (a) its activities include any relevant activities; or
- (b) it is associated with a company whose activities include any relevant activities and its own activities include the ownership, operation or management of ships or pipelines used for transporting or conveying petroleum or petroleum products.

(2) "Relevant activities" means any of the following—

- (a) the acquisition or disposal of petroleum or of rights to acquire or dispose of petroleum;
- (b) the importation into or exportation from the Falkland Islands of petroleum products or the acquisition or disposal of rights to such importation or exportation;
- (c) the acquisition otherwise than for importation into the Falkland Islands of petroleum products outside the Falkland Islands or the disposal outside the Falkland Islands of petroleum products not exported from the Falkland Islands by the company making the disposal;
- (d) the refining or processing of crude petroleum; and
- (e) the extraction of petroleum, either under rights authorising it or under contractual or other arrangements with persons by whom such rights are exercisable.

(3) Section 156(2) shall have effect with the omission of paragraphs (a) and (b) in any case where—

- (a) either party to the transaction is a petroleum company or both are petroleum companies; and
- (b) the activities of either or both are or include—
 - (i) activities the profits from which are or would be chargeable to overseas tax for which credit could be given under section 169 or in pursuance of arrangements having effect by virtue of section 165; or
 - (ii) exploration or exploitation activities; and
- (c) the transaction is part of such activities or is connected with them.

(4) Where both the buyer and the seller are resident in the Falkland Islands and the Commissioner, in pursuance of this section, directs that section 156(1) is to apply to the computation of the income, profits or losses of the one, the direction may extend the application of that subsection to the computation of the income, profits or losses of the other, and where it does so adjustments shall be made under section 156(3) accordingly.

(5) Where any property is sold and either the buyer or the seller is a petroleum company or both are petroleum companies, then if—

- (a) the sale is part of a transaction or series of transactions

(whether or not between the same persons) and its terms are affected by those of the remainder of the transaction or transactions; or

- (b) what is sold is petroleum extracted under rights exercisable by a company other than the buyer, and not less than 20 per cent. of that company's ordinary share capital was at the time of the sale owned directly or indirectly by one or more of the following, that is to say, the buyer and any companies associated with the buyer;

section 156 shall apply in relation to the sale as if in subsection (1) of that section paragraph (a) were omitted.

(6) Where a petroleum company was a party to a sale of property, then, in determining for the purposes of section 156 what price the property might have been expected to fetch had the parties to the transaction been independent persons dealing at arm's length and what consequences would have ensued in computing the income, profits or losses of the seller or the buyer for tax purposes if the property had been sold for that price, it shall be assumed—

- (a) that the terms of the transaction would have been such as might have been expected to secure both to the buyer and to the seller a reasonable profit from transactions of the same kind carried out on similar terms over a reasonable period; and
- (b) that the seller would not have been compelled by law or by executive action of any government to demand a price fixed by law or such action or a price not less than one so fixed; and
- (c) that, if the transaction was part of a transaction or series of transactions (whether or not between the same persons), its terms would not have been affected by those of the remainder of the transaction or transactions;

and no regard shall be had to the terms of similar transactions which were capable of being varied.

(7) The Governor in Council may make regulations amending subsection (6) above to include assumptions which are to be made in cases where the whole of the property sold is not delivered by the seller within 12 months after the date of the sale or such earlier period as may be specified in the regulations.

(8) In this section—

"petroleum" includes any mineral petroleum or relative hydrocarbon and, except in the expression "crude petroleum", includes natural gas;

"petroleum products" means products derived from petroleum and wholly or substantially of a hydrocarbon nature.

(9) For the purposes of this section—

- (a) two companies are associated with one another if one is under the control of the other or both are under the control of the same person or persons;
- (b) any question whether ordinary share capital is owned by a company directly or indirectly shall be determined as for the purposes of section 207;
- (c) rights are exercisable by a company if they are exercisable by that company alone or jointly with another company or companies.

*Information for
purposes of section
156, and appeals.*

158.—(1) The Commissioner may, by notice given to any body corporate, require it to give to the Commissioner, within such time (not being less than 30 days) as may be specified in the notice, such particulars (which may include details of relevant documents) as may be so specified of any related transaction which appears to the Commissioner—

- (a) to be, or to be connected with, a transaction with respect to which the Commissioner might give a direction under section 156; or
- (b) to be relevant for determining whether such a direction could or should be given in any case; or
- (c) to be relevant for determining for the purposes of that section what price any property sold would have fetched had the sale been one between independent persons dealing at arm's length.

(2) For the purposes of a notice under subsection (1) above, a transaction is a related transaction if, but only if, it is one to which the body corporate to which the notice is given, or a body corporate associated with that body, was a party; and for the purposes of this subsection two bodies corporate are associated with one another if one is under the control of the other or both are under the control of the same person or persons.

(3) Where, in the case of a transaction with respect to which it appears to the Commissioner that a direction under section 156 might be given—

- (a) one of the parties is a body corporate resident outside the Falkland Islands more than 50 per cent. of the ordinary share capital of which is owned by a body corporate ("the parent body") resident in the Falkland Islands; and
- (b) more than 50 per cent. of the ordinary share capital of the other party is owned by the parent body or the parent body is the other party,

the Commissioner may, by notice given to the parent body, require it to make available for inspection any books, accounts or other documents or records whatsoever of the parent body or, subject to subsection (4) below, of any body of persons over which it has control which relate to that transaction, to any other transaction (of whatever nature) in the same assets, or to transactions (of whatever nature) in assets similar to those to which the first-mentioned transaction related.

(4) If, in a case in which under subsection (3) above the parent body is by notice required to make available for inspection any books, accounts, documents or records of a body of persons resident outside the Falkland Islands over which the parent body has control, it appears to the Commissioner, on the application of the parent body, that the circumstances are such that the requirement ought not to have effect, the Commissioner shall direct that the parent body need not comply with the requirement.

(5) If, on an application under subsection (4) above, the Commissioner refuses to give a direction under that subsection, the parent body may, by notice given to the Commissioner within 30 days after the refusal, appeal to the Tribunal who, if satisfied that the requirement in question ought in the circumstances not to have effect, may determine accordingly.

(6) Where it appears to the Commissioner that a body of persons may be a party to a transaction or transactions with respect to which a direction under section 156 might be given, then, for the purpose of assisting the Commissioner to determine whether such a direction should be given, an officer of the Taxes Office specifically authorised in that behalf by the Commissioner may, at any reasonable time, on production if so required of his authority—

- (a) enter any premises used in connection with the business carried on by that body of persons in the course of which the transaction or transactions were effected,
- (b) inspect there any books, accounts or other documents or records whatsoever relating to that business which he considers it necessary for him to inspect for that purpose, and
- (c) require any such books, accounts or other documents or records to be produced to him there for inspection.

(7) An officer's authority for entering any premises under subsection (6) above shall state his name and the name of the body of persons carrying on the business in connection with which the premises are used.

Provisions supplementary to sections 156, 157 and 158.

159.—(1) Nothing in section 156 shall be construed as affecting the operation of Chapter II of Part V.

(2) Section 156 shall be disregarded in determining for the purposes of section 195 what, if any, profits are produced by a business.

(3) For the purposes of sections 156, 157 and 158 a sale shall be deemed to take place at the time of completion or when possession is given, whichever is the earlier.

(4) For the purposes of sections 156, 157 and 158 "control", in relation to a body corporate, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other

body corporate, or

- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

(5) In determining whether any person (alone or with others) has control over a body of persons--

- (a) there shall be attributed to him any rights or powers of a nominee for him, that is to say, any rights or powers which another possesses on his behalf or may be required to exercise on his direction or behalf;
- (b) there may also be attributed to him any rights or powers of a person with whom he is connected including any rights or powers of a nominee for such a person, that is to say, any rights or powers which another possesses on behalf of such a person or may be required to exercise on his direction or behalf.

(6) Sections 156, 157, 158 and this section shall, with the necessary adaptations, have effect in relation to—

- (a) lettings and hirings of property, grants and transfers of rights, interests or licences, and
- (b) providing business facilities whether by way of making loans or guaranteeing debts or other liabilities to third parties or by the provision of any other kind of business facility whatsoever,

as they have effect in relation to sales, and the references in those sections to sales, buyers and prices shall be deemed to be extended accordingly.

*Restriction of relief
for payments of
interest.*

160.—(1) Relief shall not be given to any person under any provision of this Ordinance in respect of any payment of interest if a scheme has been effected or arrangements have been made (whether before or after the time when the payment is made) such that the sole or main benefit that might be expected to accrue to that person from the transaction under which the interest is paid was the obtaining of a reduction in tax liability by means of any such relief.

(2) In this section "relief" means relief by way of deduction in computing profits or gains or deduction or set off against income or total profits.

(3) Where the relief is claimed under Chapter IV of Part V (group relief) any question under this section as to what benefit might be expected to accrue from the transaction in question shall be determined by reference to the claimant company and the surrendering company taken together.

*Transfer of property
to evade taxation.*

161. Any person who reduces his income by the transfer or assignment of any real or personal, movable or immovable property to any member of his family shall nevertheless be liable to be taxed as if such transfer or assignment had not been made, unless the Commissioner is satisfied that such transfer or assignment was not made for the purpose of evading the whole or any part of any tax imposed under this Ordinance.

*Tax payable before
departure from
Falkland Islands,
etc.*

162.—(1) If the Commissioner has reason to believe that any person who has been assessed to tax may leave the Falkland Islands before the tax becomes payable without having paid such tax, he may by notice to that person demand payment of the tax within the period specified in the notice.

(2) Tax demanded by notice under subsection (1) shall be payable at the end of the specified period and, in default of payment and unless security for payment thereof be given to the satisfaction of the Commissioner, shall be recoverable forthwith in the manner prescribed by section 184(3).

(3) If the Commissioner has reason to believe that tax on any chargeable income may not be recovered, he may at any time and as the case may require—

- (a) by notice require any person to make a return and to furnish particulars of any chargeable income within the specified period;
- (b) make an assessment on that person in the amount of the income returned, or if default is made in making such return or the Commissioner is dissatisfied with such return, in such amount as the Commissioner may think reasonable;
- (c) by notice to the person assessed require security for the payment of the tax assessed to be given to his satisfaction.

(4) If the Commissioner has reason to believe that tax on any income which will become chargeable to such tax (assuming tax to be chargeable on that income), may not be recovered he may at any time—

- (a) by notice to the person by whom the tax would be payable determine a period ("the tax period") for which tax shall be charged and require such person to render within the specified period returns and particulars of the income for the tax period;
- (b) make an assessment upon the person in the amount of the income returned, or if default is made in making a return or the Commissioner is dissatisfied with such return, in such amount as the Commissioner may think reasonable;

and an assessment under this subsection shall be made at the rate of tax in force for the chargeable period in which the assessment is issued.

(5) Notice of any assessment made in accordance with the provisions

of subsection (3) or (4) shall be given to the person assessed, and any tax so assessed (in accordance with the provisions of subsection (3) or (4)) shall be payable on demand made in writing under the hand of the Commissioner and shall in default of payment, unless security for the payment thereof be given to the satisfaction of the Commissioner, be recoverable forthwith in accordance with section 184(3).

(6) Any person who has paid the tax in accordance with a demand made by the Commissioner or who has given security for such payment under subsection (3) or (4) shall have the rights of objection and appeal conferred by sections 175 and 181 and the amount paid by him shall be adjusted in accordance with the result of any such objection or appeal.

(7) Subsections (3) or (4) are without prejudice to the powers of the Commissioner under section 173.

(8) In this section "specified period", in relation to any notice, means such period as may be specified in the notice.

(9) This section applies in relation to assessments made before as well as after the coming into force of this section, and in relation to tax for chargeable periods beginning before the coming into force of this section.

Company migration.

163.—(1) The requirements of subsections (2) and (3) below must be satisfied before a company ceases to be resident in the Falkland Islands.

(2) The requirements of this subsection are satisfied if the company gives to the Commissioner—

- (a) notice of its intention to cease to be resident in the Falkland Islands specifying the time ("the relevant time") when it intends so to cease;
- (b) a statement of the amount which, in its opinion, is the amount of tax which is or will be payable by it in respect of periods beginning before that time; and
- (c) particulars of the arrangements which it proposes to make for securing the payment of that tax.

(3) The requirements of this subsection are satisfied if—

- (a) arrangements are made by the company for securing the payment of the tax which is or will be payable by it in respect of periods beginning before the relevant time; and
- (b) those arrangements as so made are approved by the Commissioner for the purposes of this subsection.

(4) If any question arises as to the amount which should be regarded for the purposes of subsection (3) above as the amount of the tax which is or will be payable by the company in respect of periods beginning before the relevant time, that question shall be referred to the Tribunal whose decision shall be final.

(5) If any information furnished by the company for the purpose of securing the approval of the Commissioner under subsection (3) above does not fully and accurately disclose all facts and considerations material for the decision of the Commissioner under that subsection, any resulting approval of the Commissioner shall be void.

(6) In this section and section 164 any reference to the tax payable by a company includes a reference to—

- (a) any amount which it is liable to pay under the POAT regulations made under section 91 or Schedule 6;
- (b) any tax which it is liable to pay under section 61.

(7) In this section and section 164 any reference to the tax payable by a company in respect of periods beginning before any particular time includes a reference to any interest on the tax so payable, or on tax paid by it in respect of such periods, which it is liable to pay in respect of periods beginning before or after that time.

(8) In this section and section 164 any reference to a provision of this Ordinance shall be construed, in relation to any time before the commencement of that provision as a reference to the corresponding enactment repealed by this Ordinance.

*Penalties for failure
to comply with
section 163.*

164.—(1) If a company fails to comply with section 163 at any time, it shall be liable to a penalty not exceeding the amount of tax which is or will be payable by it in respect of periods beginning before that time and which has not been paid at that time.

(2) If, in relation to a company ("the migrating company"), any person does or is party to the doing of any act which to his knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, the migrating company failing to comply with section 163 at any time and either—

- (a) that person is a person to whom subsection (3) below applies; or
- (b) the act in question is a direction or instruction given (otherwise than by way of advice given by a person acting in a professional capacity) to persons to whom that subsection applies,

that person shall be liable to a penalty not exceeding the amount of tax which is or will be payable by the migrating company in respect of periods beginning before that time and which has not been paid at that time.

(3) This subsection applies to the following persons, namely—

- (a) any company which has control of the migrating company; and
- (b) any person who is a director of the migrating company or of a company which has control of the migrating company.

(4) In any proceedings against any person to whom subsection (3) above applies for the recovery of a penalty under subsection (2) above—

- (a) it shall be presumed that he was party to every act of the migrating company unless he proves that it was done without his consent or connivance; and
- (b) it shall, unless the contrary is proved, be presumed that any act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in, or would amount to or result in, the migrating company failing to comply with section 163 was to his knowledge such an act.

(5) References in this section to a company failing to comply with section 163 are references to the requirements of subsections (2) and (3) of that section not being satisfied before the company ceases to be resident in the Falkland Islands.

(6) In this section "director", in relation to a company, includes—

- (a) any person managing, or who is a member of the body managing, the affairs of the company (by whatever name called),
- (b) any person (other than a person advising in a professional capacity) in accordance with whose directions or instructions the other directors are accustomed to act; and
- (c) any person who, or who together with any connected person, beneficially owns, directly or indirectly, at least 20 per cent. of the ordinary share capital of the company.

PART VIII

DOUBLE TAXATION RELIEF

*Double taxation
relief arrangements.*

165.—(1) If the Governor in Council by order declares—

- (a) that arrangements specified in the order have been made with the Government of any territory outside the Falkland Islands with a view to affording relief from double taxation in relation to income tax or corporation tax or any tax of a similar character imposed by the laws of that territory, and
- (b) that it is expedient that those arrangements should have effect,

the arrangements shall have effect in relation to income tax and corporation tax notwithstanding anything to the contrary in any enactment.

(2) Any order made under this section may be revoked by a subsequent order.

(3) The Governor in Council may make rules for carrying out the provisions of any arrangements having effect under this section.

*Limit on credit:
general provisions.*

166.—(1) This section shall have effect where, under double taxation relief arrangements, tax payable in respect of any income in the territory with the government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in the Falkland Islands.

(2) In subsections (3) to (7) below and sections 167 and 168—

- "foreign tax" means any tax payable in that territory which under the arrangements is to be so allowed, and
- "tax" means income tax or corporation tax chargeable under this Ordinance.

(3) A credit shall not be allowed against tax for any chargeable period unless the person entitled to the income is resident in the Falkland Islands for that period, but subject to that, the amount of tax chargeable in respect of the income shall, on a claim being made in that behalf, be reduced by the amount of the credit.

(4) In computing the amount of the income—

- (a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);
- (b) where the tax chargeable depends on the amount received in the Falkland Islands, that amount shall be increased by the appropriate amount of the foreign tax in respect of the income;
- (c) where the income includes a dividend and, under the arrangements, foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken

into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of credit;

but notwithstanding anything in paragraphs (a) to (c) above a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds the credit therefor.

(5) Where—

(a) the double taxation relief arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls directly or indirectly, not less than one-half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(6) Any claim for an allowance by way of credit under this section for any chargeable period shall be made not later than two years after the end of that period, and in the event of any dispute as to the amount allowable, the claim shall be subject to objection and appeal in like manner as an assessment.

(7) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the Falkland Islands or elsewhere, nothing in this Ordinance limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than two years from the time when all such assessments, adjustments and other determinations have been made whether in the Falkland Islands or elsewhere, as are material in determining whether any and if so what credit falls to be given.

*Limit on credit:
income tax.*

167.—(1) The amount of the credit for foreign tax which, under any arrangements, is to be allowed to a person against income tax for any year of assessment shall not exceed the difference between—

(a) the amount of tax which would be chargeable (before allowance of any credit under this Part) on the total income of that person, and

- (b) the amount of tax which would be so chargeable on the total income of that person less the income in respect of which the credit is to be allowed.

(2) Without prejudice to subsection (1), the total credit to be allowed to a person for any chargeable period for foreign tax under this Part shall not exceed the total tax payable by him for that period.

(3) Paragraphs (a) and (b) of section 166(4) (but not the remainder of that subsection) shall apply to the computation of total income for the purpose of subsection (1) above, and shall so apply in relation to all income in the case of which credit falls to be given for foreign tax under double taxation relief arrangements.

*Limit on credit:
corporation tax.*

168.—(1) The amount of the credit for foreign tax which under any arrangements is to be allowed against corporation tax in respect of any income ("the relevant income") shall not exceed the corporation tax attributable to the relevant income, determined in accordance with subsection (2) below.

(2) The amount of corporation tax attributable to the relevant income shall be treated as equal to such proportion of the amount of that income as corresponds to the rate of corporation tax payable by the company (before any credit under this Part) on its income for the accounting period in which the income arises ("the relevant accounting period").

(3) Where in accordance with section 37 any ACT falls to be set against the company's liability to corporation tax on its income for the relevant accounting period—

(a) so far as that liability relates to the relevant income it shall be taken to be reduced by the amount of the credit for foreign tax attributable to that income as determined in accordance with subsection (2) above; and

(b) the amount of ACT which may be set against that liability, so far as it relates to the relevant income, shall not exceed the amount of corporation tax for which, after taking account of that reduction, the company is liable in respect of that amount of income

Unilateral tax credit.

169.—(1) Where any person resident or ordinarily resident in the Falkland Islands proves that he had paid, by deduction or otherwise, overseas tax on any part of his income which arises from a source outside the Falkland Islands and which is also chargeable to Falkland Islands tax, he shall be entitled to a credit against such Falkland Islands tax equal to the overseas tax

or the Falkland Islands tax on that part of his income whichever is the less.

(2) For the purposes of this section—

"overseas tax" means an income tax or corporation tax or tax of a similar character imposed by the laws of any territory outside the Falkland Islands other than a territory with the Government of which arrangements have been made which have effect under section 165; and

"income arising from a source outside the Falkland Islands" does not include, in the case of income from an employment, such part of that income as constitutes remuneration for services actually performed in the Falkland Islands.

(3) For the purpose of calculating the amount of any credit under this section, the provisions of sections 166, 167 and 168 shall apply as if references in those sections to double taxation relief arrangements were references to this section and as if references to foreign tax were references to overseas tax.

*Disclosure of
information.*

170.—(1) Where any arrangements have effect by virtue of section 165, the obligation as to secrecy imposed by section 202 shall not prevent the disclosure to any authorized officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements.

(2) Without prejudice to subsection (1) above, where, under any law in force in any territory outside the Falkland Islands, provision is made for the allowance of relief from tax on income in respect of the payment of tax in the Falkland Islands, the obligation as to secrecy imposed by section 202 shall not prevent the disclosure to the authorized officers of the Government in that territory of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from tax on income in that territory.

PART IX
ASSESSMENTS, APPEALS, COLLECTION,
REPAYMENT OF TAX, OFFENCES AND PENALTIES
Assessments to income tax and corporation tax

*Assessments to
income tax.*

171.—(1) The Commissioner shall assess every person chargeable to income tax for any year of assessment as soon as is reasonably practicable after the expiration of the time allowed to such person for the delivery of his return under section 12 that year.

- (2) Where a person has delivered his return the Commissioner may—
- (a) accept the return and make an assessment accordingly; or
 - (b) refuse to accept the return, and, to the best of his judgment, determine the amount of the chargeable income of that person and assess him accordingly.

(3) Where a person has not delivered a return for any year within the time permitted and the Commissioner is of the opinion that he is chargeable to income tax for that year, he may, according to the best of his judgment, determine the amount of the chargeable income of such person and assess him accordingly; but such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.

(4) In any case where a person has been required to lodge accounts and other information with the Commissioner under section 12, any reference above to his return includes a reference to any such accounts and information.

(5) Subject to section 174, an assessment under this section for any year of assessment may not be made after the end of the period of 6 years immediately following that year

*Assessments to
corporation tax.*

172.—(1) The Commissioner may assess any company chargeable to corporation tax for a corporation tax year before the expiry of the period of 6 years immediately following that year.

(2) Where a company has delivered accounts for an accounting period and any other information which the Commissioner may require, the Commissioner may—

- (a) accept the accounts and other information and make an assessment accordingly; or
- (b) refuse to accept the accounts or other information and, to the best of his judgment, determine the amount of the chargeable income of the company and make an assessment accordingly.

(3) Where a person has not delivered accounts for an accounting period within the time permitted and the Commissioner is of the opinion that he is chargeable to corporation tax for that period, he may, according to the best of his judgment, determine the amount of the chargeable income of the company and make an assessment accordingly; but such an assessment shall not affect any liability otherwise incurred by the company by reason of its failure or neglect to deliver a return.

(4) Where it appears to the Commissioner that the beginning or end of an accounting period of a company is uncertain, he may make an assessment on the company for such period, not exceeding 12 months, as appears to him appropriate, and that period shall be treated for all purposes as an accounting period of the company unless either—

- (a) the Commissioner on further facts coming to his knowledge sees fit to revise it; or
- (b) on an appeal to the Tribunal against the assessment in respect of some other matter the company shows the true accounting periods;

and if on an appeal against an assessment made by virtue of this subsection the company shows the true accounting periods, the assessment appealed against shall, as regards the period to which it relates, have effect as an assessment or assessments for the accounting periods, and there shall be made such other assessments for any such periods or any of them as might have been made at the time the assessment appealed against was made.

(5) Subject to section 174, an assessment under this section for any corporation tax year may not be made after the end of the period of 6 years immediately following that year.

(6) This section has effect subject to any other provision of this Ordinance making provision with respect to assessments to corporation tax.

*Additional
assessments.*

173.—(1) Where it appears to the Commissioner that any person chargeable to tax for any chargeable period has been assessed at a less amount than that which ought to have been charged, the Commissioner may, according to the best of his judgment, assess the additional amount of tax not charged by the earlier assessment and, in the case of income tax, interest shall be due as if the tax had been charged in the earlier assessment.

(2) The provisions of this Ordinance relating to notices of assessment, appeals and other proceedings under this Ordinance shall apply to any additional assessment under this section and to the tax charged under the assessment.

(3) An additional assessment under this section may not be made more than 2 years after the date on which the original assessment was made.

*Late assessments in
cases of fraud or
neglect.*

174.—(1) An assessment on any person ("the person in default") for the purpose of making good to the government a loss of tax attributable to his fraudulent or negligent conduct or the fraudulent or negligent conduct of a person acting on his behalf may be made at any time not later than—

- (a) in the case of an assessment to income tax, 20 years after the 31st August next following the year of assessment to which it relates; and
- (b) in the case of an assessment to corporation tax, 21 years after the end of the accounting period to which it relates.

(2) Where the person in default carried on a business with one or more other persons at any time in the period for which the assessment is made, an assessment in respect of the profits or gains of the business for the purpose mentioned in subsection (1) above may be made not only on the

person in default but also on his partner or any of his partners.

(3) If the person on whom the assessment is made so requires, in determining the amount of the tax to be charged for any chargeable period in any assessment made for the purpose mentioned in subsection (1) above, effect shall be given to any relief or allowance to which he would have been entitled for that chargeable period on a claim or application made within the time allowed by this Ordinance.

*Notices of
assessment and
objections to and
amendments of
assessments.*

175.—(1) Where an assessment is made on any person under this Part, the Commissioner shall give notice of it to the person as soon as is reasonably practicable after it is made, stating the amount of his chargeable income and the amount of tax payable by him, and informing him of his rights under this section; and a notice under this subsection is referred to in this Ordinance as a notice of assessment.

(2) Any person who is given a notice of assessment may by notice to the Commissioner object to the assessment.

In this section "the person assessed" means the person or company to whom a notice of assessment is given.

(3) A notice under subsection (2) ("a notice of objection") shall state precisely the grounds on which the person assessed objects to the assessment.

(4) A notice of objection shall be made within two months from the date of the service of the notice of assessment to which it relates but the Commissioner shall, if satisfied that owing to any reasonable cause (whether absence from the Falkland Islands or sickness or any other cause) the person assessed was prevented from making the application within the 2 months allowed, extend that period to such longer period as may be reasonable in the circumstances.

(5) On receipt of a notice of objection the Commissioner shall reconsider the assessment and may require the person assessed—

- (a) to furnish such particulars as the Commissioner may require with respect to that person's income, and
- (b) to produce all books or other documents in his custody or under his control relating to such income.

(6) The Commissioner may summon any person whom he has reasonable grounds for believing to be able to give evidence respecting the assessment to attend before him, and may examine such person on oath or otherwise, but a person shall not be required to give any evidence under this subsection which he could not be compelled to give in an action in the Supreme Court.

(7) In the event of any person assessed who has objected to an assessment made upon him agreeing with the Commissioner the amount at which he is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon that person.

(8) The person assessed may not appeal against the assessment under section 181 unless—

- (a) he has given notice of objection to the assessment under

this section, and

- (b) the Commissioner has completed his reconsideration of the assessment under this section.

Power to call for documents of taxpayer and others.

176.—(1) The Commissioner may serve a notice under this section for the purpose of enquiring into the tax liability of any person ("the taxpayer") in any case where he has reasonable grounds for believing—

- (a) that the taxpayer may have failed or may fail to comply with any provision of this Ordinance, and
(b) that any such failure may have prejudiced or may prejudice the proper assessment or collection of tax; but he may not otherwise serve a notice under this section.

(2) The provisions of this section are subject to sections 177 and 178 and for the purposes of this section—

- (a) "3rd party notice" means a notice under subsection (4) below;
(b) any reference to a tax liability includes a reference to the amount of the tax liability;
(c) any reference to a taxpayer's failure to comply with any provision of this Ordinance includes a failure by a person assisting him as mentioned in section 178(10)(a).

(3) The Commissioner may by notice require a person—

- (a) to deliver to the Commissioner such documents as are in that person's possession or power and as (in the Commissioner's reasonable opinion) contain, or may contain, information relevant to any tax liability to which that person is or may be subject, or
(b) to give the Commissioner such particulars as the Commissioner may reasonably require as being relevant to any such liability.

(4) The Commissioner may by notice require a person—

- (a) to deliver to the Commissioner, or
(b) if that person so elects, to make available for inspection by a named officer of the Commissioner,

such documents as are in his possession or power and as (in the Commissioner's reasonable opinion) contain, or may contain, information relevant to any tax liability to which a taxpayer is or may be, or may have been, subject.

(5) A person may comply with a notice under this section by delivering copies of documents instead of the originals if (but only if) any such copy—

- (a) is a facsimile of the original (whether photographic or other), and
(b) where so required by the Commissioner in the case of any documents specified in the notice, the originals are made available for inspection by a named officer of the Taxes Office;

and references in this section and sections 177 and 178 to documents shall be construed accordingly.

(6) A notice shall not be served on a person under this section unless that person has previously been given a reasonable opportunity to deliver or, as the case may be, to deliver or make available the documents in question or to furnish the particulars in question.

(7) A notice under this section shall specify the time, not being less than 30 days after the date of the notice, within which the documents are to be delivered, or delivered or made available, or the particulars to be furnished.

(8) The Commissioner may take copies of any document to which a notice under this section relates

*Documents etc
excluded from
section 176 notices*

177.—(1) A notice under section 176 may not relate to documentary and other records concerning an individual (whether living or dead) who can be identified from them if—

(a) they relate to his physical or mental health, to spiritual counselling or assistance given or to be given to him, or

(b) they relate to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who—

(i) by reason of his office or occupation has responsibilities for personal welfare, or

(ii) by reason of an order of a court has responsibilities for supervision.

(2) A notice under section 176 may not relate to material acquired or created for the purposes of journalism which is in the possession of a person who acquired or created it for the purposes of journalism; and for this purpose a person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

(3) Any reference in section 176 to particulars does not include a reference to particulars contained in records or material falling within subsection (1) or (2) above.

