



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CVI

31st July 1997

No. 11

Appointments

Neville Hayward, Cemetery Caretaker/Handyman,
Public Works Department, 1 7 97.

Henry Donald Alexander McLeod, Police Constable,
Royal Falkland Islands Police, 1 7 97.

Paul Watson, Permanent Staff Assistant, Falkland
Islands Defence Force, 1 7 97.

Mrs Lesley Ann Titterington, Courts Administrator
Justice Department, 17 7 97.

Terrence Kenneth Mills, Driver/Handyman Medical
Department, 21 7 97.

Dennis David Summers, Plant Operator, Property and
Municipal Section, Public Works Department, 21 7 97.

Acting Appointments

Miss Carol Ellen Eva Stewart, Acting Broadcasting
Officer, Falkland Islands Broadcasting Studio, 25.6.97-
25.7.97.

Miss Lorna Marie Howells, Acting Assistant Producer
Falkland Islands Broadcasting Studio, 30.6.97-25.7.97.

Peter Julian Basil Biggs, Acting Taxation Officer
Income Tax Office, Treasury, 19.7.97-9.9.97.

Re-Appointment

Anthony John Lee, Design Engineer, Design and
Contract Section, Public Works Department, 21.7.97.

Promotion

John Christopher Rowland, from Customs/
Immigration Officer, Customs/Immigration
Department, to Registrar General, Justice Department
17 7 97.

Completion of Contract

Anthony John Lee, Design Engineer, Design and
Contract Section, Public Works Department,
17 6 97.

NOTICES

No 15

13th June 1997.

MEDIA TRUST ORDINANCE 1989 APPOINTMENT OF MEMBER OF THE MEDIA TRUST

NOTICE is hereby given that on 13th June 1997 His
Excellency the Governor in exercise of his powers
under section 4(1) of the Media Trust Ordinance
1989 appointed Mr. Tom Blake to be a member of
the Media Trust. Under the provisions of section
4(3) Mr. Blake will be a member of the Media Trust
for 4 years (that is to say until 12 June 2001) unless
before that date he ceases to be a member of the
Media Trust under any provisions of section 4(4) of
the Ordinance.

Dated 13th June 1997.

No. 16

3rd July 1997

VESTING DEED-PORT LOUIS FARM

Further to an application made by Stuart Alfred Booth of Racecourse Cottage, Stanley, East Falkland on behalf of Port Louis Limited pursuant to section 11A of the Land Ordinance as published in Gazette of the 30th May 1997 and I hereby give notice that I have this day executed a Vesting Deed in the following form:

Registered No: on the day of 1997
Vol: Page

Registrar General

Crown Grants 479,342,340,278, and 41

Dated this 3rd day of July 1997

WHEREAS on application made to me Vera Bonner, Ag. Registrar General pursuant to subsection 11A of the Lands Ordinance by Stuart Alfred Booth of Racecourse Cottage, Stanley, East Falkland on behalf of Port Louis Limited I am satisfied that Port Louis Limited should be registered as the owner of the estate in fee simple absolute in possession of the land described in the schedule to this deed **NOW THEREFORE** by this Deed I do declare that the estate in fee simple absolute in possession of the said land is vested in Port Louis Limited **SUBJECT** only to such matters as are mentioned in the Crown Grant Numbers 479, 342,340,278 and 41 relating to the land or have effect by virtue of those Crown Grants and to such easements rights privileges and encumbrances as it may have created prior to the date of this deed.

SCHEDULE

(description of land)

ALL THAT land currently known as Port Louis Farm on East Falkland and comprising approximately 24,000 acres.

Vera Bonner,
AG Registrar General.

Any person aggrieved by decision of the Ag. Registrar General to execute a vesting deed under this Ordinance may appeal to the Supreme Court within 30 days of the publication in the Gazette of this notice in accordance with the provisions of subsection 11A (a) of the Land Ordinance.

Dated 3rd July 1997.

No. 17

31st July 1997

THE COMPANIES ACT 1948

**Special Resolution to Appoint Liquidator
Pursuant to section 141(2) and 278(1)(b) of the
Companies Act 1948**

Port Louis Limited (Company Number 5051)

At an Extraordinary General Meeting of the Members of the above-named Company duly convened and held

at 7 Kent Road, Stanley on 3rd July 1997 the following **SPECIAL** Resolution was duly passed "That the Company be wound up voluntarily and that Stuart Booth be hereby appointed Liquidator for the purpose of winding-up".

W.H. Roberts,
Chairman.

No. 18

31st July 1997

TAKE NOTICE that the following Falkland Islands Establishments have been inspected and approved by the Department of Agriculture of the Falkland Islands Government to be in compliance with European Community Directive 91/493 which specifies the health conditions to be met for the production and the placing on the market of fishery products.

Factory Vessels

Name	Approval Number	Company
Petrel	1001	Fortuna Limited
Capricorn	1005	Waverley House
Beagle FI	1006	John Street, Stanley. Tel: 22616 Fax: 22617
Argos Periera	1002	Argos Limited
Argos Galicia	1007	P.O. Box 151 Stanley Tel: 22686 Fax: 22687
El Greco	1003	Goodwin Offshore Ltd. 26 Ross Road East Stanley Tel: 21656 Fax: 22705
De Giosa T	1004	SFS Navegantes Ltd. Fitzroy Road Stanley Tel: 22644 Fax: 22746
Igueldo	1008	Beauchene Fishing and Trading Company John Street Stanley Tel: 22664 Fax: 22650
Golden Touza	1009	Golden Touza Ltd.
Golden Chica	1010	Atlantic House Stanley Tel: 22888 Fax: 22889

On-Shore Establishments

Name	Approval Number	Company
Polar Cold Store	2001	Polar Limited Stanley Tel: 22669 Fax: 22670

Andrew Coe,
*Senior Veterinary Officer,
Falkland Islands Government.*



THE FALKLAND ISLANDS GAZETTE Extraordinary

PUBLISHED BY AUTHORITY

Vol. CVI

8th August 1997

No. 12

The following is published in this Gazette:-

The Register of Electors.

Register of Electors, Stanley Constituency.

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	Helen	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

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

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 Osneth	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

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	YMCA
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

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 Helen	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 King 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	Alan John	3 Fitzroy Rd. East
267	Crowie	Ana Bonita	3 Fitzroy Rd. East
268	Crowie	Breda Marie	35 Callaghan Rd.
269	Crowie	David Sean	Stanley
270	Crowie	Nicola Jane	35 Callaghan Rd.
271	Crowie	Robert John	35 Callaghan Rd.
272	Curtis	Alfred William Hamilton	6 Brandon Rd. West
273	Curtis	Barbara Joan	6 Brandon Rd. West
274	Curtis	James William Hamilton	6 Ross Rd.
275	Davies	Andrew Liam	Flat 7, 6 Jersey Rd.

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

331	Ferguson	Marie Anne	Stanley
332 *	Ferguson	Robert John	4 Capricorn Rd.
333	Ferguson	Rose	Flat7, 1 Jeremy Moore Ave East
334	Ferguson	Thelma	4 Capricorn Rd.
335	Fiddes	Douglas Graham	18 Ross Rd. East
336	Fiddes	Gardner Walker	8 Endurance Ave
337	Fiddes	Julia Bertrand	18 Ross Rd. East
338	Fiddes	Mary McKinnon Livingstone	4 Moody St.
339	Fiddes	Melody Christine	8 Endurance Ave
340	Fiddes	Robert	4 Moody St.
341	Fiddes	Shona Mary	Sir Rex Hunt House.
342 *	Finlayson	Iris Dwenda Margaret	7 John St.
343	Finlayson	Peter	6 Brandon Rd.
344 *	Finlayson	Phyllis	6 Brandon Rd.
345	Fisher-Smith	Julie Ann	8 Fieldhouse Close
346	Fleming	Richard Ian	7 Ian Campbell Drive
347	Fogerty	Philip John	Stone Cottage
348	Fogerty	Richard Edwin John	Stone Cottage
349	Ford	Alison Jane Marie	5 Jersey Rd.
350 *	Ford	Arthur Henry	6 Drury St.
351	Ford	Caroline	2 Philomel Place
352	Ford	Cherry Rose	1 James St.
353	Ford	Christopher James	11 Fieldhouse Close
354	Ford	Colin Stewart	15 Kent Rd.
355	Ford	Colleen Mary	Lady Hunt House John St.
356	Ford	David	1 Davis St.
357	Ford	Frederick James	Lady Hunt House John St.
358	Ford	Gerard Allan	Flat 1, 3 Jeremy Moore Ave
359	Ford	Jonathan	11 Beaver Rd.
360	Ford	Julie Ann	11 Beaver Rd.
361	Ford	Leann Caroline	15 Kent Rd.
362	Ford	Leonard	5 Jersey Rd.
363	Ford	Marilyn Christina	24 James St.
364	Ford	Michael	1 James St.
365	Ford	Paul Edward	2 Philomel Place
366	Ford	Robert	1 Davis St.
367	Ford	Sara	11 Fieldhouse Close.
368	Ford	Simon	1 James St.
369	Forrest	Jennifer Carol	16 Kent Rd.
370	Forster	Amanda	39 Eliza Cres.
371	Forster	Lynne	Stanley
372	France	Graham Brian	7 Snake St.
373	France	Jane Aileen Marie	7 Snake St.
374	Freeman	Carl Francis	10 James St.
375	Freeman	Dianne May	10 James St.
376 *	Fullerton	Mary Ellen	Government House
377	Geach	Alan John	Sir Rex Hunt House.
378	George	Magnus John Alexander	14 Ross Rd. West
379	Gilbert	Christopher Paul	22 Jeremy Moore Ave.
380	Gilbert	Judith Elizabeth	22 Jeremy Moore Ave.
381	Gilbert	Robert Ernest	22 Jeremy Moore Ave.
382	Gilding	Deborah	Murray Heights
383	Gilding	Sara Jane	11 Pioneer Row.
384 *	Gooch	Dudley Frederick	34 John St.
385	Goodwin	Angela Jane	27 Callaghan Rd

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

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

496 *	Howatt	Frank Derby	Flat5, 7 Jeremy Moore Ave East
497	Howatt	Suzanna Margaret	4 Racecourse Rd.
498	Howe	Alison Delia	36 Davis St.
499	Howe	Paul Anthony	36 Davis St.
500	Howells	Anne Stephanie	112 Davis St.
501	Howells	Lorna Marie	112 Davis St.
502	Howells	Melissa Louise	112 Davis St.
503	Howells	Roger	112 Davis St.
504	Humphreys	Dennis James	7 Dean St.
505	Humphreys	Margaret Anne	7 Dean St.
506 *	Hutton	Elizabeth Isabella	3 John St.
507 *	Hutton	Philip	3 John St.
508	Igao	Pauline Lynx	15 Scoresby Close
509	Irwin	Rhoda De Felton	Eliza Cove Rd.
510	Jacobsen	Alistair	1A Philomel St.
511	Jacobsen	Catherine Joan	1A Philomel St.
512	Jaffray	Donald	15 Brandon Rd.
513	Jaffray	Eileen	5 Hebe St.
514	Jaffray	Elaine Michele	8 Discovery Close
515	Jaffray	Estelle Anita	Snake Hill
516	Jaffray	Frank Alexander	8 Discovery Close
517	Jaffray	Gerard Alan	5 Hebe St.
518	Jaffray	Helen Rose	84 Davis St.
519	Jaffray	Ian	5 Hebe St.
520	Jaffray	Ingrid Joyce	5 Hebe St.
521	Jaffray	Jacqueline Ann	Flat 3, Church House
522	Jaffray	Janet	40 Eliza Cres.
523	Jaffray	Janice Vanessa	3C Jersey Est.
524	Jaffray	John	40 Eliza Cres.
525	Jaffray	John Summers	84A Davis St.
526	Jaffray	June Elizabeth	17 Ross Rd. East
527	Jaffray	Kenneth Ian	2 Dean St.
528	Jaffray	Lisa Jane	Flat 3, 1 Jeremy Moore Ave.
529	Jaffray	Marina Morrison	15 Brandon Rd.
530	Jaffray	Robin George	Stanley
531	Jaffray	Stephen James	11 James St.
532	Jaffray	Terence Roy	Flat 3, 1 Jeremy Moore Ave
533	Jaffray	Terri-Ann	24 Endurance Ave.
534	Jaffray	Tony	84 Davis St.
535	Jaffray	Wayne Neil	5 Hebe St.
536	Jennings	Neil	Flat 4, 30 Jersey Rd.
537	Jennings	Stephen	5 Fitzroy Rd.
538	Johnson	Jacqueline	5 Kent Rd.
539 *	Johnson	Lily Ann	Brandon Rd.
540	Johnson	Michael Neil	5 Kent Rd.
541	Johnson	Vanda Joan	38 Ross Rd.
542	Jones	Alan Smith	26 Ross Rd. West
543	Jones	Jennifer	26 Ross Rd. West
544	Jones	John Hugh	1 Brandon Rd.
545	Jones	Kevin Richard	Stanley.
546	Jones	Michelle	1 Brandon Rd.
547	Jones	Yvonne Malvina	3 Discovery Close
548	Jordan	Dilys Margaret Ann	6A Pioneer Row.
549	Keane	Alva Rose Marie	18 Davis St.
550	Keane	Olaf James	18 Davis St.

551	Keane	Thomas James	18 Davis St.
552 *	Keenleyside	Charles Desmond	3 Pioneer Row
553 *	Keenleyside	Dorothy Maud	3 Pioneer Row
554	Keenleyside	Manfred Michael Ian	Snake Hill
555	Keenleyside	Nanette Barbara	Snake Hill
556	Kenny	Erling	20 James St.
557	Kiddle	Robert Karl	Flat 3. 6 Racecourse Rd.
558	King	Anna Constance Eve	38 Davis St.
559	King	Cherilyn Julie	Lafone House, Ross Rd. East
560 *	King	Desmond George Buckley	38 Davis St.
561 *	King	Gladys Evelyn	39 Fitzroy Rd.
562	King	Glynis Margaret	2 B Jeremy Moore Ave. East
563	King	Michelle Beverley	69 Fitzroy Rd.
564	King	Peter Thomas	10 Jeremy Moore Ave.
565	King	Robert John	1D Jersey Est.
566	King	Rosemarie	10 Jeremy Moore Ave
567 *	King	Vernon Thomas	39 Fitzroy Rd.
568	Kirkham	Campbell Joseph	5 Capricorn Rd.
569	Kluzniak	Beulah	26 Ross Rd. East
570 *	Kluzniak	Boguslaw Sylvester	26 Ross Rd. East
571	Kultschar	Carolyn Wendy	2 Moody St.
572	Kultschar	John William	4 Davis St. East
573	Kultschar	Richard Paul	4 Davis St. East
574	Kultschar	Yvonne Rosina	4 Davis St. East
575	Laffi	Atilio Segundo	3 Brisbane Rd.
576	Laffi	Kathleen Mary	3 Brisbane Rd.
577	Lang	David Geoffrey	45 Callaghan Rd.
578	Lang	James Patrick	Flat2, 3 Jeremy Moore Ave East
579	Lang	Marie-Bernard Therese	45 Callaghan Rd.
580	Lang	Sandra Shirleen	2 Allardyce St.
581	Lang	Theresa Margaret	45 Callaghan Rd.
582	Lang	William Frank	3 James St.
583	Larsen	Ellen	74 Davis St.
584 *	Lee	Alfred Leslie	11 Drury St.
585	Lee	Angela Audrey	8 Jersey Rd.
586	Lee	Anthony John	8 Jersey Rd.
587	Lee	Beverley Christina	10 Allardyce St.
588	Lee	Derek William	2 Davis St.
589	Lee	Gladys	11 Drury St.
590	Lee	Leslie James	10 Allardyce St.
591	Lee	Owen Henry	Stanley
592	Lee	Tanya	15 Campbell Drive
593	Lee	Trudi Dale	10 Allardyce St.
594	Lennie	Gordon Carnie	9 Narrows View
595	Lewis	David James	3 Campbell Drive
596 *	Lewis	James	2 St. Marys Walk
597	Lewis	Jason	3 Campbell Drive
598 *	Lewis	Jean	2 St. Marys Walk
599	Lewis	Pamela Irene	3 Campbell Drive
600	Leyland	Frank	10 Brandon Rd.
601	Leyland	Vera	10 Brandon Rd.
602	Livermore	Anton	33 Callaghan Rd.
603	Livermore	Darren	Stanley
604	Loftus	Colleen	11 Fitzroy Rd. East
605	Lowe	Anthony Trevor	54 Davis St.

606	Lowe	Fiona Alison	54 Davis St.
607 *	Luxton	Ernest Falkland	38 John St.
608	Luxton	Jennifer Mary	4 Hebe Place
609	Luxton	Michael	1A Pioneer Row
610	Luxton	Nicola	1A Pioneer Row
611	Luxton	Stephen Charles	7 Narrows View
612 *	Luxton	Sybil Grace	38 John St.
613 *	Luxton	Winifred Ellen	15 Fitzroy Rd.
614	Luxton	Zoe	1A Pioneer Row
615	Lyse	Ethel Malvina	65 Fitzroy Rd.
616 *	Lyse	George Walter	8 Moody St.
617	Lyse	Linda Margaret	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.

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 Allardyce St.
676	McLaren	Tony Eugene Terence	12 Allardyce 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	McMally	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

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.

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 Moreen	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.

826	Platt	Veronica Shirley	Stanley
827	Plumb	Christopher Philip	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

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 Margaret	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	Shorrock	Joyce	5 McKay Close
913	Shorrock	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	Derek Patrick	42 Eliza Cres.
919	Short	Donald Robert Gordon	Eliza Cove Rd.
920	Short	Ellen Mary	12 Brandon Rd.
921	Short	Emily Christina	1 Fitzroy Rd. East
922	Short	Gavin Phillip	14 Pioneer Row
923	Short	Isobel Rose	42 Eliza Cres.
924 *	Short	Joseph Leslie	12 Brandon Rd.
925	Short	Marc Peter	1 Racecourse Rd.
926	Short	Marlene Cindy	58 Davis St.
927	Short	Montana Tyrone	4 Dairy Paddock Rd.
928	Short	Patrick Warburton	42 Eliza Cres.
929	Short	Peter Robert	1 Fitzroy Rd. East
930	Short	Richard Edward	58 Davis St.
931	Short	Riley Ethroe	Barrack St.
932	Short	Robert Charles	12A Brandon Rd.
933	Short	Vilma Alicia	4 Dairy Paddock Rd.
934	Simpson	Bertha Veronica	6 Police Cottages, 4 Ross Rd.
935	Simpson	James Alexander Bruce	7 Racecourse Rd.

936	Simpson	James Garry	7 Racecourse Rd.
937	Simpson	John Frederick	6 Police Cottages, 4 Ross Rd.
938	Simpson	Mirabelle Hermoine	7 Racecourse Rd.
939	Sinclair	Veronica Joyce	21 Ross Rd. West
940	Skene	Greta Winnora Miller	22 Ross Rd. East
941	Smallwood	Kio Mikhailovich	105 Davis St.
942	Smallwood	Margo Amee	105 Davis St.
943	Smallwood	Michael Anthony	105 Davis St.
944 *	Smith	Adeline Jane	2 Thatcher Drive
945	Smith	Alexander Gordon	16 Jersey Rd.
946	Smith	Anthony David	10 Fieldhouse Close.
947	Smith	Bruce Dennis	Stanley
948	Smith	Colin David	6 James St.
949	Smith	Derek	8 Eliza Cres.
950	Smith	Elenore Olive	3 Brisbane Rd.
951	Smith	Eric	3 Allardyce St.
952	Smith	Gerard Alexander	8 Barrack St.
953 *	Smith	Gwenifer May	8 Barrack St.
954	Smith	Ian Lars	2 Ross Rd. West
955	Smith	Ileen Rose	28 Ross Rd. West
956 *	Smith	James Terence	3 Fitzroy Rd. West
957	Smith	Jean Waddell	16 Jersey Rd.
958	Smith	Jennifer Ethel	Stanley
959	Smith	Jeremy	1A Jersey Rd.
960	Smith	Joan Lucy Ann	6A Pioneer Row
961	Smith	John	28 Ross Rd. West
962	Smith	Julia Trinidad	8 Eliza Cres.
963	Smith	Martyn James	28 Ross Rd. West
964	Smith	Natalie Marianne	6 James St.
965	Smith	Nora Kathleen	5 Fitzroy Rd. East
966 *	Smith	Osmund Raymond	3 Brisbane Rd.
967 *	Smith	Owen Archibald	3 Fitzroy Rd.
968	Smith	Patricia Anne	6A Moody St.
969	Smith	Paulette Rose	KEMH
970	Smith	Rhona	8 Fitzroy Rd.
971	Smith	Russell James	8 Fieldhouse Close
972	Smith	Shula Louise	Flat 4, 5 Jeremy Moore Ave.
973	Smith	Sidney Frederick	Jersey Rd.
974	Smith	Susan	1 Hebe Place
975	Smith	Tyssen John Richard	Flat 8, 6 Jersey Rd.
976 *	Sollis	Sarah Emma Maude	20 Drury St.
977	Spall	Christopher Richard	German Camp West, Callaghan Rd
978	Spink	Roger Kenneth	4 Hebe St.
979 *	Spinks	Malvina Ellen	Flat6, 7Jeremy Moore Ave East
980	Spruce	Helena Joan	29 Ross Rd. West
981	Spruce	Mark Felton	29 Ross Road West
982	Spruce	Terence George	29 Ross Rd. West
983	Stedman	Dianne Audrey	15 St Marys Walk
984	Stedman	Robin Geoffrey	15 St Marys Walk
985	Steen	Allan Graham	11 Brandon Rd.
986	Steen	Barbara Ingrid	39 Ross Rd. West
987 *	Steen	Emma Jane	36 Ross Rd.
988	Steen	Gail	7 St. Marys Walk
989	Steen	Karen Lucetta	7 St. Marys Walk
990	Steen	Vernon Robert	7 St Marys Walk

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

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

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

Register of Electors, Camp Constituency.

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

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

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

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

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

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

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



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29th August 1997

No. 13

Appointments

Peter Humphrey, Aircraft Fitter, Falkland Islands Government Air Service, 25.7.97.

Dr. Klemens Putz, Fisheries Observer, Fisheries Department, 25.7.97.

John Philip Roxburgh, Fisheries Observer, Fisheries Department, 25.7.97.

David Alexander Edgar Smith, Fisheries Observer, Fisheries Department, 25.7.97.

Gary White, Aircraft Fitter, Falkland Islands Government Air Service, 25.7.97.

Mrs. Janet Ross, Clerk, Public Service, 1.8.97.

Mrs. Glenda McLeod, Clerk, Public Service, 5.8.97.

Stephen Tyldsley, Maintenance Estate Officer, Medical Department, 9.8.97.

Mrs. Carol Wendy Teggart, General Manager, Falkland Islands Government Office, 18.8.97.

Robert Stanley Ernest Valler, Trainee Computer Technician, Computer Section, Secretariat, 18.8.97.

Miss Emma Louise Dilnutt, Health Promotion Counsellor, Medical Department, 5.8.97.

Promotions

Mrs. Madeline Jean McLeod, from Assistant (Training & Economics), Department of Agriculture to Farm Management Training Officer, Department of Agriculture, 1.7.97.

Nigel Keith Dodd, from Chief Clerk, Philatelic Bureau to Pensions Administrator, Treasury, 18.8.97.

Mrs. Sara Ford, from Clerk Public Service to Cashier Treasury, 18.8.97.

Transfers

Donald Jaffray, From Fuel Bowser Driver, Plant & Vehicle Section, Public Works Department, to Night Security Officer, Medical Department, 18.08.97.

Colin George MacDonald, from Handyman/Plant Operator, Municipal Section, Public Works Department to Fuel Bowser Driver, Plant & Vehicle Section Public Works Department, 18.8.97.

Completion of Contracts

Miss. Emma Louise Dilnutt, Health Visitor, Medical Department, 24.5.97.

Miss. Emma Alesworth, Fisheries Observer, Fisheries Department, 11.7.97.

Miss. Emma Jane Edwards, Junior Geologist, Department of Oil, 19.7.97.

Resignations

Captain Michael John Southcott, Pilot, Falklands Islands Government Air Service, 29.7.97.

Craig Arthur Paice, Filtration Plant Operator, Water Section, Public Works Department, 14.8.97.

No. 19

20th August 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, **ANDREW MURRAY GURR**, Acting Governor of the Falkland Islands Grant to;

The Reverend **STUART ROGER BROUGHTON** this Certificate of Registration as a Minister for celebrating marriages in the Colony.

Given under my hand and the Public seal at Stanley this 20th day of August 1997.

A. M. Gurr,
*Acting Governor,
Falkland Islands.*

**SUPREME COURT OF THE FALKLAND
ISLANDS**

Notice under the Administration of Estates
Ordinance (Cap. 1)

TAKE NOTICE THAT Agnes Kathleen Whitney deceased, of Stanley, Falkland Islands died at Stanley, Falklands Islands on the 12th day of July 1997 Intestate.

WHEREAS Henry Leslie Whitney, widower of the deceased, has applied for letters of Administration to administer the estate of the said deceased in the Colony.

NOTICE IS HEREBY GIVEN pursuant to Section 4 of the Administration of Estates Ordinance to all persons resident in the Colony who may have prior claim to such grant that the prayer of the Petitioner will be granted provided no caveat be entered in the Supreme Court within 21 days of the Publication hereof.

V. J. Bonner,
Registrar, Supreme Court.

Stanley, Falkland Islands,
29th July 1997.
Ref: PRO/8/1997.

**SUPREME COURT OF THE FALKLAND
ISLANDS**

Notice under the Administration of Estates
Ordinance (Cap. 1)

TAKE NOTICE THAT Reginald Sturdee Lyse deceased, of Stanley, Falkland Islands died at Stanley, Falkland Islands on the 9th day of July 1997 Intestate.

WHEREAS Linda Margaret Lyse, daughter of the deceased, has applied for Letters of Administration to administer the estate of the said deceased in the Colony.

NOTICE IS HEREBY GIVEN pursuant to Section 4 of the Administration of Estates Ordinance to all persons resident in the Colony who may have prior claim to such grant that the prayer of the Petitioner will be granted provided no caveat be entered in the Supreme Court within 21 days of the publication hereof.

V. J. Bonner,
Registrar, Supreme Court.

Stanley, Falkland Islands,
30th July 1997.
Ref: PRO/9/1997.



THE FALKLAND ISLANDS GAZETTE Extraordinary

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1st September 1997

No. 14

The following are published in this Gazette:-

Proclamation No. 4 of 1997 (Elections);

Appointment of Returning Officer;

Writs of Election (Stanley and Camp Constituencies);

Notice of Election (Stanley and Camp Constituencies).

PROCLAMATION**FALKLAND ISLANDS CONSTITUTION ORDER 1985****SCHEDULE 1****(Sections 28(1), 29(2) and 32(1))****PROCLAMATION DISSOLVING THE LEGISLATIVE COUNCIL, REQUIRING
THE HOLDING OF A GENERAL ELECTION AND APPOINTING A TIME IN
RESPECT THEREOF AND APPOINTING A PLACE AND TIME FOR THE
COMMENCEMENT OF A SESSION OF THE LEGISLATIVE COUNCIL AFTER
THE GENERAL ELECTION****(Proclamation No. 4 of 1997)**

IN EXERCISE of my powers under sections 28(1), 29(2) and 32(1) of Schedule 1 to the Falkland Islands Constitution Order 1985 ("the Constitution") and of all other powers enabling me in that behalf, I, **RICHARD PETER RALPH**, Companion of the Most Distinguished Order of Saint Michael and Saint George, Commander of the Royal Victorian Order, Governor of the Falkland Islands **PROCLAIM** as follows—

- I. The Legislative Council of the Falkland Islands is dissolved.
- II. A General Election shall be held for the election of members of the Legislative Council on Thursday the ninth day of October 1997.
- III. A session of the Legislative Council shall commence following such General Election in the Legislative Council Chamber at the Town Hall Stanley on Tuesday the fourteenth day of October 1997 at the hour of ten in the forenoon at which place and time and on which date all persons declared to be elected as members of the Legislative Council as a result of such General Election should attend **UNLESS** by further Proclamation I appoint any other place day and time for the commencement of a session of the Legislative Council.

Made this first day of September 1997 at Stanley, under my hand and the Public Seal of the Falkland Islands.

R P RALPH
Governor

GOD SAVE THE QUEEN!

ELECTORAL ORDINANCE 1988
(Section 47(1))

APPOINTMENT OF RETURNING OFFICER:
STANLEY AND CAMP CONSTITUENCIES

IN EXERCISE of my powers under section 47(1) of the Electoral Ordinance 1988, I
APPOINT JOHN CHRISTOPHER ROWLAND to be the returning officer in respect
of both the Stanley and Camp constituencies.

Dated the first day of September 1997

R P RALPH
Governor

WRIT OF ELECTION

To: the Returning Officer for the Stanley Constituency

IN THE NAME OF HER MAJESTY ELIZABETH THE SECOND 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 HIS EXCELLENCY RICHARD PETER RALPH Esquire, Companion of the Most Distinguished Order of Saint Michael and Saint George, Commander of the Royal Victorian Order, Governor of the Colony of the Falkland Islands

To: the Returning Officer for the Stanley Constituency **GREETING**

WHEREAS the Legislative Council of the Falkland Islands has this day been dissolved by me by Proclamation pursuant to section 29(2) of Schedule 1 to the Falkland Islands Constitution Order 1985

AND WHEREAS by the said Proclamation I appointed Thursday the ninth day of October 1997 as the date on which a General Election is to be held within the Falkland Islands

NOW THEREFORE I COMMAND THAT, due notice having first been given you do cause election to be made according to law of five members of the Legislative Council in respect of the Stanley Constituency **AND THAT** you do return this Writ endorsed as provided by law on or before Monday the thirteenth day of October 1997.

GIVEN under my hand and the Public Seal of the Falkland Islands at Government House Stanley this first day of September in the year of Our Lord One Thousand Nine Hundred and Ninety-Seven

R P RALPH
Governor

WRIT OF ELECTION

To: the Returning Officer for the Camp Constituency

IN THE NAME OF HER MAJESTY ELIZABETH THE SECOND 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 HIS EXCELLENCY RICHARD PETER RALPH Esquire, Companion of the Most Distinguished Order of Saint Michael and Saint George, Commander of the Royal Victorian Order, Governor of the Colony of the Falkland Islands

To: the Returning Officer for the Camp Constituency **GREETING**

WHEREAS the Legislative Council of the Falkland Islands has this day been dissolved by me by Proclamation pursuant to section 29(2) of Schedule 1 to the Falkland Islands Constitution Order 1985

AND WHEREAS by the said Proclamation I appointed Thursday the ninth day of October 1997 as the date on which a General Election is to be held within the Falkland Islands

NOW THEREFORE I COMMAND THAT, due notice having first been given you do cause election to be made according to law of three members of the Legislative Council in respect of the Camp Constituency **AND THAT** you do return this Writ endorsed as provided by law on or before Monday the thirteenth day of October 1997.

GIVEN under my hand and the Public Seal of the Falkland Islands at Government House Stanley this first day of September in the year of Our Lord One Thousand Nine Hundred and Ninety-Seven

R P RALPH
Governor

GENERAL ELECTION**OCTOBER 1997****NOTICE OF ELECTION**
(Section 51 Electoral Ordinance 1988)**STANLEY AND CAMP CONSTITUENCIES**

I, JOHN CHRISTOPHER ROWLAND, Returning Officer in respect of the Stanley Constituency and in respect of the Camp Constituency **HEREBY GIVE NOTICE** in accordance with section 51 of the Electoral Ordinance 1988 as follows—

(1) The number of persons to be elected as members of the Legislative Council as a consequence of the Writ of Election transmitted to me on 1st September 1997 by the Governor, shall be—

(a) **FIVE** members in respect of the Stanley Constituency; and

(b) **THREE** members in respect of the Camp Constituency.

(2) Nomination papers for candidates in respect of each of the above constituencies may be obtained from and including today, 1st September 1997 and until and including 17th September 1997, but not including Saturdays, Sundays and public holidays falling between those dates.

(3) The hours between which nomination papers may be so obtained from me on the days above-mentioned are—

(a) between 8.30 am and 11.45 am; and

(b) between 1.30 pm and 4.15 pm.

While I am, at the request of any person, prepared to transmit nomination papers by post or other means to any person requesting them, I cannot accept any responsibility for the safe or timely delivery or arrival of them. All persons are therefore most strongly advised that wherever possible they should collect nomination papers from me.

(4) The location of my office, for the purposes of collection of nomination papers is the Court Offices, Ground Floor, Town Hall, Ross Road, Stanley (these offices are immediately to the west of the Legislative Council Chamber/Court Rooms). My telephone number at these offices is 27272.

(5) The last day for delivery of completed nomination papers to me will be 17th September 1997, and completed nomination papers must be handed to me not later than 4.30 pm on that day, at the Court Offices (located as stated in (4) above). While nomination papers may be sent to me by post or otherwise it is the responsibility of those nominating a candidate to ensure that it is actually received by me in due time and I draw attention to the provisions of section 52(1) of the Electoral Ordinance 1988—

“52(1) Every nomination paper shall be delivered or sent by or on behalf of the candidate so as to be received by the returning officer personally and shall be deemed not to have been received by the returning officer until it is received by him personally except that whenever a nomination paper is left at his office in an envelope addressed to him it shall (unless it is actually received by him at an earlier time) be deemed to have been received by him personally not later than half past four in the afternoon of the second business day following the day on which it was so left.

(2) No election shall be invalidated by the fact that the returning officer is absent from his office on any day provided that he is in personal attendance thereat on the last day for delivery of nomination papers between the hours specified pursuant to paragraph (f) of section 51(2) above”.

(6) I shall be personally in attendance at the Court Offices to receive nomination papers between the hours of 8.30 am and 11.45 am and again between the hours of 1.30 pm and 4.30 pm on 17th September 1997.

(7) In the event that more than **FIVE** persons after the close of nominations stand validly nominated as candidates for election in respect of the Stanley Constituency or more than **THREE** persons after the close of nominations stand validly nominated as candidates in respect of the Camp Constituency a poll will be necessary in respect of the relevant Constituency and will be conducted on Thursday 9th October 1997 (“polling day”). The poll will be conducted between the hours of 10.00 am and 6.00 pm on polling day (in the Stanley Constituency) and 9.00 am and 4.00 pm in the Camp Constituency at polling places to be appointed not later than ten days before polling day by the Governor pursuant to section 59(1) of the Electoral Ordinance 1988 **BUT SUBJECT—**

(a) in respect of the Camp Constituency, to any direction by the Governor under section 60(1) of that Ordinance permitting electors in this Constituency, if they wish, to vote during the visit of a mobile polling team to any place in this Constituency during the five business days ending with polling day;

(b) in respect of both Constituencies, to the provisions of the Voting in Institutions Regulations 1993, which permit inmates at the King Edward VII

Memorial Hospital and the Jack Hayward Housing Stanley, and certain members of staff employed in relation thereto to vote on polling day during a visit by an electoral team to those Institutions.

Dated the first day of September 1997

JOHN CHRISTOPHER ROWLAND
Returning Officer
Stanley Constituency and Camp Constituency



THE FALKLAND ISLANDS GAZETTE Extraordinary

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22 September 1997

No. 15

The following are published in this Gazette -

Notifications of Election Nominations to the Legislative Council 1997.

No. 20

19th September 1997

The Electoral Ordinance 1988
Notification of nominations, etc.
Stanley Constituency

In accordance with Section 69 of the Electoral Ordinance 1988, I give notice that a poll will be taken on Thursday, 9th October 1997, at the Town Hall, Stanley, for the election of five members to the Legislative Council for the Stanley Constituency. A mobile polling team will visit the King Edward VII Memorial Hospital and Jack Hayward Housing, Stanley, on the 9th October 1997 at a time or times to be fixed.

Candidates who have been nominated and are standing for Election are as follows:

Candidate: Barbara June Besley-Clark
 Address: Stanley

Proposer: Marvin Thomas Clarke

Seconder: Alexander Burnett Hadden

Supporters Sheila Peggy Hadden
 June Elizabeth Goodwin
 Tony Jaffray
 Zoe Luxton

Candidate: John Birmingham
 Address: Stanley

Proposer: Harold Bennett

Seconder: Frances Biggs

Supporters Leonard Middleton
 Alexander Burnett Hadden
 Susan Jane Birmingham
 James Peck

Candidate: Janet Lynda Cheek
 Address: Stanley
 Description: Falkland Islander

Proposer: Velma Malcolm

Seconder: Rose Ann Shirley Hirtle

Supporters Elizabeth Eve Pollard
 Sharon Halford
 James Peck
 Betty Josephine Biggs

Candidate: Frank Brian Claxton
Address: 23 Ross Road East, Stanley

Proposer: Donald William Bonner

Seconder: James Garry Simpson

Supporters: Catherine Gladys Bertrand
Marlene Rose Williams
James Lewis
Susan Smith

Candidate: Darwin Lewis Clifton
Address: Stanley

Proposer: Rosemarie King

Seconder: Claudette Anderson

Supporters: Neil McKay
Jennifer Carol Forrest
Michael Luxton
Shirley Peck

Candidate: William Davies
Address: Stanley

Proposer: Christine Susan Davies

Seconder: Dennis Michael Middleton

Supporters: Ronald Peter Buckett
Susan Vera Buckett
Rachel Catherine Orissa Hewitt
Paul Faria

Candidate: Sharon Halford
Address: Stanley

Proposer: Sheila Olga Stewart

Seconder: John Smith

Supporters: Gerald Winston Cheek
Terence George Spruce
Stuart Barrett Wallace
Eileen Jaffray

Candidate: Alan Smith Jones
Address: Stanley
Description: Civil Servant

Proposer: Jennifer Jones

Seconder: Gordon Ewing

Supporters Robert Fiddes
Shirley Ann Coombe
John Frederick Simpson
James Garry Simpson

Candidate: Michael Victor Summers
Address: 11 Pioneer Row
Description: Self Employed Businessman

Proposer: Laurence Jonathan Butler

Seconder: James Andrew Alazia

Supporters Iris Blanche McPhee
Patrick McPhee
Jacqueline Summers
Sara Jane Gilding

J.C. Rowland
Returning Officer
Town Hall
Stanley

17 September 1997

No. 20

The Electoral Ordinance 1988
Notification of nominations, etc.
Camp Constituency

19th September 1997

In accordance with Section 69 of the Electoral Ordinance 1988, I give notice that a poll will be taken on Thursday, 9th October 1997, at Goose Green, Fox Bay East and at the Town Hall, Stanley for the election of three members to the Legislative Council for the Camp Constituency. Mobile polling teams will visit other areas in the Camp in the five business days ending with Thursday, 9th October 1997, for the same purpose.