(4) A notice under section 176(3) does not oblige a person to deliver documents or furnish particulars relating to the conduct of any pending appeal by him, and a 3rd party notice does not oblige a person to deliver or make available documents relating to the conduct of a pending appeal by the taxpayer.

In this subsection "appeal" means an appeal relating to tax.

*Special provisions
relating to 3rd
party notices.*

178.—(1) In this section—

(a) a "3rd party notice" means a notice under section 176(4); and

(b) "taxpayer" has the meaning given by section 176 (1).

(2) A 3rd party notice shall name the taxpayer to whom it relates

- (a) the Commissioner does not know that person's identity or, if the notice relates to a class of taxpayers, those person's individual identities, and
- (b) the Commissioner is satisfied that the information which is likely to be contained in the documents to which the notice relates is not readily available from another source.

(3) A 3rd party notice may relate to the tax liability of a company which has ceased to exist or an individual who has died, but in the case of a taxpayer who has died it may not be served more than 6 years after his death.

(4) A copy of a 3rd party notice which names the taxpayer shall be given to that taxpayer unless the Commissioner has reasonable grounds for suspecting him of fraud.

(5) Subsection (4) above does not require the disclosure of any information if—

- (a) it would, or might, identify any person who has provided the Commissioner with any information which he took into account in deciding whether to serve the notice, or
- (b) the Commissioner has reasonable grounds for believing that disclosure of the information in question would prejudice the assessment or collection of tax.

(6) Where the taxpayer is not named in a 3rd party notice, the person to whom the notice is given may object to the notice on the ground that it would be onerous for him to comply with it; and if the matter is not resolved by agreement, it shall be referred to the Appeal Tribunal who may confirm, vary or cancel that notice.

Such an objection shall be made by way of notice which shall be given to the Commissioner within 30 days after the date of the 3rd party notice.

(7) A 3rd party notice does not oblige a person to deliver or make available any document the whole of which originates more than 6 years before the date of the notice unless—

- (a) the Commissioner has reasonable grounds for believing that tax has, or may have been, lost to the government owing to the fraud of the taxpayer, and
- (b) the notice expressly disapplies this subsection.

(8) A 3rd party notice does not oblige a lawyer to deliver or make available, without his client's consent, any document with respect to which a claim to legal professional privilege could be maintained.

(9) Subject to subsections (10) and (11) below, a 3rd party notice—

- (a) does not oblige a person who has been appointed as an auditor for the purposes of any enactment to deliver or make available documents which are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment, and

(b) does not oblige a tax adviser to deliver or make available documents which are his property and consist of communications between—

(i) himself and the person whose tax adviser he is, or

(ii) himself and any other tax adviser of that person,

the purpose of which is the giving or obtaining of advice about any of those tax affairs.

In this subsection "tax adviser" means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that other person or by another tax adviser of his).

(10) Subject to subsection (11) below, subsection (9) above shall not have effect in relation to any document which contains information—

(a) explaining any information, return, accounts or other document which the person to whom the notice is given has assisted any other person in preparing for, or delivering to, the Commissioner and which he knows will be, or is likely to be, used for any purpose of tax, or

(b) in the case of a 3rd party notice which does not name the taxpayer in question, giving the identity or address of any taxpayer to whom the notice relates or of any person who has acted on behalf of any such person.

(11) Subsection (9) above shall not apply in relation to any document if the information referred to in that subsection is contained in some other document, and the person to whom the notice is given either—

(a) delivers that other document or so much of it as contains the information to the Commissioner, or

(b) makes that other document, or so much of it as contains the information, available for inspection by an officer of the Commissioner.

Burden of proof.

179. The burden of proof of exemption from or abatement of the tax levied under this Ordinance shall lie on the party claiming the exemption or abatement.

Appeals to the Tax Appeal Tribunal

Tax Appeal Tribunal.

180.—(1) There shall continue to be a Tax Appeal Tribunal ("the Tribunal") constituted in accordance with this section to exercise functions conferred upon it by this Ordinance.

(2) The Tax Appeal Tribunal shall have at least 5 and not more than 7 members appointed by the Governor.

(3) A person who is—

(a) an elected member of the Legislative Council; or

(b) a public officer in any public office in the Finance Department,

is not qualified to be appointed as a member of the Tribunal and any person who, under this subsection, is not qualified to be appointed as a member of

the Tribunal ceases, if he is already a member of the Tribunal, to hold office as such immediately he ceases to be qualified under this subsection to be appointed to be a member of the Tribunal.

(4) A member of the Tribunal who has, or whose partner, spouse or child has, any direct interest in any matter falling to be considered by the Tribunal shall not take any part in the consideration of that matter by the Tribunal, and shall declare that interest if he is present at a meeting of the Tribunal at which the matter is considered and withdraw from such a meeting during the Tribunal's consideration of that matter.

(5) No business shall be transacted (except to adjourn) by the Tribunal unless at least 3 of its members are present, but the Tribunal may otherwise act notwithstanding a vacancy for the time being in its members.

A member of the Tribunal who has declared an interest shall not be counted as being present for the purposes of this subsection.

(6) The Governor shall appoint one of the members of the Tribunal to be the Chairman and, subject to subsection (7), the Chairman shall preside at all meetings of the Tribunal at which he is present.

(7) Where the Chairman is, by virtue of subsection (4), unable to take part in consideration of a matter or is absent from the meeting of the Tribunal, the members of the Tribunal present (where appropriate, after withdrawal of the Chairman) shall elect one of their members to preside at that meeting or for so much of it as the Chairman is absent.

*Appeals to the
Tribunal.*

181.—(1) Any person aggrieved—

- (a) by an assessment of liability to tax or entitlement to repayment of tax already paid or of entitlement to repayment of any sum already paid on account of tax;
- (b) by a decision of the Commissioner with respect to that person's entitlement to the benefit of a deduction, allowance or relief under this Ordinance or the Income Tax Ordinance;
- (c) by a decision that a person is or was at any time resident or ordinarily resident or not resident in the Falkland Islands for the purposes of this Ordinance or the Income Tax Ordinance ;
- (d) by a decision that any income of a person is, for the purposes of this Ordinance or the Income Tax Ordinance, unearned income or, as the case may be, earned income; or
- (e) by any other decision of the Commissioner under this Ordinance or the Income Tax Ordinance,

may, subject to section 175, appeal to the Tribunal in accordance with this section.

(2) An appeal may not be brought under subsection (1) against—

- (a) a requirement to file a return of income;
- (b) a requirement to produce any accounts or other information relating to a business;
- (c) a requirement to pay interest on any tax unpaid or paid late;

- (d) a decision to take proceedings for the recovery of any tax alleged to be due and unpaid; or
- (e) a decision to prosecute for any offence under this Ordinance or the Income Tax Ordinance;
- (f) a decision to require payment of a penalty under this Ordinance or the Income Tax Ordinance.

(3) For the purposes of subsection (1), "person aggrieved" means—

- (a) the person directly affected by the decision in question, or, where he is deceased, his personal representative;
- (b) in relation to a bankrupt, his trustee in bankruptcy or, where there is none, the Official Receiver or person acting as Official Receiver in relation to the bankrupt's estate;
- (c) in relation to the estate of a deceased person, the deceased person's personal representative;
- (d) in relation to a settlement of property, the trustees for the time being of that settlement; and
- (e) in relation to a person under an incapacity—
 - (i) if that person is a minor, his parents or either of them or any other person who is his guardian;
 - (ii) if that person suffers from a mental incapacity, the person who has been appointed by the Supreme Court as his receiver or, if there be none, any person appearing to the Tribunal to have a sufficient interest in his welfare; and
 - (iii) in relation to a company in the course of being wound up, the liquidator.

(4) Notice of appeal under this section must be sent or delivered to the Clerk to the Tribunal within 21 days of the date on which the decision of the Commissioner under section 175 relating to the assessment or decision in question is notified to the appellant or such longer period as the Commissioner, in his discretion, may allow.

In relation to an appeal against any assessment or decision under the Income Tax Ordinance this subsection shall have effect with the omission of the words from "the decision" to "relating to" and with the substitution of "42" for "21".

(5) Notice of appeal shall specify the decision or decisions the subject of the appeal, the appellant's grounds of appeal and whether the appellant requests an oral hearing of the appeal by the Tribunal or whether he is content for the appeal to be dealt with by written representations.

(6) Schedule 3 to this Ordinance shall have effect with respect to appeals under this section.

(7) On consideration of any written representations made in accordance with Schedule 3, or at the hearing if one is held, the Tribunal may allow the appellant to put forward any ground not specified in the notice of appeal, and take it into consideration.

(8) On receiving a notice of appeal under this section, the Clerk to the Tribunal shall transmit a copy of it to the Commissioner.

*Clerk to the
Tribunal.*

182.—(1) The Governor shall appoint a public officer to be the Clerk to the Tribunal.

(2) The duties of the Clerk shall be—

- (a) to have custody of the records at the Tribunal;
- (b) to receive notices of appeal and written representations in connection with any appeal;
- (c) to keep minutes of all meetings of the Tribunal;
- (d) to notify the parties to any appeal to the Tribunal of the determination of the appeal by Tribunal and the reasons for that determination;
- (e) any other duty imposed on him by this Ordinance; and
- (f) any other duty, not inconsistent with this Ordinance, imposed on him by the Chairman of the Tribunal.

*Postponement of tax
on appeal.*

183.—(1) This section applies to an appeal to the Commissioner against—

- (a) an assessment to income tax;
- (b) an assessment to corporation tax.

(2) Except as otherwise provided by the following provisions of this section, the tax charged by the assessment shall be due and payable as if there had been no appeal.

(3) If the appellant has grounds for believing that he is overcharged to tax by the assessment, he may, by notice given to the Commissioner within 30 days after the date of the issue of the notice of assessment, apply to the Commissioner for a determination of the amount of tax the payment of which should be postponed pending the determination of the appeal.

A notice of application under this subsection shall state the amount by which the appellant believes that he is overcharged to tax and his grounds for that belief.

(4) An application under subsection (3) above may be made more than 30 days after the date of the issue of the notice of assessment if there is a change in the circumstances of the case as a result of which the appellant has grounds for believing that he is overcharged to tax by the assessment.

(5) If, after any determination of the amount of tax the payment of which should be so postponed, there is a change in the circumstances of the case as a result of which either party has grounds for believing that the amount so determined has become excessive or, as the case may be, insufficient, he may, by notice given to the other party at any time before the determination of the appeal, apply to the Commissioner for a further determination of that amount.

A notice of application under this subsection shall state the amount by which the applicant believes that the amount previously determined has become excessive or, as the case may be, insufficient and his grounds for that belief.

(6) An application under subsection (3) or (5) above shall be heard and determined in the same way as the appeal; and where any such

application is heard and determined by the Commissioner, that shall not preclude him from hearing and determining the appeal or any application or further application under subsection (5) above.

(7) The amount of tax the payment of which shall be postponed pending the determination of the appeal shall be the amount (if any) in which it appears to the Commissioner, having regard to the representations made and any lawful evidence adduced, that there are reasonable grounds for believing that the appellant is overcharged to tax.

(8) In the case of a determination made on an application under subsection (3) above, other than an application made by virtue of subsection (4) above, or under subsection (5) above, any tax the payment of which is not postponed or which ceases to be postponed shall be due and payable—

(a) where the tax concerned is income tax for any year of assessment—

(i) 30 days after the date of the determination, or

(ii) 90 days after the date of the assessment, or

(iii) 1st August in that year,

whichever is the later;

(b) where the tax concerned is corporation tax, 30 days after the date of the determination;

and any tax overpaid shall be repaid.

(9) If the appellant and the Commissioner come to an agreement, whether in writing or otherwise, as to the amount of tax the payment of which should be postponed pending the determination of the appeal, the like consequences shall ensue under subsection (8) above as would have ensued if the Commissioner had made a determination to that effect under subsection (7) above on the date when the agreement was come to, but without prejudice to the making of a further agreement or of a further determination under that subsection.

(10) Where an agreement is not in writing—

(a) subsection (9) above shall not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice given by the Commissioner to the appellant or by the appellant to the Commissioner, and

(b) the reference in that subsection to the time when the agreement was come to shall be construed as a reference to the time of the giving of the notice of confirmation.

(11) On the determination of an appeal against an assessment, the date on which any tax payable in accordance with that determination is due and payable shall, so far as it is tax the payment of which had been postponed, or which would not have been charged by the assessment if there had been no appeal, shall be due and payable—

(a) where the tax concerned is income tax—

(i) 30 days after the date on which the Commissioner issues to the appellant a notice

of the total amount payable in accordance with that determination, or

(ii) 90 days after the date of the assessment,

whichever is the later;

(b) where the tax concerned is corporation tax, 30 days after the date of issue of the notice referred to in paragraph (a)(i);

and any tax overpaid shall be repaid.

(12) Interest shall be due on any tax repaid in accordance with subsection (8)(b) or (11)(b) above at the rate of 2 per cent. per annum under base lending rate.

Collection of tax and interest on late tax

*Collection of tax
and interest on tax.*

184.—(1) The Commissioner shall from time to time deliver to the collector lists of the names and addresses of persons assessed to tax, together with the amount payable by each person, and it shall be the duty of the collector to take all reasonable steps to ensure the payment of all assessed tax.

(2) In any case where notice of an objection or of an appeal has been given, collection of tax shall be subject to the provisions of sections 171 to 183.

(3) Without prejudice to any other provision of this Ordinance, tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner or any collector in his official name with full costs of suit from the person charged therewith as a debt due to the Crown.

(4) In any case where tax which has been assessed remains unpaid after the date on which it was due, the Commissioner or any collector appointed under this Ordinance shall serve a demand note upon the person liable to pay the tax for the amount of the tax remaining unpaid together with the amount of interest due, and if payment is not made within 30 days from the date of the service of such demand note, the collector may proceed to enforce payment in accordance with Schedules 4 and 5 to this Ordinance.

(5) Where a demand note is served under subsection (4) above, the interest shall be recoverable in respect of the period after as well as before the service of the note and it is sufficient, in relation to a period falling after the date of the demand note, for it to state that interest is payable as specified in section 11(2) or 33(1), as the case may be.

(6) Any penalty under this Ordinance for which no other means of recovery is provided shall be treated as if it were an amount of assessed tax due at the time a notice issued by the Commissioner specifying the amount of the penalty is served on the person in default and—

(a) the Commissioner may not issue any such notice more than 6 years, or in the case of fraud more than 20 years, after the default in respect of which the penalty is due occurred or, if it occurred over a period of time, after the end of that time; and

(b) any person issued with a notice under this subsection may

appeal to the Tribunal against the notice within 21 days of the date of service of the notice and section 181(5) to (8) and Schedule 3 shall apply.

Recovery of tax in respect of profits or gains on offshore petroleum activities etc.

185. Schedule 6, which makes provision with respect to the recovery of tax assessed on persons not resident in the Falkland Islands on profits or gains arising or accruing out of or in connection with exploration or exploitation activities or rights, shall have effect.

Repayment of tax

Repayment of income tax.

186.—(1) If it is proved to the satisfaction of the Commissioner on a claim made by any person that he has paid income tax, by deduction or otherwise, for any year of assessment without the making of an assessment in excess of the amount with which he is properly chargeable, that person shall be entitled to have the excess refunded to him.

(2) Every claim for repayment under this section shall be made within 6 years from the end of the year of assessment to which the claim relates.

(3) The Commissioner shall give a certificate of the amount to be repaid and upon the receipt of the certificate the Treasurer shall cause repayment to be made in conformity therewith.

(4) Except as regards sums repayable on an objection or appeal, no repayment shall be made to any person in respect of any chargeable period as regards which that person has failed or neglected to deliver a return or has been assessed in a sum in excess of the amount contained in his return, provided that he has received notice of the assessment made upon him for that year, unless it is proved to the satisfaction of the Commissioner that such failure or neglect to deliver a true and correct return did not proceed from any fraud or wilful act or omission on the part of that person.

Refund of overpayments of corporation tax.

187.—(1) If, with respect to any accounting period—

- (a) a company has paid an amount of corporation tax without the making of an assessment; and
- (b) the company has grounds for believing that the amount paid exceeds the company's probable liability for corporation tax,

the company may by notice to the Commissioner make a claim for the repayment to the company of the amount of that excess; but a claim may not be made under this subsection after an assessment to corporation tax for the period becomes final or, if there is no assessment, after the expiry of the period of 6 years beginning with the end of the accounting period in question.

(2) A notice under subsection (1) above shall state the amount which the company considers should be repaid and the grounds referred to in paragraph (b) above, and the Commissioner shall repay the amount claimed if he is satisfied that the claim is justified.

(3) If, apart from this subsection, a claim would fall to be made under

subsection (1) above at a time when the company concerned has appealed against an assessment to corporation tax for the period in question but that appeal has not been finally determined, that subsection shall have effect as if for the words from "make a claim" to "excess" there were substituted "apply to the Commissioners to whom the appeal stands referred for a determination of the amount which should be repaid to the company pending a determination of the company's liability for the accounting period in question"; and such an application shall be determined in the same way as the appeal.

(4) Where on an appeal against an assessment to corporation tax a company makes an application under section 183(3) or (5), that application may be combined with an application under subsection (1) above.

(5) Interest shall be due on any amount repaid under this section at the rate of 2 per cent. per annum under base lending rate.

Offences and penalties

*Penal provisions
relating to fraud,
etc.*

188.—(1) This section applies in any case where a person wilfully and with intent to evade or to assist any other person to evade tax—

- (a) omits from a return of income any income which should be included; or
- (b) makes any false statement or entry in any return of income; or
- (c) gives any false answer, whether orally or in writing to any question or request for information asked or made in accordance with this Ordinance; or
- (d) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or any other document or falsifies or authorizes the falsification of any books of account or records or any other document; or
- (e) destroys or conceals any document which he is required to deliver to the Commissioner or which he is required to make available for inspection by an officer of the Commissioner, or any document which he has been put on notice may be made the subject of such a requirement; or
- (f) makes use of any fraud, art or contrivance whatsoever or authorizes the use of any such fraud, art or contrivance;

and any such person is referred to below as "the person concerned".

(2) In any case falling within subsection (1) above, the person concerned commits an offence and shall be liable on conviction to a fine not exceeding level 8 on the standard scale.

(3) In any case falling within subsection (1) above, the person concerned shall be liable to a penalty equal to treble the amount of tax for which he or the person whom he has assisted is liable, as the case may be, under this Ordinance for the chargeable period in respect of or during which the offence was committed.

(4) A person does not commit an offence under subsection (1)(e)

above if he destroys a document—

- (a) with the written permission of the Commissioner, or
- (b) after he has delivered the document in question to the Commissioner or has made it available for inspection by an officer of the Commissioner.

(5) Whenever in any proceedings under this section it is proved that any false statement or entry is made in any return of income by or on behalf of any person or in any books of account or other records maintained by or on behalf of any person, that person shall be presumed, until the contrary is proved, to have made that false statement or entry with intent to evade tax.

Penalties for failure to make returns, making incorrect returns etc.

189.—(1) The following provisions of this section shall apply where a person without reasonable excuse—

- (a) fails to make a return or to give any notice or information in accordance with the requirements of this Ordinance; or
- (b) makes an incorrect return by omitting or understating any income which he is required to include in a return of income; or
- (c) gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership; or
- (d) fails to deliver any document to the Commissioner or to make any document available for inspection by an officer of the Commissioner;

and any such person is referred to below as "the person concerned".

(2) In any case falling within subsection (1) above, the person concerned commits an offence and shall be liable on conviction to a fine not exceeding level 7 on the standard scale.

(3) In any case falling within subsection (1) above where no other civil penalty is provided, the person concerned shall be liable to a penalty equal to double the amount of tax which—

- (a) in a case falling within subsection (1)(a) above, is payable by that person for the accounting period to which the return or notice or information related, or
- (b) in any case, has been undercharged in consequence of the incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct.

Penalties for offences.

190. A person convicted of an offence under this Ordinance for which no other penalty is provided is liable on conviction to a fine not exceeding level 5 on the standard scale.

Saving for other criminal proceedings.

191. The provisions of this Ordinance shall not affect any criminal proceedings, except that a person shall not be prosecuted more than once for the same offence.

*Prosecutions etc. to
commence within 6
years.*

192.—(1) Any prosecution against any person for the commission of any offence against the provisions of this Ordinance shall not be brought unless it is commenced in the chargeable period in which the offence is or is alleged to have been committed or before the expiry of the period of 6 years beginning with the end of that chargeable period.

(2) Subject to any contrary provision, proceedings for recovery of any penalty under this Ordinance for any act or omission shall not be commenced after the expiry of the period of 6 years beginning with the end of the chargeable period in which the act or omission is or is alleged to have been done or not to have been done.

(3) Where the Commissioner did not know and had no reasonable grounds for suspecting that an offence has been committed or that a penalty was due, the 6 years referred to in subsections (1) and (2) above shall not begin to run until the end of the period in which the Commissioner did so know or had reasonable grounds for so suspecting.

PART X GENERAL AND SUPPLEMENTARY PROVISIONS

Agents, trustees and others

*Appointment and
duties of agent.*

193.—(1) In this section—

"agent" means a person appointed as such under subsection (2);

"appointment notice" means a notice issued by the Commissioner under subsection (2) appointing an agent;

"moneys" includes salary, wages and pensions payments and any other remuneration whatsoever;

"principal" means the person in respect of whom an agent is appointed.

(2) The Commissioner may, in his discretion, by notice addressed to any person—

(a) appoint him to be the agent of another person for the purposes of the collection and recovery of tax due from that other person; and

(b) specify the amount of that tax to be collected and recovered.

(3) An agent shall pay the tax specified in his appointment notice out of any moneys which may, at any time during the 12 months following the date of the notice, be held by him for, or due from him to, his principal.

(4) Where an agent claims to be, or to have become, unable to comply with subsection (3) by reason of the lack of moneys held by, or due from him, he shall, as soon as may be practicable, give notice to the Commissioner of that fact, and the notice must set out in full the reasons for his inability so to comply.

(5) The Commissioner may—

(a) accept a notice under subsection (4) and cancel or amend the appointment notice accordingly; or

(b) if he is not satisfied by the reasons set out in the notice, issue a notice to the agent rejecting the agent's notice.

(6) Unless and until notice is given by an agent under subsection (4)—

(a) sufficient moneys for the payment of the tax specified in his appointment notice shall be presumed to be held by him for, or due from him to, his principal; and

(b) he may not assert the lack of such moneys as a defence in any proceedings for the collection or recovery of such tax.

(7) For the purposes of this section, the Commissioner may by notice at any time require any person to furnish him within a reasonable time, not

being less than 30 days from the date of service of such notice, with a return showing any moneys which may be held by such person for, or due by him to, any other person from whom tax is due.

(8) Where an agent fails to pay any amount of tax specified in his appointment notice within 30 days—

(a) of the date of service of the notice on him; or

(b) of the date on which any moneys come into his hands for, or become due by him to, his principal,

whichever is the later; and—

(i) he has not given notice under subsection (4); or

(ii) he has given notice under that subsection but the notice has been rejected by the Commissioner,

the provisions of this Ordinance relating to the collection and recovery of tax shall apply to the collection and recovery of such amount as if it were tax due and payable by the agent, the due date for the payment of which was the date upon which such amount should have been paid to the Commissioner under this subsection.

(9) An agent who has made any payment of tax under this section shall for all purposes be deemed to have made the payment with the authority of his principal and of all other persons concerned, and shall be indemnified in respect of such payment made against all proceedings, civil or criminal, and all process, judicial or extra-judicial, notwithstanding any provision to the contrary in any written law, contract or agreement.

*Appointment by
Governor of UK tax
agent.*

194.—(1) For the purpose of facilitating the assessment to income tax or corporation tax of the chargeable income of persons resident or ordinarily resident or carrying on business through a branch or agency in the United Kingdom, the Governor may appoint an agent in the United Kingdom who—

(a) shall make enquiries on behalf of the Commissioner in respect of any person who applies to be dealt with through such agent, and

(b) shall ascertain and report to the Commissioner the amount of the chargeable income of such person in accordance with this Ordinance, and

(c) shall forward to the Commissioner the accounts and computations upon which his report is based.

(2) If it appears to the Commissioner that any error has occurred in the accounts or computation referred to in subsection (1)(c), he may refer the report back for further consideration.

(3) The Commissioner may authorise an agent appointed under this section to issue assessments in the name of the Commissioner.

(4) Nothing in this section shall prevent an appeal in accordance with Part IX of this Ordinance.

*Special provisions
relating to non-
residents.*

195.—(1) A person not resident in the Falkland Islands ("a non-resident person"), whether a British subject or not, shall be assessable and chargeable in the name of his trustee, guardian, or committee, or of any attorney, factor, agent, receiver, branch or manager, whether such attorney, factor, agent, receiver, branch or manager has the receipt of the income or not, in like manner and to the like amount as the non-resident person would be assessed and charged if he were resident in the Falkland Islands and in the actual receipt of such income.

(2) A non-resident person who—

(a) is present in the Falkland Islands at any time during a year immediately preceding a year of assessment, and

(b) does not make a claim under subsection (3) below,

shall be entitled, in computing his chargeable income for that year of assessment, to make a deduction under any of sections 15(1), 16(1) and 17(1) and (2), but not under any other provision of Chapter I of Part II or Chapter II of Part III.

(3) In the case of any non-resident person who makes a claim under this subsection, the total amount of the deductions to be allowed to him under those Chapters shall not exceed an amount which would reduce the tax payable by him below the amount which bears the same proportion to the amount which would be payable by him if he were chargeable to tax on his total income from all sources, including income which is not subject to tax under this Ordinance, as the amount of his income subject to tax bears to such total income from all sources.

(4) A non-resident person shall be assessable and chargeable in respect of any income arising, whether directly or indirectly, through or from any attorneyship, factorship, agency, receivership, branch or management, and shall be so assessable or chargeable in the name of the attorney, factor, agent, receiver, branch, or manager.

(5) Where—

(a) a non-resident person carries on business with a resident person, and it appears to the Commissioner that owing to—

(i) the close connection between the resident person and the non-resident person, and

(ii) the substantial control exercised by the non-resident person over the resident person,

the course of business between those persons can be so arranged and is so arranged, that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business,

then the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(6) Where it appears to the Commissioner that the true amount of the gains or profits of any non-resident person chargeable with tax in the name of a resident person cannot be readily ascertained, the Commissioner may, if he thinks fit, assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is so chargeable.

The amount of the percentage shall in each case be determined having regard to the nature of the business.

(7) In any case where an assessment is made under subsection (6) above, the provisions of this Ordinance relating to the delivery of returns or particulars by persons acting on behalf of others shall extend so as to require returns or particulars to be furnished by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as returns or particulars are to be delivered by persons acting for incapacitated or non-resident persons of income to be charged.

(8) Nothing in this section shall render a non-resident person chargeable in the name of a broker or general commission agent or other agent where such broker or general commission agent or other agent is not an authorized person carrying on the regular agency of the non-resident person, or a person chargeable as if he were an agent in pursuance of subsections (5) to (7), in respect of gains or profits arising from sales or transactions carried through such a broker or agent.

(9) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him chargeable in pursuance of subsections (5) to (7) in the name of a resident person shall not of itself make him chargeable in respect of gains or profits arising from those sales or transactions.

(10) Where a non-resident person is chargeable to tax in the name of any attorney, factor, agent, receiver, branch or manager in respect of any gains or profits arising from the sale of goods or produce manufactured or produced out of the Falkland Islands by the non-resident person—

- (a) the person in whose name the non-resident person is so chargeable may, if he thinks fit, apply to the Commissioner, or in the case of an appeal, to the Tribunal to have the assessment to tax in respect of those gains or profits made or amended on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold who has bought from the manufacturer or producer direct, and
- (b) on proof to the satisfaction of the Commissioner (or

Tribunal) of the amount of the profits on that basis, the assessment shall be made or amended accordingly.

Trustees etc. of incapacitated persons.

196. A receiver appointed by the court, trustee, guardian, curator, or committee having the direction, control, or management of any property or concern on behalf of any incapacitated person shall be chargeable to income tax in like manner and to the like amount as such person would be chargeable if he were not an incapacitated person.

Responsibility of company officers.

197.—(1) Everything required to be done by a company under this Ordinance shall be done by the company through the proper officer of the company.

(2) Tax due and payable by a company under this Ordinance may (without prejudice to any other means of recovery) be recovered from the proper officer of the company who may retain out of any money coming into his hands on behalf of the company sufficient sums to pay that tax and so far as he does not have sufficient sums, shall be entitled to be indemnified by the company in respect of any liability imposed on him under this section.

(3) For the purposes of this section "the proper officer" means—

- (a) if a liquidator has been appointed for the company, the liquidator;
- (b) if a liquidator has not been appointed, the secretary or person acting as secretary of the company or such other person as is authorised to act as the proper officer of the company;
- (c) if neither paragraph (a) nor paragraph (b) applies, the treasurer or person acting as treasurer of the company.

Responsibility of trustees and others.

198.—(1) The person who is chargeable in respect of an incapacitated person, or in whose name a non-resident person is chargeable, shall be answerable for all matters required to be done by virtue of this Ordinance for the assessment of the income of any person for whom he acts and for paying the tax chargeable on that income.

(2) Every person who in whatever capacity is in receipt of any money or value being income arising from any of the sources mentioned in this Ordinance, or belonging to any other person who is chargeable in respect thereof, or who would be so chargeable if he were resident in the Falkland Islands and not an incapacitated person shall, whenever required to do so by any notice from the Commissioner, prepare and deliver within the period specified in the notice a list signed by him containing—

- (a) a true and correct statement of all such income;
- (b) the name and address of every person to whom the income belongs, and
- (c) such other information as the notice may request being information which the Commissioner requires for the

purposes of this Ordinance;
and the provisions of this Ordinance with respect to the failure to deliver lists or particulars in accordance with a notice from the Commissioner shall apply to any such list.