The Candidates standing nominated for election are as follows -

Candidate: John Richard Cockwell
 Address: Fox Bay

Proposer: David Philip Dunford

Seconder: Grizelda Susan Cockwell

Supporters: Lyndsay Rae Blake
 Cathy Ann Findlay
 Anna Dierdre Marsh
 Anthony Thomas Blake

Candidate: Norma Edwards
 Address: Lake Sullivan
 West Falkland
 Description: Farmer

Proposer: Kenneth William Halliday

Seconder: Joyce Isabella Patience Halliday

Supporters: Gavin Nicholas Marsh
 Anna Dierdre Marsh
 William Kenneth Porter
 Leon Peter Marsh

Candidate: Eric Miller Goss
 Address: North Arm
 Description: Male d.o.b. 20.7.41

Proposer: Tony McMullen

Seconder: June McMullen

Supporters: Serena Samantha Sinclair
 Brian David Hewitt
 Patrick Morrison
 Patrick Andrew Lang

Candidate: William Robert Luxton
Address: Chartres
Description: Farmer

Proposer: Vivien Hobman

Seconder: Juan Jose Eleuterio Hobman

Supporters: Frazer Roderick McKay
Gavin Nicholas Marsh
Ian Keith Gleadell
Robin Frank Marsh

Candidate: Richard James Stevens
Address: Port Sussex Farm
Description: Farmer

Proposer: Terence Owen McPhee

Seconder: Sheila Margaret McPhee

Supporters: Adrian James Minnell
Michelle Rose Minnell
William John Stanley Anderson
Lynda June Anderson

J.C. Rowland
Returning Officer
Town Hall
Stanley

17 September 1997



THE FALKLAND ISLANDS GAZETTE Extraordinary

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24 September 1997

No. 16

The following are published in this Gazette:-

Notice Numbers 21, 22 and 23 of 1997 (General Election).

The Electoral Ordinance 1988
General Election
9th October 1997

In accordance with section 99 (1) of the Electoral Ordinance 1988, the following persons have been appointed to be election officials as indicated -

Stanley Constituency:

	Mrs V Bonner	Presiding Officer
	Miss C King	Polling Clerk
	Mrs M McPhee	Polling Clerk
	Miss G Spooner	Polling Clerk
	Mr F Wallace	Polling Clerk
	Ms H Blades	Polling Clerk
	Mrs T Lee	Polling Clerk
	Mr R Titterington	Polling Clerk
Supernumerary	Mr D Lang	Presiding Officer
Mobile Team:	Miss T Clifton	Team Leader
	Mrs C Blackley	Polling Clerk

Camp Constituency:

	Mrs V Bonner	Presiding Officer
	Miss C King	Polling Clerk
	Mrs M McPhee	Polling Clerk
	Miss G Spooner	Polling Clerk
	Mr F Wallace	Polling Clerk
	Ms H Blades	Polling Clerk
	Mrs T Lee	Polling Clerk
	Mr R Titterington	Polling Clerk
Supernumerary	Mr D Lang	Presiding Officer

Fox Bay East	Mr K Halliday	Presiding Officer
Goose Green	Mr D O'Shea	Presiding Officer
Mobile Teams:	(Air) Mrs V Bonner	Team Leader
	Miss C King	Polling Clerk
	(Air) Mrs T Lee	Team Leader
	Mrs C Davies	Polling Clerk
	(Air) Mr J Adams	Team Leader
	Mrs C Rowland	Polling Clerk
	(Air) Miss B Steen	Team Leader
	Miss G Spooner	Polling Clerk
	(Air) Mr F Wallace	Team Leader
	Ms H Blades	Polling Clerk
	(Air) Mrs C Rowland	Team Leader
	Mrs C Davies	Polling Clerk
	(Air) Mrs J Fisher-Smith	Team Leader

(Landrover)

Mr T Pettersson

Team Leader

Mrs T Lee

Polling Clerk

(Landrover)

Mr M Luxton

Team Leader

Mr P Biggs

Polling Clerk

Dated 19 September 1997

J C Rowland
Returning Officer

IN EXERCISE of my powers under section 60.(1) of the Electoral Ordinance 1988, I hereby appoint the following places to be attended by mobile Polling Teams in accordance with the terms of the above provision:-

<u>Place</u>	<u>Proposed Date</u>
Rincon Grande	7th October 1997
Horseshoe Bay	7th October 1997
Port Louis	7th October 1997
Johnsons Harbour	7th October 1997
Brookfield Farm	7th October 1997
Green Patch	7th October 1997
Riverview Farm	7th October 1997
Estancia	7th October 1997
Teal Inlet	7th October 1997
Hawkbit	7th October 1997
Fitzroy	7th October 1997
Bluff Cove	7th October 1997
Mount Pleasant Airport	7th October 1997
Spring Point	6th October 1997
Dunnose Head	6th October 1997
Shallow Harbour	6th October 1997
New Island	6th October 1997
Beaver Island	6th October 1997
Weddell Island	6th October 1997
Port Stephens	6th October 1997
Albermarle	6th October 1997
Port Edgar	6th October 1997
Port Howard	6th October 1997
Chartres	6th October 1997
Roy Cove	6th October 1997
Dunbar	6th October 1997
West Point Island	6th October 1997
Carcass Island	6th October 1997
Pebble Island	6th October 1997
Saunders Island	6th October 1997
Hill Cove	6th October 1997
Lively Island	7th October 1997
Bleaker Island	7th October 1997
Sealion Island	7th October 1997
Speedwell Island	7th October 1997
North Arm	7th October 1997
Walker Creek	7th October 1997

Salvador	7th October 1997
Douglas Station	7th October 1997
Port San Carlos	7th October 1997
San Carlos	7th October 1997

Note:

In the event that it is not possible for the mobile polling team because of any circumstances (particularly bad weather) to visit any of the above locations on the dates specified above the Team Leader of the mobile polling team will re-arrange the visits if at all possible so that a visit is made to those places as announced over FIBS on or before Polling Day, 9th October. If a person is not able to vote during a visit by a mobile polling team then he can vote at a Polling Place (Fox Bay East, Goose Green or Stanley) on Polling Day 9th October during polling hours. The mobile polling team will do its best to visit all of the above places but in the worst combination of circumstances there is no absolute guarantee that it will be able to do so.

R.P. Ralph
Governor

Dated 19 September 1997

No. 23

19 September 1997

IN EXERCISE of my powers under section 59.(1) of the Electoral Ordinance 1988, I hereby appoint the following places to be Polling Places in accordance with the terms of the above provision:-

Post Office	Fox Bay East	(Camp Consituency - West Falkland)
School	Goose Green	(Camp Consituency - East Falkland)
Court & Council Chamber	Town Hall	(Stanley Constituency)

R. P Ralph
Governor

Dated 19th September 1997



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No. 17

Appointments

Miss Patricia Jayne McNally, Junior Technical Assistant, Design & Contracts Section, Public Works Department, 25.8.97.

Miss Sandi Jayne Halford, Clerk, Public Service, 1.9.97.

Miss Tanya Fiona Jaffray, Sports Attendant, Leisure Centre, Education Department, 1.9.97.

Michael Ian Wallace, Filtration Plant Operator, Water Section, Public Works Department, 1.9.97.

Neil Alexander William Goodwin, Plant Operator/ Handyman, Highways Section, Public Works Department, 2.9.97.

Mrs. Patricia Irene Stevenson, Maths Teacher, Education Department, 9.9.97.

Miss Tracey Ann McIntyre, Locum Dentist, Medical Department, 13.9.97.

Miss Clare Frances Crowie, Dental Assistant, Medical Department, 15.9.97.

Mrs. Rhoda Irwin de Felton, Auxiliary Nurse, Medical Department, 15.9.97.

Christian Olaf Alexander Berntsen, Plant Operator/ Handyman, Property & Municipal Section, Public Works Department, 18.9.97.

Miss Larissa Celly Fava, Teacher, Infant/Junior School, Education Department, 18.9.97.

Miss Paula Michelle Newell, Clerk, Public Service, 23.9.97.

Miss Lynn Roberts, Clerk, Public Service, 25.9.97.

Acting Appointments

Miss Carol Ellen Eva Stewart, Acting Broadcasting Officer, Falkland Islands Broadcasting Studio, 3.9.97-26.9.97.

Miss Lorna Marie Howells, Acting Assistant Producer, Falkland Islands Broadcasting Studio, 25.8.97-26.9.97.

Confirmation of Appointment

Mrs. Dilys Agnes Payne, Computer Technician, Computer Section, Secretariat, 15.8.97.

Completion of Contract

Miss Kathleen Sheila Tingey, Crown Counsel, Justice Department, 10.9.97.

Retirements

James Garry Simpson, Clerk, Central Stores, 13.9.97.

Ronald Peter Buckett, Construction Superintendent, Plant and Materials Section, Public Works Department, 3.10.97.

Resignation

St John Peter Payne, Fisheries Protection Officer, Fisheries Department, 20.8.97.

NOTICES

No. 24

16th September 1997.

MERCHANT SHIPPING ACT 1894

Section 727

Appointment of T.A. Llewellyn-Edwards

WHEREAS DAVID EVERARD TATHAM Companion of the Most Distinguished Order of Saint Michael and Saint George Governor of the Falkland Islands acting in the name and on behalf of Her Majesty in right of Her Government in the Falkland Islands and **ROBIN BRADLEY** the Surveyor General appointed by her Majesty's Secretary of State for Transport and acting in the name and on behalf of Her Majesty's Secretary of State for Transport entered into an agreement relating to matters of marine administration in the Falkland Islands ("the Agreement") dated 3 February 1994

AND WHEREAS under the terms of the Agreement the Surveyor General has offered to provide advice and assistance to the Governor of the Falkland Islands Government and the Marine Administration of the Falkland Islands (as that latter phrase is defined in the Agreement) with the task of ensuring that all ships upon the Stanley Register are properly surveyed and certificated and offered other advice and assistance

NOW THEREFORE I RICHARD PETER RALPH Companion of the Most Distinguished Order of Saint Michael and Saint George, Commander of the Royal Victorian Order Governor of the Falkland Islands in exercise of my powers pursuant to Section 727 of the Merchant Shipping Act 1894 in its application to the Falkland Islands and all other powers me enabling **HEREBY APPOINT TAMLYN ANTHONY LLEWELYN-EDWARDS** Principal Fishing Vessel Surveyor of the Marine Safety Agency of the Department of Transport for the purpose of conducting all necessary surveys and dealing with all associated matters as set out in the Agreement (including the appointment of surveyors) in connection with fishing vessels registered on the Stanley Register of ships or in connection with fishing vessels the owners of which wish or have made application to join the Stanley Register of ships

MADE this 16th day of September 1997.

R.P. RALPH,
Governor.

No. 25

18th September 1997

APPLICATION FOR NATURALISATION

Notice is hereby given that Ms Nicole Gabrielle Buxton of Stanley, Falkland Islands, is applying to His Excellency the Governor for naturalisation, and any person who knows why naturalisation should not be

grated should send a written and signed statement of the facts to the Immigration Officer at the Customs & Immigration Department, Stanley, within two weeks of this notice.

B. Eccles,
Immigration Officer.

No. 26

19th September 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**, Companion of the Most Distinguished Order of Saint Michael and Saint George, Commander of the Royal Victorian Order, Governor of the Falkland Islands Grant to

The Reverend **DAVID THOMAS OSBORN** this Certificate of Registration as a Minister for celebrating marriages in the Colony.

Given under my hand and the Public Seal at Stanley this 19th day of September 1997.

R.P. Ralph,
Governor.

No. 27

24th September 1997.

THE FALKLAND ISLANDS COASTAL SHIPPING LIMITED

TAKE NOTICE that in accordance with the provisions of section 353 of the Companies Act 1948 in its application to the Falkland Islands and the requirements of the said section having been complied with the above-named Company will be removed from the Register of Companies upon the expiry of three months from the publication of this notice in the Gazette unless good cause do be shown as to why such action should not be taken.

Dated this 24th day of September 1997.

J.C. Rowland,
Registrar of Companies.

No. 28

30th September 1997.

The Electoral Ordinance - General Election 1997

In accordance with section 99 (1) of the Electoral Ordinance 1988, the following persons have been appointed to be election officials and indicated -

Stanley Constituency:

Mobile Team: Miss T. Clifton Presiding Officer

Camp Constituency:

Mobile Team: Mrs. J. Fisher-Smith Presiding Officer

Dated this 30th day of September 1997.

J.C. Rowland,
Returning Officer.

**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. M. GIBSON A8283783

to be a Temporary Customs Officer from 16th July 1997
until 25th November 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. W. L. MITCHELL R8127974

to be a Temporary Customs Officer from 25th
July 1997 until 25th November 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. R. W. DEAN K8249568

to be a Temporary Customs Officer from 31st
July 1997 until 25th November 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. M. C. STEVENS J8287597

to be a Temporary Customs Officer from 25th
August 1997 until 26th December 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:

WO2 C. A. WRIGHT 24379031

to be a Temporary Customs Officer from 19th
September 1997 until 25th March 1998.

R. J. King,
Collector of Customs.



THE FALKLAND ISLANDS GAZETTE Extraordinary

PUBLISHED BY AUTHORITY

Vol. CVI

3 October 1997

No. 18

NOTICES

No.29

1 October 1997

THE STANLEY (VARIOUS ROADS) ONE WAY STREET (AMENDMENT) ORDER 1997

ARTICLE 1

COMMENCEMENT NOTICE

IN EXERCISE of my powers under article 1 of The Stanley (Various Roads) One Way Street (Amendment) Order 1997, I hereby notify that the Order shall come into force on 20 October 1997.

Dated this 1st day of October 1997

R P Ralph CMG CVO
Governor

No. 30

2 October 1997

THE ELECTORAL ORDINANCE 1988
GENERAL ELECTION
9TH OCTOBER 1997

In accordance with section 99 (1) of the Electoral Ordinance 1988, the following persons have been appointed to be election officials as indicated:-

Mobile Team (Air)	Mrs C. Davies	Team Leader
	Mr L. McGill	Polling Clerk
	Mrs L. Titterington	Polling Clerk
	Mr W.J. Chater	Polling Clerk
	Mr I.C. Patterson-Smith	Polling Clerk

Dated 2 October 1997

J.C. Rowland
Returning Officer



THE
FALKLAND ISLANDS GAZETTE
Extraordinary

PUBLISHED BY AUTHORITY

Vol. CVI

10th October 1997

No. 19

The following notices are published at the request of the Returning Officer for the election held on 9th October 1997.

LEGISLATIVE COUNCIL
ELECTION OF LEGISLATIVE COUNCILLORS FOR THE
STANLEY CONSTITUENCY

I, the undersigned, **JOHN CHRISTOPHER ROWLAND** being the Returning Officer at this Election of five members for the Legislative Council for the Stanley Constituency **DO HEREBY GIVE NOTICE** of the result of the election as follows:-

Votes Cast.....	3,264
Beasley-Clark Barbara June166..... Votes
Birmingham John472..... Votes
Cheek Janet Lynda672..... Votes
Claxton Frank Brian292..... Votes
Clifton Darwin Lewis558..... Votes
Davies William42..... Votes
Halford Sharon450..... Votes
Jones Alan Smith98..... Votes
Summers Michael Victor559..... Votes

Rejected Ballot Papers.....3.....

- (1) want of official mark.....**NONE**.....
- (2) voting for more candidates than voter is entitled to..**THREE**.....
- (3) writing or mark by which voter could be identified....**NONE**.....
- (4) unmarked or wholly void for uncertainty.....**NONE**.....
- (5) rejected in part.....**NONE**.....

I THEREFORE DECLARE

1. **CHEEK JANET LYNDA**
2. **SUMMERS MICHAEL VICTOR**
3. **CLIFTON DARWIN LEWIS**
4. **BIRMINGHAM JOHN**
5. **HALFORD SHARON**

To be **DULY ELECTED** to the Legislative Council to serve for the Stanley Constituency.

Dated this 10th day of October 1997

J.C. Rowland
Returning Officer

LEGISLATIVE COUNCIL

ELECTION OF LEGISLATIVE COUNCILLORS FOR THE

CAMP CONSTITUENCY

I, the undersigned, **JOHN CHRISTOPHER ROWLAND** being the Returning Officer at this election of three members for the Legislative Council for the Camp Constituency **DO HEREBY GIVE NOTICE** of the results of the election as follows:-

Votes Cast.....720.....

Cockwell John Richard182.....	Votes
Edwards Norma174.....	Votes
Goss Eric Miller74.....	Votes
Luxton William Robert203.....	Votes
Stevens Richard James87.....	Votes

Rejected Ballot Papers.....4.....

- (1) want of official mark.....**NONE**.....
- (2) voting for more candidates than voter is entitled to...**THREE**.....
- (3) writing or mark by which voter could be identified.....**NONE**.....
- (4) unmarked or wholly void for uncertainty.....**ONE**.....
- (5) rejected in part.....**-NONE-**.....

I THEREFORE DECLARE

- 1. LUXTON WILLIAM ROBERT**
- 2. COCKWELL JOHN RICHARD**
- 3. EDWARDS NORMA**

to be **DULY ELECTED** to the Legislative Council to serve for the Camp Constituency.

Dated this 9th day of October 1997

J.C Rowland
Returning Officer



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CVI

31st October 1997

No. 20

Appointments

Miss Sarah Jane Gilding, Sports Attendant/Lifeguard,
Leisure Centre, Education Department, 27.9.97.

Michael Floyd, Customs/Immigration Officer,
Customs/Immigration Department, 29.9.97.

Miss Emma Jones, Temporary Fisheries Observer,
Fisheries Department, 30.9.97.

John David Blackley, Handyman/Plant Operator,
Municipal Section, Public Works Department, 1.10.97.

Alastair Peter Summers, Fireman/Handyman, Civil
Aviation Department, 6.10.97.

Miss Rachel Jayne Butterworth, Locum Reception
Class Teacher, Education Department, 7.10.97.

Christopher Burt, Staff Nurse, Medical Department,
10.10.97.

Mrs. Debra Jayne Taplin, Highways Technician/
Engineer, Public Works Department, 10.10.97.

Miss Elspeth Alice Wyke-Holloway, Staff Nurse,
Medical Department, 10.10.97.

Derek Smith, Night Watchkeeper, Stanley School
Hostel, Education Department, 16.10.97.

John Leonard Hirtle, Labourer, Quarry Section, Public
Works Department, 23.10.97.

Confirmation of Appointments

Miss Julia Thain, Assistant Secretary, Falkland Islands
Government Office, London, 3.7.97.

Miss Lorna Marie Howells, Broadcasting
Assistant, Falkland Islands Broadcasting Studio,
4.10.97.

Transfer

Thomas James Keane, from Engineman, Power &
Electrical Section, Public Works Department, to
Filtration Plant Operator, Water Section, Public Works
Department, 3.10.97.

Completion of Contracts

Geoffrey Eric Benjamin, Laboratory Technician,
Medical Department, 12.10.97.

Miss Rachel Nicola Riley, Staff Nurse, Medical
Department, 22.10.97.

Re-Appointment

Geoffrey Eric Benjamin, Laboratory Technician,
Medical Department, 13.10.97.

NOTICES

No. 33 15th October 1997.

SUPREME COURT OF THE FALKLAND ISLANDS**Notice under the Administration of Estates
Ordinance (Cap. 1)**

TAKE NOTICE THAT Edward Bernard Anderson deceased of Stanley, Falkland Islands died at K.E.M.H., Stanley, Falkland Islands on the 2nd day of October 1997 Intestate.

WHEREAS Amy Rose Pole-Evans, daughter of the deceased, has applied for Letters of Administration to administer the estate of the said deceased in the Colony.

NOTICE IS HEREBY GIVEN pursuant to Section 4 of the Administration of Estates Ordinance to all persons resident in the Colony who may have prior claim to such grant that the prayer of the Petitioner will be granted provided no caveat be entered in the Supreme Court within 21 days of the publication hereof.

L. A. Titterington,
Registrar, Supreme Court.

No. 34 16th October 1997

APPOINTMENT OF COMMISSIONER FOR OATHS

In accordance with section 2(2) of the Commissioners for Oaths Ordinance 1969, **LESLEY ANN TITTERINGTON** is appointed a Commissioner for Oaths.

Dated this sixteenth day of October 1997.

R P. Ralph,
Governor.

No. 35 16th October 1997

APPOINTMENT OF COMMISSIONER FOR OATHS

In accordance with section 2(2) of the Commissioners for Oaths Ordinance 1969, **JOHN CHRISTOPHER ROWLAND** is appointed a Commissioner for Oaths.

Dated this sixteenth day of October 1997.

R P. Ralph,
Governor.

No. 36 24th October 1997

**The Companies and Private Partnership Ordinance
(Cap. 13)****COMPANIES ACT 1948**

NOTICE IS HEREBY GIVEN pursuant to section 2 of the Companies and Private Partnership Ordinance and section 353 of the Companies Act 1948 in its application to the Falkland Islands that with effect from the publication of this Notice the following names are struck off the Register and the Companies are dissolved subject to the proviso to subsection (5) of section 353 aforesaid.

JBG SAJO LIMITED

INTEROCEAN MARINE CONSULTANTS (FALKLAND ISLANDS LIMITED)

LONGDON FISHING COMPANY LIMITED

Dated this 24th day of October 1997.

J.C. Rowland,
Registrar of Companies.

No. 37 24th October 1997.

**THE FALKLAND ISLANDS
ARGOS ONE VESSELS LTD - No. 8697**

TAKE NOTICE that in accordance with the provisions of section 353 of the Companies Act 1948 in its application to the Falkland Islands and the requirements of the said section having been complied with the above-named Company will be removed from the Register of Companies upon the expiry of three months from the publication of this notice in the Gazette unless good cause do be shown as to why such action should not be taken.

Dated this 24th day of October 1997.

J.C. Rowland,
Registrar of Companies.

No. 38 27th October 1997

**The Companies and Private Partnership Ordinance
(Cap. 13)****COMPANIES ACT 1948**

NOTICE IS HEREBY GIVEN pursuant to section 2 of the Companies and Private Partnership Ordinance and section 353 of the Companies Act 1948 in its application to the Falkland Islands that with effect from the publication of this Notice the name of **JB J MARR SERVICES LIMITED** is struck off the Register and the Company is dissolved subject to the proviso to subsection (5) of section 353 aforesaid.

Dated this 27th day of October 1997.

J.C. Rowland,
Registrar of Companies.

No. 39 27th October 1997

**The Companies and Private Partnership Ordinance
(Cap. 13)****COMPANIES ACT 1948**

NOTICE IS HEREBY GIVEN pursuant to section 2 of the Companies and Private Partnership Ordinance and section 353 of the Companies Act 1948 in its application to the Falkland Islands that with effect from the publication of this Notice the name of **LIVELY STEVEDORING LIMITED** is struck off the Register and the Company is dissolved subject to the proviso to subsection (5) of section 353 aforesaid.

Dated this 27th day of October 1997.

J.C. Rowland,
Registrar of Companies.



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CVI

28th November 1997

No. 21

Appointments

Miss Nola Robyn Henry, Staff Nurse (Casualty), Medical Department, 31.10.97.

Richard Buick McKee, Fisheries Protection Officer, Fisheries Department, 31.10.97.

Mrs. Trudi Ann Clarke, Clerk, Public Service, 3.11.97.

Mrs. Michelle Jane Morris, Data Entry Clerk, Fisheries Department, 3.11.97.

Nicholas Charles Ellick, Plant Operator, Quarry Section, Public Works Department, 4.11.97.

Michael Charles Bingham, Engineman, Power & Electrical Section, Public Works Department, 5.11.97.

Aprim Yousif Michael Yacoub, Pilot, Falkland Islands Government Air Service, 7.11.97.

Leslie Walter Beckett, Plant Operator, Highways Section, Public Works Department, 10.11.97.

Miss Tamara Colette Lang, Stores Clerk, Central Store, Treasury, 10.11.97.

Mrs. Rosalyn Lesley Gullickson, Staff Nurse (Ward), Medical Department, 15.11.97.

Melvyn Mark Summers, Trainee Aircraft Fitter, Falkland Islands Government Air Service, 18.11.97.

Errol Barry Gordon Goss, Clerk, Public Service, 19.11.97.

Brett Gerald Phillips, Senior Solicitor, Justice Department, 22.11.97.

Gary George Thomas, Plant Operator, Quarry Section, Public Works Department, 25.11.97.

Acting Appointments

Richard Edwin John Fogerty, Acting Director, Education Department, 27.08.97. - 3.10.97.

Transfers

Paul Faria, from Plant Operator, Property Municipal Section, Public Works Department, to Plant Operator, Highways Section, Public Works Department, 3.11.97.

Michael Ian Wallace, from Filtration Plant Operator, Water Section, Public Works Department, to Mains & Services Layer, Water Section, Public Works Department, 3.11.97.

Miss Tanya Lee, from Clerk, Medical Department, to Receptionist/Clerk, Government House, 6.11.97.

Completion of Contract

Andrew Murray Gurr, Chief Executive, Secretariat, 30.11.97.

Re-Appointment

Andrew Murray Gurr, Chief Executive, Secretariat, 1.12.97.

Resignations

Mark David Porter, Police Constable, Royal Falkland Islands Police Force, 27.11.97.

Mrs. Celia Soledad Short, Clerk, Public Service, 28.11.97.

Miss Beverley Christina Lee, Sports Attendant, Leisure Centre, Education Department, 22.11.97.

No. 41

18th June 1997.

**REPORT OF THE AUDITOR TO THE TRUSTEES
OF THE FALKLAND ISLANDS GOVERNMENT
MEDIA TRUST (PENGUIN NEWS)**

I have audited the financial statements on pages 4 to 8 which have been prepared under the accounting policies set out on page 6.

Respective responsibilities of Trustees and the Principal Auditor

As described on page 2 the Trustees are responsible for the preparation of financial statements. It is my responsibility to form an independent opinion, based on my audit, on those statements and to report my opinion to you.

Basis of opinion

I conducted my audit in accordance with Auditing Standards. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the Trustees in the preparation of the financial statements, and of whether the accounting policies are appropriate to the Trust's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations which I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements.

Opinion

In my opinion the financial statements give a true and fair view of the state of affairs of the Trust as at 30 June and of its surplus for the year then ended and have been properly prepared in accordance with the Finance and Audit Ordinance 1988 and the Media Trust Ordinance 1989.

**P J Campbell
Principal Auditor
Falkland Islands Government**

Aberdeen

Dated 18th June 1997.

**MEDIA TRUST (PENGUIN NEWS)
PROFIT AND LOSS ACCOUNT
YEAR ENDED 30 JUNE 1996**

	<u>Notes</u>		<u>1996</u>		<u>1995</u>
		£	£	£	£
TURNOVER	2		51,904		47,643
Distribution costs		5,063		4,311	
Administrative expenses		<u>67,939</u>		<u>64,650</u>	
			<u>73,002</u>		<u>68,961</u>
			(21,098)		(21,318)
Other operating income	3		<u>23,000</u>		<u>27,000</u>
<u>RETAINED SURPLUS FOR THE YEAR</u>	8		<u>1,902</u>		<u>5,682</u>

All amounts relate to continuing operations.

The Trust has no recognised gains or losses other than the surplus for the year.

**MEDIA TRUST (PENGUIN NEWS)
BALANCE SHEET
AS AT 30 JUNE 1996**

	<u>Notes</u>		<u>1996</u>		<u>1995</u>
		£	£	£	£
FIXED ASSETS					
Tangible Assets	5		3,228		999
CURRENT ASSETS					
Debtors	6	3,091		3,561	
Cash at bank and in hand		<u>11,772</u>		<u>12,370</u>	
		14,863		15,931	
CREDITORS					
Amounts falling due within one year	7	<u>(5,130)</u>		<u>(5,871)</u>	
NET CURRENT ASSETS			<u>9,733</u>		<u>10,060</u>
NET ASSETS			<u>12,961</u>		<u>11,059</u>
CAPITAL					
Capital account	8		<u>12,961</u>		<u>11,059</u>
			<u>12,961</u>		<u>11,059</u>

Approved by the Trustees on 9 June 1997.

M. Rendell
S. Wallace

Trustees

NOTICES

No. 42

3rd November 1997

**TAXES ORDINANCE 1997
(Section 194(1))**

IN EXERCISE of my powers under Section 194(1) of the Taxes Ordinance 1997, I, **RICHARD PETER RALPH**, Companion of the Most Distinguished Order of St. Michael and St. George, Commander of the Royal Victorian Order, **HEREBY APPOINT** the firm of **CREASEYS**, Chartered Accountants carrying on business at 12 Lonsdale Gardens, Tunbridge Wells, Kent, England to be agent in the United Kingdom of the Commissioner of Taxation of the Falkland Islands in relation to the matters specified in the said Section 194(1) of the Taxes Ordinance 1997.

Dated this third day of November 1997.

R.P. Ralph,
Governor.

No. 43

4th November 1997

THE FALKLAND ISLANDS CONSTITUTION ORDER 1985**SCHEDULE 1 (SECTION 80(1))****APPOINTMENT OF ACTING JUDGE****WHEREAS** the office of Chief Justice is vacant

AND WHEREAS I am satisfied that **DAVID JOHN JEREMIAH** possesses such legal qualifications and experience as are appropriate for him to be so appointed as an Acting Judge of the Supreme Court

Now I **RICHARD PETER RALPH** Companion of the Most Distinguished Order of St. Michael and St. George, Commander of the Royal Victorian Order **GOVERNOR** of the Falkland Islands

IN EXERCISE of my powers under section 80(1) of Schedule 1 to the Falkland Islands Constitution Order 1985 **DO APPOINT** the said **DAVID JOHN JEREMIAH** to sit as an Acting Judge of the Supreme Court for the purpose of hearing and determining Supreme Court Case No. SC/CIV/4/97 (An Adoption)

AND I DECLARE that the powers contained in this appointment are granted in addition to the appointment of the said **DAVID JOHN JEREMIAH** dated 16th April 1996 and all such appointments of **DAVID JOHN JEREMIAH** as an Acting Judge of the Supreme Court made subsequent to that date

AND THIS appointment shall be effective until such time as the Governor of the Falkland Islands for the time being signifies to the contrary

Given under my hand and the Public Seal this 4th day of November 1997

R.P. Ralph,
Governor.

No. 44

11th November 1997

**NOTICE to Official Receiver and trustee of
application for discharge**

No. SC/CIV/9/93

**IN THE SUPREME COURT OF
THE FALKLAND ISLANDS****In Bankruptcy****Re: Vanda Joan Johnson****Ex parte the Official Receiver**

The Bankrupt having applied to the Court for her discharge, the Court has fixed 15 December at 10 am for hearing the application

Dated this 11th day of November 1997

To the Official Receiver, of The Treasury, Secretariat, Stanley and to
Keith Biles, of Standard Chartered Bank, Ross Road, Stanley
Trustee of the estate of the above-named Bankrupt

**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. J. M. COWELL T8252059**

to be a Temporary Customs Officer from 10th November 1997 until 10th March 1998.

R. J. King,
Collector of Customs

CORRIGENDUM

In Gazette Notice No. 38, JBG Marr Services should have read JBJ Marr Services.



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CVI

24th December 1997

No. 22

Appointments

Brett Gerald Phillips, Senior Solicitor, Justice Department, 22.11.97.

Miss Alison Inglis, Crown Counsel, Justice Department, 28.11.97.

Miss Sara Jayne Halford, Sports Attendant, Leisure Centre, 1.12.97.

Mrs. Josephine McInnis, Clerk, Public Service, 1.12.97.

Miss Alison Jane Claire Blundell, Dental Officer, Medical Department, 9.12.97.

Miss Marie Summers, Junior Agricultural Assistant, Department of Agriculture, 9.12.97.

Cameron Marc Bell, Veterinary Officer, Department of Agriculture, 13.12.97.

Miss Beverley Lee, Auxiliary Nurse, Medical Department, 15.12.97.

Melvyn George Johnson, Plant Operator, Quarry Section, Public Works Department, 18.12.97.

Promotion

Miss Gail Shalima Spooner, from Clerk, Public Service, to Travel Co-ordinator, Falkland Islands Government Office, London 8.12.97.

Transfers

Mrs. Barbara June Besley-Clark, from Clerk, Philatelic Bureau, to Clerk, Medical Department, 27.11.97.

Mrs. Trudi Dale Lee, from Senior Clerk, Royal Falkland Islands Police, to Clerk, Public Service, 1.12.97.

Mrs. Janet Jaffray, from Caretaker, Education Department, to Clerk, Public Service, 9.12.97.

Completion of Contracts

Nigel Lionel MacKenzie Wright, Teacher, Education Department, 5.12.97.

Jaime Reinaldo Correa Vera, Teacher, Falkland Islands Community School, Education Department, 6.12.97.

Ms. Sandra Leigh Picone, Teacher, Infant/Junior School, Education Department, 10.12.97.

Resignation

Miss Jennifer Marie Paice, Clerk, Public Service, 21.11.97.

Esko Juhani Keskitalo, Staff Nurse, Medical Department, 6.12.97.

Jason Alan Plumb, Plumber, Water Section, Public Works Department, 10.12.97.

Robert Dean Coombe, Agricultural Assistant, Department of Agriculture, 24.12.97.

NOTICES

No. 45

27th November 1997

**THE FALKLAND ISLANDS
WITTE BOYD (FALKLANDS) LIMITED**

TAKE NOTICE that in accordance with the provisions of section 353 of the Companies Act 1948 in its application to the Falklands Islands and the requirements of the said section having been complied with the above-named Company will be removed from the Register of Companies upon the expiry of three months from the publication of this notice in the Gazette unless good cause do be shown as to why such action should not be taken.

Dated this 27th day of November 1997.

R.P. Ralph,
Governor.

No. 46

10th December 1997

**THE FALKLAND ISLANDS
CLANWOOD (FALKLANDS) LIMITED - No. 8030**

TAKE NOTICE that in accordance with the provisions of section 353 of the Companies Act 1948 in its application to the Falklands Islands and the requirements of the said section having been complied with the above-named Company will be removed from the Register of Companies upon the expiry of three months from the publication of this notice in the Gazette unless good cause do be shown as to why such action should not be taken.

Dated this 10th day of December 1997.

R.P. Ralph,
Governor.

No. 47

19th December 1997

**DOUBLE TAXATION RELIEF ARRANGEMENT
BETWEEN THE UNITED KINGDOM AND THE
FALKLAND ISLANDS****Double Taxation Relief Arrangement
(United Kingdom) Order 1996**

Notice is given that on 17 December 1997 the United Kingdom Government completed the procedures required by its law for the bringing into force of the Arrangement (which is printed as the Schedule to the above Order in Supplement No. 29 of the 1996 Gazette dated 24 December 1996). In accordance with paragraph 29(1) of the Arrangement, it entered into force on 17 December 1997, as the Falkland Islands Government had already notified the United Kingdom of the completion of the procedures required by Falkland Islands law for the bringing into force of the Arrangement.

Dated this 19th day of December 1997.

D.G. Lang,
Attorney General.

No. 48

22nd December 1997

ABATTOIRS ORDINANCE 1997**SECTION 1****COMMENCEMENT NOTICE**

IN EXERCISE of my powers under section 1 of the Abattoirs Ordinance 1997, I hereby notify that the Ordinance shall come into force on 1st January 1998.

Dated this 22nd day of December 1997.

A.M. Gurr,
Acting Governor.

No. 49

22nd December 1997

CRIMINAL LAW (AMENDMENT) ORDINANCE 1997**SECTION 1****COMMENCEMENT NOTICE**

IN EXERCISE of my powers under section 1 of the Criminal Law (Amendment) Ordinance 1997, I hereby notify that the Ordinance shall come into force on 1st January 1998.

Dated this 22nd day of December 1997.

A.M. Gurr,
Acting Governor.

No. 50

22nd December 1997

EVIDENCE (AMENDMENT) ORDINANCE 1997**SECTION 1****COMMENCEMENT NOTICE**

IN EXERCISE of my powers under section 1 of the Evidence (Amendment) Ordinance 1997, I hereby notify that the Ordinance shall come into force on 1st January 1998.

Dated this 22nd day of December 1997.

A.M. Gurr,
Acting Governor.

No. 51

22nd December 1997

**MISUSE OF DRUGS (AMENDMENT) ORDINANCE
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IN EXERCISE of my powers under section 1 of the Misuse of Drugs (Amendment) Ordinance 1997, I hereby notify that the Ordinance shall come into force on 1st January 1998.

Dated this 22nd day of December 1997.

A.M. Gurr,
Acting Governor.



**THE
FALKLAND ISLANDS GAZETTE
Supplement**

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The Taxes Ordinance 1997.

ELIZABETH II



Colony of the Falkland Islands

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

TAXES ORDINANCE 1997

(No: 14 of 1997)

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Colony of the Falkland Islands

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

TAXES ORDINANCE 1997

(No. 14 of 1997)

An Ordinance

(assented to: 4th July 1997)
(commencement: in accordance with section 1(2))
(published: 18th July 1997)

To consolidate the enactments relating to income tax and corporation tax with minor amendments to improve the law

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.

and controlled waters.

(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 be deducted from that earned income ("earned income relief") and shall be deducted after any deduction which may be made under section 58 or 97 has been made but before any deduction is made under subsection (3) below.

(2) Any deduction allowed under subsection (3) 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 the 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.

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.

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) “employer” includes any employer whether or not resident or ordinarily resident in the Falkland Islands or carrying on a business through a branch or agency in the Falkland Islands.

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 of 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

business.

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.

Change in ownership of company: disallowance of trading losses.

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.

(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 an assessment of the claimant company to

- 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

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
- (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 disappplies 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) The Commissioner shall not be precluded from hearing an application or further application under subsection (3) or (5) above by an

appellant because he has heard and determined an earlier application by that appellant.

(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.

bsidiaries.

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.

*ernative meaning
"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.

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.

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.

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

disregarded accordingly).

(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.

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

PART IV INDENTURE

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 ORDINANCE 1997

TABLE OF DERIVATIONS

In this Table 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

Taxes Ordinance

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TABLE OF DERIVATIONS

Section of 1997 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

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Section of 1997 Ordinance	Derivation
26	1994 s.24
27	1994 s.25; 1997 s.5
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

Taxes Ordinance

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TABLE OF DERIVATIONS

Section of 1997 Ordinance	Derivation
52	1994 s.47
53	1994 s.48
54	1994 s.49
55	1994 s.50
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)-(4)	1994 s.57(1)-(4)
(5)	1996 Sch.1 §14
65	1994 s.58
66	1994 s.59; 1996 Sch.2 §5
67	1994 s.60
68(1)	1994 s.61(1)
(2)	1994 s.61(2); 1996(P) s.2(2)
(3),(4)	1994 s.61(3),(4)
(5)	1994 s.61(5); 1996(P) s.2(3)
(6),(7)	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

Taxes Ordinance

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Section of 1997 Ordinance	Derivation
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)	1994 s.79
(2)	1996(P) s.3
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.82(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

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Section of 1997 Ordinance	Derivation
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
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

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TABLE OF DERIVATIONS

Section of 1997 Ordinance	Derivation
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
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

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Section of 1997 Ordinance	Derivation
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
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

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Section of 1997 Ordinance	Derivation
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.136A
177	1997 s.136B
178	1997 s.136C
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

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Section of 1997 Ordinance	Derivation
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
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

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Section of 1997 Ordinance	Derivation
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

Passed by the Legislature of the Falkland Islands this 30th day of May 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

1st July 1997

No. 15

The following are published in this Supplement -

- The Appropriation Ordinance 1997;**
- The Finance Ordinance 1997;**
- The Supplementary Appropriation (1996-1997) (No. 2) Ordinance 1997;**
- The Abattoirs Ordinance 1997;**
- The Misuse of Drugs (Amendment) Ordinance 1997;**
- The Currency (Amendment) Ordinance 1997;**
- The Evidence (Amendment) Ordinance 1997;**
- The Animals (Amendment) Ordinance 1997;**
- The Education (Academic Year) Ordinance 1997.**

ELIZABETH II



Colony of the Falkland Islands

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

Appropriation Ordinance 1997

(No: 4 of 1997)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. Appropriation of £66,783,540 for the service of the year 1997/98

Schedule

ELIZABETH II



Colony of the Falkland Islands

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

APPROPRIATION ORDINANCE 1997

(No: 4 of 1997)

AN ORDINANCE

<i>(assented to:</i>	<i>24 June 1997)</i>
<i>(commencement:</i>	<i>on publication)</i>
<i>(published:</i>	<i>1 July 1997)</i>

To provide for the service of the Financial Year commencing on 1 July 1997 and ending on 30 June 1998.

ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Appropriation Ordinance 1997.

Appropriation of £66,783,540 for the service of the year 1997/98

2. The Financial Secretary may cause to be issued out of the Consolidated Fund and applied to the service of the year commencing on 1 July 1997 and ending on 30 June 1998 ("the financial year"), sums not exceeding in aggregate the sum of SIXTY SIX MILLION SEVEN HUNDRED AND EIGHTY THREE THOUSAND FIVE HUNDRED AND FORTY POUNDS (£66,783,540) which sum is granted and shall be appropriated for the purposes and to defray the charges of the several services expressed and particularly mentioned in the Schedule hereto and which will come in course of payment during the financial year.

SCHEDULE

NUMBER	HEAD OF SERVICE	£
PART I OPERATING BUDGET		
100	Aviation	2,036,310
150	Posts and Telecommunications	349,910
200	Health and Social Services	2,983,720
250	Education and Training	2,987,830
300	Customs and Immigration	193,870
320	Fisheries	5,538,960
350	Public Works Department	6,856,240
390	Fox Bay Village	90,370
400	Agriculture	1,111,790
450	Justice	707,380
500	Falkland Islands Defence Force	400,000
551	Police & Prisons	500,000
552	Fire & Rescue Service	250,000
600	Central Administration	4,828,060
620	Oil Department	256,010
650	Pensions and Gratuities	338,830
750	The Governor	160,920
800	Legislature	242,340
850	Falkland Islands Government Office - London	361,050
TOTAL OPERATING BUDGET		30,193,590
PART II CAPITAL BUDGET		
950	Expenditure	36,589,950
TOTAL EXPENDITURE		66,783,540

Passed by the Legislature of the Falkland Islands this 30th day of May 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.M.G., C.V.O.,
Governor.

Finance Ordinance 1997

(No: 5 of 1997)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. Amendment of various laws

Schedule

ELIZABETH II



Colony of the Falkland Islands

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

FINANCE ORDINANCE 1997

(No: 5 of 1997)

AN ORDINANCE

<i>(assented to:</i>	<i>24 June 1997)</i>
<i>(commencement:</i>	<i>on publication)</i>
<i>(published:</i>	<i>1 July 1997)</i>

To amend various laws so as to increase benefits, allowances and contributions payable under them.

ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Finance Ordinance 1997.

Amendment of various laws

2. The Schedule to this Ordinance shall have effect to amend the laws specified in that Schedule, with effect from the date so specified in relation thereto, in the manner provided by that Schedule.

THE SCHEDULE

Increase in Family Allowance benefits

1. Section 3 of the Family Allowances Ordinance 1960 is amended with effect from 1st January 1998—

(a) in subsection (2), by replacing “£46” with “£49”; and

(b) in subsection (3), by replacing “£38” with “£40”.

Increase in Retirement Pensions

2. Regulation 3 of the Retirement Pensions (Prescribed Rates) Regulations 1996 is amended with effect from 1st July 1997—

(a) in paragraph (a), by replacing “£66” with “£80”; and

(b) in paragraph (b), by replacing “£37” with “£45”.

Increase in Retirement Pension contributions

3. Regulation 5 of the Retirement Pensions (Prescribed Rates) Regulations 1996 is amended with effect from 1st January 1998—

(a) in paragraph 1(a), by replacing “£3.50” with “£4.00”;

(b) in paragraph 1(b), by replacing “£7.00” with “£8.00”;

(c) in paragraph (2), by replacing “£3.50” with “£4.00”;

(d) in paragraph (3)(a), by replacing “£7.00” with “£8.00”;

(e) in paragraph (3)(b), by replacing “£14.00” with “£17.00”; and

(f) in paragraph (4), by replacing “£7.00” with “£8.00”.

Increase in amount of weekly earnings under which a person is not obliged to pay a Retirement Pension contribution

4. Regulation 6 of the Retirement Pensions (Prescribed Rates) Regulations 1996 is amended with effect from 1st January 1998 by replacing “£35” with “£40”.

Passed by the Legislature of the Falkland Islands this 30th day of May 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.M.G., C.V.O.,
Governor.

Supplementary Appropriation (1996-1997)(No 2) Ordinance 1997

(No. 6 of 1997)

ARRANGEMENTS OF PROVISIONS

Section

1. Short title
2. Appropriation of further sum
3. Replenishment of Contingencies Fund

Schedule

ELIZABETH II



Colony of the Falkland Islands

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

SUPPLEMENTARY APPROPRIATION (1996-1997)(NO 2) ORDINANCE 1997

(No. 6 of 1997)

An Ordinance

<i>(assented to:</i>	<i>24 June 1997)</i>
<i>(commencement:</i>	<i>on publication)</i>
<i>(published:</i>	<i>1 July 1997)</i>

To appropriate and authorise the withdrawal from the Consolidated Fund of the additional sum of £141,790 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 2) Ordinance 1997.

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 £141,790 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 the Schedule, prior to the commencement of this Ordinance, have been withdrawn from the Contingencies Fund by the authority of Contingencies Fund Warrant Number 9 of 1996/97, the authority of which lapses on the commencement of this Ordinance.

FALKLAND ISLANDS

Report No 3 of 1996/97 to Executive Council on advances authorised by the Financial Secretary to be issued out of the Contingencies Fund for application to the service of the 1996/97 Financial Year to enable the need for unforeseen and urgent expenditure to be met pursuant to the provisions of Section 26 of the Finance and Audit Ordinance 1988

Account Code	Advance Amount £	Warrant No	Approvals	Reasons
0201 MEDICAL				
0310 Salaries Established Staff	47,220	9	SFC 25.04.97	Additional funding required to enable the implementation of the Hay salary proposals.
0320 Wages Unestablished Staff	10,440	9	SFC 25.04.97	
0202 DENTAL				
0310 Salaries Established Staff	5,170	9	SFC 25.04.97	Additional funding required to enable the implementation of the Hay salary proposals.
0203 SOCIAL WELFARE				
0310 Salaries Established Staff	1,260	9	SFC 25.04.97	Additional funding required to enable the implementation of the Hay salary proposals.
0320 Wages Unestablished Staff	900	9	SFC 25.04.97	
0300 CUSTOMS & IMMIGRATION				
0310 Salaries Established Staff	4,800	9	SFC 25.04.97	Additional funding required to enable the implementation of the Hay salary proposals.
0452 COURT & REGISTRY				
0600 Tele Telex & Fax	1,000	9	SFC 25.04.97	As a result of extra visits of Acting Judge and liaison with Chief Justice in relation to staff matters.
0602 TREASURY				
1470 Income Tax Refunds	50,000	9	SFC 25.04.97	Increase in processing of 1997 assessments is anticipated during remainder of financial year.
0606 BROADCASTING				
0320 Wages Unestablished Staff	5,000	9	SFC 25.04.97	Due to the unforeseen requirement for a further Assistant Producer.
0850 FALKLAND ISLANDS GOVT OFFICE				
0604 Incidental Expenses	1,000	9	SFC 25.04.97	Contribution towards the costs of Memorial Service for Capt Nick Barker.
0951 CAPITAL - GENERAL				
3007 Waste Management & Disposal	15,000	9	SFC 25.04.97	20% of contract price and flights costs in respect of Waste Management and Disposal Consultancy - Exco Paper 121/97 refers.
TOTAL	<u>141,790</u>		CONTINGENCIES WARRANT NO 9 - APPROVED BY SFC ON 25 APRIL 1997	

SCHEDULE

HEAD OF SERVICE

PART I OPERATING EXPENDITURE

£

200	Health & Social Services	64,990
300	Customs & Immigration	4,800
450	Justice	1,000
600	Central Administration	55,000
850	Falkland Islands Government Office - London	1,000
TOTAL OPERATING BUDGET		<u>126,790</u>

PART II CAPITAL BUDGET

950	Expenditure	<u>15,000</u>
TOTAL SUPPLEMENTARY EXPENDITURE		<u>141,790</u>

Passed by the Legislature of the Falkland Islands this 30th day of May 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.M.G., C.V.O.,
Governor.

Abattoirs Ordinance 1997

(No: 7 of 1997)

ARRANGEMENT OF PROVISIONS

Section

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

ELIZABETH II



Colony of the Falkland Islands

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

ABATTOIRS ORDINANCE 1997

(No. 7 of 1997)

AN ORDINANCE

(assented to: 24 June 1997)
(commencement: in accordance with section 1)
(published: 1 July 1997)

To make provision in relation to the operation of designated abattoirs

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.

Passed by the Legislature of the Falkland Islands this 30th day of May 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.M.G., C.V.O.,
Governor.

Misuse of Drugs (Amendment) Ordinance 1997

(No: 8 of 1997)

ARRANGEMENT OF PROVISIONS

Section

1. Short title and commencement
2. Amendment of the principal Ordinance

ELIZABETH II



Colony of the Falkland Islands

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

MISUSE OF DRUGS (AMENDMENT) ORDINANCE 1997

(No: 8 of 1997)

AN ORDINANCE

(assented to: 24 June 1997)
(commencement: in accordance with section 1)
(published: 1 July 1997)

To amend the Misuse of Drugs Ordinance 1987

ENACTED by the Legislature of the Falkland Islands as follows—

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
 Bolandiol
 Bolasterone
 Bolazine
 Boldenone
 Bolenol
 Bolmantelate
 Calusterone
 4-Chloromethandienone
 Clostebol
 Drostanolone

Enestebol
Epiostanol
Ethylloestrenol
Fluoxymesterone
Formebolone
Furazabol
Mebolazine
Mepitiostane
Mesabolone
Mestanolone
Methandienone
Methandriol
Methenolene
Methyltestosterone
Metribolone
Mibolerone
Nandrolone
Norboletone
Norcostebol
Norethandrolone
Ovandroton
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-hydroxyandrostan-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"

Passed by the Legislature of the Falkland Islands this 30th day of May 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.M.G., C.V.O.,
Governor.

Currency (Amendment) Ordinance 1997

(No: 9 of 1997)

ARRANGEMENT OF PROVISIONS

Section

1. Short title.
2. Amendment of section 9(1) of the Currency Ordinance 1987

ELIZABETH II



Colony of the Falkland Islands

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

CURRENCY (AMENDMENT) ORDINANCE 1997

(No. 9 of 1997)

AN ORDINANCE

<i>(assented to:</i>	<i>24 June 1997)</i>
<i>(commencement:</i>	<i>on publication)</i>
<i>(published:</i>	<i>1 July 1997)</i>

To amend the Currency Ordinance 1987

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.

Passed by the Legislature of the Falkland Islands this 30th day of May 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.

Evidence (Amendment) Ordinance 1997

(No: 10 of 1997)

ARRANGEMENT OF PROVISIONS**Section**

1. Short title and commencement
2. Amendment of the Schedule to the Evidence Ordinance 1994
3. Consequential amendments and repeal

Schedule

ELIZABETH II



Colony of the Falkland Islands

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

EVIDENCE (AMENDMENT) ORDINANCE 1997

(No: 10 of 1997)

AN ORDINANCE

(assented to: 24 June 1997)
(commencement: in accordance with section 1)
(published: 1 July 1997)

To amend the Evidence Ordinance 1994

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.

Passed by the Legislature of the Falkland Islands this 30th day of May 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.

Animals (Amendment) Ordinance 1997

(No: 12 of 1997)

ARRANGEMENT OF PROVISIONS

Section

1. Short title and commencement
2. Interpretation
3. Identification of cats and dogs
4. Seizure and destruction of stray cats and dogs
5. Inspection of premises etc
6. Supplementary to sections 4 and 5: powers to make Orders
7. Amendment of Crimes Ordinance 1989 in relation to application of Protection of Animals Act 1911

ELIZABETH II



Colony of the Falkland Islands

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

ANIMALS (AMENDMENT) ORDINANCE 1997

(No: 12 of 1997)

AN ORDINANCE

(assented to: 24 June 1997)
(commencement: in accordance with section 1(1))
(published: 1 July 1997)

To make provision for the identification of cats and dogs by implanted identification devices, the seizure and humane destruction of stray dogs and cats; the issue of warrants by the courts authorising a Government Veterinary Officer or other public officer in the Department of Agriculture power to enter upon premises where there is reasonable cause to believe that an offence under section 1 of the Protection of Animals Act 1911 in its application to the Falkland Islands may have been or is being committed and to seize, treat, and where necessary humanely destroy, any animal found upon such a search; to amend the Crimes Ordinance 1989 in relation to the application to the Falkland Islands of the Protection of Animals Act 1911 so as to confer upon every veterinary surgeon power humanely to destroy any animal he finds or which is brought to him which, after examination, is in his opinion beyond practicable treatment and the immediate humane destruction of which is in his opinion necessary to prevent further suffering; and purposes connected with the foregoing purposes.

ENACTED by the Legislature of the Falkland Islands as follows—

Short title and commencement

1.—(1) This Ordinance may be cited as the Animals (Amendment) Ordinance 1997.

(2) This Ordinance, except section 4, comes into force on its publication in the *Gazette* and section 4 comes into force three months after such publication.

Interpretation

2.— (1) In this Ordinance—

“approved identification device” means—

(a) a microchip, enabling the identification of the animal in which it is implanted upon the animal being electronically scanned by a suitable scanning device,

(b) any other device, approved by the Director of Agriculture, implanted in an animal, whereby the animal may readily be identified by the use of suitable equipment;

“Director” means the Director of Agriculture;

“feral” means existing in a wild state;

“Government Veterinary Officer” means any person employed as a veterinary surgeon by the Crown;

“humanely destroy”, in relation to an animal, means to put to death by means of the administration of a lethal injection in such a way as not to be likely to cause unnecessary pain or suffering to the animal or otherwise to put to death in a way not likely to cause unnecessary pain or suffering to the animal;

“keeper”, in relation to an animal, means a person, not being the owner of that animal, by whom that animal is for the time being ordinarily kept;

“owner”, in relation to an animal, means the person to whom the animal lawfully belongs and includes an agent of the owner;

(2) For the purposes of this Ordinance, any pain or suffering is unnecessary if, in all the circumstances of the case, it is reasonably avoidable or preventable.

Identification of cats and dogs

3.—(1) The Director of Agriculture may, at the request of the owner or keeper of a cat or dog, implant in it an approved identification device on payment of such charge as may have been prescribed but if none has been prescribed, free of charge.

(2) The Director of Agriculture shall maintain a register in which shall be entered particulars of every cat and dog in which an approved identification device has been implanted by the Director, whether before or after the commencement of this section, and particulars of the owner and keeper (if any) of the animal and of any changes in the owner or keeper of the animal notified to the Director. The register may, if the Director so determines, be kept in electronic form.

(3) The Governor may by regulations under this subsection prescribe charges in relation to the implanting of approved identification devices.

(4) In this section, "Director of Agriculture" and "Director" includes any public officer in respect of whom the Director of Agriculture is the head of department who has been authorised or required by the Director of Agriculture to perform the function in question.

Seizure and destruction of stray cats and dogs

4.—(1) The Director, any Government Veterinary Officer and any public officer authorised in writing by the Director may seize any cat or dog—

(a) which is found by him or another person wandering abroad not apparently under the control of any person; and

(b) which he reasonably believes to have become a stray by reason of having been abandoned or neglected by its owner or keeper or to be feral ("a stray"),

and take it to a place authorised by the Director of Agriculture for its detention.

(2) A stray may be detained in an authorised place until—

(a) it is claimed by a person who shows himself to be the animal's owner or keeper;

(b) it is humanely destroyed in accordance with subsection (6) or (7).

(3) As soon as possible after it has been seized, a stray shall be examined by the person seizing it to ascertain whether its owner or keeper can be identified, whether by means of an approved identification device, collar or tag it bears or otherwise.

(4) If as a result of the examination of a stray in accordance with subsection (3) the owner or keeper of the stray is identified, the person examining the stray shall notify, or ensure that some other public officer notifies, the owner or keeper of the detention of the stray by the quickest means which is both practicable and reasonable at any place in the Falkland Islands he is known to be likely to be found and otherwise at his last known address in the Falkland Islands.

(5) Where the stray is a dog the owner or keeper of which is not identified on examination under subsection (3), the person examining the dog shall cause, or ensure that some other public officer causes, notification of the seizure of the dog to be made by broadcast by the Falkland Islands Broadcasting Station during a time when public announcements are usually broadcast by the Falkland Islands Broadcasting Station. A notification under this subsection shall include a description of the dog, a statement of the place where and time at which it was seized and a statement as to where and how, and the time within which, the dog may be claimed.

(6) A cat—

(a) the owner or keeper of which is not identified on examination of the cat in accordance with subsection (3); or

(b) which is not claimed by its owner or keeper or his agent within seventy-two hours of notification under subsection (4),

may be humanely destroyed by a Government Veterinary Officer or by any other person authorised by him.

(7) A dog may be humanely destroyed by a Government Veterinary Officer or by any person authorised by him if its owner or keeper does not claim it within seventy-two hours of the notification under subsection (4) or (5), whichever in the circumstances of the case is appropriate.

(8) A person claiming a cat or dog which has been seized as a stray may be required by the Director of Agriculture or a public officer in respect of whom he is the head of department to pay to the Crown such sum as represents the reasonable cost of seizure of the animal and of detaining it and the sum so required shall be recoverable by the Crown as a civil debt due to the Crown.

(9) Notwithstanding any foregoing provision of this section, a stray may be humanely destroyed at once by or on the authority of a Government Veterinary Officer if he reasonably believes that it is, or may be, suffering from rabies or any other disease communicable to, and which if communicated to may be a fatal disease in, human beings and which has been specified for the purposes of this subsection by an Order under section 6.

Inspection of premises etc

5.—(1) A Government Veterinary Officer may at any reasonable time on forty-eight hours notice to the occupier of any premises in which he reasonably believes that any cat or dog is in need of treatment or is being caused unnecessary suffering—

(a) enter and inspect those premises;

(b) cause any animal kept on those premises to be produced to him;

(c) on such premises treat any such animal if he considers it to be in need of treatment;

(d) take away any such animal if he considers that, in the circumstances of the case it ought sensibly to be treated elsewhere;

(e) without prejudice to section 11A of the Prevention of Cruelty to Animals Act 1911 in its application to the Falkland Islands, humanely destroy any such animal on those premises which he believes has any disease or affliction which he reasonably believes—

(i) cannot practicably be treated; and

(ii) is causing the animal substantial pain or suffering.

(2) A justice of the peace, if satisfied by evidence on oath that a Government Veterinary Officer has unreasonably been refused entry to premises to which subsection (1) relates, may grant to the Government Veterinary Officer a warrant authorising him to enter those premises at any reasonable hour, accompanied by such person or persons as may be authorised by the warrant, and there do any thing which subsection (1) authorises him to do. Such a warrant may authorise the Government Veterinary Officer and any persons authorised by the warrant to accompany him to use such force as is reasonably necessary to enable him and those persons to enter those premises or to enable the Government Veterinary Officer to do any such thing.

(3) A person who wilfully hinders or obstructs the lawful execution of a warrant issued under subsection (2) by the Government Veterinary Officer or any person authorised by that warrant to accompany him, commits an offence for which he may be arrested without warrant and in respect of which upon conviction he is liable to a fine not exceeding the maximum of level 5 on the standard scale or to imprisonment for six months.

Supplementary to sections 4 and 5: powers to make Orders

6. The Governor may by Order under this subsection extend the application of section 4(9) so that the power humanely to destroy a stray at once in circumstances specified in that subsection in relation to rabies extends also to any disease specified in the Order; but an Order under this subsection may only specify a disease which the Governor believes may be fatal to a human being if communicated to him.