*Indemnification of
representatives.*

199. Every person answerable under this Ordinance for the payment of tax on behalf of another person may retain out of any money coming to his hands on behalf of such other person so much thereof as shall be sufficient to pay such tax; and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Ordinance.

Residence of individuals and companies

*Residence of
individuals.*

200.—(1) In this Ordinance any reference to a person who is ordinarily resident in any place is a reference to a person who is habitually resident in that place except for such absence therefrom as seems to the Commissioner to be of a temporary nature.

(2) In this Ordinance any reference to an individual who is resident in the Falkland Islands in any year of assessment is a reference to a person—

- (a) who is actually in the Falkland Islands for 183 days or more in that year; or
- (b) who arrives in the Falkland Islands in that year with the intention of establishing his permanent residence in the Islands; or
- (c) who is permanently resident in the Falkland Islands in that year but who leaves the Islands before the end of that year.

*Residence of
companies.*

201.—(1) Subject to subsections (3) and (4) below, a company which is incorporated in the Falkland Islands shall be regarded for the purposes of this Ordinance as resident in the Falkland Islands, and accordingly, if a different place of residence would be given by subsection (2) below or by any rule of law, that place shall no longer be taken into account for those purposes.

(2) In determining for the purposes of this Ordinance the place of residence of a company which is not incorporated in the Falkland Islands or to which subsection (1) above does not apply at the beginning of January 1st 1996 by virtue of any of the following provisions of this section, the place of incorporation or registration shall be regarded as immaterial and its place of residence shall be determined by reference to the abode of the central management and control of the company's business.

(3) For the purposes of this Ordinance a company which—

- (a) is no longer carrying on any business; or
- (b) is being wound up outside the Falkland Islands,

shall be regarded as continuing to be resident in the Falkland Islands if it was so regarded for those purposes immediately before it ceased to carry on

business or, as the case may be, before any of its activities came under the control of a person exercising functions which, in the Falkland Islands, would be exercisable by a liquidator.

(4) Subject to subsection (5) below, subsection (1) above shall not apply until January 1st 1998 in relation to a company which—

(a) carried on business at any time before January 1st 1996; and

(b) was not resident in the Falkland Islands immediately before that date.

(5) If at any time on or after January 1st 1996 a company falling within subsection (4) above becomes resident in the Falkland Islands, subsection (1) shall apply in relation to the company after that time.

Disclosure of information

Official secrecy.

202.—(1) Every person having any official duty or being employed in the administration of this Ordinance shall regard and deal with all documents, information and returns relating to the income or items of income of any person as secret and confidential, and shall make and subscribe a declaration in the form prescribed to that effect before a Justice of the Peace.

(2) Every person having possession of or control over any documents, information or returns relating to the income or items of income of any person, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists, or copies to any person—

(a) other than a person to whom he is authorized by the Governor to communicate it; or

(b) otherwise than for the purpose of this Ordinance, commits an offence.

Disclosure of information.

203.—(1) Subject to subsection (2), the Commissioner may require any public officer or any officer in the employment of any public body to supply such particulars as may be required for the purposes of this Ordinance and which may be in the possession of such officer.

(2) A person shall not by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy, but section 202 shall be disregarded for the purposes of this subsection.

(3) The Commissioner may by notice require any employer, agent, contractor or other person within such time as may be specified in the notice, to make a return for any chargeable period containing—

(a) the names and addresses of all persons employed by that person for the whole or any part of that period; and

(b) the payments and allowances made to those persons in respect of that employment, except persons who are not employed in any other employment and whose remuneration in the employment for the period does not (or is not expected to) exceed £800;

- (c) the names and addresses of all persons with whom he has entered into a contract for the performance of any work, or for delivery of any produce or goods, in the course of that chargeable period, and the amount advanced or paid in respect of such contract either in cash or in goods or merchandise; and
- (d) such other information as may be specified in the notice being information which is in the opinion of the Commissioner necessary for the purposes of this Ordinance.

(4) A return under subsection (3) above shall be made to the Commissioner and any person who fails to comply with a notice under that subsection shall be liable—

- (a) if the person is not more than 3 months late in complying with the requirements of subsection (3), to a penalty of £100;
- (b) in any other case, to a penalty of £200.

(5) An employer, agent, contractor, or other person shall not be liable to any penalty for omitting from any such return the name or address of any person employed by him and not employed in any other employment if it appears to the Commissioner, on enquiry, that such person has no chargeable income.

(6) For the purposes of this section—

- (a) in any case where an employer, agent, contractor or other person is a body of persons, the manager or other principal officer of the body shall be deemed to be the employer, and
- (b) any director of a company, or person engaged in the management of a company, shall be deemed to be an employee of the company.

Miscellaneous provisions

Rules.

204.—(1) The Governor in Council may from time to time make rules generally for carrying out the provisions of this Ordinance, and rules made under this section may, in particular, make provision—

- (a) any such matters as are authorized by this Ordinance to be prescribed otherwise than by the Commissioner;
- (b) as to the apportionment of deductions or allowances under this Ordinance—

- (i) where an individual becomes resident or ordinarily resident or ceases to be so resident in the Falkland Islands during the year preceding the year of assessment, or

- (ii) where an individual's personal circumstances change during such year (for example, on marriage, death or separation from his spouse), or

- (iii) where it otherwise appears that apportionment of deductions or allowances would be appropriate;

(c) for the method of calculating or estimating the deductions allowed or prescribed under section 15, 58 and 97.

(2) Rules made under this section shall be published in the Gazette and shall come into operation on such publication or at such other time as may be named in such rules.

(3) If any person fails to comply with or contravenes the provisions of any rule made under this Ordinance he commits an offence.

(4) All rules made under this Ordinance shall be judicially noticed.

Time limit for making claims.

205. Subject to any provision of this Ordinance prescribing a longer or a shorter period, a claim under this Ordinance shall not be allowed unless it is made within 6 years from the end of the chargeable period to which it relates.

Earned income and unearned income.

206.—(1) In this Ordinance references to earned income and to unearned income shall be construed in accordance with this section.

(2) In this Ordinance "earned income" means, in relation to any individual—

- (a) any income arising in respect of any remuneration from any office or employment held by the individual, or in respect of any pension, superannuation or other allowance, deferred pay or compensation for loss of office or employment, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment or given to the individual in respect of the past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance or deferred pay or not; and
- (b) any income from any property which is attached to or forms part of the emoluments of any office or employment held by the individual; and
- (c) any income which is immediately derived by the individual from the carrying on or exercise by him of his business either as an individual or, in the case of a partnership, as a partner personally acting in the partnership; and

(d) any voluntary pension of an individual, and for the purposes of this subsection "remuneration" includes any payment in respect of any holidays or leave accrued due, overtime, or terminal bonus or gratuity or any other payment made by an employer to an employee or former employee or for or on account of employment.

(3) Any reference in this Ordinance to earned or unearned income does not include—

- (a) any income in respect of which income tax is not payable by virtue of section 13, or
- (b) any income which is exempt from income tax by virtue of section 57 or by virtue of any provision of the Taxes and Duties (Special Exemptions) Ordinance 1987, or
- (c) any income which is exempt from income tax by virtue of any arrangements having effect under section 165.

(4) An annuity payable under approved personal pension arrangements (within the meaning of Part III) shall be treated as earned income of the annuitant.

(5) Subsection (4) above applies only in relation to the annuitant to whom the annuity is made payable by the terms of the arrangements.

(6) Any pension paid under any retirement benefit scheme which is approved or is being considered for approval under Part III shall, unless the Commissioner otherwise directs, be treated as earned income of the recipient.

(7) A daily allowance payable under the Elected Councillors' Allowances Ordinance 1990 shall be treated as earned income of the recipient.

(8) In cases where the income of a wife is deemed to be the income of the husband, any reference in subsection (2) to the individual includes either the husband or the wife.

(9) Subject to subsection (3) above, for the purposes of this Ordinance, "unearned income" means any income which is not by virtue of subsections (2) to (8) above earned income and which is not, by virtue of any other provision of this Ordinance, to be treated as earned income.

(10) The provisions of this section are without prejudice to any other provision of this Ordinance directing income to be treated as earned income.

Subsidiaries.

207.—(1) For the purposes of this Ordinance a body corporate shall be deemed to be—

- (a) a "51 per cent. subsidiary" of another body corporate if and so long as more than 50 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate;
- (b) a "75 per cent. subsidiary" of another body corporate if and so long as not less than 75 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate;
- (c) a "90 per cent. subsidiary" of another body corporate if and so long as not less than 90 per cent. of its ordinary share capital is owned directly by that other body corporate.

(2) In subsection (1) above "owned directly or indirectly" by a body corporate means owned, whether directly or through another body corporate

or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.

(3) In this section references to ownership shall be construed as references to beneficial ownership.

(4) For the purposes of this section the amount of ordinary share capital of one body corporate owned by a second body corporate through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate, shall be determined in accordance with the following provisions of this section.

(5) Where, in the case of a number of bodies corporate, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then for the purposes of this section, the first shall be deemed to own ordinary share capital of the third through the second, and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third and so on.

(6) In this section—

(a) any number of bodies corporate of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one, and so on, and, if they are more than three, any three or more of them, are referred to as "a series";

(b) in any series—

(i) that body corporate which owns ordinary share capital of another through the remainder is referred to as the "first owner";

(ii) that other body corporate the ordinary share capital of which is so owned is referred to as "the last owned body corporate";

(iii) the remainder, if one only, is referred to as "an intermediary" and, if more than one, are referred to as "a chain of intermediaries";

(c) a body corporate in a series which directly owns ordinary share capital of another body corporate in the series is referred to as "an owner"; and

(d) any 2 bodies corporate in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other bodies corporate in the series, are referred to as being directly related to one another.

(7) Where every owner in a series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned body corporate.

(8) Where one of the owners in a series owns a fraction of the

ordinary share capital of the body corporate to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned body corporate through the intermediary or chain of intermediaries.

(9) Where—

- (a) each of 2 or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the body corporate to which it is directly related; or
- (b) every owner in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned body corporate as results from the multiplication of those fractions.

(10) Where the first owner in any series owns a fraction of the ordinary share capital of the last owned body corporate in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned body corporate, either—

- (a) directly, or
- (b) through an intermediary or intermediaries which is not a member or are not members of that series, or
- (c) through a chain or chains of intermediaries of which one or some or all are not members of that series, or
- (d) in a case where the series consists of more than three bodies corporate, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the bodies corporate of which the chain of intermediaries in the series consists;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned body corporate owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

Connected persons.

208.—(1) For the purposes of this Ordinance, any question whether a person is connected with another shall be determined in accordance with the following provisions of this section (any provision that one person is connected with another being taken to mean that they are connected with one another).

(2) A person is connected with an individual if that person is the individual's wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual's wife or husband.

(3) A person, in his capacity as trustee of a settlement, is connected with any individual who in relation to the settlement is a settlor and with any person who is connected with such an individual, and for the purposes of this

subsection—

"settlement" includes any disposition, trust, covenant, agreement or arrangement; and

"settlor", in relation to a settlement, means any person by whom the settlement is made (whether directly or indirectly).

(4) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person is connected with any person with whom he is in partnership, and with the wife or husband or relative of any individual with whom he is in partnership.

(5) A company is connected with another company—

(a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other; or

(b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

(6) A company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.

(7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(8) In this section—

(a) "company" includes any body corporate or unincorporated association, but does not include a partnership;

(b) "relative" means brother, sister, ancestor or lineal descendant;

and section 210 shall apply for the purposes of this section.

*Meaning of
"control".*

209. For the purposes of this Ordinance, except any provision which applies section 210, "control", in relation to a body corporate, means the power of a person to secure—

(a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or

(b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

*Alternative meaning
of "control".*

210.—(1) For the purposes of any provision of this Ordinance which applies this section, a person shall be taken to have control of a company if he exercises, or is able to exercise or is entitled to acquire, direct or indirect control over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses or is entitled to acquire—

- (a) the greater part of the share capital or issued share capital of the company or of the voting power in the company; or
- (b) such part of the issued share capital of the company as would, if the whole of the income of the company were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive the greater part of the amount so distributed; or
- (c) such rights as would, in the event of the winding-up of the company or in any other circumstances, entitle him to receive the greater part of the assets of the company which would then be available for distribution among the participators.

(2) Where 2 or more persons together satisfy any of the conditions of subsection (1) above, they shall be taken to have control of the company.

(3) For the purposes of subsection (1) above a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire.

(4) For the purposes of subsections (1) and (2) above, there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

(5) For the purposes of subsections (1) and (2) above, there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under subsection (4) above, but not those attributed to an associate under this subsection; and such attributions shall be made under this subsection as will result in the company being treated as under the control of 5 or fewer participators if it can be so treated.

*Meaning of
"participator",
"associate" and
creditor"*

211.—(1) For the purposes of section 210, a "participator" is, in relation to any company, a person having a share or interest in the capital or income of the company, and, without prejudice to the generality of the preceding words, includes—

- (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;
- (b) any loan creditor of the company;
- (c) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the

company or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption; and

- (d) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit.

In this subsection references to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it.

(2) For the purposes of section 210, "associate" means, in relation to a participator—

- (a) any relative or partner of the participator;
- (b) the trustee or trustees of any settlement in relation to which the participator is, or any relative of his (living or dead) is or was, a settlor; and
- (c) where the participator is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person—
 - (i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased; and
 - (ii) if the participator is a company, any other company interested in those shares or obligations;

and has a corresponding meaning in relation to a person other than a participator.

(3) In subsection (2) above—

- "relative" means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister; and
- "settlement" and "settlor" have the same meanings as in section 208(3).

(4) Subject to subsection (6) below, for the purposes of this section and section 210, "loan creditor", in relation to a company, means a creditor in respect of any debt incurred by the company—

- (a) for any money borrowed or capital assets acquired by the company; or
- (b) for any right to receive income created in favour of the company; or
- (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon);

or in respect of any redeemable loan capital issued by the company.

(5) Subject to subsection (6) below, a person who is not the creditor in respect of any debt or loan capital to which subsection (4) above applies but nevertheless has a beneficial interest therein shall, to the extent of that interest, be treated for the purposes of this section and section 210 as a loan creditor in respect of that debt or loan capital.

(6) A person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.

*Errors etc. in
assessments and
notices.*

212.—(1) An assessment, warrant or other proceeding purporting to be made in accordance with this Ordinance shall not be quashed, or be declared void or voidable, for want of form, or be affected by reason of a mistake, defect or omission in it if it is in substance and effect in conformity with or according to the intent and meaning of this Ordinance, and if the person assessed or intended to be assessed or affected thereby is identified by the name by which he is usually or generally known.

(2) An assessment shall not be impeached or affected—

(a) by reason of a mistake therein as to—

- (i) the name or surname of a person liable; or
- (ii) the description of any income; or
- (iii) the amount of tax charged; or

(b) by reason of any variance between the assessment and the notice of assessment,

unless the notice of assessment was not duly served on the person intended to be charged, or did not contain, in substance and effect, the particulars on which the assessment was made.

Service of notices.

213. Any notice given under this Ordinance by the Commissioner may be served on a person either personally or by being sent by registered post to his last known business or private address, and shall if sent by registered post be deemed to have been served not later than the tenth day succeeding the day on which the notice would have been received in the ordinary course by post, and in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

*Signature of
notices.*

214.—(1) Every notice to be given by the Commissioner under this Ordinance shall be signed by the Commissioner or by a person appointed by him for that purpose.

(2) Any notice under this Ordinance to any person requiring him to furnish particulars to the Commissioner, or any notice under this Ordinance requiring the attendance of any person or witness before the Commissioner, shall be personally signed by the Commissioner or by a person duly authorized by him.

(3) Any other notice given by the Commissioner under this Ordinance shall be valid if the signature of the Commissioner or of such person appears on it either printed or in manuscript.

(4) A signature appearing on any notice and purporting to be the signature of any person so appointed or authorized shall be taken to be the signature of that person unless and until the contrary is shown.

(5) The production of any document under the hand of the

Commissioner or of any person appointed by him purporting to be a copy of or extract from any return or assessment shall in the Tribunal, all courts and in all proceedings be sufficient evidence of the original, and the production of the original shall not be necessary; and all courts shall in all proceedings take judicial notice of the signature of the Commissioner and of any person appointed by him.

Repeals.

215. The following enactments are hereby repealed—

- (a) the Taxes Ordinance 1994;
- (b) the Taxes (Amendment) Ordinance 1996;
- (c) paragraph 4 of the Schedule to the Finance Ordinance 1996;
- (d) the Taxes (Pensions Schemes) Ordinance 1996;
- (e) the Taxes (Amendment) Ordinance 1997.

SCHEDULES

Section 38,50.

SCHEDULE 1

EQUITY HOLDERS AND PROFITS OR ASSETS AVAILABLE FOR DISTRIBUTION

1.—(1) For the purposes of this Ordinance, an equity holder of a company is any person who—

- (a) holds ordinary shares in the company, or
- (b) is a loan creditor of the company in respect of a loan which is not a normal commercial loan,

and any reference to profits or assets available for distribution to a company's equity holders does not include a reference to any profits or assets available for distribution to any equity holder otherwise than as an equity holder.

(2) For the purposes of sub-paragraph (1)(a) above "ordinary shares" means all shares other than fixed-rate preference shares.

(3) In this Schedule "fixed-rate preference shares" means shares which—

- (a) are issued for consideration which is or includes new consideration; and
- (b) do not carry any right either to conversion into shares or securities of any other description except—
 - (i) shares to which sub-paragraph (6) below applies,
 - (ii) securities to which sub-paragraph (7) below applies,
 - (iii) shares or securities in the company's parent company,
 or to the acquisition of any additional shares or securities; and
- (c) do not carry any right to dividends other than dividends which—
 - (i) are of a fixed amount or at a fixed rate per cent. of the nominal value of the shares, and
 - (ii) represent no more than a reasonable commercial return on the new consideration received by the company in respect of the issue of the shares; and
- (d) on repayment do not carry any rights to an amount exceeding that new consideration except in so far as those rights are reasonably comparable with those general for fixed dividend shares listed in the Official List of the Stock Exchange in the United Kingdom.

(4) For the purposes of sub-paragraph (1)(b) above "loan creditor" in relation to a company means a creditor in respect of any debt incurred by the company—

- (a) for any money borrowed or capital assets acquired by the company; or
- (b) for any right to receive income created in favour of the company; or
- (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon);

or in respect of any redeemable loan capital issued by the company.

(5) In sub-paragraph (1)(b) above "normal commercial loan" means a loan of or including new consideration and—

- (a) which does not carry any right either to conversion into shares or securities of any other description except—
 - (i) shares to which sub-paragraph (6) below

applies,

(ii) securities to which sub-paragraph (7) below

applies, or

(iii) shares or securities in the company's parent company,

or to the acquisition of any additional shares or securities; and

(b) which does not entitle the loan creditor to any amount by way of interest which depends to any extent on the results of the company's business or any part of it or on the value of any of the company's assets or which exceeds a reasonable commercial return on the new consideration lent; and

(c) in respect of which the loan creditor is entitled, on repayment, to an amount which either does not exceed the new consideration lent or is reasonably comparable with the amount generally repayable (in respect of an equal amount of new consideration) under the terms of issue of securities listed in the Official List of the Stock Exchange in the United Kingdom.

(6) This sub-paragraph applies to any shares which—

(a) satisfy the requirements of sub-paragraph (3)(a), (c) and (d) above, and

(b) do not carry any rights either to conversion into shares or securities of any other description, except shares or securities in the company's parent company, or to the acquisition of any additional shares or securities.

(7) This sub-paragraph applies to any securities representing a loan of or including new consideration and—

(a) which satisfies the requirements of sub-paragraph (5)(b) and (c) above, and

(b) which does not carry any such rights as are mentioned in sub-paragraph (6)(b) above.

(8) For the purposes of sub-paragraphs (3) and (5) to (7) above a company ("the parent company") is the parent company of another company if —

(a) in a case where the matter is relevant to section 38 or 50, the other company is a 51 per cent. subsidiary of the parent company, or

(b) in a case where the matter is relevant to section 139 by virtue of subsection (6) of that section, a 51 per cent., 75 per cent. or (as the case may be) 90 per cent. subsidiary of the parent company, or

(c) in a case where the matter is relevant to section 139 by virtue of subsection (7) of that section, the parent company and a third company each directly and beneficially owns 50 per cent. of the ordinary share capital in the other company.

(9) For the purposes of sub-paragraph (5)(b) above, the amount to which the loan creditor is entitled by way of interest—

(a) shall not be treated as depending to any extent on the results of the company's business or any part of it by reason only of the fact that the terms of the loan provide for the rate of interest to be reduced in the event of the results of the company's business or any part of it improving, and

(b) shall not be treated as depending to any extent on the value of any of the company's assets by reason only of the fact that the terms of the loan provide for the rate of interest to be reduced in the event of the value of any of the company's assets increasing.

2.—(1) Sub-paragraph (3) below applies where—

- (a) a person makes a loan to a company on the basis mentioned in sub-paragraph (2) below for the purpose of facilitating the acquisition of land, and
- (b) none of the land which the loan is used to acquire is acquired with a view to resale at a profit.

(2) The basis referred to above is that—

- (a) the whole of the loan is to be applied in the acquisition of land by the company or in meeting the incidental costs of obtaining the loan,
- (b) the payment of any amount due in connection with the loan to the person making it is to be secured on the land which the loan is to be used to acquire, and
- (c) no other security is to be required for the payment of any such amount.

(3) For the purposes of paragraph 1(5)(b) above, the amount to which the loan creditor is entitled by way of interest shall not be treated as depending to any extent on the value of any of the company's assets by reason only of the fact that the terms of the loan are such that the only way the loan creditor can enforce payment of an amount due is by exercising rights granted by way of security over the land which the loan is used to acquire.

(4) In sub-paragraph (2)(a) above the reference to the incidental costs of obtaining the loan is to any expenditure on fees, commissions, advertising, printing or other incidental matters wholly and exclusively incurred for the purpose of obtaining the loan or of providing security for it.

(5) Notwithstanding anything in paragraph 1 above but subject to sub-paragraph (6) below, where—

- (a) any person has, directly or indirectly, provided new consideration for any shares or securities in the company, and
- (b) that person, or any person connected with him, uses for the purposes of his business assets which belong to the company and in respect of which there is made to the company—
 - (i) an allowance under Chapter II of Part V in respect of expenditure incurred by the company on the provision of machinery or plant;
 - (ii) an allowance under section 107 in respect of expenditure incurred by the company on scientific research;

then, for the purposes of this Schedule, that person, and no other, shall be treated as being an equity holder in respect of those shares or securities and as being beneficially entitled to any distribution of profits or assets attributable to those shares or securities.

(6) In any case where sub-paragraph (5) above applies in relation to a bank in such circumstances that—

- (a) the only new consideration provided by the bank as mentioned in paragraph (a) of that sub-paragraph is provided in the normal course of its banking business by way of a normal commercial loan as defined in paragraph 1(5) above; and
- (b) the cost to the company concerned of assets falling within paragraph (b) of that sub-paragraph which are used as mentioned in that paragraph by the bank or a person connected with the bank is less than the amount of that new consideration,

references in sub-paragraph (5) above, other than the reference in paragraph (a), to shares or securities in the company shall be construed as references to so much only of the loan referred to in paragraph (a) above as is equal to the cost referred to in paragraph (b) above.

3.—(1) In this Ordinance "new consideration" means, subject to sub-paragraphs (2) and (3) below, consideration not provided directly or indirectly out of the assets of the company, and in particular does not include amounts retained by the company by way of capitalising a distribution.

(2) Where share capital has been issued at a premium representing new consideration, any part of that premium afterwards applied in paying up share capital shall be treated as new consideration also for that share capital.

(3) Subject to sub-paragraph (4) below, no consideration derived from the value of any share capital or security of a company, or from voting or other rights in a company, shall be regarded for the purposes of this paragraph as new consideration received by the company unless the consideration consists of—

- (a) money or value received from the company as a distribution;
- (b) money received from the company as a payment which for those purposes constitutes a repayment of that share capital or of the principal secured by the security; or
- (c) the giving up of the right to the share capital or security on its cancellation, extinguishment or acquisition by the company.

(4) No amount shall be regarded as new consideration by virtue of subsection (3)(b) or (c) above in so far as it exceeds any new consideration received by the company for the issue of the share capital or security in question or, in the case of share capital which constituted a distribution on issue, the nominal value of that share capital.

4.—(1) Subject to the following provisions of this Schedule, for the purposes of section 38(10), 50(8) or 139(6) and (7) the percentage to which one company is beneficially entitled of any profits available for distribution to the equity holders of another company means the percentage to which the first company would be so entitled in the relevant accounting period on a distribution in money to those equity holders of—

- (a) an amount of profits equal to the total profits of the other company which arise in that accounting period (whether or not any of those profits are in fact distributed), or
- (b) if there are no profits of the other company in that accounting period, profits of £100;

and in the following provisions of this Schedule that distribution is referred to as "the profit distribution".

(2) For the purposes of the profit distribution, it shall be assumed that no payment is made by way of repayment of share capital or of the principal secured by any loan unless that payment is a distribution.

(3) Subject to sub-paragraph (2) above, where an equity holder is entitled as such to a payment of any description which, apart from this sub-paragraph, would not be treated as a distribution, it shall nevertheless be treated as an amount to which he is entitled on the profit distribution.

5.—(1) Subject to the following provisions of this Schedule, for the purposes of section 38(10), 50(8) or 139(6) and (7) the percentage to which one company would be beneficially entitled of any assets of another company available for distribution to its equity holders on a winding-up means the percentage to which the first company would be so entitled if the other company were to be wound up and on that winding-up the value of the assets available for distribution to its equity holders (that is to say, after deducting any liabilities to other persons) were equal to—

- (a) the excess, if any, of the total amount of the assets of the company, as shown in the balance sheet relating to its affairs as at the end of the relevant accounting period, over the total amount of those of its liabilities as so shown which are not liabilities to equity holders as such; or

- (b) if there is no such excess or if the company's balance sheet is prepared to a date other than the end of the relevant accounting period, £100.

(2) In the following provisions of this Schedule a winding-up on the basis specified in sub-paragraph (1) above is referred to as "the notional winding-up".

(3) If, on the notional winding-up, an equity holder would be entitled as such to an amount of assets of any description which, apart from this sub-paragraph, would not be treated as a distribution of assets, it shall nevertheless be treated, subject to sub-paragraph (4) below, as an amount to which the equity holder is entitled on the distribution of assets on the notional winding up.

(4) If an amount ("the returned amount") which corresponds to the whole or any part of the new consideration provided by an equity holder of a company for any shares or securities in respect of which he is an equity holder is applied by the company, directly or indirectly, in the making of a loan to, or in the acquisition of any shares or securities in, the equity holder or any person connected with him, then, for the purposes of this Schedule—

- (a) the total amount referred to in sub-paragraph (1)(a) above shall be taken to be reduced by a sum equal to the returned amount; and
- (b) the amount of assets to which the equity holder is beneficially entitled on the notional winding-up shall be taken to be reduced by a sum equal to the returned amount.

6.—(1) This paragraph applies if any of the equity holders—

- (a) to whom the profit distribution is made, or
- (b) who is entitled to participate in the notional winding-up,

holds, as such an equity holder, any shares or securities which carry rights in respect of dividend or interest or assets on a winding-up which are wholly or partly limited by reference to a specified amount or amounts (whether the limitation takes the form of the capital by reference to which a distribution is calculated or operates by reference to an amount of profits or otherwise).

(2) Where this paragraph applies there shall be determined—

- (a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled, and
- (b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be entitled,

if, to the extent that they are limited as mentioned in sub-paragraph (1) above, the rights of every equity holder falling within that sub-paragraph (including the first company concerned if it is such an equity holder) had been waived.

(3) If, on the profit distribution, the percentage of profits determined as mentioned in sub-paragraph (2)(a) above is less than the percentage of profits determined under paragraph 4(1) above without regard to that sub-paragraph, the lesser percentage shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled as mentioned in that paragraph.

(4) If, on the notional winding-up, the percentage of assets determined as mentioned in sub-paragraph (2)(b) above is less than the percentage of assets determined under paragraph 5(1) above without regard to that sub-paragraph, the lesser percentage shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 5(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

7.—(1) This paragraph applies if, at any time in the relevant accounting period, any of the equity holders—

- (a) to whom the profit distribution is made, or
- (b) who is entitled to participate in the notional winding-up,

holds, as such an equity holder, any shares or securities which carry rights in respect of dividend or interest or assets on a winding-up which are of such a nature, (as, for example, if any shares will cease to carry a right to a dividend at a future time) that if the profit distribution or the notional winding-up were to take place in a different accounting period the percentage to which, in accordance with paragraphs 1 to 6 above, that equity holder would be entitled of profits on the profit distribution or of assets on the notional winding-up would be different from the percentage determined in the relevant accounting period.

(2) Where this paragraph applies, there shall be determined—

- (a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled, and
- (b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be entitled,

if the rights of the equity holders in the relevant accounting period were the same as they would be in the different accounting period referred to in sub-paragraph (1) above.

(3) If in the relevant accounting period an equity holder holds, as such, any shares or securities in respect of which arrangements exist by virtue of which, in that or any subsequent accounting period, the equity holder's entitlement to profits on the profit distribution or to assets on the notional winding-up could be different as compared with his entitlement if effect were not given to the arrangements, then for the purposes of this paragraph—

- (a) it shall be assumed that effect would be given to those arrangements in a later accounting period, and
- (b) those shares or securities shall be treated as though any variation in the equity holder's entitlement to profits or assets resulting from giving effect to the arrangements were the result of the operation of such rights attaching to the share or securities as are referred to in sub-paragraph (1) above.