Amendment of Crimes Ordinance 1989 in relation to application of Protection of Animals Act 1911

7. Schedule 1 to the Crimes Ordinance 1989 is amended in the item appearing under the heading "*Animals*" by inserting under the subheading "**Modifications**" the following paragraphs immediately after paragraph 1—

"1A. Section 11(4) is omitted (and so that "animal" in section 11(1) to (3) has the meaning given by section 15 of the Act).

"1B. The following section is inserted immediately after section 11—

"Duty to destroy animals suffering and beyond successful veterinary treatment

11A. —(1) Without prejudice to section 11, if any animal is examined by a veterinary surgeon and found in his opinion to be mortally injured, or so severely injured, or so diseased, or in such physical condition, so as to be beyond successful veterinary treatment and so that it is in the view of the veterinary surgeon cruel to keep it alive, the veterinary

surgeon shall forthwith humanely destroy the animal or procure that some competent person, authorised by the veterinary surgeon for the purpose, does so.

(2) A person who wilfully hinders or obstructs a veterinary surgeon or another person authorised by a veterinary surgeon pursuant to subsection (1) in the humane destruction of an animal in accordance with the requirements of that subsection, commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 4 on the standard scale.

(3) In this section "humanely destroy" has the same meaning as in section 2(1) of the Animals (Amendment) Ordinance 1997."

Passed by the Legislature of the Falkland Islands this 30th day of May 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.

Education (Academic Year) Ordinance 1997

(No: 13 of 1997)

ARRANGEMENT OF PROVISIONS

Section

1. Short title and commencement
2. Academic year
3. Amendment of section 17(1) and (2) of the Education Ordinance 1989
4. Amendment of section 57 of the Education Ordinance 1989
5. Transitional provisions

ELIZABETH II



Colony of the Falkland Islands

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

EDUCATION (ACADEMIC YEAR) ORDINANCE 1997

(No: 13 of 1997)

AN ORDINANCE

<i>(assented to:</i>	<i>24 June 1997)</i>
<i>(commencement:</i>	<i>in accordance with section 1)</i>
<i>(published:</i>	<i>1 July 1997)</i>

To provide for the academic year to be coincident with the calendar year instead of beginning on 1st February each year; to make transitional provision in relation to the compulsory education of children who attained compulsory education age before 1st January 1998; to provide that there shall be half-term holidays in every term; to amend the Education Ordinance 1989 in accordance with the foregoing purposes, and to make consequential provision in relation to the ending of the academic year which began on 1st February 1997.

ENACTED by the Legislature of the Falkland Islands as follows—

Short title and commencement

1. This Ordinance may be cited as the Education (School Year) Ordinance 1997 and except as to section 5(5), which shall come into force on the publication of this Ordinance in the *Gazette*, comes into force on 1st January 1998.

Academic year

2. The academic year is coincident with the calendar year and the definition of "academic year" in section 2 of the Education Ordinance 1989 is replaced by the following definition—

"the academic year is coincident with the calendar year;"

Amendment of section 17(1) and (2) of the Education Ordinance 1989

3. Section 17 of the Education Ordinance 1989 is amended—

- (a) by inserting at the beginning of each of subsections (1) and (2) the words "Subject to section 5 of the Education (Academic Year) Ordinance 1997,"; and
- (b) by deleting all words appearing in subsection (2) after the words "sixteen years".

Amendment of section 57 of the Education Ordinance 1989

4. Section 57 of the Education Ordinance 1989 is amended—

- (a) by repealing subsection (1); and
- (b) by replacing subsections (2) to (6) with the following subsections—

"(2) Each academic year shall be divided into three terms, the date of the beginning and ending of which shall be appointed by notice published in the *Gazette*. Each of those terms shall be divided into two portions by a half term holiday (during which pupils shall not be obliged to attend school) beginning and ending on such dates as shall be so appointed. Each term shall begin on a Tuesday, the first and second terms of the academic year shall each end on a Friday and the third term of the academic year shall end on such date before 8th December in that year as shall be appointed by the notice. The effect of any notice published in accordance with this subsection in respect of any academic year shall be that there shall be not less than 190 days in that academic year on which pupils of compulsory education age are required to attend school.

(3) In respect of each of the first and second terms of an academic year, the half-term holiday shall include six days which are not a Saturday or a Sunday and in the third term of an academic year the half-term holiday shall include three days which are not a Saturday or a Sunday.

(4) There shall be a vacation of not less than fourteen days in length between the end of the first term of an academic year and the beginning of the second term, a vacation of not less than twenty-one days in length between the end of the second term and the beginning of the third term and a vacation of not less than thirty-eight days in length between the end of the last term of the academic year and the beginning of the first term of the next following academic year. Public holidays falling within a vacation shall be counted as forming part of that vacation.";

(c) in subsection (7), by replacing all words appearing in that subsection after the words "academic year" with the words "by a notice published in the *Gazette*".

Transitional provisions

5. (1) Section 17(1) and (2) of the Education Ordinance 1989 ("the 1989 Ordinance") shall not apply to children who became of compulsory education age before 1st January 1998 under those provisions in the form they were before that date and who had not, before that date, ceased to be of compulsory education age under those provisions ("transitional pupils"). The following provisions of this section shall instead apply to transitional pupils.

(2) Subject to subsection (3), a transitional pupil shall for the purposes of Part III of the 1989 Ordinance be of compulsory school age until he completes the eleventh year of compulsory education or he attains the age of sixteen years, whichever is the later, or until such date (being earlier than the later of the foregoing but not earlier than the date on which the transitional pupil is due to complete all external examinations for which he has been entered in the third term in his eleventh academic year) as the Director of Education may direct in writing in respect of him.

(3) A transitional pupil who arrived in the Falkland Islands after attaining five years of age shall, for the purposes of subsection (2) of this section, be deemed to complete the eleventh year of compulsory education on the same date as he would have completed it if he had attended a Government school in the Falkland Islands—

(a) from the beginning of the term in which he attained the age of five years; or

(b) if he attained the age of five years during the interval between one term and the next, from the beginning of the term preceding his attaining the age of five years.

(4) For the purposes of subsections (2) and (3) of this section, a transitional pupil who commenced compulsory education in the Falkland Islands after the first day of the first term in any year shall be taken to have completed a year of compulsory education on the last day of the last term in that year.

(5) The third term of the academic year which commenced on 1st February 1997 shall end on 4th December 1997.

Passed by the Legislature of the Falkland Islands this 30th day of May 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

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No. 16

The following is published in this Supplement -

The Criminal Law (Amendment) Ordinance 1997.

ELIZABETH II



Colony of the Falkland Islands

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

Criminal Law (Amendment) Ordinance 1997

(No: 11 of 1997)

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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.
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ELIZABETH II



Colony of the Falkland Islands

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

CRIMINAL LAW (AMENDMENT) ORDINANCE 1997

(No: 11 of 1997)

AN ORDINANCE

(assented to: 24 June 1997)
(commencement: in accordance with section 1)
(published: 1 July 1997)

To amend the criminal law of 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 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 mention 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 ate 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 524 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.

Passed by the Legislature of the Falkland Islands this 30th day of May 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.

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THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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The following are published in this Supplement -

The Court of Appeal Rules 1997, (S.R. & O. No. 11 of 1997);

The Antarctic Act 1994 (Commencement) Order 1997, (S.R. & O. No. 12 of 1997);

The Iraq and Kuwait (United Nations Sanctions) (Dependent Territories) (Amendment) Order 1997.

SUBSIDIARY LEGISLATION

FALKLAND ISLANDS

Falkland Islands Constitution Order 1985
Schedule 1, section 84(1)

Court of Appeal Rules 1997

(S.R.&O. No. 11 of 1997)

Rules of Court

made by the President of the Falkland Islands Court of Appeal under the powers conferred by section 84(1) of Schedule 1 to the Falkland Islands Constitution Order 1985.

PART 1. GENERAL

Introductory

Short title

1. These Rules may be cited as the Falkland Islands Court of Appeal Rules 1997.

Application of Rules

2. These Rules shall regulate the practice and procedure of the Court in connection with all appeals and intended appeals from decisions of the Supreme Court of the Falkland Islands and the practice and procedure of that court in connection with appeals and intended appeals to the Court.

Interpretation

3. (1) In these Rules, unless the context otherwise requires,—

“advocate” means a person who, under rule 15, has the right of audience before the Court;

“the Court” means the Court of Appeal for the Falkland Islands, constituted by section 78 of Schedule 1 to the Falkland Islands Constitution Order 1985;

“Judge,” in relation to the Court, means the President or a Justice of the Court of Appeal, in relation to the Supreme Court means the Chief Justice of the Falkland Islands or, as the case may be, an acting judge appointed under section 80(1) of Schedule 1 to the Falkland Islands Constitution Order 1985;

“the Registrar” means the Registrar of the Court;

“the Supreme Court”, means the Supreme Court for the Falkland Islands constituted by section 77(2) of Schedule 1 to the Falkland Islands Constitution Order 1985.

(2) In these Rules, any reference to “the Registrar of the Supreme Court” is a reference to the Registrar of the Supreme Court of the Falkland Islands.

Computation of time

4. Any period of time fixed by these Rules or by any decision of the Court for doing any act shall be reckoned in accordance with the following provisions—

(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or that act or thing is done;

(b) if the last day of the period is a Saturday or Sunday, or a public holiday in the place where the act is to be done (which days are in this rule referred to as excluded days) the period shall include the next following day, not being an excluded day;

(c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day.

Administration

The Registrar

5. The Governor may from time to time appoint a Registrar of the Court and such other officers as may from time to time appear to be necessary for the administration of the Court.

The Registry

6. (1) The Registry of the Court shall be situate in London.

(2) The President may from time to time direct during what hours the Registry shall be open for the receipt of documents lodged under the provisions of these Rules.

Service, etc on Registrar of Supreme Court

7. (1) Where under these Rules any notice is to be given to or any document is to be lodged with the Registrar, it may be given to or lodged with the Registrar of the Supreme Court with a request that it be transmitted to the Registrar.

(2) On receipt of any notice or document given to or lodged with him, the Registrar of the Supreme Court shall immediately endorse it with the date and time when it was received by him and shall as soon as practicable thereafter transmit it to the Registrar.

(3) A notice given to or lodged with the Registrar of the Supreme Court under sub-rule (1) shall be deemed to have been given to or lodged with the Registrar at the time when it was given or lodged with the Registrar of the Supreme Court.

Use of facsimile transmission

8. A copy of a notice or other document sent to the Registrar by facsimile transmission by telephone and duly received by him shall be as effective for all purposes as if it were the original.

Endorsement of documents

9. Whenever any document is lodged with or transmitted to the Registrar under or in accordance with these Rules, he shall forthwith cause it to be endorsed to show the date and time when it was so lodged with or received by him.

Acceptance of documents lodged out of time

10. The Registrar shall not, nor shall the Registrar of the Supreme Court, refuse to accept any document on the ground that it was lodged out of time but shall mark it "Lodged out of time" and shall inform the person lodging it that he has done so.

Numbers of applications and appeals

11. (1) Every application to the Court, whether lodged before or after the institution of an appeal, other than an application made orally in the course of a hearing, and every appeal shall be given a serial number.

(2) There shall be maintained separate series of numbers for civil applications, civil appeals, criminal applications and criminal appeals.

(3) A serial number shall be allotted—

(a) in the case of an originating application, as soon as it is received;

(b) in the case of a civil appeal, as soon as the memorandum of appeal is received; and

(c) in the case of a criminal appeal, as soon as the notice of appeal is received.

Maintenance of Registers

12. (1) The Registrar shall maintain—

(a) a register of civil applications, in which shall be entered particulars of every originating application relating to a civil appeal lodged with the Registrar or sent to the Registrar by the Registrar of the Supreme Court;

(b) a register of criminal applications, in which shall be entered particulars of every application relating to a criminal appeal lodged with the Registrar or sent to the Registrar by the Registrar of the Supreme Court;

(c) a register of civil appeals, in which shall be entered particulars of every memorandum of appeal lodged in any civil matter and of the subsequent proceedings; and

(d) a register of criminal appeals, in which shall be entered particulars of every notice of appeal lodged in any criminal matter and of subsequent proceedings.

(2) The Registrar of the Supreme Court shall maintain—

(a) a register of civil applications, in which shall be entered particulars of every application lodged with him relating to a civil appeal;

(b) a register of criminal applications, in which shall be entered particulars of every application lodged with him relating to a criminal appeal.

(3) The registers to be maintained under this rule shall show the number of each application or appeal, the number of the proceedings in the Supreme Court, the names of the parties, the dates when the essential steps in the proceedings were taken and the result of the application or appeal.

Appearances and Representation

Appearances

13. (1) A party to any proceedings in the Court may appear in person or by advocate.

(2) A corporation may appear either by advocate or by a director, manager or secretary, appointed by a resolution of the corporation, a sealed copy of which resolution has been lodged with the Registrar.

Statement in lieu of appearance

14. (1) Any party to an application or appeal who does not intend to appear in person or by advocate at the hearing may lodge with the Registrar a statement in writing of his argument in support of or in opposition to the application or appeal, as the case may be.

(2) Every such statement shall be signed by or on behalf of the party lodging it and shall be lodged in quintuplicate with the Registrar at the time when he lodges the application or the memorandum of appeal or within 14 days thereafter or within 14 days of the service on him of the application or memorandum of appeal, as the case may be.

(3) On receipt of a statement under this rule, the Registrar shall send one copy of it to the other party, or to each other party, as the case may be.

(4) The arguments contained in any statement lodged under this rule shall receive the same consideration as if they had been advanced orally at the hearing of the application or appeal.

(5) A person who has lodged a statement under this rule shall not, except with the leave of the Court, address the Court at the hearing.

Right of audience

15. The following persons shall be entitled to appear and be heard as advocates before the Court of Appeal—

- (a) members of the Bar of England, Scotland, or Northern Ireland;
- (b) solicitors of the Supreme Court in England or Northern Ireland and law agents admitted to practise in Scotland;
- (c) lawyers qualified to practise in any member state of the European Communities who enjoy the right to appear before the High Court in England or the Court of Session in Scotland or to practise as solicitors in England or Scotland; and
- (d) any other persons entitled to appear and be heard before the Supreme Court.

Change of advocate

16. Where a party to an application or appeal changes his advocate or, having been represented by an advocate, decides to act in person or, having acted in person, engages an advocate, he shall, as soon as practicable, lodge with the Registrar notice of the change and shall serve a copy of such notice on the other party or on each other party appearing in person or separately represented, as the case may be.

Signature and service of documents, amendments, etc

Signature of documents

17. (1) Any document may be signed on behalf of the person making it by any person appointed under rule 13 to appear on his behalf.

(2) In or in relation to a criminal appeal, a document may be signed on behalf of an appellant who is alleged to be of unsound mind by a person appointed under rule 13 to appear on his behalf or by any person in whose care he may be for the time being, including a medical officer, police officer or prison officer.

Service of documents, etc

18. (1) Where by these Rules any document is required to be served on any person, service may be effected in such way as the Court may in any case direct, which shall normally be a way in which a comparable process of the Supreme Court could be served, and in the absence of any special direction shall be made personally on the person to be served or any person appointed to appear on his behalf:

Provided that where the person to be served is not in the Falkland Islands and there is no person in the Falkland Islands appointed to appear on his behalf, the document may be served by facsimile transmission by telephone or by registered air mail to the last known address of that person or any person appointed to appear on his behalf.

(2) Where any document is required to be served on the appellant or the respondent and two or more appellants or respondents, as the case may be, are represented by one advocate, it shall be sufficient if one copy of that document is served on that advocate.

(3) For the purpose of this rule, service on the partner or a clerk of an advocate at the office of the advocate shall be deemed to be service on the advocate.

(4) Proof of service may be given where necessary by affidavit, unless in any case the Court shall require proof by oral evidence:

Provided that, in the case of a person in custody, a letter purporting to be signed by the person in charge of the place to which that person was committed, certifying that the document was delivered to that person on a specified date, may be accepted as sufficient proof of service.

(5) Where any document is required to be sent to any person, the document may be sent by hand or by registered post to that person or to any person appointed to appear on his behalf and notice of the date fixed for the hearing of an application or appeal or for the delivery of judgment or the reasons for any decision may be given by telephone or telegram.

Change of address for service

19. A person who has given an address for service may at any time change his address for service by lodging a notice of such change with the Registrar and serving copies of it on all persons who have been served with the previous address.

Amendment of documents

20. (1) Whenever application is made to the Court for leave to amend any document, otherwise than orally in the course of a hearing, the amendment for which leave is sought shall be set out in writing and, if practicable, lodged with the Registrar and served on each other party appearing in person or separately represented, as the case may be, before the hearing of the application or, if that is not practicable, handed to the Court and to the other party or parties at the time of the hearing.

(2) Where the Court gives leave for the amendment of any document, whether on a written or an informal application, the amendment shall be made or an amended version of the document be lodged within such time as the Court when giving leave may specify and if no time is so specified then within two days of the giving of leave and on failure to comply with the requirements of this sub-rule the leave so given shall determine.

Form of amendments

21. (1) Where any person obtains leave to amend any document, the document itself may be amended or, if it is more convenient, an amended version of the document may be lodged.

(2) Where any person lodges an amended version of a document, he shall show clearly—

(a) any words or figures deleted from the original, by including those words or figures and striking them through with red ink, so that what was written remains legible;

(b) any words or figures added to the original, by writing them in red ink or underlining them in red ink.

(3) Sub-rule (2) shall apply to subsequent amendments and re-amendments *mutatis mutandis* and so that each subsequent set of amendments or re-amendments shall appear in a different coloured ink and be readily distinguishable from previous amendments or re-amendments.

- (4) Where any record of appeal includes any amended document, the amendments shall similarly be shown in each copy of the record of appeal.

Hearings

Arrangement of business

22. The sittings of the Court and the arrangement of business shall be decided by the President and shall be notified in such manner as he may direct.

Places and notice of hearing

23. (1) The Court shall sit in such places as the President may from time to time designate.

(2) Every appeal shall be heard and every judgment therein delivered in open court:

Provided that the Court may decide to conduct the whole or any part of an appeal otherwise than in open court if it considers, in the circumstances of that appeal, that the public interest (including the prompt and efficient administration of justice) so requires.

(3) Public notice of the place where and the date when an appeal is to be heard or a judgment delivered shall be given in such manner as the President may direct.

(4) An application may be made informally by letter where all parties consent to the order sought and the Court may in its discretion dispense with the appearance of the parties or direct that they appear.

Skeleton arguments

24. (1) The advocate for an appellant shall, not less than seven days before the date fixed for the hearing of the appeal, or such shorter period as the Registrar may allow, lodge with the Registrar in quadruplicate a skeleton argument and shall serve a copy of it on the other party or one each other party appearing in person or separately represented, as the case may be.

(2) The advocate for a respondent in a civil appeal who has given notice of cross-appeal under rule 67 or notice of grounds for affirming the decision under rule 68, shall, not less than three days before the day fixed for the hearing of the appeal, or such shorter period as the Registrar may allow, lodge with the Registrar in quadruplicate a skeleton argument and shall serve a copy of it on the appellant or his advocate.

(3) Either side may lodge with the Registrar in quadruplicate a supplementary skeleton argument if exceptional circumstances give rise to the need for one and shall immediately send a copy of it to the other side.

(4) "Skeleton argument" means a concise statement setting out succinctly and without elaboration, numbered serially, the arguments which an advocate intends to advance before the Court at the hearing of the appeal.

Lists of authorities, etc

25. (1) An advocate who intends at the hearing of any application or appeal to rely on the judgment in any reported case or to quote from any book shall lodge with the Registrar at least 24 hours before the application or appeal is due to be heard a list containing the titles of such cases with their citations and the names, authors and editions of any such books and shall serve a copy of any such list on the other party or on each other party appearing in person or separately represented, as the case may be:

Provided that a supplementary list may, when necessary, be produced at the time of the hearing.

(2) Such list shall be in quadruplicate, except in the case of an application to be heard by a single Judge, when it shall be in duplicate.