In this sub-paragraph "arrangements" means arrangements of any kind whether in writing or not.

(4) Paragraph 6(3) and (4) above shall apply for the purposes of this paragraph with the substitution for any reference to paragraph 6(2)(a) or (2)(b) of a reference to sub-paragraph (2)(a) or (2)(b) above (as the case may require).

8.—(1) In a case where paragraphs 6 and 7 above apply, each of the following percentages, namely—

- (a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled, and
- (b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are—

- (a) the basis specified in paragraph 6(2) above;
- (b) the basis specified in paragraph 7(2) above;
- (c) the basis specified in paragraph 6(2) above and the basis specified in paragraph 7(2) above taken together;
- (d) the basis specified in paragraph 4(1) or 5(1) above (according to the

percentage concerned) without regard to paragraphs 6(2) and 7(2) above.

(3) The lowest of the four percentages of profits so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the four percentages of assets so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 5(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

9.—(1) This paragraph applies if, at any time in the relevant accounting period, option arrangements exist; and option arrangements are arrangements of any kind (whether in writing or not) as regards which the two conditions set out below are fulfilled.

(2) The first condition is that the arrangements are ones by virtue of which there could be a variation in—

- (a) the percentage of profits to which any of the equity holders is entitled on the profit distribution, or
- (b) the percentage of assets to which any of the equity holders is entitled on the notional winding-up.

(3) The second condition is that, under the arrangements, the variation could result from the exercise of any of the following rights (option rights)—

- (a) a right to acquire shares or securities in the second company referred to in paragraphs 4(1) and 5(1) above;
- (b) a right to require a person to acquire shares or securities in that company.

(4) For the purposes of sub-paragraph (3) above—

- (a) it is immaterial whether or not the shares or securities were issued before the arrangements came into existence;
- (b) "shares" does not include fixed-rate preference shares;
- (c) "securities" does not include normal commercial loans (within the meaning given by paragraph 1(5) above).

(5) As regards each point in time when option arrangements exist in the relevant accounting period—

- (a) there shall be taken each possible state of affairs that could then subsist if the outstanding option rights, or any of them or any combination of them, became effective at that point, and
- (b) taking each such state of affairs, it shall be assumed that the rights and duties of the equity holders in the relevant accounting period were to be found accordingly.

(6) The following rules shall have effect—

- (a) for the purposes of sub-paragraph (5) above outstanding option rights are all such option rights under the arrangements (or sets of arrangements if more than one) as exist at the point in time concerned but have not become effective at or before that point;
- (b) for the purpose of applying sub-paragraph (5) above it is immaterial whether or not the rights are exercisable at or before the point in time concerned and it is immaterial whether or not they are capable of becoming effective at or before that point;
- (c) for the purposes of sub-paragraph (5) above and this sub-paragraph an option right becomes effective when the shares or securities

to which it relates are acquired in pursuance of it.

(7) The determination mentioned in sub-paragraph (8) below shall be made as regards each point in time when option arrangements exist in the relevant accounting period; and for each such point in time a separate determination shall be made for each of the possible states of affairs mentioned in sub-paragraph (5) above.

(8) The determination is a determination of—

- (a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled, and
- (b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be entitled,

if the rights and duties of the equity holders in the relevant accounting period were found as mentioned in sub-paragraph (5) above.

(9) Where different determinations yield different percentages of profits and different percentages of assets, only one determination of each percentage (yielding the lowest figure) shall be treated as having been made.

(10) Paragraph 6(3) and (4) above shall apply for the purposes of this paragraph with the substitution for references to paragraph 6(2)(a) and (2)(b) of references to sub-paragraphs (8)(a) and (8)(b) above.

10.—(1) In a case where paragraphs 6 and 9 above apply, each of the following percentages, namely—

- (a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled, and
- (b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are—

- (a) the basis specified in paragraph 6(2) above;
- (b) the basis specified in paragraph 9(8) above;
- (c) the basis specified in paragraph 6(2) above and the basis specified in paragraph 9(8) above taken together;
- (d) the basis specified in paragraph 4(1) or 5(1) above (according to the percentage concerned) without regard to paragraphs 6(2) and 9(8) above.

(3) The lowest of the four percentages of profits so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the four percentages of assets so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 5(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

(5) For the purposes of this paragraph the basis specified in paragraph 9(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 9(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 9(9) above.

11.—(1) In a case where paragraphs 7 and 9 above apply, each of the following percentages, namely—

- (a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled, and
- (b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are—

- (a) the basis specified in paragraph 7(2) above;
- (b) the basis specified in paragraph 9(8) above;
- (c) the basis specified in paragraph 7(2) above and the basis specified in paragraph 9(8) above taken together;
- (d) the basis specified in paragraph 4(1) or 5(1) above (according to the percentage concerned) without regard to paragraphs 7(2) and 9(8) above.

(3) The lowest of the 4 percentages of profits so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the 4 percentages of assets so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 5(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

(5) For the purposes of this paragraph the basis specified in paragraph 9(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 9(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 9(9) above.

12.—(1) In a case where paragraphs 6 and 7 and 9 above apply, each of the following percentages, namely—

- (a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled, and
- (b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are—

- (a) the basis specified in paragraph 6(2) above;
- (b) the basis specified in paragraph 7(2) above;
- (c) the basis specified in paragraph 9(8) above;
- (d) the basis specified in paragraph 6(2) above and the basis specified in paragraph 7(2) above taken together;
- (e) the basis specified in paragraph 6(2) above and the basis specified in paragraph 9(8) above taken together;
- (f) the basis specified in paragraph 7(2) above and the basis specified in paragraph 9(8) above taken together;
- (g) the basis specified in paragraph 6(2) above and the basis specified in paragraph 7(2) above and the basis specified in paragraph 9(8) above all taken together;
- (h) the basis specified in paragraph 4(1) or 5(1) above (according to the

percentage concerned) without regard to paragraphs 6(2), 7(2) and 9(8) above.

(3) The lowest of the 8 percentages of profits so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the 8 percentages of assets so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 5(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

(5) For the purposes of this paragraph the basis specified in paragraph 9(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 9(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 9(9) above.

13. For the purposes of section 38(10), 50(8) or 139(6) and (7) and paragraphs 4 to 12 above—

(a) the percentage to which one company is beneficially entitled of any profits available for distribution to the equity holders of another company, and

(b) the percentage to which one company would be beneficially entitled of any assets of another company on a winding-up,

means the percentage to which the first company is, or would be, so entitled either directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.

Section 147.

SCHEDULE 2

TAXATION OF CHARGEABLE GAINS: SUPPLEMENTARY PROVISIONS

PART I GENERAL

Deductions permitted from consideration.

1.—(1) There shall be deducted from the consideration for a disposal of assets taken into account in the computation of the gain any money or money's worth charged to tax as income of, or taken into account as a receipt in computing income or profits or gains or losses of, the person making the disposal for the purposes of this Ordinance other than any money or money's worth which is—

(a) taken into account in the making of a balancing charge under Chapter II of Part V of this Ordinance, or

(b) brought into account as the disposal value of any machinery or plant under that Chapter.

(2) Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation of the gain accruing to a person on the disposal of an asset shall be restricted to—

(a) the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly and exclusively incurred by him in providing the asset,

- (b) any expenditure wholly and exclusively incurred by him in establishing, preserving or defending his title to, or to a right over, the asset,
- (c) the incidental costs to him of making the disposal.

(3) For the purposes of this paragraph and for the purposes of all other provisions of this Ordinance, the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent or legal adviser and costs of transfer or conveyance together with—

- (a) costs of advertising to find a seller or a buyer, and
- (b) costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by this Ordinance.

(4) In any case where—

- (a) the disposal is of a petroleum licence, and
- (b) the person making the disposal has incurred (or is deemed to have incurred) expenditure on searching for petroleum in the licensed area, ascertaining the characteristics of any petroleum-bearing area in that area or ascertaining what are the petroleum reserves of any such petroleum-bearing area, and
- (c) an allowance under Chapter II of Part V has not been made in respect of that expenditure,

then an amount equal to the amount of that expenditure, less any amount within sub-paragraph (5) below, may be deducted in the computation of the gain.

(5) In the case of a disposal of a petroleum licence, there shall be deducted from the amount of any expenditure within sub-paragraph (4)(b) above any amount which the buyer is deemed to have incurred by virtue of section 111(4) to (6).

(6) Subject to Part VIII, the tax chargeable under the law of any country outside the Falkland Islands on the disposal of an asset which is borne by the person making the disposal shall be allowable as a deduction in the computation of the gain.

(7) Any provision in this Ordinance introducing the assumption that assets are sold and immediately reacquired shall not imply that any expenditure is incurred as incidental to the sale or reacquisition.

Exclusion of expenditure by reference to tax on income.

2. The following sums shall not be allowable as a deduction in the computation of the gain (however the deduction is or would be made)—

- (a) any expenditure allowable as a deduction in computing the profits or gains or losses of a business, or allowable as a deduction in computing any other income or profits or gains or losses, for the purposes of this Ordinance;
- (b) any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains;
- (c) without prejudice to paragraph (a) or (b) above, any expenditure which, if the assets, or all the assets to which the computation relates, were, and had at all times been, held or used as part of the fixed capital of a trade the profits or gains of which were (irrespective of whether the person making the disposal is a company or not) chargeable to income tax would be allowable

as a deduction in computing the profits or gains or losses of the trade for the purposes of income tax.

Part disposals and options

3.—(1) For the purposes of this Chapter—

- (a) references to a disposal of an asset include, except where the context otherwise requires, references to a part disposal of an asset, and
- (b) subject to sub-paragraphs (2) to (4) below, there is a part disposal of an asset where an interest or right in or over the asset is created by the disposal, as well as where it subsists before the disposal, and generally, there is a part disposal of an asset where, on a person making a disposal, any description of property derived from the asset remains undisposed of.

(2) The grant of an option, and in particular—

- (a) the grant of an option in a case where the grantor binds himself to sell what he does not own, and because the option is abandoned, never has occasion to own, and
 - (b) the grant of an option in a case where the grantor binds himself to buy what, because the option is abandoned, he does not acquire,
- is the disposal of an asset, namely, the option, but subject to sub-paragraphs (3) and (4) as to treating the grant of an option as part of a larger transaction.

(3) If an option is exercised, the grant of the option and the transaction entered into by the grantor in fulfilment of his obligations under the option shall be treated as a single transaction and accordingly—

- (a) if the option binds the grantor to sell, the consideration for the option is part of the consideration for the sale, and
- (b) if the option binds the grantor to buy, the consideration for the option shall be deducted from the cost of acquisition incurred by the grantor in buying in pursuance of his obligations under the option.

(4) The exercise of an option by the person for the time being entitled to exercise it shall not constitute the disposal of an asset by that person, but, if an option is exercised then the acquisition of the option (whether directly from the grantor or not) and the transaction entered into by the person exercising the option in exercise of his rights under the option shall be treated as a single transaction and accordingly—

- (a) if the option binds the grantor to sell, the cost of acquiring the option shall be part of the cost of acquiring what is sold, and
- (b) if the option binds the grantor to buy, the cost of the option shall be treated as a cost incidental to the disposal of what is bought by the grantor of the option.

(5) Where there is a part disposal of an asset, the sums which are attributable to the asset under paragraph 1(2)(a) and (b) above shall, both for the purposes of the computation of the gain accruing on the disposal and for the purpose of applying this Chapter in relation to the property which remains undisposed of, be apportioned by reference to—

- (a) the amount or value of the consideration for the disposal on the one hand (call that amount or value A), and
- (b) the market value of the property which remains undisposed of on the other hand (call that market value B);

and, accordingly the fraction of those sums so allowable as a deduction shall be—

$$\frac{A}{A + B}$$

and the remainder of the sums which would have been so allowable shall be attributed to the property which remains undisposed of.

(6) This paragraph shall not be taken as requiring the apportionment of any expenditure which, on the facts, is wholly attributable to what is disposed of, or wholly attributable to what remains undisposed of.

(7) It is hereby declared that this paragraph and all other provisions for apportioning on a part disposal expenditure which is deductible in computing a gain, are to be operated before the operation of, and without regard to, paragraph 18 below or any other enactment making an adjustment to secure that neither a gain nor a loss occurs on a disposal.

Transactions between connected persons

4.—(1) This paragraph shall apply where a person acquires an asset and the person making the disposal is connected with him.

(2) Without prejudice to the generality of section 144(1), the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction otherwise than by way of a bargain made at arm's length.

(3) Subject to sub-paragraph (4) below, if on the disposal a loss accrues to the person making the disposal, it shall not be deductible except from a chargeable gain accruing to him on some other disposal of an asset to the person acquiring the asset mentioned in sub-paragraph (1) above, being a disposal made at a time when they are connected persons.

(4) Sub-paragraph (3) above shall not apply to a disposal by way of gift in settlement if the gift and the income from it is wholly or primarily applicable for educational, cultural or recreational purposes, and the persons benefiting from the application for those purposes are confined to members of an association of persons for whose benefit the gift was made, not being persons all or most of whom are connected persons.

(5) Where the asset mentioned in sub-paragraph (1) above is an option to enter into a sale or other transaction given by the person making the disposal, a loss accruing to the person acquiring the asset shall not be an allowable loss unless it accrues on a disposal of the option at arm's length to a person who is not connected with him.

(6) Subject to sub-paragraph (7) below, in a case where the asset mentioned in sub-paragraph (1) above is subject to any right or restriction enforceable by the person making the disposal, or by a person connected with him, then (where the amount of the consideration for the acquisition is, in accordance with sub-paragraph (2) above, deemed to be equal to the market value of the asset) that market value shall be an amount equal to the amount (if any) by which A exceeds B, where—

A is equal to what the market value of the asset would be if not subject to the right or restriction, and

B is equal to the market value of the right or restriction or the amount by which its extinction would enhance the value of the asset to its owner, whichever is the less.

(7) If the right or restriction is of such a nature that its enforcement would or might effectively destroy or substantially impair the value of the asset without bringing any countervailing advantage either to the person making the disposal or a person connected with him or is an option or other right to acquire the asset or is a right to extinguish the asset in the hands of the person giving the consideration by forfeiture or merger or otherwise, the market value of the asset shall be determined, and the amount

of the gain accruing on the disposal shall be computed, as if the right or restriction did not exist.

(8) Sub-paragraphs (6) and (7) above shall not apply to a right of forfeiture or other right exercisable on breach of a covenant contained in a lease of land or other property, and shall not apply to any right or restriction under a mortgage or other charge.

Consideration due after time of disposal.

5. In the computation of the gain consideration for the disposal shall be brought into account without any discount for postponement of the right to receive any part of it and, in the first instance, without regard to a risk of any part of the consideration being irrecoverable or to the right to receive any part of the consideration being contingent; and if any part of the consideration so brought into account is subsequently shown to the satisfaction of the Commissioner to be irrecoverable, such adjustment, whether by way of discharge or repayment of tax or otherwise, shall be made as is required in consequence.

*Deemed consideration in certain cases
where assets disposed of in a series of transactions.*

6.—(1) For the purposes of this Chapter, in any case where—

- (a) by way of 2 or more material transactions which are linked (a series of linked transactions), one person disposes of assets to another person with whom he is connected or to 2 or more other persons with each of whom he is connected, and
- (b) the original market value of the assets disposed of by any of the transactions in the series, as determined under paragraph 7 is less than the appropriate portion of the aggregate market value of the assets disposed of by all the transactions in the series, as so determined,

then, subject to sub-paragraph (2) below, the disposal effected by any linked transaction in the series in respect of which the condition in paragraph (b) above is fulfilled shall be deemed to be for a consideration equal to the appropriate portion referred to in that paragraph.

(2) Where the disposal effected by a material transaction is one to which paragraph 18 below applies, nothing in sub-paragraph (1) above shall affect the amount which, for the purposes of this Chapter, is the consideration for that disposal.

(3) Subject to sub-paragraph (5) below, any reference in this paragraph to a material transaction is a reference to a transaction which takes place on or after 1st January 1996; and, for the purposes of this paragraph, 2 or more material transactions are linked if they occur within the period of 6 years ending on the date of the last of them.

(4) This paragraph shall apply or, as the case may be, shall again apply—

- (a) when a second material transaction causes a series of linked transactions to come into being; and
- (b) whenever, on the occurrence of a further material transaction, an existing series is extended by the inclusion of that transaction (whether or not an earlier transaction ceases to form part of the series);

and all such assessments and adjustments of assessments shall be made as may be necessary to give effect to this paragraph on each such occasion.

(5) Where a member of a group of companies disposes of an asset to another member of the group in circumstances such that, by virtue of section 148, both companies are treated, so far as relates to corporation tax on chargeable gains, as if the consideration for the disposal were of such an amount as would secure that neither a gain

nor a loss would accrue, the transaction by which that disposal is effected is not a material transaction; and a disposal in these circumstances is in this paragraph referred to as an "inter-group transfer".

(6) In any case where—

- (a) a company ("company A") disposes of an asset by way of a material transaction, and
- (b) company A acquired the asset after 1st January 1996 by way of an inter-group transfer, and
- (c) the disposal by company A is to a person who is connected with another company ("company B") which at some time after that date disposed of the asset by way of an inter-group transfer, and
- (d) either the disposal by way of inter-group transfer which is referred to in paragraph (c) above was the occasion of the acquisition referred to in paragraph (b) above or, between that disposal and that acquisition, there has been no disposal of the asset which was not an inter-group transfer,

then, for the purpose of determining whether sub-paragraph (1) above applies in relation to a series of linked transactions, the disposal by company A shall be treated as having been made by company B; but any increase in the consideration for that disposal resulting from the application of sub-paragraph (1) above shall have effect with respect to company A.

*Original market value and aggregate market value
for purposes of paragraph 6*

7.—(1) This paragraph has effect for determining the original market value of assets and the aggregate market value of assets as mentioned in paragraph 6(1)(b), and expressions used in this paragraph have the same meaning as in that paragraph.

(2) Where there is a series of linked transactions, the original market value of the assets disposed of by each transaction in the series shall be determined as follows—

- (a) if at the time in question the transaction is the most recent in the series, the original market value of the assets disposed of by that transaction is the market value which, apart from paragraph 6, would be deemed to be the consideration for that transaction for the purposes of this Chapter; and
- (b) in the case of any other transaction in the series, the original market value of the assets disposed of by that transaction is the value which, prior to the occurrence of the most recent transaction in the series, was or would have been deemed for the purposes of this Chapter to be the consideration for the transaction concerned (whether by virtue of the previous operation of paragraph 6 above, or by virtue of any other provision of this Ordinance).

(3) Subject to sub-paragraphs (6) to (9) below, in relation to any transaction in a series of linked transactions—

- (a) any reference in this paragraph or paragraph 6 to the aggregate market value of the assets disposed of by all the transactions in the series is a reference to what would have been the market value of all those assets for the purposes of this Chapter if, considering all the assets together, they had been disposed of by one disposal occurring at the time of the transaction concerned; and
- (b) any reference in paragraph 6 to the appropriate portion of the aggregate market value of the assets disposed of by all the transactions in the series is a reference to that portion of the market value determined in accordance with paragraph (a)

above which it is reasonable to apportion to those of the assets which were actually disposed of by the transaction concerned.

(4) The reference in sub-paragraph (3)(a) above to considering all the assets together includes a reference not only to considering them as a group or holding or collection of assets retaining their separate identities but also (if it gives a higher market value) to considering them as brought together, physically or in law, so as to constitute either a single asset or a number of assets which are distinct from those which were comprised in each of the transactions concerned.

(5) If any of the assets disposed of by all the transactions in a series of linked transactions were acquired after the time of the first of those transactions, then, in the application of sub-paragraphs (3) and (4) above in relation to each of the transactions in the series—

- (a) no account shall be taken of any assets which were acquired after the time of that transaction unless they were acquired by way of an inter-group transfer; and
- (b) subject to sub-paragraph (6) below, the number of assets of which account is to be taken shall be limited to the maximum number which were held by the person making the disposal at any time in the period beginning immediately before the first of the transactions in the series and ending immediately before the last.

(6) If, before the first of the transactions referred to in paragraph (b) of sub-paragraph (5) above, the person concerned (being a company) disposed of any assets by way of an inter-group transfer, the maximum number of assets referred to in that paragraph shall be determined as if the inter-group transfer had occurred after that first transaction.

(7) In the application of sub-paragraph (5) above in a case where the assets disposed of are securities, the assets disposed of by any of the transactions in a series of linked transactions shall be identified with assets acquired on an earlier date rather than with assets acquired on a later date.

(8) In sub-paragraph (7) above "securities" includes any assets which are of a nature to be dealt in without identifying the particular assets disposed of or acquired.

Disposal where capital sums derived from assets.

8.—(1) Subject to paragraph 9(1), and to any other exceptions in this Ordinance, there is for the purposes of this Chapter a disposal of assets by their owner where any capital sum is derived from assets notwithstanding that no asset is acquired by the person paying the capital sum, and this sub-paragraph applies in particular to—

- (a) capital sums received in return for forfeiture or surrender of rights, or for refraining from exercising rights, and
- (b) capital sums received as consideration for use or exploitation of assets.

(2) In the case of a disposal within paragraph (a) or (b) of sub-paragraph (1) above, the time of the disposal shall be the time when the capital sum is received as described in that sub-paragraph.

(3) In this paragraph "capital sum" means any money or money's worth which is not excluded from the consideration taken into account in the computation of the gain.

Mortgages and charges not to be treated as disposals.

9.—(1) The conveyance or transfer by way of security of an asset or of an interest

or right in or over it, or transfer of a subsisting interest or right by way of security in or over an asset (including a retransfer on redemption of the security), shall not be treated for the purposes of this Chapter as involving any acquisition or disposal of the asset.

(2) Where a person ("the nominee") who is entitled to an asset by way of security or to the benefit of a charge or incumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or incumbrance, his dealings with it shall be treated for the purposes of this Chapter as if they were done through him as nominee by the person entitled to it subject to the security, charge or incumbrance; and this sub-paragraph shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver and manager or judicial factor as it applies to the dealings of the nominee.

(3) An asset shall be treated as having been acquired free of any interest or right by way of security subsisting at the time of any acquisition of it, and as being disposed of free of any such interest or right subsisting at the time of the disposal; and where an asset is acquired subject to any such interest or right the full amount of the liability thereby assumed by the person acquiring the asset shall form part of the consideration for the acquisition and disposal in addition to any other consideration.

Disposals in case of hire-purchase etc

10. A hire-purchase or other transaction under which the use and enjoyment of an asset is obtained by a person for a period at the end of which the property in the asset will or may pass to that person shall be treated for the purposes of this Chapter, both in relation to that person and in relation to the person from whom he obtains the use and enjoyment of the asset, as if it amounted to an entire disposal of the asset to that person at the beginning of the period for which he obtains the use and enjoyment of the asset, but subject to such adjustments of tax, whether by way of repayment or discharge of tax or otherwise, as may be required where the period for which that person has the use and enjoyment of the asset terminates without the property in the asset passing to him.

PART II

SPECIAL PROVISIONS RELATING TO SECURITIES

Share pooling and identification of securities

11.—(1) Subject to the following provisions of this Part of this Schedule, any number of securities of the same class acquired by the same person in the same capacity shall for the purposes of this Chapter be regarded as indistinguishable parts of a single asset growing or diminishing on the occasions on which additional securities of the same class are acquired or some of the securities of that class are disposed of.

(2) In this Part of this Schedule—

"a new holding" is a holding of securities which, by virtue of sub-paragraph (1) above, is to be regarded as a single asset; and
"securities" means unquoted shares.

(3) The provisions of this Part of this Schedule—

- (a) shall apply separately in relation to any securities held by a person to whom they were issued as an employee of the company or of any other person on terms which restrict his rights to dispose of them, so long as those terms are in force, and
- (b) while applying separately to any such securities, shall have effect as if the owner held them in a capacity other than that in which he holds any other securities of the same class.

(4) Where a person is the owner of securities on 1st January 1996 which he

acquired before that date, he shall be deemed to have disposed of the securities and immediately reacquired them at their market value immediately before that date.

(5) Nothing in this Part of this Schedule shall be taken as affecting the manner in which the market value of any securities is to be ascertained.

(6) Without prejudice to the generality of sub-paragraphs (1) and (2) above, a disposal of securities in a new holding, other than a disposal of the whole of it, is a disposal of part of an asset and the provisions of this Chapter relating to the computation of a gain accruing on a disposal of part of an asset shall apply accordingly.

12.—(1) The following provisions shall apply where securities of the same class are acquired or disposed of by the same person on the same day and in the same capacity—

- (a) all the securities so acquired shall be treated as acquired by a single transaction and all the securities so disposed of shall be treated as disposed of by a single transaction, and
- (b) all the securities so acquired shall, so far as their quantity does not exceed that of the securities so disposed of, be identified with those securities.

(2) Where the quantity of the securities so disposed of exceeds the quantity of the securities so acquired, then so far as the excess is not required by any provision of paragraph 11 or 13 of this Schedule to be identified with securities acquired before the day of the disposal, it shall be treated as diminishing a quantity subsequently acquired, and a quantity so acquired at an earlier date, rather than one so acquired at a later date.

13.—(1) Where a person disposes of securities, the securities disposed of shall be identified in accordance with the provisions of this paragraph with securities of the same class acquired by him which could be comprised in that disposal.

(2) This paragraph applies notwithstanding that securities disposed of are otherwise identified by the disposal or by a transfer or delivery giving effect to it (but so that where a person disposes of securities in one capacity, they shall not be identified with securities which he holds or can dispose of only in some other capacity).

(3) Subject to paragraph 2 and the following provisions of this paragraph, securities disposed of shall be identified with securities acquired at a later time rather than with securities acquired at an earlier time.

(4) Without prejudice to paragraph 2, if, within a period of 10 days, a number of securities are acquired and subsequently a number of securities are disposed of and, apart from this sub-paragraph—

- (a) the securities acquired would increase the size of, or constitute a new holding, and
- (b) the securities disposed of would decrease the size of, or extinguish, the same new holding,

then, subject to sub-paragraphs (5) and (6) below, the securities disposed of shall be identified with the securities acquired and none of them shall be regarded as forming part of an existing new holding or constituting a new holding.

(5) If, in a case falling within sub-paragraph (4) above, the number of securities acquired exceeds the number disposed of—

- (a) the excess shall be regarded as forming part of an existing new holding or, as the case may be, as constituting a new holding; and
- (b) if the securities acquired were acquired at different times (within the 10 days referred to in sub-paragraph (4) above) the securities

disposed of shall be identified with securities acquired at an earlier time rather than with securities acquired at a later time.

(6) If, in a case falling within sub-paragraph (4) above, the number of securities disposed of exceeds the number acquired, the excess shall not be identified in accordance with that sub-paragraph.

Reorganisation or reduction of share capital

14.—(1) For the purposes of this Part of this Schedule "reorganisation" means a reorganisation or reduction of a company's share capital, and in relation to the reorganisation—

- (a) "original shares" means shares held before and concerned in the reorganisation;
- (b) "reorganised holding" means, in relation to any original shares, the shares in the company which as a result of the reorganisation represent the original shares (including such, if any, of the original shares as remain).

(2) The reference in sub-paragraph (1) above to the reorganisation of a company's share capital includes—

- (a) any case where persons are, whether for payment or not, allotted shares in of the company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of shares in the company or of any class of shares in the company, and
- (b) any case where there are more than one class of share and the rights attached to shares of any class are altered.

(3) The reference in sub-paragraph (1) above to a reduction of share capital does not include the paying off of redeemable share capital, and where shares in a company are redeemed by the company otherwise than by the issue of shares (with or without other consideration) and otherwise than in a liquidation, the shareholder shall be treated as disposing of the shares at the time of the redemption.

15. Subject to the following provisions of this Part of this Schedule, a reorganisation shall not be treated as involving any disposal of the original shares or any acquisition of the reorganised holding or any part of it, but the original shares (taken as a single asset) and the reorganised holding (taken as a single asset) shall be treated as the same asset acquired as the original shares were acquired.

16.—(1) Subject to sub-paragraph (2) below, where, on a reorganisation, a person gives or becomes liable to give any consideration for his reorganised holding or any part of it, that consideration shall in relation to any disposal of the reorganised holding or any part of it be treated as having been given for the original shares, and if the reorganised holding or part of it is disposed of with a liability attaching to it in respect of that consideration, the consideration given for the disposal shall be adjusted accordingly.

(2) There shall not be treated as consideration given for the reorganised holding or any part of it—

- (a) any surrender, cancellation or other alteration of the original shares or of the rights attached thereto, or
- (b) any consideration consisting of any application, in paying up the reorganised holding or any part of it, of assets of the company or of any dividend or other distribution declared out of those assets but not made,

and any consideration given for the reorganised holding or any part of it otherwise than by way of a bargain made at arm's length shall be disregarded to the extent that its amount or value exceeds the relevant increase in value; and for this purpose "the relevant increase

in value" means the amount by which the market value of the reorganised holding immediately after the reorganisation exceeds the market value of the original shares immediately before the reorganisation.

(3) Where on a reorganisation a person receives (or is deemed to receive), or becomes entitled to receive, any consideration, other than the reorganised holding, for the disposal of an interest in the original shares he shall be treated as if the reorganised holding resulted from his having for that consideration disposed of an interest in the original shares (but without prejudice to the original shares and the reorganised holding being treated in accordance with paragraph 15 above as the same asset).

(4) Where for the purpose of sub-paragraph (3) above it is necessary in computing the gain or loss accruing on the disposal of the interest in the original shares mentioned in that sub-paragraph to apportion the cost of acquisition of the original shares between what is disposed of and what is retained, the apportionment shall be made in the like manner as under paragraph 17 below.

17. Where for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of any part of the reorganised holding it is necessary to apportion the cost of acquisition of any of the original shares between what is disposed of and what is retained, the apportionment shall be made by reference to market value at the date of the disposal (with such adjustment of the market value of any part of the reorganised holding as may be required to offset any liability attaching thereto but forming part of the cost to be apportioned).

PART III INDIVIDUALS, TRUSTEES ETC

Husbands and wives.

18.—(1) If, in any year of assessment, and in the case of a woman who in that year of assessment is a married woman living with her husband, the man disposes of an asset to the wife, or the wife disposes of an asset to the man, both shall be treated as if the asset was acquired from the one making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the one making the disposal.

(2) This paragraph shall not apply—

(a) if until the disposal the asset formed part of trading stock of a trade carried on by the one making the disposal, or

(b) the asset is acquired as trading stock for the purposes of a trade carried on by the one acquiring the asset, or

(c) if the disposal is by way of donatio mortis causa,

but this paragraph shall have effect notwithstanding any other provision of this Ordinance fixing the amount of the consideration deemed to be given on a disposal or acquisition.

Nominees and bare trustees.

19.—(1) In any case where assets are held—

(a) by a person as nominee for another person, or

(b) as trustee for another person absolutely entitled as against the trustee, or

(c) for any person who would be so entitled but for being an infant or other person under disability (or for 2 or more persons who are or would be jointly so entitled),

this Chapter shall apply as if the property were vested in, and the acts of the nominee or trustee in relation to the assets were the acts of, the person or persons for whom he is the nominee or trustee (acquisitions from or disposals to him by that person or persons being

(2) It is hereby declared that references in this Chapter to any asset held by a person as trustee for another person absolutely entitled as against the trustee are references to a case where that other person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustees to resort to the asset for payment of duty, taxes, costs or other outgoings, to direct how that asset shall be dealt with.

Death: general provisions.

20.—(1) For the purposes of this Chapter the assets which a deceased person was competent to dispose of—

(a) shall be deemed to be acquired on his death by the personal representatives or other person on whom they devolve for a consideration equal to their market value at the date of the death, but

(b) shall not be deemed to be disposed of by him on his death (whether or not they were the subject of a testamentary disposition).

(2) Allowable losses sustained by an individual in the year of assessment in which he dies may, so far as they cannot be deducted from chargeable gains accruing in that year, be deducted from chargeable gains accruing to the deceased in the 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year.

(3) In relation to property forming part of the estate of a deceased person the personal representatives shall for the purposes of this Chapter be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the personal representatives), and that body shall be treated as having the deceased's residence, ordinary residence, and domicile at the date of death.

(4) On a person acquiring any asset as legatee (as defined in paragraph 21 below)—

(a) no chargeable gain shall accrue to the personal representatives, and

(b) the legatee shall be treated as if the personal representatives' acquisition of the asset had been his acquisition of it.

(5) Notwithstanding section 144(1), no chargeable gain shall accrue to any person on his making a disposal by way of donatio mortis causa.

(6) Subject to sub-paragraphs (7) and (8) below, where within the period of 2 years after a person's death any of the dispositions (whether effected by will, under the law relating to intestacy or otherwise) of the property of which he was competent to dispose are varied, or the benefit conferred by any of those dispositions is disclaimed, by an instrument in writing made by the persons or any of the persons who benefit or would benefit under the dispositions—

(a) the variation or disclaimer shall not constitute a disposal for the purposes of this Chapter, and

(b) this paragraph shall apply as if the variation had been effected by the deceased or, as the case may be, the disclaimed benefit had never been conferred.

(7) Sub-paragraph (6) above does not apply to a variation unless the person or persons making the instrument so elect by notice given to the Commissioner within 6 months after the date of the instrument or such longer time as the Commissioner may allow.

(8) Sub-paragraph (6) above does not apply to a variation or disclaimer made for any consideration in money or money's worth other than consideration consisting of the making of a variation or disclaimer in respect of another of the dispositions.

(9) Sub-paragraph (6) above applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.

(10) In this paragraph references to assets of which a deceased person was competent to dispose—

- (a) are references to assets of the deceased which (otherwise than in right of a power of appointment or of the testamentary power conferred by statute to dispose of entailed interests) he could, if of full age and capacity, have disposed of by his will, assuming that all the assets were situated in the Falkland Islands and, if he was not domiciled in the Falkland Islands, that he was domiciled in the Falkland Islands, and
- (b) include references to his severable share in any assets to which, immediately before his death, he was beneficially entitled as a joint tenant.

Expenses in administration of estates and trusts.

21.—(1) In the case of a gain accruing to a person on the disposal of, or of a right or interest in or over, an asset to which he became absolutely entitled as legatee or as against the trustees of settled property—

- (a) any expenditure within paragraph 1(2) above incurred by him in relation to the transfer of the asset to him by the personal representatives or trustees, and
- (b) any such expenditure incurred in relation to the transfer of the asset by the personal representatives or trustees,

shall be allowable as a deduction in the computation of the gain accruing to that person on the disposal.

(2) In this Chapter, unless the context otherwise requires, "legatee" includes any person taking under a testamentary disposition or on an intestacy or partial intestacy, whether he takes beneficially or as trustee, and a person taking under a donatio mortis causa shall be treated (except for the purposes of paragraph 20 above) as a legatee and his acquisition as made at the time of the donor's death.

(3) For the purposes of the definition of "legatee" above, and of any reference in this Ordinance to a person acquiring an asset "as legatee", property taken under a testamentary disposition or on an intestacy or partial intestacy includes any asset appropriated by the personal representatives in or towards satisfaction of a pecuniary legacy or any other interest or share in the property devolving under the disposition or intestacy.

Insolvents' assets.

22.—(1) In relation to assets held by a person as trustee or assignee in bankruptcy or under a deed of arrangement—

- (a) this Chapter shall apply as if the assets were vested in, and the acts of the trustee or assignee in relation to the assets were the acts of, the bankrupt or debtor (acquisitions from or disposals to him by the bankrupt or debtor being disregarded accordingly), and
- (b) tax in respect of any chargeable gains which accrue to any such trustee or assignee shall be assessable on and recoverable from him.

(2) Assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor shall for the purposes of this Chapter be regarded as held by a personal representative of the deceased and—

(a) sub-paragraph (1) above shall not apply after the death, and

(b) paragraph 20(1) shall apply as if any assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor were assets of which the deceased was competent to dispose and which then devolved on the trustee or assignee as if he were a personal representative.

(3) Assets vesting in a trustee in bankruptcy after the death of the bankrupt or debtor shall for the purposes of this Chapter be regarded as held by a personal representative of the deceased, and sub-paragraph (1) above shall not apply.

(4) In this paragraph "deed of arrangement" means a deed of arrangement to which the Deeds of Arrangement Act 1914 applies.

Section 181

SCHEDULE 3 TAX APPEALS *Interpretation*

1. In this Schedule—

"the Chairman" means the Chairman of the Tax Appeal Tribunal;

"the Clerk" means the Clerk to the Tax Appeal Tribunal;

"the Tribunal" means the Tax Appeal Tribunal.

Written representation appeals

2.—(1) Where the Commissioner receives a copy of a notice of appeal under section 181 which does not request an oral hearing, the Commissioner shall, before the expiry of the period of 21 days beginning with the date of receipt of the copy notice, or such later period as the Chairman may permit, send to the Clerk his own written representations with respect to the appeal, supporting the decision or decisions appealed against in general and responding to the grounds of appeal in particular.

(2) The Clerk shall send a copy of any representations of the Commissioner made in accordance with sub-paragraph (1) above to the appellant together with a notice informing the appellant that he may submit his own representations to the Tribunal before the expiry of the period of 21 days beginning with the date of the notice, or such later period as the Chairman may permit.

(3) The Clerk shall send copies of any representation received in accordance with sub-paragraph (2) above to the Chairman and to the Commissioner.

(4) If it appears to the Chairman that—

(a) the written representations of the appellant raise any fresh ground of appeal (that is to say, which is not raised in the appellant's original notice of appeal),

(b) the fresh ground has been anticipated in the Commissioner's own written representations, so that no injustice to the Commissioner is likely to result if he is not offered the opportunity of making further written representations,

the Chairman shall cause the Clerk to notify the Commissioner that the Commissioner may, in relation only to the fresh grounds of appeal specified in the notice, submit such further written representations to the Clerk before the expiry of the period of 14 days beginning with the date of the notice, or such later period as the Chairman may permit.

(5) On receiving any further written representations of the Commissioner submitted in accordance with sub-paragraph (4), the Clerk shall send copies of them to the Chairman and to the appellant but, unless the Chairman for special reason otherwise directs, the appellant shall not have the right to submit any further written representations on his own behalf.

(6) The Clerk shall ensure that the appeal is considered by the Tribunal as soon as reasonably possible after the expiry of the period or periods during which representations may be made under the preceding provisions of this paragraph.

(7) The Clerk shall send to every member of the Tribunal—

- (a) a copy of the notice of appeal and of all written representations received in accordance with this paragraph relating to the appeal;
- (b) notice of the date on and time and place at which the appeal will be considered by the Tribunal.

(8) The Tribunal shall not, on consideration of an appeal under this paragraph—

- (a) consider any representations other than written representations submitted in accordance with this paragraph;
- (b) permit any person other than a member of the Tribunal or the Clerk to be present.

(9) The Tribunal shall cause its decision and the reasons for that decision to be taken down in writing by the Clerk.

(10) As soon as reasonably convenient the Clerk shall cause a fair copy of the Tribunal's decision and the reasons for it to be signed by the Chairman or other member of the Tribunal presiding during the consideration of the appeal, and the copy so signed shall then constitute the determination of the appeal.

Oral appeals

3.—(1) Where the appellant's notice of appeal under section 181 requests an oral hearing, the Clerk shall give notice of the date on which and time and place at which the hearing will begin—

- (a) to every member of the Tribunal;
- (b) to the appellant; and
- (c) to the Commissioner.

(2) At the hearing, the appellant and the Commissioner may appear and be heard in person or by any other person appointed by or on behalf of the appellant or Commissioner to act in that behalf before the Tribunal; and in the following provisions of this paragraph any reference to the appellant or the Commissioner shall be construed accordingly.

(3) The following procedural rules shall apply for the conduct of the hearing—

- (a) the appellant shall be heard first and then the Commissioner shall be heard in reply;
- (b) the appellant and the Commissioner shall each have the right to call witnesses or to produce written evidence as part of their case, and any witness who gives oral evidence may be cross-examined by the other party;
- (c) the Commissioner may not call or produce any evidence or speak in reply to the appellant's case until the appellant's witnesses have completed their evidence and any written evidence he wishes to produce has been produced;
- (d) if the Commissioner calls witnesses or produces written evidence

after the close of the case for the appellant, the appellant shall have the right (if he wishes) to address the Tribunal for a second time.

(4) After the Tribunal has heard the parties to the appeal, the Tribunal shall require the parties (and any witnesses they may have called) to withdraw, and shall then consider its decision in the appeal.

(5) The Clerk shall make a sufficient note of—
 (a) the address or addresses of the parties, and
 (b) any oral evidence given to the Tribunal.

(6) The Tribunal shall not require any evidence given to it during the hearing of an appeal to be given on oath or affirmation.

(7) The Tribunal shall not permit any person other than—
 (a) the members of the Tribunal hearing the appeal;
 (b) the parties, their representatives and their witnesses; and
 (c) the Clerk to the Tribunal,
 to be present during the hearing of an appeal under this paragraph.

(8) The Tribunal shall cause its decision and the reasons for that decision to be taken down in writing by the Clerk.

(9) As soon as reasonably convenient the Clerk to the Tribunal shall cause a fair copy of the Tribunal's decision and the reasons for it to be signed by the Chairman or other member of the Tribunal presiding during the consideration of the appeal, and the copy so signed shall then constitute the determination of the appeal.

Notification of determination of appeal: further appeal on point of law

4.—(1) As soon as possible after the determination of the appeal has been signed, the Clerk shall transmit a copy of it to the appellant and to the Commissioner.

(2) The appellant and the Commissioner may appeal against the determination of the Tribunal to the Supreme Court on a point of law.

(3) An appeal under this paragraph shall be lodged by the appellant or the Commissioner in triplicate with the Registrar of the Supreme Court within 28 days of the receipt by the appellant or the Commissioner (as the case may be) of the notice of the Tribunal's determination; and the notice of appeal shall—

- (a) specify the point of law in question;
- (b) the reasons for alleging that in relation to that point of law, that the Tribunal was in error.

(4) On determination of an appeal under this paragraph, the Supreme Court may—

- (a) correct any immaterial informality or error in the determination of the Tribunal which it is satisfied can be made without injustice to the parties;
- (b) quash or vary the determination of the Tribunal in such manner as it considers appropriate; and
- (c) make any other order it considers appropriate in the circumstances of the case (including, without prejudice to the generality of the foregoing, an order as to the costs of the appeal to the Supreme Court).

(5) The Chief Justice may make rules in relation to the procedure of the Supreme

Court in appeals under this paragraph, but until such rules are first made, and subject to the foregoing provisions of this paragraph, the procedure on such appeals shall as nearly as possible be that on civil appeals to the Supreme Court.

Commissioner to give effect to decisions on appeal

5.—(1) Subject to sub-paragraph (2), the Commissioner shall take such steps and do such things as are necessary to give effect to the determination of the Tribunal on an appeal to it.

(2) Sub-paragraph (1) does not apply where the Commissioner has appealed or intends to appeal in accordance with this Schedule to the Supreme Court against the determination of the Tribunal, but in such a case the Commissioner shall not seek to enforce payment of any tax until or unless the determination of the Tribunal is quashed or varied to the relevant extent by the Supreme Court, if to do so would be inconsistent with the determination of the Tribunal.

(3) The Commissioner shall, so far as it affects him, take all such steps and do all such things as are necessary to give effect to any order of the Supreme Court on an appeal under this Schedule.

Supplementary provisions

6.—(1) A member of the Tribunal is not personally liable in respect of anything done or omitted by him in good faith in the course of his functions as such a member.

(2) The Tribunal has no power to award to any person any costs of an appeal to it.

(3) For the avoidance of doubt, it is hereby declared that section 202 applies to all members of the Tribunal and to the Clerk in the performance of their functions as such.

(4) Neither the bringing of an appeal to the Tribunal nor the bringing of a further appeal from the Tribunal to the Supreme Court shall (otherwise than by reason of the manner of determination of that appeal or further appeal) have effect—

- (a) to postpone any liability to pay any tax except in accordance with section 183;
- (b) to excuse any person from payment of interest on any tax overdue or abate that interest; or
- (c) to excuse any person from any penalty otherwise payable under this Ordinance.

SCHEDULE 4
PROCEEDINGS FOR THE RECOVERY OF TAX
Notice to be given to tax defaulters

1.—(1) The Commissioner shall on such days in each year as the Governor in Council may direct cause to be inserted in 3 consecutive issues of the Gazette a notice to the effect that warrants will be issued for the recovery of all tax together with interest, penalties and fines due thereon which remain unpaid after such day as may be specified in the notice.

(2) The specified day shall not be earlier than one month from the first publication of the notice and publication in accordance with this section shall be sufficient notice to all tax defaulters.

Warrants against goods, power to sell lands, etc.

2.—(1) The collector shall, on such day in each year as the Governor in Council may direct, issue to any person whom he may employ as bailiff for this purpose ("the bailiff") warrants directing and authorizing him to make a levy upon the goods of all defaulters for the payment of tax, interest, penalties and fines unpaid in the previous year.

(2) The collector may issue another warrant or warrants directed to any bailiff to recover any tax, interest, penalties or fines still outstanding and due from a defaulter named in a warrant previously issued by him.

(3) This paragraph is without prejudice to the power of the Financial Secretary under paragraph 10 below, to proceed to sell or issue a praecipe authorizing the sale of any land or house chargeable with the unpaid taxes, interest, penalties or fines together with any expenses of the collector in respect of anything done to recover the unpaid taxes, interest, penalties or fines at any time.

Withdrawal of execution and institution of proceedings before magistrate

3. Notwithstanding that the name of a person in default in the payment of any tax, interest, penalties or fines shall have been included in a list to any warrant or praecipe authorizing a levy, the Financial Secretary may, at his discretion, at any time that the tax, interest, penalty or fine remains unpaid, to cause the warrant or praecipe to be suspended as against the defaulter and instead to apply to the magistrate for a summons directing the defaulter to attend before the magistrate, at such time as may be specified in the summons, to show cause why he should not be ordered to pay the amount unpaid as a judgment debt, and the magistrate may in his discretion issue the summons and cause the same to be served.

Order of magistrate for payment of unpaid sums

4. If a summons is issued under paragraph 3 above, the magistrate may on the hearing of the summons order the defaulter to pay into court the amount of the unpaid tax, interest, penalties or fines, and such costs and expenses as may have been incurred, or to order him to pay into court any part of such amount which the magistrate may deem the defaulter able to pay or arrange for paying, within 7 days of the order or within such extended time as may be determined by the magistrate, either as a lump sum or by instalments.

Imprisonment for failure to obey order

5.—(1) If a person summoned under paragraph 3 above fails to comply with the summons without lawful excuse or if he fails to comply with an order under paragraph 4 above, the magistrate may commit him to prison for a term not exceeding 6 weeks or

until payment of the sum ordered to be paid (if paid before the expiration of such term).

(2) Committal shall not be ordered under this paragraph unless the magistrate is satisfied that the person in default either has, or has had since the date of the order, the means to pay the sum in respect of which he is in default, and has refused or neglected, or refuses or neglects, to pay that sum.

(3) Proof of the means of the person making default may be given in such manner as the magistrate thinks just and, for the purposes of such proof, the debtor and any witnesses may be summoned and their attendance enforced by the same processes as in cases in which the magistrate has summary jurisdiction in criminal matters, and such debtor and witnesses may be examined on oath.

(4) Every order of committal under this paragraph shall be issued, obeyed and executed in manner similar to commitments by the magistrate in the exercise of his summary jurisdiction in criminal cases.

(5) Imprisonment in pursuance of an order under this paragraph shall not satisfy or extinguish the judgment debt.

Debtor paying whole of amount ordered to be paid

6. In the event of the defaulter paying the whole of the amount ordered to be paid in pursuance of this Schedule the magistrate shall remit to the Treasury the amount so paid, deducting such part thereof as may represent the court costs.

Proceedings by way of distress

7.—(1) For the purpose of levying any distress the bailiff shall execute a warrant issued to him by the collector according to the tenor thereof, and such warrant shall be in the form set out in Part I of Schedule 5.

(2) On payment of the tax, interest and fines and expenses, the bailiff shall give acquittances under his hand to the persons who pay the same on numbered (counterfoil) receipt forms with which the bailiff shall be supplied by the collector, and shall pay over to the Treasury all money received by him under this Ordinance.

Sale of goods levied on and disposal of proceeds

8.—(1) When any goods or chattels are distrained on, they shall, after due notice given in the Gazette, be sold by the bailiff at public auction in such a manner as is usual in sales under executions issuing out of the Magistrate's Court.

(2) Until the sale, the goods shall remain in the custody of the bailiff by whom the levy is made.

(3) The money arising from the sale shall be paid over by the bailiff to the Treasury after deducting therefrom all reasonable and necessary charges and expenses attending the levy and sale which may be allowed by the Financial Secretary; and these proceeds of sale shall be applied by the Financial Secretary towards satisfaction of the unpaid tax, interest, penalties, fines and expenses and the surplus (if any) shall be restored on demand to the owner of the goods distrained.

(4) Sub-paragraphs (1), (2) and (3) above shall have effect subject to the following provisions—

- (a) tools of trade, bedding and wearing apparel amounting in all to the value of £250 shall be exempted from execution;
- (b) after a levy it shall be lawful for the owner of the goods seized to

- redeem the goods at any time before the time appointed for the sale by paying to the bailiff the full amount of the tax, interest, penalties and fines thereon, together with all costs and expenses incurred in relation thereto by the date of such payment;
- (c) if at such public auction there shall be no bids sufficient to cover the tax, interest, penalties, fines, costs and expenses, the unsold goods shall become the property of Her Majesty for the use of the Government of the Falkland Islands.

Bailiff's fees

9.—(1) The bailiff's fees which may be included in a claim of levy under a warrant may be in such sum and according to such scale as is fixed from time to time by the Governor in Council.

(2) All such fees shall be paid by the persons in default against whom warrants are issued, and the Governor in Council may award to any bailiff such proportion thereof as he shall think fit.

Execution against land or houses

10.—(1) If the amount of the tax and interest, penalties due and recoverable from a person in default and of the fines, costs and expenses relating to any unpaid tax, interest or penalties have not been, or in the opinion of the Financial Secretary cannot be, raised by the sale of that person's goods, the Financial Secretary may put up for sale either the whole of any lands or houses in the Falkland Islands to which that person is beneficially entitled, or such part thereof as in the discretion of the Financial Secretary may be selected and marked off as sufficient to realize the required amount.

(2) In default of satisfaction of the debt by any such sale, then if the lands or houses charged with the payment of unpaid tax or interest had passed out of the possession of the defaulter before the date of the said sale and consequently such last-mentioned lands or houses had not been levied as aforesaid, the Financial Secretary may in the last instance proceed to levy and sell the lands or houses last mentioned.

(3) The Financial Secretary may issue a praecipe to levy the tax by the sale of the lands or houses therein mentioned, which praecipe shall be in the form set out in Part II of Schedule 5.

Notice to be served on defaulter before sale of realty

11.—(1) Before proceeding with the sale of any land or house in accordance with this Schedule, the Financial Secretary or the officer conducting the sale shall serve or cause to be served on the person in default a notice in the form set out in Part III of Schedule 5, and unless the Financial Secretary or that officer specially sanctions service by post or by some other means, any such notice shall be served personally on the person in default.

(2) Whenever the Financial Secretary or the officer have reason to believe that the person in default is avoiding service of the notice, or that neither he nor his authorized agent can be found, the Financial Secretary or officer may order the notice to be affixed in some conspicuous manner to the property with respect to which the praecipe to levy has been issued.

(3) The server or bailiff serving any such notice personally shall endeavour to explain its purport fully to the person upon whom it is served.

(4) The bailiff or server of such notice shall write on it the date when it is served

by him, and shall enter upon a counterfoil of the notice or on some other record the date and manner of service and the place where it was made.

(5) Any person duly served but failing to comply with the notice within the time and in the manner prescribed commits an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale unless he proves either that, before the notice was served, he had paid the tax or fine, or that no tax or fine was or is due from him.

Property vests in Crown on abortive sale

12.—(1) When the whole of any land or any house in respect of which levy has been made, has been offered for sale and no bid made for it equal to or in excess of the tax, interest, penalties, fines, costs and charges thereon, that land or house shall be liable to forfeiture at the discretion of the Governor in Council.

(2) The Financial Secretary shall cause to be served on the person in default a notice that such land or house is liable to forfeiture within one month from the date of the service of the notice, if the amount due be not paid, and no land or house shall be forfeit in pursuance of this paragraph unless such a notice has been served.

(3) When any land or house has been declared by the Governor in Council to be forfeit, the same shall vest in Her Majesty, her heirs and successors for the use of the Government of the Falkland Islands.

(4) The Financial Secretary shall forward to the Registrar of the court for the purposes of registration a statement in such form as may be prescribed by the Commissioner for the purposes of this paragraph, which shall contain the particulars of the land or house, the name of the person in default, the amount due, the date of abortive sale, and the date of the service of the notice of liability to forfeiture.

(5) The registration of the statement shall constitute an indefeasible title.

Conditions of sale

13. In all cases of the sale of lands or houses under this Ordinance the following shall be the conditions of sale—

1. The purchaser buys at his own risk as to the provisions of the law necessary to authorize the sale having been complied with. Those who intend to purchase shall be allowed access to all documents which show that such provisions have been complied with.

2. The purchaser shall not require any proof (beyond a copy of the notice of assessment and the praecipe with the list of defaulters' notices with service) of the identity of the contents, dimensions, or other particulars of the property offered for sale with that advertised.

3. The highest bidder for each lot shall be the purchaser. Should any dispute arise as to any bidding, the property may again be put up for sale.

4. The reserve price shall be the amount of the tax, interest, penalties, fines, costs and charges remaining unpaid.

5. The advance on the bidding may be declared by the officer conducting the sale on putting up the specific lot. No bid shall be retracted without the consent of that officer.

6. Immediately after the sale, the purchaser shall pay to the Financial Secretary, or to the officer who conducts the sale, a deposit of his bid, and the balance within 7 days thereafter. In default of payment of the deposit, the property shall be offered for sale immediately and any subsequent bid by the person who has made default as aforesaid, shall be ignored or refused. If the purchaser fails to complete his purchase within 7 days, the deposit shall be

forfeited and the property shall be re-offered for sale, when any deficiency on the first bid may be recovered from the first bidder as a debt.

7. Except in special cases to which the Governor may give his sanction, conveyances for lands, tenements and hereditaments will only be executed on the prescribed form.

8. Conveyances will not be executed until one month has elapsed from the date of sale, and during this period the right is reserved for the Governor to cancel the sale.

Effect of execution sales with regard to title

14.—(1) Any sale of any land or any house charged with the payment of unpaid tax, interest, penalties, fines or expenses shall, subject to the provisions of this paragraph and provided that the other provisions of this Ordinance have been duly complied with, operate to confer on the purchaser an indefeasible title thereto, free from all encumbrances, and that title shall be the right, title, and interest therein of the person in default in respect of that tax or other sum.

(2) A purchaser shall not have, nor be capable of granting, any title to any land, house or goods purchased in accordance with this Ordinance, if the purchase is made with the intention of defrauding any creditor, or as agent or trustee for the person in default, or for his wife or family.

(3) Any such sale to the person in default shall be void.

(4) Any person having a charge or debt by way of specialty or otherwise upon any property of the person in default may pay the tax, interest, penalties, fines, costs and expenses payable in accordance with this Ordinance by that person, and shall be entitled to add the moneys thus paid to such charge or debt, and thereupon the increased charge or debt shall bear the same interest and may be enforced and recovered in the same manner as the original charge or debt.

Form of conveyance

15. Where any land or house is sold in accordance with this Ordinance, the Chief Executive shall execute and deliver on completion a conveyance to the purchaser in the form set out in Part IV of Schedule 5.

Disposal of surplus proceeds of sale

16.—(1) Any surplus moneys arising on any sales under this Ordinance, after payment of the tax, interest, penalties, fines and costs, shall be paid by the Financial Secretary to the owner of the property sold, if known; and if not known, then they shall be at the disposal of the Governor in Council on the application of any person entitled, for 6 years from the day of sale, after which they shall be appropriated to the Consolidated Fund.

(2) If the Financial Secretary has notice that any person other than the owner of the property sold has a claim to the whole or any part of those surplus moneys, either by way of mortgage or other legal encumbrance, the Financial Secretary may give notice to the owner stating that the moneys or some specified part of the moneys will be paid to the claimant, mortgagee, or encumbrancer, unless the owner informs the Financial Secretary within 10 days from the date of service of the notice that he does not admit the claim.

(3) If no reply is received from the owner to the notice within the time permitted, the surplus moneys, or so much of them as may have specified in the notice may be paid to the claimant by the Financial Secretary.

(4) If the owner denies the claim, then the Financial Secretary shall pay the surplus moneys to the Registrar of the Supreme Court, to be placed by the Registrar to the credit of an account in court to abide the settlement by the court of the question as to what person is entitled to them.

(5) The Financial Secretary shall not be held responsible for any payment made by him in accordance with this paragraph.

Claims by third parties

17.—(1) If any person (other than the person in default) claims that he is the owner of any goods or lands which are levied upon as belonging to a party in default he or any solicitor on his behalf may file an affidavit in the Supreme Court—

- (a) specifying which of the goods or lands he claims as his property;
- (b) stating full particulars of his title thereto; and
- (c) stating the value of the property,

and a person making a claim under this paragraph is referred to as "the claimant".

(2) If the claimant either at the time of or subsequent to the filing of the affidavit, gives security by bond with two sureties (such bonds being hereby exempted from stamp duty) to the satisfaction of the Registrar of the Supreme Court in a sum of £1,000, conditioned to secure—

- (a) first, either the total amount of taxes, interest, penalties, fines, costs, and expenses unpaid or such part thereof as may be equivalent to the value of the property claimed; and
- (b) secondly, all costs of the legal proceedings incidental to the determination of the claim,

the Registrar shall notify the Financial Secretary to discontinue his levy upon such of the goods and lands as are specified in the affidavit until the determination of the claim.

Abandonment of levy

18. At any time within 7 days after receipt of the notification to discontinue the levy, the Financial Secretary may abandon the levy altogether, and if he does so, shall notify the Registrar and the claimant that the levy is wholly withdrawn and that no further legal proceedings will take place.

Determination of claim

19.—(1) If notice of abandonment is not given by the Financial Secretary under paragraph 18, the Registrar shall set the matter down for trial at the next sitting of the Supreme Court (Summary Jurisdiction) held not later than two weeks subsequent to security being so given.

(2) At the hearing, the issue shall be whether or not the claimant has made out his title to the goods or lands specified in the affidavit, and whether the value thereof has been correctly stated in the affidavit; and, upon the issues being determined, the court shall order the bond to be enforced or cancelled, as the case may be.

(3) In proceedings brought under this paragraph—

- (a) the defendant shall be, in the case of goods being claimed, the bailiff by whom the levy was made, and in the case of lands being claimed, the Financial Secretary, and
- (b) all steps may be taken and things done as in ordinary cases before the court, except that an order for costs shall not be made against the defendant unless the court is of the opinion that he has been guilty of wilful neglect or misconduct.