(3) An advocate who intends at the hearing of any application or appeal to rely on the judgment in any unreported case shall, at or before the hearing, produce a certified or photographic copy of such judgment and, except in the case of an application to be heard by a single Judge, two other copies thereof, for use of the Court and, in every case, one copy for the use of the other party, or each other party appearing in person or separately represented, as the case may be.

Order of addresses

26. (1) The Court will, at the hearing of an application or appeal, hear first the applicant or appellant, then the respondent and then the applicant or appellant in reply.

(2) At the hearing of an appeal where notice of cross-appeal has been given, the Court will ordinarily hear the appellant first on the appeal, then the respondent on the appeal and on the cross-appeal, then the appellant in reply on the appeal and the cross-appeal and finally the respondent in reply on the cross-appeal.

(3) The Court may dismiss but shall not allow any preliminary objection, application, appeal or cross-appeal without calling on the opposing party.

(4) After hearing the opposing party, the Court may allow but shall not dismiss any preliminary objection, application, appeal or cross-appeal without giving the objector, applicant, appellant or cross-appellant an opportunity to reply.

(5) The provisions of this rule shall apply where notice of grounds for affirming the decision has been given, in the same way in all respects as where notice of cross-appeal has been given.

Powers of Court and Supreme Court

Power to order security for costs in civil appeals

27. (1) The Court may order that such security shall be given for the costs of a civil appeal as may be just.

(2) Where an appeal has been withdrawn under rule 70 after notice of cross-appeal has been given, the Court may order that such security shall be given for costs of the cross-appeal as may be just.

(3) The Court may at any time, if it thinks fit, direct that further security for costs be given and may direct that security be given for past costs relating to the matters in question in the appeal.

Power to order stay of execution and suspension of sentence

28. (1) The institution of an appeal shall not operate to stay execution or to suspend any sentence but the Court or the Supreme Court may—

(a) in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 52, order a stay of execution;

(b) in any criminal proceedings, where notice of appeal has been given in accordance with rule 79, order that the appellant be released on bail, subject to such conditions as to the furnishing of security, or otherwise, as the court may think fit, or that the execution of any warrant of distress be suspended pending the determination of the appeal.

(2) No sentence of death shall be carried out until the time for giving notice of the appeal has expired or, where notice of appeal has been given, until the appeal has been determined.

Power to extend time

29. (1) The Court may for sufficient reason extend the time limited by these Rules or by any decision of the Court or of the Supreme Court for the doing of any act authorised or required by these Rules, whether before or after the expiration of such time and whether before or after the doing of the act, and reference in these Rules to any such time shall be construed as a reference to such time as so extended:

Provided that the power to extend the time for giving notice of appeal or notice of application for leave to appeal shall not be exercisable in the case of a conviction involving sentence of death.

(2) An order extending the time for doing any act shall specify the time within which such act shall be done.

Power to allow amendments

30. The Court may, on the application of any party, which may be made orally during the course of a hearing, allow the amendment of any document, on such terms as it may think fit.

Power to re-appraise evidence and to take additional evidence

31. (1) On any appeal from a decision of the Supreme Court acting in the exercise of its original jurisdiction, the Court shall have power—

(a) to re-appraise the evidence and to draw inferences of fact; and

(b) in its discretion, for sufficient reason, to take additional evidence or to direct that additional evidence be taken by the Supreme Court or by a commissioner.

(2) When additional evidence is taken by the Court, it may be oral or by affidavit and the Court may allow the cross-examination of any deponent.

(3) When additional evidence is taken by the trial court, it shall certify such evidence to the Court, with a statement of its opinion on the credibility of the witness or witnesses giving the additional evidence; when evidence is taken by a commissioner, he shall certify the evidence to the Court, without any such statement of opinion.

(4) The parties to an appeal shall be entitled to be present when such additional evidence is taken.

Power to call for report

32. On any appeal from a decision of the Supreme Court in the exercise of its original jurisdiction, the Court shall have power to call for and receive from the Supreme Court a report on any matter concerned with the proceedings before that Court.

General powers

33. On any appeal, the Court shall have power, so far as its jurisdiction permits, to confirm, reverse or vary the decision of the Supreme Court, or to remit the proceedings to the Supreme Court with such directions as may be appropriate, or to order a new trial, and may make any necessary incidental or consequential orders, including orders as to costs.

Judgments and Orders

Judgment

34. (1) Judgment may be given at the close of the hearing of an application or appeal or reserved for delivery on some future day which may be appointed at the hearing or subsequently notified to the parties.

(2) In any proceedings separate judgments may be delivered by the members of the Court, but where two or more members agree they may sign a single judgment.

(3) In a criminal matter a dissenting Judge shall not be obliged to deliver a separate judgment.

(4) Where the decision is not unanimous then the decision of the majority of the members of the Court shall constitute the decision of the Court.

(5) Notwithstanding the provisions of sub-rule (1), the Court may at the close of an application or appeal, give its decision but reserve its reasons and in such a case the reasons may be delivered at a date which shall be notified to the parties. The reasons shall in every case be read aloud in open court, unless the Court directs that they be read while the Court is sitting in camera.

(6) Where judgment is given at the close of the hearing as the judgment of the Court, it shall be delivered by such member of the Court, other than a Judge who dissents, as the presiding Judge may direct.

(7) Where the Court has reserved judgment or indicated that it will give reasons later, any judgment or reasons, being in writing and signed by the Judge who sat at the

hearing, may be delivered by any other Judge, whether or not he sat at the hearing, or by the Registrar.

(8) A judgment shall be dated as of the day when it is delivered.

Correction of errors

35. (1) A clerical or arithmetical mistake in any judgment of the Court or any error arising therein from an accidental slip or omission may at any time, whether before or after the judgment has been embodied in an order, be corrected by the Court, either of its own motion or on the application of any interested person so as to give effect to what was the intention of the Court when judgment was given.

(2) An order of the Court may at any time be corrected by the Court, either of its own motion or on the application of any interested person, if it does not correspond with the judgment it purports to embody or, where the judgment has been corrected under sub-rule (1), with the judgment as so corrected.

Decisions to be embodied in orders

36. (1) Every decision of the Court on an application or appeal, other than on an application made orally in the course of a hearing, shall be embodied in an order.

(2) Every such order shall be dated as of the date when the decision was delivered and shall in addition show the date on which the order was extracted.

Preparation of orders

37. (1) Where a decision of the Court was given in a civil application or appeal—

(a) the party who has been substantially successful shall, as soon as practicable, prepare a draft of the order and shall submit it for approval of the other parties;

(b) if the parties are unable to agree which party was substantially successful, the Registrar, on the application of either party, which application may be made informally, and after giving all parties an opportunity of being heard, shall direct by which party the draft is to be prepared, and such direction shall be final;

(c) if all parties approve the draft, the order shall, unless the presiding Judge otherwise directs, be in accordance with it;

(d) if the parties do not agree on the form of the order, or if there is unreasonable delay in the preparation or approval of a draft, the form of the order shall be settled by the presiding Judge or by such Judge who sat at the hearing as the presiding Judge shall direct, after giving all the parties an opportunity of being heard.

(2) Where a decision of the Court was given in a criminal application or appeal, the order shall be drawn up by the Registrar who, in drawing up the order, shall not be required to consult the parties or their advocates.

Notification of decisions

38. (1) The Registrar shall send to the Registrar of the Supreme Court a sealed copy of the order embodying the decision of the Court in any civil or criminal appeal from that court.

(2) The Registrar shall, so far as is practicable, inform any party to any proceeding in the Court who was not present or represented at the hearing of such proceeding of the decision of the Court therein.

PART II. APPLICATIONS

Application for leave to appeal in civil matters

39. In civil and criminal matters—

(a) where an appeal lies to the Court with leave of the Supreme Court, application for such leave may be made orally at the time when the decision is given against which it is desired to appeal or within 28 days thereafter;

(b) where leave to appeal has been refused by the Supreme Court and an appeal lies to the Court by leave of the Court, application for such leave shall be made within 28 days of the refusal of leave by the Supreme Court.

Form of applications

40. (1) Subject to the provisions of sub-rule (3) and to any other rule allowing oral application, all applications to the Court shall be in writing and shall state the grounds of the application.

(2) An application shall be substantially in the Form CA1 in the First Schedule and shall be signed by or on behalf of the applicant.

(3) The provisions of this rule shall not apply—

(a) to applications made in the course of a hearing, which may be made orally; or

(b) to applications made by consent of all parties, which may be made informally by letter.

Supporting documents

41. (1) Every application to the Court, other than an application made orally in the course of a hearing or an application made informally by letter with the consent of all parties, shall if necessary be supported by one or more affidavits of the applicant or of some other person or persons having knowledge of the facts.

(2) An applicant may, with the leave of a Judge of the Court or with the consent of the other party, lodge one or more supplementary affidavits; application for such leave may be made informally.

(3) Every application to the Court for leave to appeal shall be accompanied by a copy of the decision against which it is desired to appeal and, where an application has been

made to the Supreme Court for leave to appeal and such application has been refused, by a copy of the order refusing the application.

Number of copies of applications

42. When an application is to be heard by a single Judge of the Court, the application and other documents relating thereto shall be filed in duplicate; in all other cases, they shall be filed in quadruplicate.

Service of application

43. (1) The application and copies of all affidavits shall be served on all necessary parties not less than 7 clear days before the hearing:

Provided that in case of urgency, an application, other than an application under rule 96, may be made *ex parte*, but in any such case, if the applicant is represented by an advocate, the advocate shall sign a certificate of urgency, which shall be filed with the proceedings.

(2) Where any person required to be served with an application gave an address for service in or in connection with the proceedings in the Supreme Court and has given no subsequent address for service, the notice may be served on him at the address, notwithstanding that it may be that of an advocate who has not been retained for the purpose of any subsequent proceedings.

Affidavits in reply

44. (1) Any person served with an application under rule 43 may lodge one or more affidavits in reply and shall as soon as practicable serve a copy or copies thereof on the applicant.

(2) Any such person may, with the leave of a Judge of the Court or with the consent of the applicant, lodge one or more supplementary affidavits; application for such leave may be made informally.

Death of parties

45. (1) A civil application shall not abate on death of the applicant or the respondent but the Court shall, on the application of any interested person, cause the legal personal representative of the deceased to be made a party in place of the deceased.

(2) A criminal application shall abate, where the applicant is the Crown, on death of the respondent, and in any case, on the death of the applicant.

Hearing of applications

46. (1) Every application to the Court, other than an application included in sub-rule (2), shall be heard by a single Judge:

Provided that any such application may be adjourned by the Judge for determination by the Court.

(2) This rule shall not apply—

- (a) to an application for leave to appeal; or
- (b) to an application for a stay of execution; or
- (c) to an application to strike out a notice of appeal or an appeal; or
- (d) to an application made as ancillary to an application under paragraph (a) or (b) or made orally in the course of a hearing by the Court.

Hearing in court or chambers

47. (1) An application to be heard by a single Judge of the Court shall be heard in chambers unless the Judge otherwise directs.
- (2) Any other application shall be heard in court, unless the President or the presiding Judge shall otherwise direct.

Procedure on non-appearance

48. (1) If on the day fixed for the hearing of an application the applicant does not appear and has not lodged a statement under rule 14, the application may be dismissed, unless the Court sees fit to adjourn the hearing.
- (2) If the application appears and the respondent, or a respondent, as the case may be, fails to appear, the application shall proceed in the absence of the respondent, unless the Court sees fit to adjourn the hearing.
- (3) Where an application has been dismissed under sub-rule (1) or allowed under sub-rule (2), the party in whose absence the application was determined may apply to the Court to restore the application for the hearing or to re-hear it, as the case may be, if he can show that he was prevented by any sufficient cause from appearing when the application was called on for hearing.
- (4) An application made under sub-rule (3) shall be made within 28 days of the decision of the Court, or in the case of a party who should have been served with notice of the hearing but was not so served, within 28 days of his first hearing of that decision.
- (5) The provisions of sub-rule (1) shall not apply to any criminal application if the applicant is in custody and is not represented by an advocate: in any such case, the application shall be heard notwithstanding the absence of the applicant, unless the Court shall otherwise order.

Reference from decision of single Judge

49. (1) Where any party, being dissatisfied with the decision of a single Judge on an application heard by him, wishes to have that decision, and any order consequent upon it, varied, discharged or reversed by the Court, he may give notice thereof orally to the Judge at the time when the decision is given or by writing to the Registrar within 21 days thereafter.

- (2) At the hearing by the Court of an application previously decided by a single Judge, no additional evidence shall be adduced except with leave of the Court.

Rescinding of orders

50. (1) An order made on an application heard by a single Judge may be varied or rescinded by that Judge or by any other Judge or by the Court on application of any person affected thereby, if—

(a) the order was one extending the time for doing any act, otherwise than to a specific date; or

(b) the order was one permitting the doing of some act, without specifying the date by which the act was to be done,

and the person on whose application the order was made has failed to show reasonable diligence in the matter.

(2) An order made on an application to the Court may similarly be varied or rescinded by the Court.

PART III. CIVIL APPEALS

Application of Part III

51. This Part of these Rules shall apply only to appeals from the Supreme Court acting in its original and appellate jurisdiction in civil cases and matters relating thereto.

Notice of appeal

52. (1) Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in duplicate with the Registrar of the Supreme Court.

(2) Every such notice shall be so lodged within 28 days of the date of the decision against which it is intended to appeal.

(3) Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision, shall specify the part complained of, shall state the address for service of appellant and shall state names and addresses of all persons intended to be served with copies of the notice.

(4) When an appeal lies only with leave, it shall not be necessary to obtain such leave before lodging the notice of appeal.

(5) Where it is intended to appeal against a decree or order, it shall not be necessary that the decree or order be extracted before lodging the notice of appeal.

(6) A notice of appeal shall be substantially in Form CA2 in the First Schedule and shall be signed by or on behalf of the appellant.

Transmission of notice of appeal

53. On receipt of a notice of appeal, the Registrar of the Supreme Court shall forthwith send one copy thereof to the Registrar.

54. (1) An intended appellant shall, before or within 28 days after lodging notice of appeal, serve copies thereof on all persons affected by the appeal:

Provided that the Court may on application, which may be made *ex parte*, direct that service need not be effected on any person who took no part in the proceedings in the Supreme Court.

(2) Where any person required to be served with a copy of a notice of appeal gave any address for service in or in connection with the proceedings in the Supreme Court, and has not subsequently given any other address for service, the copy of the notice of appeal may be served on him at that address, notwithstanding that it may be that of an advocate who has not been retained for the purpose of an appeal.

Death of respondent before service

55. A notice of appeal shall not be incompetent by reason only that the person on whom it is required to be served was dead at the time when the notice was lodged but a copy of the notice shall be served as soon as practicable on the legal representative of the deceased.

Respondent to give address for service

56. (1) Every person on whom a notice of appeal is served shall—

(a) within 21 days after service on him of the notice of appeal lodged with the Registrar serve on the intended appellant notice of a full and sufficient address for service; and

(b) within a further 14 days serve a copy of such address for service on every other person named in the notice of appeal as a person intended to be served:

Provided that a person whose address for service is unchanged from his address of record in the proceedings in the Supreme Court shall not be required to comply with this rule.

(2) A notice of address for service shall be substantially in the Form CA3 in the First Schedule and shall be signed by or on behalf of the person lodging it.

(3) The lodging and service of an address for service shall not operate or be construed as an admission that the appeal is competent or as a waiver of any irregularity.

Separate notices of appeal from the same decision

57. (1) Where two or more parties have given notice of appeal from the same decision, the second and all subsequent notices to be lodged shall be deemed to be notices of address for service within the meaning of rule 56 and the party or parties giving those notices shall be respondents in the appeal.

(2) A party whose notice of appeal is deemed to be a notice of address for service shall not be required to comply with rule 56 if he has served copies of his notice of appeal on all persons on whom under that rule he would have been required to serve notice of his address for service.

Application to strike out notice of appeal or appeal

58. A person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.

Institution of appeals

59. (1) Subject to the provisions of rule 95, an appeal shall be instituted by lodging with the Registrar, within 60 days of the date when the notice of appeal was lodged—

- (a) a memorandum of appeal, in quadruplicate;
- (b) the record of appeal, in quadruplicate;
- (c) the prescribed fee; and
- (d) security for the costs of the appeal, if any order for security has been made;

Provided that where an application for a copy of the proceedings in the Supreme Court has been made within 30 days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the Registrar of the Supreme Court as having been required for the preparation and delivery to the appellant of such copy.

(2) An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless his application for such copy was in writing and a copy of it was sent to the respondent.

Effect of default in instituting appeal

60. If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time—

- (a) he shall, unless the Court otherwise orders, be deemed to have withdrawn his notice of appeal and shall, unless the Court otherwise orders, be liable to pay the costs arising therefrom of any persons on whom the notice of appeal was served;
- (b) any person on whom the notice was served shall be entitled to give notice of appeal notwithstanding that the appointed time has expired, if he does so within 28 days of the date by which the party who lodged the previous notice of appeal should have instituted his appeal.

Death of party to intended appeal

61. (1) An appeal shall not be instituted in the name of a person who is dead but may be instituted in the name of his legal representative.

(2) An appeal shall not be incompetent by reason only that the respondent was dead at the time when it was instituted but the Court shall, on the application of any interested person, cause the legal representative of the deceased to be made a party in place of the deceased.

Contents of memorandum of appeal

62. (1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the Court to make.

(2) The grounds of objection shall be numbered consecutively.

(3) A memorandum of appeal shall be substantially in the Form CA4 in the First Schedule and shall be signed by or on behalf of the appellant.

Contents of record of appeal

63. (1) For the purpose of an appeal from the Supreme Court in its original jurisdiction, the record of appeal shall, subject to the provisions of sub-rule (3), contain copies of the following documents in the following order—

(a) an index of all the documents in the record with the numbers of the pages at which they appear;

(b) a statement showing the address for service of the appellant and the address for service furnished by the respondent and, as regards any respondent who has not furnished an address for service under rule 56, his last known address and proof of service on him of the notice of appeal;

(c) the notice of appeal;

(d) the judgment, decree or order;

(e) the order, if any, giving leave to appeal where it is not already included in the judgment, decree or order;

(f) the pleadings;

(g) such parts of the transcript of the official shorthand note or record, if any, of the evidence given in the Supreme Court as are relevant to any question at issue in the appeal, or in the absence of such a note or record, such parts of the judge's note of the evidence as are relevant to any such question;

(h) the transcript of the official shorthand note or record, if any, of the judge's reasons for giving the judgment or making the order of the Supreme Court, or in the absence of such note or record, the trial judge's note of his reasons or, if the judge's note is not available, the trial advocate's note of the judge's reasons approved wherever possible by the trial judge;

(i) the affidavits read and all documents put in evidence at the hearing or, if such documents are not in the English language, certified translations thereof so far as they are relevant to any question at issue on the appeal;

(j) such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant:

Provided that the copies referred to in paragraphs (d), (e) and (f) shall exclude copies of any documents or any parts thereof that are not relevant to the matters in controversy on the appeal.

(2) For the purpose of an appeal from the Supreme Court in its appellate jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial court corresponding as nearly as may be to those set out in sub-rule (1) and shall contain also the following documents relating to the appeal to the Supreme Court (or documents corresponding thereto as nearly as may be)—

- (i) the order, if any, giving leave to appeal;
- (ii) the memorandum of appeal;
- (iii) the record of proceedings;
- (iv) the judgment or order;
- (v) the decree or order;
- (vi) the notice of appeal.

(3) The Judge or the Registrar of the Supreme Court may, on the application of any party, direct which documents or parts of documents should be excluded from the record. Application for such direction may be made informally.

(4) Documents produced in evidence shall be put in order of the dates they bear or, where they are undated, the dates when they are believed to have been made, without regard to the order in which they were produced in evidence:

Provided that an affidavit filed in support of a chamber summons shall be bound immediately following the summons.

(5) Each copy of the record of appeal shall be certified to be correct by the appellant or by any person appointed under rule 13 to appear on his behalf.