SCHEDULE 5
WARRANTS AND OTHER FORMS
PART I
WARRANT TO LEVY

Under the Taxes Ordinance of the Falkland Islands

By Financial Secretary of the Falkland Islands
To a bailiff appointed by the said Financial Secretary in this behalf.

WHEREAS the several persons named in the list attached to this Warrant are respectively liable in respect of tax, interest or fines to pay the several amounts set opposite their names respectively in such list;

AND WHEREAS default has been made in payment of the same;

YOU are therefore hereby enjoined and required to make demand of the several sums mentioned in the said list from the persons liable therefor or on the premises charged with the assessment, as the case may require, and upon payment thereof, to give acquittances under your hand unto the several persons who shall pay the same; and if any sum or sums remain unpaid after demand duly made by you then you are hereby enjoined and required to levy upon each and every of the persons named in the list such sums of money as shall be sufficient to pay the amount set opposite to the names of such persons in the said list together with the cost attending any levy and any sale thereon or any and all other proceedings consequent thereon. And of your proceedings herein you are forthwith to make your return to me.

Given under my hand at Stanley, Falkland Islands, the *[date to be inserted here]*

Financial Secretary

PART II
PRAECIPE TO LEVY BY SALE OF LAND OR HOUSE

Under the Taxes Ordinance of the Falkland Islands

By the Financial Secretary of the Falkland Islands
To

WHEREAS the lands or houses of the several persons named in the list to this Warrant attached are respectively liable under the Taxes Ordinance for the several amounts set opposite their respective names:

AND WHEREAS the lands or houses named in the said list are likewise respectively liable for the amount aforesaid whether or not the persons named are in possession thereof:

AND WHEREAS default has been made in payment of the said amounts,

YOU are therefore hereby enjoined and required to levy upon and sell the lands of which the several persons named in the said list are possessed, or a sufficient part thereof, to satisfy the amounts set opposite their respective names as aforesaid together with the costs attending any such levy and sale and all other proceedings consequent thereon.

AND in default of satisfaction thereby, then, if the persons named are not now in possession of the lands or houses named in the said list, you are hereby enjoined and

required to levy upon the lands or houses last mentioned. And of your proceedings herein you are to make returns to me at the end of every calendar month commencing from the date hereof until your final return which you are to make to me on or before the thirtieth day of April next.

Given under my hand at Stanley, Falkland Islands, the *[date to be inserted here]*

Financial Secretary

PART III
NOTICE TO DEFAULTER

Under the Taxes Ordinance of the Falkland Islands

TAKE NOTICE that you are hereby required to fill in the following form with the statements and information thereby required, to sign the same and to deliver it within 7 days from the date of the service thereof to the Officer in charge of the Treasury.

AND FURTHER TAKE NOTICE that in default of your delivering such form duly filled in and signed as aforesaid, you will commit an offence and on conviction thereof be liable to a fine not exceeding level 2 on the standard scale.

FORM

Do you admit that you owe £..... for tax and £..... for interest, fines or penalties in respect of

If the whole of the above-mentioned amount is not owing by you, state how much is owing by you.

If the above-mentioned amount or any part thereof is not owing by you, but is owing by some other person, state the name of that other person.

Have you any right, title or interest in the following properties? If you have, state the nature of your interest therein:

.....
.....
.....
.....

State any reason you may have for claiming that your property may not be sold to satisfy the amount due by you.

Dated this day of

Financial Secretary

Served by me on the *[date to be inserted here]*

Bailiff or Server

THIS INDENTURE made the *[date to be inserted here]*
between the Governor of the Falkland Islands of the one part ("the Governor") and ("the
Grantee") of the other part

WITNESSETH that in consideration of the sum of
paid by the Grantee to the Crown (the receipt whereof is hereby acknowledged) the
Governor doth, pursuant to and in exercise of the powers in him vested by the laws of the
said Falkland Islands relating to income tax and corporation tax, hereby grant to the
Grantee ALL THAT

EXCEPTING AND RESERVING to the Crown, out of the grant hereby intended to be
made, all the rights, liberties and benefits in respect of the said land and every portion
thereof reserved to the Crown under and by virtue of section 28 of the Land Ordinance.

To hold the said hereditaments unto and to the use of the Grantee in fee simple.

IN WITNESS whereof the Governor hath hereunto set his hand and seal the day and year
above written.

Signed sealed and delivered by the
said (Governor) in L.S.
the presence of

Section 185.

SCHEDULE 6

TERRITORIAL EXTENSION OF CHARGE TO TAX:
SUPPLEMENTARY PROVISIONS

General

1.—(1) In this Schedule any reference to a licence is a reference to a petroleum
licence and, in relation to a licensee, any such reference is a reference to the licence by
virtue of which he is a licensee and is a reference to the whole of that licence (not merely
his share or interest in the licence or in other assets).

(2) For the purposes of this Schedule, profits or gains are profits or gains in
respect of which any licence was the basis for the assessment if those profits or gains fall
within paragraph 3(1)(a) or (b) by reference to that licence.

Power of Commissioner to obtain information from licensees

2.—(1) A licensee shall, if required to do so by a notice served on him by the
Commissioner, give to the Commissioner within the time limited by the notice (which
shall not be less than 30 days) such particulars as may be required by the notice of—

- (a) transactions in connection with activities authorised by the licence
as a result of which any person who is not resident in the
Falkland Islands is or might be liable to tax; and
- (b) emoluments or other payments paid or payable in respect of duties
or services performed in an area in which those activities may
be carried on under the licence and the persons to whom they
were paid or are payable.

(2) Without prejudice to sub-paragraph (3) below, a licensee shall take all
reasonable steps to obtain the information necessary to enable him to comply with the
notice, including imposing requirements on other persons to provide him with the
information.

(3) The Commissioner may by notice require a licensee to keep records of transactions within sub-paragraph (1)(a) above and emoluments and other payments within sub-paragraph (1)(b) above in accordance with the notice, and records kept in accordance with a notice under this sub-paragraph shall—

- (a) be kept for a period of 6 years from the end of the chargeable period to which they refer, and
- (b) shall be kept in the Falkland Islands and shall be open to inspection at all reasonable times by an officer of the Taxes Office specifically authorised in that behalf by the Commissioner and on production (if so required) of his authority.

(4) A licensee who without reasonable excuse fails to comply with a notice under this sub-paragraph or with the requirements of sub-paragraph (3) above shall be guilty of an offence and liable to a fine not exceeding level 7 on the standard scale.

Recovery of unpaid tax from licensees

3.—(1) Subject to the following provisions of this Schedule, the Commissioner may serve a notice under this paragraph on a licensee requiring the licensee to pay an amount of tax which has been assessed on a person not resident in the Falkland Islands in respect of —

- (a) profits or gains from activities authorised, or carried on in connection with activities authorised, by the licence, or
- (b) profits or gains from, or chargeable gains accruing on the disposal of, exploration or exploitation rights,

if the tax remains unpaid later than 30 days after it has become due and payable.

(2) An amount of unpaid tax may not be included in a notice under this paragraph if the tax—

- (a) was assessed in respect of profits or gains arising or accruing to a person as respects whom a certificate has been issued under paragraph 5 below (“an exempt person”) at a time when such a certificate is in force as respects that person, or
- (b) is payable by an exempt person and became due at a time when a certificate under paragraph 5 below is in force as respects that person, or

(c) was assessed in respect of the emoluments of any employment;
and such fair and reasonable apportionments of unpaid tax shall be made as may be necessary to give effect to this paragraph.

(3) The licensee shall pay the amount of unpaid tax stated in the notice, together with any interest due thereon under this Ordinance, within 30 days of the service of the notice.

(4) A notice under this paragraph shall state particulars of the assessment, the amount remaining unpaid, the date when it became payable and the amount of interest due, and where sub-paragraph (2) above or paragraph 4 below applies the notice shall include particulars of the manner in which the amount required to be paid was determined.

(5) Any amount which a licensee is required to pay by a notice under this paragraph may be recovered from him as if it were tax due and duly demanded from him; and he may recover any such amount paid by him from the person on whom the assessment was made.

(6) A payment in pursuance of a notice under this paragraph shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(7) Where more than one licensee may be given a notice under this paragraph in

respect of the same amount of unpaid tax, the liability of the licensees to pay the amount specified in the notice shall be joint and several.

4. Where tax is assessed on any person not resident in the Falkland Islands as mentioned in paragraph 3(1)(a) or (b) but more than one licence is the basis for the assessment, then the amount the licensee may be required to pay by a notice under that paragraph shall be such amount of the tax remaining unpaid under the assessment as on a just and reasonable apportionment can be attributed to the profits or gains in respect of which the licence was the basis for the assessment, together with a corresponding proportion of any interest due as mentioned in paragraph 3.

5.—(1) Where, on an application made by a person who will or might become liable to tax which, if remaining unpaid, could be recovered under paragraph 3 above from a licensee, the Commissioner is satisfied that the applicant will comply with any obligations imposed on him by this Ordinance, he may issue a certificate to the licensee exempting him from the provisions of that paragraph with respect to any tax payable by the applicant.

(2) The Commissioner may, by notice in writing to the holder of a certificate issued under this paragraph, cancel the certificate from such date, not earlier than 30 days after the service of the notice, as may be specified in the notice.

THE TAXES BILL 1997

TABLES OF DESTINATIONS AND DERIVATIONS

In these Tables the following abbreviations are used—

| | | |
|---------|---|---|
| 1994 | = | The Taxes Ordinance 1994 c.17 |
| 1996 | = | The Taxes (Amendment) Ordinance 1996 c.2 |
| 1996(P) | = | The Taxes (Pensions Schemes) Ordinance 1996 c.8 |
| 1996(F) | = | The Finance Ordinance 1996 c.5 |
| RPO | = | The Retirement Pensions Ordinance 1996 c.20 |
| IGCO | = | Interpretation and General Clauses Ordinance |
| 1997 | = | The Taxes (Amendment) Ordinance 1997 c.00 |
| § | = | paragraph |
| ExMem | = | the Explanatory Memorandum to the Bill |

TABLE OF DERIVATIONS

| Section of 1997 Ordinance | Derivation |
|---------------------------|---|
| 204 | 1994 s.160 |
| 205 | 1994 s.161 |
| 206 | 1994 s.162 |
| 207 | 1994 s.163(1)-(10); 1996 Sch.1 §45 |
| 208 | 1994 s.164; 1996 Sch.1 §46 |
| 209 | 1994 s.165; 1996 Sch.1 §47 |
| 210 | 1994 s.165A; 1996 Sch.1 §47 |
| 211 | 1994 s.165B; 1996 Sch.1 §47 |
| 212 | 1994 s.166 |
| 213 | 1994 s.167 |
| 214 | 1994 s.168 |
| 215 | — |
| Schedule 1 | 1994 Sch.A1; 1996 Sch.1 §48; 1997 s.10(10).(11) |
| Schedule 2 | 1994 Sch.A2; 1996 Sch.1 §48 |
| Schedule 3 | 1994 Sch.1; 1996 Sch.2 §16 |
| Schedule 4 | 1994 Sch.2; 1996 Sch.2 §17 |
| Schedule 5 | 1994 Sch.3 |
| Schedule 6 | 1994 Sch.2A; 1996 Sch.1 §49 |

Taxes Ordinance

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| Section of 1997 Ordinance | Derivation |
|---------------------------|--|
| 179 | 1994 s.137 |
| 180 | 1994 s.138 |
| 181 | 1994 s.139; 1996 Sch.2 §12 |
| 182 | 1994 s.140 |
| 183 | 1994 s.141; 1996 Sch.2 §13 |
| 184 | 1994 s.142 |
| 185 | 1994 s.142A; 1996 Sch.1 §43 |
| 186 | 1994 s.143 |
| 187 | 1994 s.144; 1996 Sch.2 §14 |
| 188(1)(a)-(f) | 1994 s.145(1)(a)-(d),(da),(f); 1997 s.13(1)(a),(b) |
| (2) | 1994 s.145(2) |
| (3) | 1994 s.145(3); 1997 s.13(1)(c) |
| (4) | 1994 s.145(3A); 1997 s.13(1)(d) |
| (5) | 1994 s.145(4) |
| 189(1)-(d) | 1994 s.146(1)(a)-(d); 1997 s.13(2) |
| (2),(3) | 1994 s.146(2),(3) |
| 190 | 1994 s.147 |
| 191 | 1994 s.148 |
| 192(1),(2) | 1994 s.149(1),(2) |
| (3) | 1994 s.149(3); 1997 s.13(3) |
| 193 | 1994 s.150 |
| 194(1) | 1994 s.151(1); 1997 s.14(2) |
| (2) | 1994 s.151(2) |
| (3) | 1994 s.151(2A); 1997 s.14(3) |
| (4) | 1994 s.151(3) |
| 195 | 1994 s.152 |
| 196 | 1994 s.153 |
| 197 | 1994 s.154 |
| 198 | 1994 s.155 |
| 199 | 1994 s.156 |
| 200 | 1994 s.157(2),(3) |
| 201 | 1994 s.157A; 1996 Sch.1 §44 |
| 202 | 1994 s.158 |
| 203 | 1994 s.159; 1996 Sch.2 §15 |

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| Section of 1997 Ordinance | Derivation |
|---------------------------|--|
| 148 | 1994 s.119I; 1996 Sch.1 §38 |
| 149 | 1994 s.119J; 1996 Sch.1 §38 |
| 150 | 1994 s.119K; 1996 Sch.1 §38 |
| 151 | 1994 s.119L; 1996 Sch.1 §38 |
| 152 | 1994 s.119M; 1996 Sch.1 §38 |
| 153 | 1994 s.119N; 1996 Sch.1 §38 |
| 154 | 1994 s.119O; 1996 Sch.1 §38 |
| 155 | 1994 s.119P; 1996 Sch.1 §38 |
| 156 | 1994 s.120; 1996 Sch.1 §39; see ExMem |
| 157 | 1994 s.120A(1) (9); 1996 Sch.1 §40; see Exmem. |
| 158 | 1994 s.121 |
| 159 | 1994 s.122 |
| 160 | 1994 s.122A; 1996 Sch.1 §41 |
| 161 | 1994 s.123 |
| 162 | 1994 s.124; 1996 Sch.2 §10 |
| 163 | 1994 s.125; 1996 Sch.1 §42 |
| 164 | 1994 s.126 |
| 165 | 1994 s.127 |
| 166 | 1994 s.128 |
| 167 | 1994 s.129 |
| 168 | 1994 s.130 |
| 169 | 1994 s.131 |
| 170 | 1994 s.132; 1996 Sch.2 §11 |
| 171 | 1994 s.133; 1997 s.11(1) |
| 172 | 1994 s.134; 1997 s.11(1) |
| 173 | 1994 s.135; 1997 s.11(1) |
| 174 | 1994 s.135A; 1997 s.11(2) |
| 175 | 1994 s.136; see ExMem. |
| 176 | 1997 s.138A |
| 177 | 1997 s.136B |
| 178 | 1997 s.136C |

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| Section of 1997 Ordinance | Derivation |
|---------------------------|---|
| 122 | 1994 s.102B; 1996 Sch.1 §33 |
| 123 | 1994 s.103; 1996 Sch.1 §34 |
| 124 | 1994 s.104(1) |
| 125 | 1994 s.105 |
| 126 | 1994 s.106 |
| 127 | 1994 s.107 |
| 128 | 1994 s.108; 1996 Sch.1 §35 |
| 129 | 1994 s.109; 1996 Sch.1 §36 |
| 130 | 1994 s.110 |
| 131(1),(2) | 1994 s.111(1),(2) |
| (3)-(6) | 1994 s.111 (3),(3A),(3B),(3C); 1997 s.10(2) |
| (7)-(9) | 1994 s.111(4)-(6) |
| 132 | 1994 s.112 |
| 133 | 1994 s.113(1)-(3); 1996 Sch.2 §9; 1997 s.10(3) |
| 134 | 1994 s.114 |
| 135 | 1994 s.115 |
| 136 | 1994 s.116 |
| 137 | 1994 s.117; 1997 s.10(4) |
| 138 | 1994 s.118 |
| 139(1) | 1994 s.119(1) |
| (2) | 1994 s.119(2); 1997 s.10(5) |
| (3) | 1994 s.119(3)(a),(aa),(b),(c); 1997 s.10(6) |
| (4) | 1994 s.119(4); 1997 s.10(7) |
| (5),(6) | 1994 s.119(5),(6); 1996 Sch.1 §37; 1997 s.10(8),(9) |
| (7) | 1994 s.119(7); 1997 s.10(9) |
| 140 | 1994 s.119A; 1996 Sch.1 §38; 1997 s.10(12) |
| 141 | 1994 s.119B; 1996 Sch.1 §38 |
| 142 | 1994 s.119C; 1996 Sch.1 §38 |
| 143 | 1994 s.119D; 1996 Sch.1 §38 |
| 144 | 1994 s.119E; 1996 Sch.1 §38 |
| 145 | 1994 s.119F; 1996 Sch.1 §38 |
| 146 | 1994 s.119G; 1996 Sch.1 §38 |
| 147 | 1994 s.119H; 1996 Sch.1 §38 |

| Section of 1997 Ordinance | Derivation |
|---------------------------|---|
| 105(1) | 1994 s.98(1); 1996 Sch.1 §25(2) |
| (2) | 1994 s.98(1A); 1996 Sch.1 §25(3) |
| (3)(a) | 1994 s.98(3) |
| (3)(b) | 1994 s.98(1B); 1996 Sch.1 §25(3) |
| (3)(c) | 1994 s.98(4) |
| (4) | 1994 s.98(1C); 1996 Sch.1 §25(3) |
| (5) | 1994 s.98(1G); 1996 Sch.1 §25(3) |
| (6) | 1994 s.98(2) |
| 106(1),(2) | 1994 s.98(1D),(1E); 1996 Sch.1 §25(3) |
| (3)(a)-(e) | 1994 s.98(1F)(a)-(e); 1996 Sch.1 §25(3) |
| (f),(g) | 1994 s.98(1F)(ea),(eb); 1996 Sch.1 §25(3); 1997 s.8(2) |
| (h) | 1994 s.98(1F)(f); 1996 Sch.1 §25(3) |
| (4),(5) | 1994 s.98(5),(6); 1996 Sch.1 §25(4),(5); 1996 Sch.2 §8; 1997 s.9(3) |
| 107 | 1994 s.98A; 1996 Sch.1 §26 |
| 108 | 1994 s.98B; 1996 Sch.1 §26 |
| 109 | 1994 s.98C; 1996 Sch.1 §26 |
| 110 | 1994 s.98D; 1996 Sch.1 §26 |
| 111(1) | 1994 s.98E(1); 1996 Sch.1 §26 |
| (2) | 1994 s.98E(1A); 1997 s.8(4) |
| (3)-(6) | 1994 s.98E(2)-(5); 1996 Sch.1 §26 |
| (7) | 1994 s.98E(6); 1996 Sch.1 §26; 1997 s.8(5) |
| (8),(9) | 1994 s.98E(7),(8); 1996 Sch.1 §26 |
| 112 | 1994 s.98F; 1996 Sch.1 §26 |
| 113 | 1994 s.98G; 1996 Sch.1 §26 |
| 114 | 1994 s.98H; 1996 Sch.1 §26 |
| 115 | 1994 s.98J; 1996 Sch.1 §26 |
| 116(1) | 1994 s.99(1); 1996 Sch.1 §28(2) |
| (2) | 1994 s.99(2); 1996 Sch.1 §28(3) |
| (3),(4),(5) | 1994 s.99(2A),(2B),(2C); 1996 Sch.1 §28(3) |
| (6) | 1994 s.99(3); 1996 Sch.1 §28(4) |
| (7)-(13) | 1994 s.99(5)-(11) |
| 117 | 1994 s.99A; 1996 Sch.1 §29; 1997 s.8(6) |
| 118 | 1994 s.100 |
| 119 | 1994 s.101; 1996 Sch.1 §30 |
| 120 | 1994 s.102; 1996 Sch.1 §32; 1997 s.9 |
| 121 | 1994 s.102A; 1996 Sch.1 §33 |

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| Section of 1997 Ordinance | Derivation |
|---------------------------|---|
| 83(1) | 1994 s.80(1); 1996 Sch.1 §17(2) |
| (2),(3) | 1994 s.80(2),(3) |
| (4) | 1994 s.80(4)(b) |
| 84 | 1994 s.80A; 1996 Sch.1 §15 |
| 85 | 1994 s.80B; 1996 Sch.1 §15; 1997 s.7(2) |
| 86 | 1994 s.80C; 1996 Sch.1 §15 |
| 87(1)-(5) | 1994 s.81(1)-(5); 1996 Sch.1 §17(4) |
| (6) | 1994 s.81(5A); 1997 s.7(3) |
| (7),(8) | 1994 s.81(6),(7) |
| 88(1) | 1994 s.82(1); 1996 Sch.1 §17(5) |
| (2)-(5) | 1994 s.82(2),(2A),(2B),(2C); 1996 Sch.1 §17(6); 1997 s.7(4) |
| (6) | 1994 s.82(3); 1996 Sch.1 §17(6) |
| (7)-(9) | 1994 s.92(4)-(6); 1996 Sch.1 §17(7) |
| 89 | 1994 s.83; 1996 Sch.1 §17(8); 1997 s.7(5) |
| 90 | 1994 s.84; 1996 Sch.1 §17(9) |
| 91(1) | 1994 s.85(1) |
| (2)-(6) | 1994 s.82(2),(2A),(2B),(2C),(2D); 1997 s.7(6) |
| (7) | 1994 s.83(3); 1996 Sch.1 §17(10)(a),(b) |
| (8) | 1994 s.82(4) |
| (9) | 1994 s.85(4A); 1996 Sch.1 §17(10)(c) |
| (10) | 1994 s.85(5) |
| 92 | 1994 s.86; 1996 Sch.1 §17(11) |
| 93 | 1994 s.87; 1997 s.7(8) |
| 94 | 1994 s.87A; 1996 Sch.1 §16 |
| 95 | 1994 s.87B; 1996 Sch.1 §16 |
| 96 | 1994 s.88; 1996 Sch.1 §17(12); 1997 s.7(9) |
| 97 | 1994 s.89; 1996 Sch.2 §7 |
| 98 | 1994 s.89A; 1996 Sch.1 §18 |
| 99 | 1994 s.90 |
| 100 | 1994 s.91 |
| 101 | 1994 s.94; 1996 Sch.1 §21; see ExMem. |
| 102 | 1994 s.95 |
| 103 | 1994 s.96(1),(2); 1996 Sch.1 §22 |
| 104 | 1994 s.97; 1996 Sch.1 §23 |

| Section of 1997 Ordinance | Derivation |
|---|--|
| 56 | 1994 s.51 |
| 57 | 1994 s.52 |
| 58 | 1994 s.53 |
| 59 | 1994 s.54 |
| 60 | 1994 s.55 |
| 61 | 1994 s.56; 1996 Sch.1 §13 |
| 62 | 1994 s.56A; 1996 Sch.1 §13 |
| 63 | 1994 s.56B; 1996 Sch.1 §13 |
| 64(1)-(1) (5) | 1994 s.57(1)-(4) 1996 Sch.1 §14 |
| 65 | 1994 s.58 |
| 66 | 1994 s.59; 1996 Sch.2 §5 |
| 67 | 1994 s.60 |
| 68(1) (2) (3),(4) (5) (6),(7) | 1994 s.61(1) 1994 s.61(2); 1996(P) s.2(2) 1994 s.61(3),(4) 1994 s.61(5); 1996(P) s.2(3) 1994 s.61(6),(7) |
| 69 | 1994 s.62(1) |
| 70 | 1994 s.63 |
| 71 | 1994 s.64 |
| 72 | 1994 s.65 |
| 73 | 1994 s.66 |
| 74 | 1994 s.67 |
| 75 | 1994 s.68 |
| 76 | 1994 s.69 |
| 77 | 1994 s.70 |
| 78 | 1994 s.71 |
| 79 | 1994 s.72 |
| 80 | 1994 s.73 |
| 81 | 1994 s.74(4),(5); 1996(P) s.2(5) |
| 82(1) (2) | 1994 s.79 1996(P) s.3 |

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| Section of 1997 Ordinance | Derivation |
|---------------------------|--|
| 28 | 1994 s.25A; 1997 s.5 |
| 29 | 1994 s.26 |
| 30(1) | 1994 s.27(1); 1996 Sch.1 §7 |
| (2),(3) | 1994 s.27(2),(3) |
| (4) | 1994 s.27(4); 1996 Sch.1 §7 |
| (5),(6) | 1994 s.27(4A),(4B); 1996 Sch.1 §7 |
| (7) | 1994 s.27(5) |
| 31 | 1994 s.27A; 1996 Sch.1 §8; 1997 s.10(12) |
| 32 | 1994 s.28(1),(4)-(9); see ExMem. |
| 33 | 1994 s.29 |
| 34 | 1994 s.30; 1996 Sch.1 §9 |
| 35 | 1994 s.31 |
| 36 | 1994 s.32 |
| 37 | 1994 s.33; 1996 Sch.1 §10 |
| 38 | 1994 s.33A; 1996 Sch.1 §10 |
| 39 | 1994 s.34; 1996 Sch.2 §4 |
| 40 | 1994 s.35; 1996 Sch.1 §11 |
| 41 | 1994 s.36 |
| 42 | 1994 s.37 |
| 43 | 1994 s.38 |
| 44(1) | 1994 s.39; 1997 s.6 |
| (2)-(7) | 1994 s.40 |
| 45 | 1994 s.41 |
| 46 | 1994 s.42 |
| 47 | 1994 s.44 |
| 48 | 1994 s.45 |
| 49 | 1994 s.46 |
| 50 | 1994 s.46A; 1996 Sch.1 §12 |
| 51 | 1994 s.46B; 1996 Sch.1 §12 |
| 52 | 1994 s.47 |
| 53 | 1994 s.48 |
| 54 | 1994 s.49 |
| 55 | 1994 s.50 |

| Section of 1987 Ordinance | Derivation |
|---------------------------|---|
| 1 | |
| 2(1) | 1994 s.2(1); 1996 Sch.1 §2(2). |
| (2)-(5) | 1994 s.2(1A),(1B),(C),(1D); 1996 Sch.1 §2(3). |
| (6)-(8) | 1994 s.2(2)-(4); 1996 Sch.1 §2(4) |
| 3 | 1994 s.2A; 1996 Sch.1 §3. |
| 4 | 1994 s.3 |
| 5 | 1994 s.4; am.1997s.5 |
| 6 | 1994 s.5 |
| 7 | 1994 s.6 |
| 8(1),(2) | 1994 s.7(1),(2) |
| (3) | 1994 s.2(1) |
| (4) | 1994 s.7(3) |
| (5),(6) | 1994 s.7(4),(5); 1997s.3 |
| 9 | 1994 s.8 |
| 10 | 1994 s.9; 1996(F) s.4(a); 1997 s.4 |
| 11 | 1994 s.10 |
| 12 | 1994 s.11 |
| 13 | 1994 s.12; 1996 Sch.1 §4 |
| 14 | 1994 s.13 |
| 15 | 1994 s.14; RPO s.16; IGCO s.14(2); see ExMem. |
| 16 | 1994 s.15; 1996(F) s.4(b),(c),(d) |
| 17 | 1994 s.16; 1996(F) s.4(e),(f) |
| 18 | 1994 s.17; see ExMem; RPO s.25. |
| 19 | 1994 s.18; 1996(F) s.4(g); see ExMem. |
| 20 | 1994 s.19 |
| 21 | 1994 s.20 |
| 22 | 1994 s.20A; 1996 Sch.1 §5 |
| 23(1) | 1994 s.21(1); see ExMem. |
| (2)-(5) | 1994 s.21(3) (6); 1996 Sch.2 §2 |
| 24 | 1994 s.22 |
| 25 | 1994 s.23; 1996 Sch.2 §3 |
| 26 | 1994 s.24 |
| 27 | 1994 s.25; 1997 s.5 |

THE TAXES BILL 1997

EXPLANATORY MEMORANDUM

INTRODUCTION

This Bill consolidates provisions presently contained in the Taxes Ordinance 1994 ("the 1994 Ordinance"), the Taxes (Amendment) Ordinance 1996 ("the 1996 Ordinance") and the recently enacted Taxes (Amendment) Ordinance 1997. The 1996 Ordinance made substantial amendments to the 1994 Ordinance largely in anticipation of the exploration and exploitation of the Falkland Islands Continental Shelf (FICS). The 1997 Ordinance made miscellaneous amendments on a variety of topics.

Other enactments which have amended or otherwise affected the 1994 Ordinance are the Finance Ordinance 1996 which increased the amounts of various reliefs for individuals, the Taxes (Pensions Schemes) Ordinance 1996 which amended the provisions of the 1994 Ordinance relating to personal pension schemes and the Retirement Pensions Schemes Ordinance 1996 which replaces the existing flat-rate old-age pension scheme with a graduated pension scheme.

In addition to the amendments made by those Ordinance, a few other minor amendments are made to the legislation in this consolidation. These are identified in the following notes.

The new Bill will have effect, for income tax, for the year of assessment 1997 and later years and, for corporation tax, for the corporation tax year 1997 and later years.

Certain provisions of the 1994 Ordinance are not reproduced in the Bill.

Section 43 of the 1994 Ordinance only applies in relation to ACT payable in respect of distributions made by a company before 1st January 1996 in an accounting period for which the company is within the charge to corporation tax. Such distributions will have been made during a period the income of which is chargeable to corporation tax for the year 1996. This section is not required to be reproduced in the Bill as that applies for corporation tax years beginning after 1996.

Sections 75 to 78 of the 1994 Ordinance are not reproduced in the Bill. The Taxes (Pensions Schemes) Ordinance 1996 amended Chapter IV of Part III of the 1994 Ordinance in relation to the requirements which had to be satisfied before a personal pension scheme could be approved for the purposes of Part III. The main requirements were set out in section 74(1) to (3) which were repealed in the 1996 Ordinance. Section 74(1) referred forward to the requirements of sections 75 to 78 which were to have been repealed consequentially on the repeal of section 74(1). Due to an error in the preparation of the Bill for the 1996 Ordinance, section 2(6) of the 1996 Ordinance purported to repeal sections 75

and 78 instead of *sections* 75 to 78. The intention of the 1996 Ordinance is plain from its accompanying Explanatory Memorandum. The error was not discovered in time for it to be corrected before the 1996 Bill was assented to but it is being corrected in this Bill.

Certain sections in the 1994 Ordinance have dates in them which act as cut-off dates: that is to say, the section does not apply to things done before the date. Generally speaking, these dates are no longer needed owing to the passage of time -- this Bill does not apply to periods earlier than those dates. Provisions containing such dates which have been omitted are sections 96(3), 97(1) and 120(1).

Other omissions are noted below in this Memorandum.

CLAUSE 2

Subsection (1) no longer contains the full definition of "maintenance payment" which has been moved to clause 8(3). This is not a change of substance but is intended to make clause 2 easier to read. Clause 8 is the first and main place where maintenance payments are referred to, so it is appropriate to set out the definition in full in that clause.

CLAUSE 15

Subsection (3) of clause 15 lists sums which are deductible from a person's income in computing his chargeable income for income tax purposes. Paragraph (d) refers to sums paid under the Old Age Pensions Ordinance and under the Retirement Pensions Ordinance 1996. This paragraph takes account, by virtue of section 14(2) of the Interpretation and General Clauses Ordinance, of the coming into force of the Retirement Pensions Ordinance 1996 and the repeal of the Old Age Pensions Ordinance. Under the new Retirement Pensions Ordinance 1996 the wife will be able to make her own contributions in certain circumstances and clause 16 of that Ordinance provides that the husband may make a deduction in calculating his chargeable income under the Taxes Ordinance equal in amount to contributions made by himself and by his wife. Clause 15(d) of this Bill reflects that new provision.

CLAUSE 18

Clause 18 makes provision for amounts, calculated by reference to the annual value of the standard weekly rate of pension to be paid under the Retirement Pensions Ordinance 1996 (that is, the maximum pension payable under that Ordinance), to be deducted from a person's income in computing his chargeable income for income tax purposes.

Section 17(1) the 1994 Ordinance allows an amount equal to the married man's rate of pension to be deducted from the husband's chargeable income. Under the new Retirement Pensions Ordinance there is no exact equivalent of the married

man's rate of pension, but as women, married and single, will be able to make contributions on their own behalf, the expectation is that they will in the future earn their own pension. In addition there is provision for a married couple's allowance to be paid in certain cases.

After consideration of the issues, it has been decided that instead of allowing a man to deduct an amount equal to the standard pension plus the married couple's supplement, the deduction for tax purposes will be equal to twice the standard rate of pension. This reflects the aim of the new pensions legislation that husbands and wives will in the fullness of time benefit from a full pension each. As with the existing provision, this deduction may be made whatever the amount of pension actually received.

CLAUSE 19

Clause 19 is derived from section 18 of the 1994 Ordinance which makes provision for the deduction of an additional allowance in respect of children in computing a person's chargeable income for a year of assessment. The deduction is (in brief) allowed in respect of a qualifying child resident with the tax-payer in the previous year. There are one or two errors in the wording of subsections (1) to (3) which are being corrected in this Bill.

First, in subsection (1) the words "of any person" are omitted and "of" is inserted at the beginning of paragraphs (a) and (b). Secondly, in subsection (2)(a) and (b) the words "the child" are replaced by "a qualifying child". And lastly in subsection (3) the words "in that year" are replaced by the words "in the preceding year".

This amendments are to correct drafting errors and do not represent alterations of substance.

CLAUSE 23

This clause, which re enacts section 21 of the 1994 Ordinance, imposes the charge to corporation tax on companies resident in the Falkland Islands or with income falling within section 33.

Corporation tax was introduced in the 1994 Ordinance for income of tax years beginning on or after 1st January 1996 and section 28(2) and (3) of that Ordinance included provision determining the first accounting period for corporation tax of a company which had been within the charge to income tax for the year of assessment 1996.

However all companies affected by those provisions will have had their first accounting period already determined under the 1994 Ordinance before this Bill, which will have effect for years beginning on and after 1st January 1997, comes into effect. Section 28(2) and (3) are accordingly not required. It follows

therefore that section 21(2) is no longer needed either and can be omitted as being spent.

An amendment has been made to subsection (2)(b) of this clause, previously section 21(3)(b), to take account of the new clause 34, introduced as section 30 of the 1994 Ordinance in 1996. Clause 34 makes provision with respect to the taxation of non-resident companies and no longer expressly defines the chargeable income of such companies as was the case with section 30 of the 1994 Ordinance.

It is now therefore more appropriate in referring to income brought into the charge to tax by clause 34 to refer to such income as being chargeable income by virtue of clause 34 rather than to refer to chargeable income within the meaning of that clause.

CLAUSE 26

Clause 26 is derived from section 24 of the 1994 Ordinance and makes provision with respect to the beginning and the end of accounting periods of companies. Section 24 is expressed to be subject to section 28 of the 1994 Ordinance: s.28(1). This reference to section 28, now clause 32, is not reproduced in clause 26 since the provisions of section 28 which related to the start and end of accounting periods are not being reproduced: see the notes on clauses 23 and 32.

CLAUSE 32

This clause re-enacts section 28 of the 1994 Ordinance making provision with respect to companies within the charge to income tax for the year of assessment 1996. As mentioned above in the Note on clause 23, section 28(2) and (3) are now spent. In addition since this Bill only applies to tax for years later than 1996, section 28(4)(a), which makes provision for the payment of tax for the corporation tax year 1996, can also be omitted.

CLAUSE 44

Subsection (1) of this clause reenacts section 39 of the 1994 Ordinance, a new draft of which was substituted by the 1996 Ordinance. The remainder of clause 44 re-enacts section 40 of the 1994 Ordinance. This is merely a drafting change.

CLAUSE 101

Subsection (4) of this clause imposes a limit on the amount of remuneration a company may pay its non-resident directors. This provision was amended by paragraph 21 of Schedule 1 to the 1996 Ordinance. Originally paragraph (i) read ".....income derived from the business in that accounting period". Since

Taxes Bill — Explanatory Memorandum

the reference to the business was not required it was omitted in 1996. At present the paragraph reads ".....income derived in that accounting period". However, "derived in" is not quite correct and accordingly in the new Bill the provision has been simplified to read ".....income for that accounting period".

CLAUSE 103

This clause reproduces section 96 of the 1994 Ordinance which allows tax relief for pre-commencement expenditure. Subsection (3) is not reproduced as that prevented the allowance being made where the business commenced before 1st January 1994. Tax years to which that subsection applied fall outside the application of this consolidation and so it is omitted as being spent.

CLAUSES 105 AND 106

These clauses reproduce section 98 of the 1994 Ordinance. That section was heavily amended by the 1996 Ordinance and the opportunity has been taken in this Bill to rationalise the arrangement of the provisions in section 98 and to split what had become a cumbersome section into 2 more accessible clauses.

CLAUSE 124

This clause reproduces section 104(1) of the 1994 Ordinance which makes transitional provisions for persons entitled to allowances under the Seventh Schedule to the Income Tax Ordinance 1939. Subsection (2) of section 104 is not re-enacted as it is only concerned with matters relating to periods to which this Bill does not apply.

CLAUSE 156

This clause reproduces section 120 of the 1994 Ordinance as amended in 1996, subject to one further amendment. The clause deals with transfers between associated persons and broadly speaking prevents the value of a transaction from being artificially reduced or increased to obtain a tax advantage.

In subsection (2) a further paragraph, (ba), was added in 1996 which disappplied the section to sales of petroleum which followed on from the new Part VA, now Part VI, which contains other provisions relating to the pricing of sales of petroleum. These are to be found in clause 151 which deems non-arms' length sales and relevant appropriations of petroleum to be disposals at market value, but only in the case of a sale or appropriation by a ring fence trader.

However the exclusion in paragraph (ba) is absolute for all sales of petroleum whether or not involving a ring fence trader. Clearly clause 156(2)(c), as

Taxes Bill Explanatory Memorandum

paragraph (ba) now is, ought to be limited to those sales which are caught by clause 151 and this limitation is now included in clause 156(2)(c).

CLAUSE 157

This clause re-enacts section 120A of the 1994 Ordinance which was added by the 1996 Ordinance and extended section 120 of the 1994 Ordinance (clause 156) (transfer pricing) to petroleum companies. Subsection (10) of section 120A erroneously refers to section 121 (clause 158) instead of section 122 (clause 159). The purpose of the subsection is to attract the supplementary provisions of section 122(3) to (6) to section 120A and this is given effect to in the Bill more directly by incorporating references to clause 157 in clause 159(3), (4) and (6). There is no need to refer to clause 157 in clause 158.

CLAUSE 175

This clause re-enacts section 136 of the 1994 Ordinance which makes provision with respect to assessments under sections 133, 134 or 135 of that Ordinance. It requires the Commissioner to give notice to taxpayers of the assessments and to include specified information to ensure the taxpayer understands the assessment. In addition section 136 gives a right of objection to the Commissioner against an assessment.

A new section 135A was added by the 1997 Ordinance which allows assessments to be made late in cases of fraud or neglect. Assessments under that section should also be within section 136. To achieve this end, clause 175 of the Bill, previously s.136, is extended to apply to any assessment under Part IX. This will ensure that all taxpayers are properly protected with respect to assessments.

SCHEDULE 2

A drafting error in paragraph 2(a) is corrected in the Bill. Originally the provision referred to "the Taxes Ordinance" meaning the Taxes Ordinance 1994. However the Schedule was added to that Ordinance by the 1996 Ordinance and paragraph 2(a) ought always to have referred to "this Ordinance". The new Bill uses this wording.



THE FALKLAND ISLANDS GAZETTE Supplement

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The following are published in this Supplement -

The Taxes (Amendment) Ordinance 1997;

The Breath Alcohol Concentration Measurement (Device Approval (No. 2) Order 1997), (S.R. & O. No. 7 of 1997);

The Civil Aviation (Investigations of Air Accidents and Incidents) Regulations 1997, (S.R. & O. No. 8 of 1997);

The Merchant Shipping Act 1979 (Commencement of Certain Provisions in the Falkland Islands) Order 1997, (S.R. & O. No. 9 of 1997);

The Repatriation of Prisoners Act 1984 (Sections 1 to 9) (Commencement in the Falkland Islands) Order 1997, (S.R. & O. No. 10 of 1997).

ELIZABETH II



Colony of the Falkland Islands

RICHARD PETER RALPH, C.V.O.,
Governor.

TAXES (AMENDMENT) ORDINANCE 1997

(No. 1 of 1997)

ARRANGEMENT OF PROVISIONS

Section

- 1. Short title and commencement*
- 2. Functions of officers and appointment of Deputy Commissioner of Taxation.*
- 3. Free of tax earnings*
- 4. Company income tax rates.*
- 5. Corporation tax amendments.*
- 6. Changes in rate of ACT*
- 7. Amendments to Part IV of the 1994 Ordinance (POAT).*
- 8. Depreciation allowances.*
- 9. Capital allowances: transfers of businesses*
- 10. Relief for groups and consortia .*
- 11. Late assessments in cases of fraud or neglect*
- 12. Power to call for documents of taxpayer and others.*
- 13. Criminal and civil penalties.*
- 14. UK tax agent.*



Colony of the Falkland Islands

RICHARD PETER RALPH, C.V.O.,
Governor.

TAXES (AMENDMENT) ORDINANCE 1997

(No. 1 of 1997)

An Ordinance

To amend the Taxes Ordinance 1994.

(assented to: 2 May 1997)
(commencement: in accordance with section 1)
(published: 28 May 1997)

ENACTED by the Legislature of the Falkland Islands as follows:—

1.—(1) This Ordinance may be cited as the Taxes (Amendment) Ordinance 1997.

*Short title and
commencement*

(2) Section 8 of this Ordinance shall apply for the charge to corporation tax for corporation tax years beginning on or after 1st January 1997, and section 10 shall apply for the charge to corporation tax for corporation tax years beginning on or after 1st January 1996 but, subject to that, the provisions of this Ordinance shall come into force on 1st April 1997.

(3) In this Ordinance “the 1994 Ordinance” means the Taxes Ordinance 1994.

2. In section 4 of the 1994 Ordinance—

(a) in subsection (2) after “collect” there shall be inserted “assess”, and at the end there shall be inserted “and generally to assist the Commissioner and the Deputy Commissioner in the performance of their functions”; and

(b) the following subsection shall be inserted after subsection (3)—

*Functions of
officers and
appointment of
Deputy
Commissioner of
Taxation*

“(4) The Governor may appoint a Deputy Commissioner of Taxation to whom the Commissioner may delegate any of his functions under this Ordinance or under any instrument made under this Ordinance or under any other enactment relating to taxation.”

3.—(1) In section 7 of the 1994 Ordinance the following subsections shall be added after subsection (3)—

Free of tax earnings.

(4) It is hereby declared that for the purposes of determining the amount of tax payable in accordance with this Ordinance in respect of any net sum, the net sum shall be deemed to be increased to such gross amount as will, after deduction of the amount of tax so payable in respect of an amount equal to that gross amount produce an amount equal to the net sum.

(5) In subsection (4) above a “net sum” is a sum payable to or in respect of a person under any agreement or arrangement which (however expressed) provides for the sum to be paid wholly or partly free of tax.

4.—(1) Section 9 of the 1994 Ordinance shall have effect, and shall be deemed always to have had effect, subject to the following amendments.

Company income tax rates.

(2) In paragraph (a) immediately before “on the first” there shall be inserted “in the case of any person other than a company,” and at the end of that paragraph there shall be inserted “and on the remainder, at 25 per cent.”.

(3) For paragraph (b) there shall be substituted—

“(b) in the case of a company trading through a branch or agency in the Falkland Islands, on all its chargeable income, at the rate of 32.5 per cent;

(c) in the case of any other company, on any part of its income which the company pays to any person not ordinarily resident or company not resident in the Falkland Islands, at the rate of 32.5 per cent. and on all other income, whether distributed or undistributed, at the rate of 25 per cent.”

(4) For the words “the rate specified in paragraph (a) or (b) respectively” there shall be substituted “the lower or the higher rate specified in paragraph (a) respectively”.

5. The following sections shall be substituted for section 25 of the 1994 Ordinance—

Corporation tax amendments.

25. Subject to section 28, corporation tax for a corporation tax year charged on the income of an accounting period shall be due and payable on the day following the expiry of 8 months from the end of that accounting period (whether or not the tax has been assessed).

*Corporation tax:
time for payment.*

25A.—(1) Where in any accounting period the chargeable income of a company does not exceed the lower maximum amount, the company may claim that its chargeable income for that period shall be charged to tax at the rate of 25 per cent. ("the small companies' rate of corporation tax").

*Corporation tax
rates.*

(2) Where in any accounting period the chargeable income of a company exceeds the lower maximum amount but does not exceed the higher maximum amount, the company may claim that the amount of corporation tax charged on its chargeable income for that period shall be equal to—

$$EL + M(I - L)$$

where L is the lower maximum amount,

E is the small companies' rate of corporation tax;

M is the marginal tax rate, and

I is the amount of its chargeable income for that period.

(3) Any reference in subsections (1) and (2) above to a company's chargeable income for any period is a reference to the amount of that income less the amount of any ring fence income and any franked investment income of the company for that period.

(4) Subject to subsections (1) and (2) above, the chargeable income of any company, including any ring fence income, shall be charged to tax at the rate of 32.5 per cent.

(5) In this section, in relation to the accounting period of a company—

(a) the lower maximum amount for that period—

(i) if at any time in that period the company has any associated companies is—

$$\frac{\pounds 1,000,000}{1 + A}$$

where A is the number of associated companies; or

(ii) if sub-paragraph (i) does not apply, £1,000,000;

(b) the higher maximum amount for that period—

(i) if at any time in that period the company has any associated companies is—

£3,000,000,

$1 + A$

where A is the number of associated companies; or

(ii) if sub-paragraph (i) does not apply, £3,000,000; and

(c) the marginal tax rate is—

$$\frac{BC - DE}{B - D} \text{ per cent.}$$

where B is the higher maximum amount,

C is the rate of corporation tax specified in subsection (4) above;

D is the lower maximum amount, and

E is the small companies' rate of corporation tax.

(6) For the purposes of subsection (5)(a) and (b) above—

(a) a company is associated with another at any time if at that time one of them has control of the other or both are controlled by the same person or persons; and

(b) an associated company which has not carried on any business during the accounting period in question or, if associated for part only of that period, during that part, shall be disregarded.

Section 165A shall apply for the purposes of this subsection.

(7) In relation to any accounting period of less than 12 months, the higher maximum amount and the lower maximum amount shall be proportionately reduced.

6. The following section is substituted for section 39 of the 1994 Ordinance 1994—

Changes in rate of ACT

39. If ACT for any corporation tax year is charged otherwise than as it has been paid or assessed, the necessary adjustment shall be made by discharge or repayment of tax or by a further assessment.

Changes in rate of ACT.

7.—(1) Part IV of the 1994 Ordinance shall have effect subject to the following amendments.

Amendments to Part IV of the 1994 Ordinance (POAT).

(2) In section 80B—

(a) in subsection (1) omit “of assessment”, and at the end of paragraph (b) insert “in that year”;

(b) in subsection (2) omit “of assessment” (in the first place where it appears) and for “for a year of assessment during” substitute “during a year in”; and

(c) in subsections (4)(a) and (6)(b) omit “of assessment”.

(3) In section 81(5) after subsection (5) insert—

(5A) Without prejudice to section 82(2), in any case where—

- (a) an employer has failed to comply with any requirement of the POAT regulations to account to the Commissioner for any sum on account of the liability of an employee of his to income tax, and
- (b) the Commissioner has not recovered that sum from the employer under subsection (5) above or section 86 or otherwise,

then subsection (5) does not have effect to prevent the Commissioner from recovering any such income tax as is mentioned in paragraph (a).

(4) In section 82 in subsection (2) at the beginning insert “Subject to subsection (2A)” and after that subsection insert—

(2A) Subject to subsections (2B) and (2C) below, subsection (2) above shall apply only in relation to any deduction made in respect of an employee by his employer where the employer—

- (a) is resident in the Falkland Islands or trading through a branch or agency in the Falkland Islands at the time the deduction is made, and
- (b) fails to account to the Commissioner for the deduction in accordance with the POAT regulations or otherwise, and
- (c) before the end of second year of assessment following the year in which the deduction was made, is either adjudicated bankrupt or (in the case of a company) is insolvent and has had a winding-up order made in respect of it.

(2B) Subsection (2) above shall not apply in relation to any deduction as respects which the Commissioner notifies the employer and the employee that the Commissioner has determined that subsection (2) shall not apply.

(2C) Subsection (2A) above shall not apply in relation to any deduction as respects which the Commissioner notifies the employer and the employee that the Commissioner has determined that subsection (2A) shall not apply.

(5) In section 83(1)(b) for “any year of assessment other than a year which has not begun at that time” substitute “the year of assessment in which the deduction was made or the immediately following year or any earlier year”.

(6) In section 85 for subsection (2) substitute—

(2) The Governor may make regulations for determining the sums which an employer is, under this Part, required to deduct from payments to any employee of that employer in any year.

(2A) Regulations under this section may require sums to be deducted in accordance with tables prepared, or directions given, by the Commissioner from time to time.

(2B) Sums to be deducted under this Part from payments made by an employer to an employee in any year shall be related to the earned income of the employee under that employer, in such manner as is calculated so far as is possible to achieve the result that the total sum deducted in respect of any employee does not exceed the likely liability of that employee for income tax in respect of that income (but, nevertheless, the regulations, tables or directions, as the case may be, shall not be invalid merely because, for any reason, they fail to achieve that result).

(2C) The amounts to be deducted in respect of any pay period in respect of any employee shall be calculated having regard either—

(a) to that employee's gross earnings from that employment during the calendar year to date; or

(b) to the amount of the cash or money earned from that employment during that pay period;

and for the purposes of this subsection "pay period" means the period in respect of which an employee is paid, but the regulations may make such provision as may be necessary to cater for pay periods of differing length and shall, in any case, make provision for monthly and weekly pay periods.

(2D) Regulations under this section may prescribe the times at which employers shall submit information to the Commissioner as to deductions made, the information to be submitted and the time or times at which employers shall pay over to the Commissioner sums deducted under this Part.

(7) In section 85—

(a) in subsection (3)(a) after "that employer" insert "or in the case of an employee with more than one employer, for all his employers"; and

(b) in subsection (5)(c) for "level 4" substitute "level 7".

(8) In section 87—

(a) in subsection (1)(a) for "that year" substitute "the year immediately preceding that year";

(b) for in subsection (1)(b) for "that year" substitute "that year of assessment";

(c) in subsection (2) omit "of assessment";

(d) in subsection (3) in paragraph (a) for "that year"

substitute "the year immediately preceding that year", and in the words following paragraph (b) omit "for that year"; and

- (e) in subsection (4) for all the words preceding "the Commissioner " substitute "If the employee makes a claim before the sixth anniversary of the end of the year of assessment referred to in subsection (3)(a) above" and omit "as mentioned in subsection (3) above".

(9) In section 88 at the beginning insert "(1)", for "level 4" substitute "level 7", and at the end add—

(2) Subsection (1) above does not apply in relation to any failure which is a criminal offence by virtue of any provision of the regulations.

(2A) Any person who fails to comply with any requirement of the POAT regulations to pay any sum to the Commissioner shall be liable to a penalty equal in amount to that sum.

8.—(1) Chapter II of Part V of the 1994 Ordinance (depreciation allowances) shall have effect subject to the following modifications.

Depreciation allowances.

(2) In section 98(1F) after paragraph (e) there shall be inserted—

"(ea) that person ceases to be within the charge to tax in the Falkland Islands in respect of the business for the purposes of which the asset is used;

(eb) the asset ceases to be situated in the Falkland Islands or any designated area, unless its absence is only temporary and not for the purposes of any business carried on (wholly or partly) outside the Falkland Islands and the designated areas;"

(3) In section 98(5) after the definition of "expenditure" there shall be inserted—

"market value", in relation to any asset at any time, means the price which the asset would have fetched if sold in the open market at that time;"

(4) After section 98E(1) there shall be inserted—

"(1A) In any case where—

(a) expenditure not falling within subsection (1)(a) or (c) above is incurred at any time by any person on the provision of an asset, and

(b) at any later time that asset begins to be used by that person for the purposes of petroleum exploration and appraisal or for the purposes of a ring fence trade, without any relevant event having occurred in relation to that asset,

then, for the purposes of this Chapter, that person shall be treated as if at that later time he had acquired the asset for the purposes for which it is then used and had incurred expenditure on its acquisition equal to the market value of that asset at that time or equal to his original expenditure on that asset if less (and accordingly such expenditure shall be treated for the purposes of this Chapter as falling within subsection (1)(a) or (c) above, as the case may be)."

(5) At the end of section 98E(6) there shall be added—

"Where an asset has been used otherwise than for the purposes of a ring fence trade, and the market value of the asset on the day he begins to carry on the ring fence trade is less than the amount of expenditure which he is deemed to have incurred, then he shall be deemed to have incurred expenditure equal to that market value on the provision on that asset."

(6) In section 99A(1) after "machinery or plant" where it first occurs there shall be inserted "which is or is to be used for".

9. Section 102 of the 1994 Ordinance shall have effect, and shall be deemed always to have had effect, with the substitution for "section 107" of "section 107(1)(a)".

*Depreciation
allowances: transfers
of businesses.*

10.—(1) Chapter IV of Part V of the 1994 Ordinance (group relief) shall have effect subject to the following modifications.

*Relief for groups
and consortia.*

(2) In section 111 for subsection (3) there shall be substituted—

"(3) Group relief shall be available in a case where the surrendering company and the claimant company are both members of the same 75 per cent. group.

(3A) Group relief shall also be available in a case where—

- (a) the surrendering company and the claimant company are both members of the same 51 per cent. group, and
- (b) none of the members of the group carries on a ring fence trade at any relevant time.

(3B) Group relief shall also be available where—

- (a) the claimant company is one of two companies each of which directly and beneficially owns 50 per cent. of the ordinary share capital in the surrendering company, and
- (b) none of those three companies carries on a ring fence trade at any relevant time.

(3C) For the purposes of subsections (3A) and (3B) above a time is relevant as respects any company if at that time the

company is a member of a 51 per cent. group or is one of three companies two of which directly and beneficially own 50 per cent. of the ordinary share capital of the third.

(3) In section 113—

(a) in subsection (1) after “only if” there shall be inserted “either” and after “same group” there shall be inserted “or fulfill the requirements of section 111(3B)(a) with respect to each other”;

(b) in subsection (2) after “same group” there shall be inserted “or begin or cease to fulfill the requirements of section 111(3B)(a)”;

and subsections (4) and (5) shall cease to have effect.

(4) In section 117—

(a) in subsection (1) for “group claim” there shall be substituted “claim”, and

(b) in subsection (4) for “paragraph” there shall be substituted “section”.

(5) In section 119 in subsection (2) for the definition of “group claim” there shall be substituted—

“claim” means a claim for group relief under section 111.’

(6) In section 119(3)(a) for “a group” there shall be substituted “a 75 per cent. group” and after that paragraph there shall be inserted—

“(aa) two companies shall be deemed to be members of a 51 per cent. group if one is the 51 per cent subsidiary of the other or if both are 51 per cent subsidiaries of a third company;”

(7) In section 119(4) for the words from the beginning to “163” there shall be substituted “For the purposes of the application of section 163 in relation to any provision of this Chapter,”.

(8) In section 119(5) for “is a 75 per cent. subsidiary of another” there shall be substituted “owns any share capital in another”.

(9) In section 119(6) for “75” in each place where it occurs there shall be substituted “51 per cent. or 75”, and after that subsection there shall be added—

“(7) Notwithstanding that at any time a company owns 50 per cent. of the ordinary share capital in another company it shall not be treated as the owner of that share capital for the purposes of this Chapter unless additionally at that time it is directly and beneficially entitled—

(a) to 50 per cent. of any profits available for distribution to equity holders of the other company, and

(b) to 50 per cent. of the assets of the other company available for distribution to equity holders on a winding-up;

and Schedule A1 shall have effect for the purposes of this subsection as it applies for the purposes of section 33A(10)(b).”

(10) In paragraph 1(8)(b) of Schedule A1 to the 1994 Ordinance for all following "if" there shall be substituted "—

- (a) in a case where the matter is relevant to section 33A or 46A, the other company is a 51 per cent. subsidiary of the parent company, or
- (b) in a case where the matter is relevant to section 119 by virtue of subsection (6) of that section, a 51 per cent., 75 per cent. or (as the case may be) 90 per cent. subsidiary of the parent company, or
- (c) in a case where the matter is relevant to section 119 by virtue of subsection (7) of that section, the parent company and a third company each directly and beneficially owns 50 per cent. of the ordinary share capital in the other company."

(11) In the following provisions of that Schedule for each reference to section 119(6) of the 1994 Ordinance there shall be substituted a reference to section 119(6) and (7) of that Ordinance.

(12) In both sections 27A(3) and 119A(2) of the 1994 Ordinance for "in accordance with" there shall be substituted "as a reference to a 75 per cent. group within the meaning of".

11.—(1) At the beginning of each of sections 133(5), 134(5) and 135(3) there shall be inserted "Subject to section 135A".

Late assessments in cases of fraud or neglect.

(2) After section 135 there shall be inserted the following section—

Late assessments in cases of fraud or neglect.

135A.—(1) An assessment on any person ("the person in default") for the purpose of making good to the government a loss of tax attributable to his fraudulent or negligent conduct or the fraudulent or negligent conduct of a person acting on his behalf may be made at any time not later than—

- (a) in the case of an assessment to income tax, 20 years after the 31st August next following the year of assessment to which it relates; and
- (b) in the case of an assessment to corporation tax, 21 years after the end of the accounting period to which it relates.

(2) Where the person in default carried on a business with one or more other persons at any time in the period for which the assessment is made, an assessment in respect of the profits or gains of the business for the purpose mentioned in subsection (1) above may be made not only on the person in default but also on his partner or any of his partners.

(3) If the person on whom the assessment is made so requires, in determining the amount of the tax to be charged for any chargeable period in any assessment made for the purpose mentioned in subsection (1) above, effect shall be given to any relief or allowance to which he would have been entitled for that chargeable period on a claim or application made within the time allowed by this Ordinance.

12. After section 136 there shall be inserted the following sections—

*Power to call
for documents
of taxpayer
and others.*

136A.—(1) The Commissioner may serve a notice under this section for the purpose of enquiring into the tax liability of any person ("the taxpayer") in any case where he has reasonable grounds for believing—

- (a) that the taxpayer may have failed or may fail to comply with any provision of this Ordinance, and
- (b) that any such failure may have prejudiced or may prejudice the proper assessment or collection of tax;

but he may not otherwise serve a notice under this section.

(2) The provisions of this section are subject to sections 136B and 136C and for the purposes of this section—

- (a) "3rd party notice" means a notice under subsection (4) below;
- (b) any reference to a tax liability includes a reference to the amount of the tax liability;
- (c) any reference to a taxpayer's failure to comply with any provision of this Ordinance includes a failure by a person assisting him as mentioned in section 136C(10)(a).

*Power to call for
documents of
taxpayer and
others.*

(3) The Commissioner may by notice require a person—

- (a) to deliver to the Commissioner such documents as are in that person's possession or power and as (in the Commissioner's reasonable opinion) contain, or may contain, information relevant to any tax liability to which that person is or may be subject, or
- (b) to give the Commissioner such particulars as the Commissioner may reasonably require as being relevant to any such liability.

(4) The Commissioner may by notice require a person—

- (a) to deliver to the Commissioner, or
- (b) if that person so elects, to make available for inspection by a named officer of the Commissioner,

such documents as are in his possession or power and as (in the Commissioner's reasonable opinion) contain, or may contain, information relevant to any tax liability to which a taxpayer is or may be, or may have been, subject.

(5) A person may comply with a notice under this section by delivering copies of documents instead of the originals if (but only if) any such copy—

- (a) is a facsimile of the original (whether photographic or other), and

- (b) where so required by the Commissioner in the case of any documents specified in the notice, the originals are made available for inspection by a named officer of the Board;

and references in this section and sections 136B and 136C to documents shall be construed accordingly.

(6) A notice shall not be served on a person under this section unless that person has previously been given a reasonable opportunity to deliver or, as the case may be, to deliver or make available the documents in question or to furnish the particulars in question.

(7) A notice under this section shall specify the time, not being less than 30 days after the date of the notice, within which the documents are to be delivered, or delivered or made available, or the particulars to be furnished.

(8) The Commissioner may take copies of any document to which a notice under this section relates.

*Documents etc
excluded from
section 136A
notices.*

136B.—(1) A notice under section 136A may not relate to documentary and other records concerning an individual (whether living or dead) who can be identified from them if—

(a) they relate to his physical or mental health, to spiritual counselling or assistance given or to be given to him, or

(b) they relate to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who—

(i) by reason of his office or occupation has responsibilities for personal welfare, or

(ii) by reason of an order of a court has responsibilities for supervision.

(2) A notice under section 136A may not relate to material acquired or created for the purposes of journalism which is in the possession of a person who acquired or created it for the purposes of journalism; and for this purpose a person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

(3) Any reference in section 136A to particulars does not include a reference to particulars contained in records or material falling within subsection (1) or (2) above.

(4) A notice under section 136A(3) does not oblige a person to deliver documents or furnish particulars relating to the conduct of any pending appeal by him, and a 3rd party notice does not oblige a person to deliver or make available documents relating to the conduct of a pending appeal by the taxpayer.

In this subsection "appeal" means an appeal relating to tax.

Special provisions relating to 3rd party notices.

136C.—(1) In this section—

- (a) a "3rd party notice" means a notice under section 136A(4); and
- (b) "taxpayer" has the meaning given by section 136A(1).

(2) A 3rd party notice shall name the taxpayer to whom it relates unless—

- (a) the Commissioner does not know that person's identity or, if the notice relates to a class of taxpayers, those person's individual identities, and
- (c) the Commissioner is satisfied that the information which is likely to be contained in the documents to which the notice relates is not readily available from another source.

(3) A 3rd party notice may relate to the tax liability of a company which has ceased to exist or an individual who has died, but in the case of a taxpayer who has died it may not be served more than 6 years after his death.

(4) A copy of a 3rd party notice which names the taxpayer shall be given to that taxpayer unless the Commissioner has reasonable grounds for suspecting him of fraud.

(5) Subsection (4) above does not require the disclosure of any information if—

- (a) it would, or might, identify any person who has provided the Commissioner with any information which he took into account in deciding whether to serve the notice, or
- (b) the Commissioner has reasonable grounds for believing that disclosure of the information in question would prejudice the assessment or collection of tax.

(6) Where the taxpayer is not named in a 3rd party notice, the person to whom the notice is given may object to the notice on the ground that it would be onerous for him to comply with it; and if the matter is not resolved by agreement, it shall be referred to the Appeal Tribunal who may confirm, vary or cancel that notice.

Such an objection shall be made by way of notice which shall be given to the Commissioner within 30 days after the date of the 3rd party notice.

(7) A 3rd party notice does not oblige a person to deliver or make available any document the whole of which originates more than 6 years before the date of the notice unless—

- (a) the Commissioner has reasonable grounds for believing that tax has, or may have been, lost to the government owing to the fraud of the taxpayer, and
- (b) the notice expressly disapplies this subsection.

(8) A 3rd party notice does not oblige a lawyer to deliver or make available, without his client's consent, any document with respect to which a claim to legal professional privilege could be maintained.

(9) Subject to subsections (10) and (11) below,
a 3rd party notice—

(a) does not oblige a person who has been appointed as an auditor for the purposes of any enactment to deliver or make available documents which are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment, and

(b) does not oblige a tax adviser to deliver or make available documents which are his property and consist of communications between—

(i) himself and the person whose tax adviser he is, or

(ii) himself and any other tax adviser of that person,

the purpose of which is the giving or obtaining of advice about any of those tax affairs.

In this subsection "tax adviser" means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that other person or by another tax adviser of his).

(10) Subject to subsection (11) below, subsection (9) above shall not have effect in relation to any document which contains information—

(a) explaining any information, return, accounts or other document which the person to whom the notice is given has assisted any other person in preparing for, or delivering to, the Commissioner and which he knows will be, or is likely to be, used for any purpose of tax, or

- (b) in the case of a 3rd party notice which does not name the taxpayer in question, giving the identity or address of any taxpayer to whom the notice relates or of any person who has acted on behalf of any such person.

(11) Subsection (9) above shall not apply in relation to any document if the information referred to in that subsection is contained in some other document, and the person to whom the notice is given either—

- (a) delivers that other document or so much of it as contain the information to the Commissioner, or
- (b) makes that other document, or so much of it as contains the information, available for inspection by an officer of the Commissioner.

13.—(1) Section 145 (penalties relating to fraud etc.) shall be amended as follows—

Criminal and civil penalties.

- (a) in paragraph (d) of subsection (1) after "records" (in both places) there shall be inserted "or any other document";
- (b) after that paragraph there shall be inserted—

"(da) destroys or conceals any document which he is required to deliver to the Commissioner or which he is required to make available for inspection by an officer of the Commissioner, or any document which he has been put on notice may be made the subject of such a requirement;"

- (c) in subsection (3) after "he is liable" there shall be inserted "or for which the person whom he has assisted is liable, as the case may be,"; and
- (d) after subsection (3) there shall be inserted—

(3A) A person does not commit an offence under subsection (1)(da) above if he destroys a document—

- (a) with the written permission of the Commissioner, or
- (b) after he has delivered the document in question to the Commissioner or has made it available for inspection by an officer of the Commissioner.

(2) In section 146 (penalties for failure to make returns etc.) In subsection (1) at the end of paragraph (c) there shall be added "or

(d) fails to deliver any document to the Commissioner or to make any document available for inspection by an officer of the Commissioner;"

(3) In section 149 (time within which prosecutions may be brought) after subsection (2) there shall be inserted—

(3) Where the Commissioner did not know and had no reasonable grounds for suspecting that an offence has been committed or that a penalty was due, the 6 years referred to in subsections (1) and (2) above shall not begin to run until the end of the period in which the Commissioner did so know or had reasonable grounds for so suspecting.

14.—(1) Section 151 of the 1994 Ordinance shall have effect *UK tax agent.* subject to the following amendments.

(2) In subsection (1) for "residing in the United Kingdom" there shall be substituted "resident or ordinarily resident or carrying on business through a branch or agency in the United Kingdom".

(3) The following subsection shall be inserted after subsection (2)—

(2A) The Commissioner may authorise an agent appointed under this section to issue assessments in the name of the Commissioner.

Passed by the Legislature of the Falkland Islands this 25th day of April 1997.

C. ANDERSON
Clerk of Councils

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council and is found by me to be a true and correctly printed copy of the said Bill.

C. ANDERSON
Clerk of Councils

SUBSIDIARY LEGISLATION

ROAD TRAFFIC

Breath Alcohol Concentration Measurement (Device Approval (No 2)) Order 1997

S. R. & O. No. 7 of 1997

Made: 2 May 1997

Published: 28 May 1997

Coming into force: on publication

IN EXERCISE of my powers under sections 2, 9 I and 18 of the Road Traffic Ordinance 1987(a), I make the following Order—

Citation and commencement

1. This Order may be cited as the Breath Alcohol Concentration Measurement (Device Approval (No 2)) Order 1997 and shall come into force upon publication in the *Gazette*.

“The Ordinance”

2. In this Order, “the Ordinance” means the Road Traffic Ordinance 1987(a).

Approval of breath analysis device

3. The device known as the Lion Intoxilyzer 6000 manufactured by or under the licence of Lion Laboratories Limited of Ty Verlon Industrial Estate, Barry, Wales or its successors or assigns is approved for use for the purposes of section 9H of the Ordinance.

Made this 2nd day of May 1997

R P Ralph
Governor

SUBSIDIARY LEGISLATION

CIVIL AVIATION

The Civil Aviation (Investigations of Air Accidents and Incidents) Regulations 1997

S. R. & O. No. 8 of 1997

Made: 2 May 1997

Published: 28 May 1997

Coming into force: 12 May 1997

IN EXERCISE of the powers conferred by sections 75 and 102 of, and paragraphs 4 and 6 of Part III of Schedule 13 to, the Civil Aviation Act 1982(a) as having effect in the Falkland Islands by virtue of the Civil Aviation Act 1949 (Overseas Territories) Order 1969(b) and sections 17(2)(a) and 23(1) and (2) of the Interpretation Act 1978(c), and of all other powers enabling me in that behalf, I hereby make the following Regulations—

Citation and commencement

1. These Regulations may be cited as the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1997 and shall come into force on 12th May 1997.

Interpretation

2.(1) In these Regulations, unless the context otherwise requires—

“accident” means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, in which—

(a) a person suffers a fatal or serious injury as a result of—

(i) being in or upon the aircraft,

(ii) direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or

(a) 1982 c.16; subsection (1A) of section 75 was inserted by the Civil Aviation Act (Investigation of Accidents) Regulations 1996 (SI 1996/76)

(b) SI 1969/592

(c) 1978 c.30.

(iii) direct exposure to jet blast,

except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew, or

(b) the aircraft sustains damage or structural failure which—

(i) adversely affects the structural strength, performance or flight characteristics of the aircraft, and

(ii) would normally require major repair or replacement of the affected component,

except for engine failure or damage, when the damage is limited to the engine, its cowlings or accessories; or for damage limited to propellers, wing tips, antennas, tyres, brakes, fairings, small dents or puncture holes in the aircraft skin; or

(c) the aircraft is missing or is completely inaccessible;

“aerodrome authority” means, in relation to any aerodrome, the person by whom the aerodrome is managed;

“the Annex” means Annex 13 to the Chicago Convention as amended on 10 November 1994(a);

“causes” means actions, omissions, events, conditions or a combination thereof, which led to the accident or incident;

“commander” in relation to an aircraft means the member of the flight crew designated as commander of that aircraft by the operator thereof, or failing such a person, the person who is for the time being the pilot in command of the aircraft;

“Contracting State” means any State (including the United Kingdom) which is party to the Chicago Convention;

“crew” includes every person employed or engaged in an aircraft in flight on the business of the aircraft;

“fatal injury” means an injury which is sustained by a person in an accident and which results in his death within 30 days of the date of the accident;

“flight recorder” means any kind of recorder installed in the aircraft for the purpose of complementing accident or incident investigation;

(a) The eighth edition of Annex 13 to the Chicago Convention dated July 1994 is published by the International Civil Aviation Organisation, Montreal Canada.

“incident” means an occurrence, other than an accident, associated with the operation of an aircraft which affects or would affect the safety of operation;

“Inspector” means a person appointed as an Inspector of Air Accidents under regulation 8(1);

“investigating Inspector” means an Inspector carrying out an investigation pursuant to these Regulations

“investigation” means a process conducted for the purpose of accident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and when appropriate, the making of safety recommendations;

“owner” means, where an aircraft is registered, the registered owner;

“pilot in command” in relation to an aircraft means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

“police officer” means any person who is a member of the Royal Falkland Islands Police Force and any reserve constable of that Force;

“public officer” has the same meaning as it has in Schedule 1 to the Falkland Islands Constitution Order 1985(a);

“safety recommendation” means a proposal by an Inspector of Air Accidents based on information derived from the investigation made with the intention of preventing accidents or incidents;

“serious incident” means an incident involving circumstances indicating that an accident nearly occurred;

“serious injury” means an injury which is sustained by a person in an accident and which—

(a) requires hospitalisation for more than 48 hours, commencing within seven days from the date the injury was received;

(b) results in a fracture of any bone (except simple fractures of fingers, toes, or nose);

(c) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage;

(d) involves injury to any internal organ;

(e) involves second or third degree burns, or any burns affecting more than 5 per cent of the body surface; or

(f) involves verified exposure to infectious substances or harmful radiation;

and “seriously injured” shall be construed accordingly.

(2) Any notice or other document required or authorised by any provision of these Regulations to be served on or given to any person may be served or given—

(a) by delivering it to that person;

(b) by leaving it at his usual or last-known residence or place of business, whether in the Falkland Islands or elsewhere;

(c) by sending it to him by post at that address; or

(d) by sending it to him at that address by telex, by facsimile transmission or other similar means which produce a document containing a text of the communication, in which event the document shall be regarded as served when it is received.

Application

3. These Regulations apply only to civil aviation accidents and incidents.

Purpose of the investigation of accidents and incidents

4. The sole objective of the investigation of an accident or incident under these Regulations shall be the prevention of accidents and incidents. It shall not be the purpose of such an investigation to apportion blame or liability.

Duty to furnish information relating to accidents and incidents

5.(1) Where an accident or a serious incident occurs the relevant person and, in the case of an accident or a serious incident occurring on or adjacent to an aerodrome, the aerodrome authority shall forthwith give notice thereof to the Governor by the quickest means of communication available.

(2) In this regulation the expression “relevant person” means—

(a) in the case of an accident or serious incident occurring in or over the Falkland Islands or occurring elsewhere to an aircraft registered in the Falkland Islands, the commander of the aircraft involved at the time of the accident or serious incident or, if he be killed or incapacitated, the operator of the aircraft; and

(b) in the case of a serious incident occurring in or over any country or territory other than a member State or a Contracting State to an aircraft registered elsewhere than in the Falkland Islands but operated by an undertaking established in the Falkland Islands, that undertaking.

(3) The notice to the Governor referred to in paragraph (1) above shall contain as much of the following information as is available—

- (a) in the case of an accident, the identifying abbreviation "ACCID" or, in the case of a serious incident, the identifying abbreviation "INCID";
- (b) the type, model and the nationality and registration marks of the aircraft;
- (c) the name of the owner, operator and hirer (if any) of the aircraft;
- (d) the name of the commander of the aircraft;
- (e) the date and Co-ordinated Universal Time of the accident or serious incident;
- (f) the last point of departure and the next point of intended landing of the aircraft;
- (g) the position of the aircraft by reference to some easily defined geographical point and latitude and longitude;
- (h) the number of—
 - (i) crew on board the aircraft at the time of the accident or serious incident and, in the case of an accident, the number of them killed or seriously injured as a result of the accident;
 - (ii) passengers on board the aircraft at the time of the accident or serious incident and, in the case of an accident, the number of them killed or seriously injured as a result of the accident;
 - (iii) in the case of an accident, other persons killed or seriously injured as a result of the accident;
 - (iv) the nature of the accident or serious incident and the extent of the damage to the aircraft as far as is known.

(4) Where an incident, other than a serious incident, takes place—

- (a) in or over the Falkland Islands; or
- (b) otherwise than in or over the Falkland Islands to an aircraft registered in the Falkland Islands;

the owner, operator, commander or hirer of the aircraft shall, if so required by notice given to him by the Governor, send to the Governor such information as is in his possession or control with respect to the incident in such form and at such times as may be specified in the notice.

Publication of information relating to an accident or incident

6. Subject to the provisions of regulations 11(3) and 17, the Governor may at any time publish, or cause to be published, information relating to an accident or incident whether or not such incident is the subject of an investigation by an inspector.

Removal of damaged aircraft

7.(1) Subject to paragraph (2) and regulation 9, where an accident, or a serious incident which results in the withdrawal from service of an aircraft, occurs in or over the Falkland Islands no person other than an authorised person shall have access to the aircraft involved and neither the aircraft nor its contents shall, except under the authority of the Governor, be removed or otherwise interfered with.

(2) Notwithstanding paragraph (1)—

(a) the aircraft may be removed or interfered with so far as may be necessary for the purpose of—

(i) extricating persons or animals;

(ii) removing any mail, valuables or dangerous goods, carried by the aircraft;

(iii) preventing destruction by fire or other cause;

(iv) preventing any danger or obstruction to the public, air navigation or other transport;

(v) removing any other property from the aircraft under the supervision of an Inspector or with the agreement of an Inspector or of a police officer;

(b) if an aircraft is wrecked on water, the aircraft or any of its contents may be removed to such extent as may be necessary for bringing it or them to a place of safety.

(3) In this regulation the expression “authorised person” means—

(a) any person authorised by the Governor either generally or specially to have access to any aircraft involved in an accident or serious incident;

(b) any police officer; and

(c) any customs officer.

Inspectors of Air Accidents

8.(1) For the purpose of carrying out investigations into accidents and incidents to which these Regulations apply, the Governor shall, as occasion requires, appoint persons as Inspectors of Air Accidents.

(2) The Governor shall determine whether or not an investigation shall be carried out into an accident or incident to which these Regulations apply.

(3) Without prejudice to the power of an Inspector to seek such advice and assistance as he may deem necessary in making an investigation, the Governor may appoint persons to assist any Inspector in a particular investigation and such persons shall, for the purpose of so doing have such of the powers of an Inspector under these Regulations as may be specified in their appointment.

Powers of Inspectors

9. For the purpose of the investigation of any accident to which these Regulations apply, or of any inquiries undertaken with a view to the Governor's determining whether any such investigation should be carried out, an Inspector shall have power—

(a) by summons under his hand to call before him and examine all such persons as he thinks fit, to require such persons to answer any question or furnish any information or produce any books, papers, documents and articles which he may consider relevant and to retain any such books, papers, documents and articles until the completion of the investigation or, as the case may be, it is determined that an investigation shall not be carried out;

(b) to take statements from all such person as he thinks fit and to require any such person to make and sign a declaration of the truth of the statement made by him;

(c) to have access to and examine any aircraft involved in any such accident and the place where the accident occurred and to require any such aircraft or any part or equipment thereof to be preserved unaltered pending investigation;

(d) to examine, remove, test and take measures for the preservation of, or otherwise deal with—

(i) the aircraft involved in the accident; or

(ii) where it appears to the Inspector requisite for the purposes of any such investigation or inquiries, any other aircraft,

or any part of such aircraft or anything contained therein;

(e) on production, if required, of his credentials, to enter and inspect any place, building or aircraft the entry or inspection whereof appears to him to be requisite for the purposes of any such investigation or inquiries, except that he shall not have power to enter any premises under this sub-paragraph for the purposes of inquiries with a view to determining whether an investigation should be carried out if at the time of the proposed entry the premises are being used as a dwelling;

(f) to take such measures for the preservation of evidence as he considers appropriate.

Form and conduct of investigations

10.(1) An investigation into any accident to which these Regulations apply may be a formal investigation or a field investigation, as the Governor shall direct.

(2) Public notice that a formal investigation is taking place shall be given in such manner as the Governor may think fit and shall invite any persons who desire to make representations concerning the circumstances or causes of the accident to do so in writing within the time specified in the notice.

(3) All investigations shall be held in private.

(4) Where it appears to the Inspector in the course of any investigation that in order to resolve any conflict of evidence or for any other reason it is expedient to do so, he may permit any person to appear before him and call evidence and examine witnesses.

(5) Every person summoned by the Inspector as a witness in accordance with these Regulations shall be allowed such expenses as the Governor may determine.

(6) The Governor may determine that any investigation being carried out into an accident shall be discontinued; and, in the event of a formal investigation being discontinued, no report need be made thereon to the Governor under regulation 11, but public notice shall be given, in such manner as the Governor may think fit, that the investigation has been discontinued.

(7) Following the discontinuance of any investigation, the Inspector shall submit to the Governor such information as he thinks desirable in the interest of the avoidance of accidents in the future.

Inspector's report and submission of information to the Governor

11.(1) Subject to the provisions of regulation 12, upon completion of a formal investigation the Inspector shall submit his report to the Governor.

(2) Upon completion of a field investigation the Inspector shall submit to the Governor such information as he considers desirable in the interest of the avoidance of accidents in the future.

(3) The report to the Governor upon completion of a formal investigation shall state the facts relating to the accident followed by an analysis of the facts and conclusions as to the causes of the accident, together with any recommendations which the Inspector thinks fit to make with a view to the preservation of life and the avoidance of accidents in the future.

(4) The Governor may, in the case of any field investigation, at any time direct the Inspector to submit to him, instead of the information referred to in paragraph (2) above, a report of the same kind and in the same form as the report which he would submit if the investigation were a formal investigation; but, for the avoidance of doubt, the provisions of regulation 12 (Notice of Inspector's report and representations

thereon) do not apply in relation to a report submitted, or to be submitted, in pursuance of a direction given under this paragraph.

Notice of Inspector's report and representations thereon

12.(1) No report shall be submitted to the Governor under regulation 11(1) above in respect of an accident until the Inspector has—

(a) where it appears to him to be practicable to do so, served a notice under this regulation upon the operator and commander of the aircraft involved in the accident and on any person whose reputation is, in the Inspector's opinion, likely to be adversely affected by the report or, if any of the foregoing be a deceased person, upon such person or persons as appear to the Inspector, at the time he proposes to serve notice pursuant to this paragraph, to represent best the interests of the deceased in this matter, and

(b) considered any representations which may be made to him in accordance with paragraph (3) by or on behalf of the persons served with such notice.

(2) The notice referred to in paragraph (1) shall include particulars of any proposed analysis of facts and conclusions as to the causes of the accident which may affect the person on whom or in respect of whom the notice is served.

(3) Any representations made pursuant to paragraph (1) shall be in writing and shall be served on the Inspector within 28 days of service of the notice referred to in that paragraph or within such further period as may be allowed by the Governor.

(4) A copy of the report submitted to the Governor under regulation 11(1) shall be served by him on any person who has been served with a notice pursuant to paragraph (1) of this regulation.

(5) No person shall, without the prior consent in writing of the Governor, disclose or permit to be disclosed to any other person any information contained in a notice or report served on him pursuant to paragraph (2) or paragraph (4).

Publication of Reports

13. The Governor may cause the report of an investigation into an accident or incident to be made public.

Reopening of Investigation

14.(1) The Governor may cause the investigation of any accident or incident to be reopened and shall do so—

(a) if, after the completion of the investigation, evidence has been disclosed which is in his opinion both new and important; or

(b) if for any other reason there is in his opinion ground for suspecting that the reputation of any person has been unfairly and adversely affected.

(2) Any investigation reopened shall be subject to and conducted in accordance with the provisions of these Regulations.

Accredited representatives

15.(1) Where an investigation of an accident or serious incident is being carried out by an investigating Inspector pursuant to regulation 8, an accredited representative appointed by—

- (a) the State of Registry;
- (b) the State of Design;
- (c) the State of Manufacture;
- (d) the State of the Operator;
- (e) a Contracting State which has, on request, furnished information, facilities or experts to the investigating Inspector in connection with the accident or serious incident—

may take part in the investigation, that is to say, he shall be permitted to visit the scene of the accident, examine the wreckage, question witnesses, receive copies of all pertinent documents (saving all such just exceptions as may be determined by the investigating Inspector), have access to all relevant evidence and make submissions; and he may be accompanied by such technical and other advisers as may be considered necessary by the authorities of the country or territory by which he is appointed.

(2) In this regulation the expressions “accredited representative”, “State of Registry”, “State of Design”, “State of Manufacture” and “State of the Operator” have the meanings given to them by Chapter 1 of the Annex.

Obstruction of Investigation

16.(1) No person shall obstruct or impede an Inspector or any person acting under the authority of the Governor in the exercise of any powers or duties under these Regulations.

(2) No person shall without reasonable excuse fail, after having had the expenses (if any) to which he is entitled under these Regulations tendered to him, to comply with any summons of an Inspector holding an investigation.

Disclosure of relevant records

17.(1) Subject to paragraphs (2) and (4) to (6) no relevant record shall be made available by the Governor to any person for purposes other than accident or incident investigation.

(2) Nothing in paragraph (1) shall preclude the Governor making a relevant record available to any person where—

(a) in a case where that person is a party to or otherwise entitled to appear at judicial proceedings, the Supreme Court has ordered that the relevant record shall be made available to him for the purpose of those proceedings, or

(b) in any other circumstances, the Supreme Court has ordered that the relevant record shall be made available to him for the purpose of those circumstances.

(3) In this regulation—

“judicial proceedings” includes any proceedings before any court, tribunal or person having by law power to hear, receive and examine evidence on oath,

“relevant record” means any item in the possession, custody or power of the Governor which is of a kind referred to in sub-paragraphs (a) to (e) of paragraph 5.12 of the Annex; and

“Governor” includes any public officer.

(4) Subject to paragraph (6) no order shall be made under paragraph (2) unless the Supreme Court is satisfied that the interests of justice in the judicial proceedings or circumstances in question outweigh any adverse domestic and international impact which disclosure may have on the investigation into the accident or incident to which the record relates or any future accident or incident investigation undertaken in the Falkland Islands.

(5) A relevant record or part thereof shall not be treated as having been made available contrary to paragraph (1) above in any case where that record or part is included in the final report (or the appendices to the final report) of the accident or incident.

(6) The provisions of this regulation shall be without prejudice to any rule of law which authorises or requires the withholding of any relevant record or part thereof on the ground that the disclosure of it would be injurious to the public interest.

Revocation

18. The Civil Aviation (Investigation of Air Accidents) Regulations 1959(a) are hereby revoked. Any investigation commenced under those Regulations which, in the

(a) SR&O No 3 of 1959

case of a field investigation has not been completed or, in the case of a formal investigation has not been the subject of a report submitted to the Governor, shall continue as if it had been commenced under these Regulations.

Made this 2nd day of May 1997

R P Ralph
Governor

EXPLANATORY NOTE
(not forming part of the above Regulations)

These Regulations, modelled on the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996 of the United Kingdom replace the Civil Aviation (Investigation of Air Accidents) Regulations 1959.

SUBSIDIARY LEGISLATION

MERCHANT SHIPPING

Merchant Shipping Act 1979
(Commencement of Certain Provisions in the Falkland Islands) Order 1997

(S.R. & O. No. 9 of 1997)

Made: 9 May 1997

Published: 28 May 1997

Coming into operation: on publication

In exercise of the powers conferred on me under section 52(1) of the Merchant Shipping Act 1979(a) in its application to the Falkland Islands(b), I make the following Order—

Citation

1. This Order may be cited as the Merchant Shipping Act 1979 (Commencement of Certain Provisions in the Falkland Islands) Order 1997.

Commencement of provisions of the Merchant Shipping Act 1979

2. The provisions of the Merchant Shipping Act 1979 which were extended to the Falkland Islands by the Merchant Shipping Act 1979 (Falkland Islands) Order 1979(c) (that is to say, sections 14, 17, 18, 19(1), 50, 51 and 52 of, and Schedules 3, 4 and 5 and Part I of Schedule 7 to, the Merchant Shipping Act 1979, as modified in the Schedule to the said Order) shall come into force on 1st June 1997.

Made this 9th day of May 1997

R.P. Ralph
Governor

(a) 1979 c.39

(b) i.e. under the Merchant Shipping Act 1979 (Falkland Islands) Order 1980

(c) SI 1980/1513

EXPLANATORY NOTE
(not forming part of the above Order)

Section 52(2) of the Merchant Shipping Act 1979, in the form it has effect in the Falkland Islands by virtue of the Merchant Shipping Act 1979 (Falkland Islands) Order 1980, enables the Governor to bring into force in the Falkland Islands the provisions of the Act extended by the Order on such date as he may appoint. It would appear that the bringing into force of those provisions was overlooked at the relevant time, and this Order will bring them all into force on 1st June 1997.

SUBSIDIARY LEGISLATION

PRISONERS

The Repatriation of Prisoners Act 1984 (Sections 1 to 9)
(Commencement in the Falkland Islands) Order 1997

(S.R. & O. No. 10 of 1997)

Made: 9 May 1997

Published: 28 May 1997

Coming into operation: 1st June 1997

IN EXERCISE of my powers under section 9(2) of the Repatriation of Prisoners Act 1984(a) in its application to the Falkland Islands(b), and all other powers enabling me in that behalf, I make the following Order—

Citation and commencement

1. This Order may be cited as the Repatriation of Prisoners Act 1984 (Sections 1 to 9) (Commencement in the Falkland Islands) Order 1997 and shall come into operation on 1st June 1997.

Commencement of sections 1 to 9 of the Repatriation of Prisoners Act 1984

2. Sections 1 to 9 of the Repatriation of Prisoners Act 1984 as they have effect in the Falkland Islands by virtue of the Repatriation of Prisoners (Overseas Territories) Order 1986(c) shall come into force on 1st June 1997.

Made this 9th day of May 1997

R.P. Ralph
Governor

EXPLANATORY NOTE (not forming part of the above Order)

This Order brings into force on 1st June 1997 sections 1 to 9 of the Repatriation of Prisoners Act 1984, in the form they apply in the Falkland Islands by virtue of the Repatriation of Prisoners Act 1984 (Overseas Territories) Order 1986.

(a) 1984 c. 47

(b) i.e. under the provisions of the Repatriation of Prisoners (Overseas Territories) Order 1986

(c) SI 1986/2226