Contents of decrees and orders for purposes of appeal

64. (1) For the purposes of an appeal to the Court against any decree or order, it shall not be necessary for the amount of any costs ordered to be paid to be stated therein, and such decree or order shall be deemed to be duly drawn up and extracted if in addition to other matters required to be embodied therein it sets out the order or orders for costs but not the result of any taxation.

(2) Where leave to appeal has been given or refused by the Supreme Court immediately following the delivery of the decision against which it is desired to appeal, a statement that leave has been given or refused shall be included in the decree or order.

Service or memorandum and record of appeal

65. (1) The appellant shall, before or within 14 days after lodging the memorandum of appeal and the record of appeal with the Registrar, serve copies thereof on each respondent who has complied with rule 56, or who is not required to comply with it.

(2) The appellant shall also serve copies of the memorandum and the record of appeal on such other parties to the original proceedings as the Court may at any time on application or of its own motion direct and within such time as the Court may appoint.

Supplementary records

66. (1) If a respondent is of opinion that the record of appeal is defective or insufficient for the purposes of his case, he may lodge with the Registrar four copies of a supplementary record of appeal containing copies of any further documents or of any additional parts of documents which are, in his opinion, required for the proper determination of the appeal.

(2) The respondent shall as soon as practicable after lodging a supplementary record of appeal, serve copies of it on the appellant and on each other respondent who has complied with or who is not required to comply with rule 56.

(3) An appellant may, at any time, lodge with the Registrar four copies of a supplementary record of appeal and shall as soon as practicable thereafter serve a copy of it on each respondent who has complied with or who is not required to comply with rule 56.

Notice of cross-appeal

67. (1) A respondent who desires to contend at the hearing of the appeal that the decision of the Supreme Court or any part thereof should be varied or reversed, either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of his contention and the nature of the order which he proposes to ask the Court to make, or to make in that event, as the case may be.

(2) A notice given by a respondent under this rule shall state the names and addresses of any persons intended to be served with copies of the notice and shall be lodged in quadruplicate with the Registrar not more than 42 days after service on the respondent of the memorandum of appeal and the record of appeal.

(3) A notice of cross-appeal shall be substantially in the Form CA5 in the First Schedule and shall be signed by or on behalf of the respondent.

Notice of grounds for affirming decision

68. (1) A respondent who desires to contend on an appeal that the decision of the Supreme Court should be affirmed on grounds other than or additional to those relied upon by that court shall give notice to that effect, specifying the grounds of his contention.

(2) A notice given by a respondent under this rule shall state the names and addresses of any persons intended to be served with copies of the notice and shall be lodged in quadruplicate with the Registrar not more than 42 days after service on the respondent of the memorandum of appeal and the record of appeal.

(3) A notice of grounds for affirming a decision shall be substantially in the Form CA6 in the First Schedule and shall be signed by or on behalf of the respondent.

(4) A respondent who desires to content at the hearing of the appeal that part of the decision of the Supreme Court should be varied or reversed and that part of that decision should be affirmed on grounds other than or additional to those relied upon by that court may include both such contentions in a notice of cross-appeal under rule 67 and shall not be required to give notice also under this rule.

(5) The provisions of sub-rules (1), (2) and (3) of this rule and those of rule 67 shall apply *mutatis mutandis* to an appellant who desires to contend in opposition to a cross-appeal that the decision of the Supreme Court should be affirmed on grounds other than or additional to those relied on by that court.

Service of notice of cross-appeal or notice of grounds for affirming decision

69. (1) A respondent who intends to cross-appeal or to contend that the decision of the Supreme Court should be affirmed on grounds other than or additional to those relied on by that court shall, before or within 14 days after lodging his notice of cross-appeal or notice of grounds for affirming the decision, as the case may be, serve a copy thereof on the appellant and copies thereof on all persons directly affected by the cross-appeal or by the appeal, as the case may be.

(2) The respondent shall also serve copies of the notice of cross-appeal or notice of grounds for affirming the decision, as the case may be, on such other parties to the original proceedings as the Court may at any time on application or of its own motion direct and within such time as the Court may direct.

Withdrawal of appeal

70. (1) An appellant may at any time after instituting his appeal and before the appeal is called on for hearing lodge with the Registrar notice in writing that he does not intend further to prosecute the appeal.

(2) The appellant shall, before or within 14 days after lodging the notice of withdrawal, serve copies thereof on each respondent who has complied with or who is not required to comply with the requirements of rule 56.

(3) If all the parties to the appeal consent to the withdrawal of the appeal, the appellant may lodge with the Registrar the document or documents signifying the consent of the parties and thereupon the appeal shall be struck out of the list of pending appeals.

(4) If all the parties to the appeal do not consent to the withdrawal of the appeal, the appeal shall stand dismissed with costs, except as against any party who has consented, unless the Court, on the application of appellant, otherwise orders. Any such application shall be made within 14 days after the lodging of the notice of withdrawal.

Rights of respondent when appeal withdrawn

71. (1) If an appeal is withdrawn under rule 70 after notice of cross-appeal has been given, the respondent who gave the notice may withdraw it within 21 days of the service on him of the notice of withdrawal; if it is not so withdrawn, the cross-appeal shall proceed to hearing and the provisions of these Rules shall apply as if the cross-appellant were an appellant and the appellant a respondent.

(2) If an appeal is withdrawn under rule 70 within 14 days of the date when the appeal was instituted, any respondent who has not lodged a notice of cross-appeal shall be

entitled to give notice of appeal notwithstanding that the time limited by rule 52 has expired, if he does so within 21 days of the date when the appellant's notice of withdrawal was served on him.

Withdrawal of notice of cross-appeal or notice of grounds for affirming decision

72. (1) A respondent who has given notice of cross-appeal or notice of grounds for affirming the decision of the Supreme Court may withdraw the same at any time before the appeal is called on for hearing, by lodging with the Registrar notice in writing to that effect, signed by him or on his behalf.

(2) The respondent shall, before or as soon as practicable after lodging the notice of withdrawal, serve a copy thereof on the appellant and copies thereof on all other respondents who were served with the notice of cross-appeal or notice of grounds for affirming the decision, as the case may be.

Death of party to appeal

73. An appeal shall not abate on the death of the appellant or of a respondent but the Court shall, on the application of any interested person, cause the legal representative of the deceased to be made a party in place of the deceased.

Notice of hearing

74. The Registrar shall give all parties to an appeal not less than 28 days notice of the date fixed for the hearing of an appeal:

Provided that it shall not be necessary to give such notice to any party with whose consent the date for the hearing was fixed.

Appearances at hearing and procedure on non-appearance

75. (1) If on any day fixed for the hearing of an appeal, the appellant does not appear, the appeal may be dismissed and any cross-appeal may proceed, unless the Court sees fit to adjourn the hearing:

Provided that where an appeal has been so dismissed or any cross-appeal so heard has been allowed, the appellant may apply to the Court to restore the appeal for hearing or to rehear the cross-appeal, if he can show that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing.

(2) If the appellant appears and the respondent, or any respondent, as the case may be, fails to appear, the appeal shall proceed in his absence, and any cross-appeal may be dismissed, unless the Court sees fit to adjourn the hearing:

Provided that where an appeal has been allowed or cross-appeal dismissed in the absence of a respondent, he may apply to the Court to re-hear the appeal or to restore the cross-appeal for hearing, if he can show that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing.

(3) An application for restoration under the proviso to sub-rule (1) or the proviso to sub-rule (2) shall be made within 28 days of the decision of the Court, or in the case of a party who should have been served with notice of the hearing but was not so served, within 28 days of his first hearing of that decision.

(4) For the purposes of this rule, a party who has lodged a statement under the provisions of rule 14 shall be deemed to have appeared.

Consolidation of appeals

76. The Court may for sufficient reason order any two or more appeals to be consolidated on such terms as it thinks just or may order them to be heard at the same time or one immediately after the other or may order any of them to be stayed until after the determination of any other of them.

Arguments at hearing

77. At the hearing of an appeal—

(a) no party shall, without the leave of the Court, argue that the decision of the Supreme Court should be reversed or varied except on a ground specified in the memorandum of appeal or in a notice of cross-appeal, or support the decision of the Supreme Court on any ground not relied on by that Court or specified in a notice given under rule 67 or rule 68;

(b) a respondent shall not, without the leave of the Court, raise any objection to the competence of the appeal which might have been raised by application under rule 58;

(c) the Court shall not allow an appeal or cross-appeal on any ground not set forth or implicit in the memorandum of appeal or notice or cross-appeal, without affording the respondent or respondents, or any person who, in relation to that ground should have been made a respondent, or the appellant, as the case may be, an opportunity of being heard on that ground.

PART IV. CRIMINAL APPEALS

Application of Part IV

78. This Part of these Rules shall apply only to appeals from the Supreme Court acting in its original and appellate jurisdiction in criminal cases.

Notice of appeal

79. (1) A person who desires to appeal to the Court shall give notice in writing, which shall be lodged in sextuplicate with the Registrar of the Supreme Court within 28 days of the date of the decision against which it is desired to appeal, and the notice of appeal shall institute the appeal.

(2) Every notice of appeal shall—

(a) state shortly the nature of the conviction, sentence or finding against which it is desired to appeal; and

(b) contain the address at which any documents connected with the appeal may be served on the appellant.

(3) Where two or more persons have been convicted at the same trial and any two or more of them desire to appeal to the Court, they may at their option lodge separate notices or a joint notice of appeal and where a joint notice of appeal is lodged, it may include, in addition to the grounds of appeal common to all the appellants, grounds peculiar to one or more of them.

(4) Where an appeal lies only on a certificate that the case is a fit case for appeal, or with leave, it shall not be necessary to obtain such certificate or leave before lodging the notice of appeal.

(5) Where a notice of appeal is signed by an advocate, he shall add after his signature the words "Retained only to prepare this notice", "Retained to appear at the hearing of the appeal" or "Assigned to appear at the hearing of the appeal", as the case may be.

(6) A notice of appeal shall be substantially in the Form CA7 in the First Schedule and shall be signed by or on behalf of the appellant.

Consolidation of appeals

80. Where two or more appeals are brought from convictions or sentences passed at the same trial, they shall, unless the Court otherwise orders, be consolidated and shall proceed as one appeal.

Transmission of notice of appeal

81. On receipt of a notice of appeal, the Registrar of the Supreme Court shall forthwith send one copy thereof to the Registrar and one to the respondent named therein.

Preparation of record of appeal

82. (1) Subject to the provisions of sub-rule (4), as soon as practicable after a notice of appeal has been lodged, the Registrar of the Supreme Court shall prepare the record of appeal.

(2) For the purpose of an appeal from the Supreme Court in its original jurisdiction, the record of appeal shall contain copies of the following documents in the following order—

(a) an index of all documents in the record with the numbers of the pages at which they appear;

(b) a list of all exhibits put in at the trial;

(c) the notice of appeal;

(d) the order, if any, giving leave to appeal or the certificate, if any, that the case is a fit case for appeal;

(e) the information, indictment or charge;

(f) the transcript of any shorthand notes taken or sound recording made at the trial, the trial judge's notes of the hearing, including the proceedings on and after sentence;

(g) all documentary exhibits, photographs and plans put in at the trial and all depositions read in consequence of the absence of intended witnesses:

Provided that the Registrar of the Supreme Court may in his discretion omit copies of documents which are of great length or other exhibits which are difficult to reproduce or may include copies of the relevant parts only of any such documents;

(h) the verdict of the jury, if any;

(i) the judgment, if any.

(3) For the purpose of appeal from the Supreme Court in its appellate jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial court corresponding as nearly as may be to those set out in sub-rule (2) and shall contain also copies of the following documents relating to the appeal to the Supreme Court—

(i) the petition of appeal;

(ii) the record of proceedings;

(iii) the judgment;

(iv) the order, if any, and

(v) the notice of appeal.

(4) Notwithstanding the provisions of sub-rule (1), the Registrar of the Supreme Court shall not prepare the record of appeal—

(a) where the notice of appeal has been lodged out of time, until he has been notified that the time has been extended by order of the Court or unless the President shall otherwise direct;

(b) where the appeal cannot be heard without leave to appeal or a certificate that the case is a fit case for appeal, until he has been notified that such leave or certificate has been given or unless the President shall otherwise direct;

(c) where the appeal is from the Supreme Court in its appellate jurisdiction, until the prescribed fee, or such part thereof, if any, as the appellant may be liable to pay under an order made under rule 96, has been paid or a deposit on account thereof has been made to the satisfaction of the Registrar of the Supreme Court.

(5) The Registrar shall certify each copy of the record of appeal to be a true copy of the original proceedings:

Provided that where the record is produced by printing or photography, it shall suffice if one copy is so certified.

Service and transmission of record of appeal, etc

83. (1) As soon as the record of appeal has been prepared, the Registrar of the Supreme Court shall cause a copy of it to be served on the appellant and a copy on the respondent and shall send four copies to the Registrar.

(2) The Registrar of the Supreme Court shall at the same time send to the Registrar the original record of proceedings in the Supreme Court, and the original documentary exhibits in the Supreme Court, other than any of great bulk, but shall not send any exhibits other than documentary ones, unless requested to do so by the Registrar.

Memorandum of appeal

84. (1) The appellant shall, within 42 days after service on him of the record of appeal, lodge a memorandum of appeal, in quintuplicate, with the Registrar.

(2) The memorandum shall set forth concisely and under distinct heads, numbered consecutively, without argument or narrative, the grounds of objection to the decision appealed against.

(3) The Registrar shall as soon as practicable cause a copy of the memorandum of appeal to be served on the respondent.

(4) A memorandum of appeal shall be substantially in the Form CA8 in the First Schedule and shall be signed by or on behalf of the appellant.

(5) If no memorandum of appeal is lodged within the prescribed time, the Court may dismiss the appeal or may direct that it be set down for hearing:

Provided that where an appeal is dismissed under this sub-rule, the appellant, if he can show sufficient cause, may apply to the Court to restore it for hearing.

Supplementary memorandum

85. The appellant may at any time with the leave of the Court lodge a supplementary memorandum of appeal and shall cause a copy thereof to be served on the respondent.

Withdrawal of appeal

86. (1) An appeal may be withdrawn at any time before hearing by notice in writing to the Registrar signed by the appellant, and upon such notice being given the appeal shall be deemed to have been dismissed.

(2) When an appeal is withdrawn, the Registrar shall forthwith notify the respondent and the Registrar of the Supreme Court.

(3) An appeal which has been withdrawn may be restored by leave of the Court on the application of the appellant if the Court is satisfied that the notice of withdrawal was induced by fraud or mistake, oppression or undue influence, and that the interests of justice require that the appeal be heard.

Abatement of appeal

87. An appeal, other than an appeal against a sentence of fine or an order for costs, compensation or forfeiture, shall abate on the death of the appellant or, where the appellant is the Crown, on the death of the respondent.

Notice of hearing

88. (1) The Registrar shall cause notice to be given to the appellant and the respondent of the time and place at which an appeal will be heard.

(2) Such notice shall be given not less than 14 days before the date appointed for the hearing, unless in any case the President or the presiding judge shall otherwise direct.

Appearance at hearing and dismissal for non-appearance

89. (1) The appellant, other than an appellant who is in custody, and the respondent shall be entitled to be present at the hearing of the appeal.

(2) If in the day fixed for the hearing of the appeal, the appellant does not appear in person or by advocate and has not lodged a statement under rule 14, the appeal may be dismissed or may be heard in his absence:

Provided that where an appeal has been dismissed under this sub-rule, the Court may restore it for hearing if it is satisfied that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing.

(3) If on the day fixed for the hearing of an appeal, the respondent does not appear in person or by advocate, the appeal shall proceed, unless the Court sees fit to adjourn it.

Arguments at hearing

90. At the hearing of an appeal the appellant shall not, without the leave of the Court, argue any ground of appeal not specified in the memorandum of appeal or in any supplementary memorandum lodged under rule 85.

Appellant in custody

91. (1) If the appellant is in custody, he shall be deemed to have complied with the requirements of rules 14, 79, 84 and 85 or any of them if he gives to the person in charge of the place to which he was committed the statement, notice of appeal, memorandum of appeal or supplementary memorandum provided for in those rules respectively.

(2) In any such case, in computing the time limited for lodging the statement, notice or memorandum, there shall be excluded—

(a) the time between the appellant's conviction and his arrival at the place to which he was committed; and

(b) the time between the giving of the statement, notice or memorandum to the person in charge of that place and its lodging by him with the Registrar of the Supreme Court or the Registrar, as the case may be.

(3) A person in charge of a place where any person is held in custody who receives a statement, notice or memorandum under this rule shall forthwith endorse the same with the date and time of receipt.

PART VI. FORMS, FEES, INTEREST AND COSTS

Forms

92. The forms contained in the First Schedule shall be used for the purposes to which they are expressed to relate, with such modifications as the circumstances may require.

Fees

93. Subject to the provisions of rules 95 and 96, the fees set out in the Second Schedule shall be payable in respect of the matters and services therein set out:

Provided that—

(a) no fee shall be payable upon any appeal from the Supreme Court acting in its original jurisdiction in a criminal case or on any application in connection with any such appeal or for the supply of the copy of the record of appeal to any party to any such appeal;

(b) no fee shall be payable by the Crown or by the Government of the Falkland Islands in respect of any criminal application or appeal;

(c) copies of any documents may be issued without fee to such persons as the President may nominate or at such reduced fee as the President may direct.

Time of payment of fees

94. (1) The fee payable on lodging any document shall be payable at the time when the document is lodged.

(2) The Registrar may require the payment in advance of the fee for any other service or, where the amount of the fee cannot conveniently be ascertained when the service is requested, may require a deposit towards it. Any fee so paid in advance or deposit made shall be refunded if the request for the service is cancelled before the service has been undertaken.

Relief from fees in civil appeals

95. If in any appeal from the Supreme Court in its original or appellate jurisdiction in any civil case, the Court is satisfied on the application of an appellant that he lacks the means to pay the required fees and that the appeal is not without reasonable possibility of success, the Court may by order direct that the appeal may be lodged without prior payment of fees of court, or on payment of any specified amount less than the required fees.

Waiver of fees in criminal appeals

96. (1) If in any appeal from the Supreme Court acting in its appellate jurisdiction in any criminal matter, the Judge of the Supreme Court is satisfied on the application of the appellant—

(a) that the appeal raises one or more questions of law proper for determination by the Court; and

(b) that the appellant ought not, by reason of poverty, to be required to pay the whole of the fees ordinarily payable, including the fees for preparing the record of appeal,

he may by order direct that the whole or any part of such fees be waived.

(2) An application for an order under sub-rule (1) may be made informally at any time but not later than 14 days after the appellant has been informed of the amount which, in the absence of an order, he would be required to pay as fees or to deposit in respect of thereof:

Provided that the Judge of the Supreme Court may entertain any such application out of time if it shall appear to him that there was sufficient cause for the delay in making the same.

(3) The Judge of the Supreme Court considering the means of an applicant may rely on a report made to him by the Registrar of that Court.

(4) The Judge of the Supreme Court making an order under sub-rule (1) may, at the same time and without formal application, order the extension of the time for giving notice of appeal or for lodging the memorandum of appeal.

(5) An order allowing or dismissing an application under sub-rule (1) shall be final:

Provided that the decision by the Judge of the Supreme Court that an appeal raises or does not raise a question of law proper for determination by the Court shall be conclusive of that question only in relation to the application.

Interest on decretal amount

97. Where an appeal from a decree awarding money is dismissed, interest on the decretal amount, for such time as execution has been delayed by the appeal, shall be allowed, unless the Court otherwise orders.

Assessment of costs or direction for taxation

98. (1) When making any decision as to the payment of costs, the Court may assess the same or direct them to be taxed and any decision as to the payment of costs, not being a decision whereby the amount of costs is assessed, shall operate as a direction that the costs be taxed.

(2) For the purpose of execution in respect of costs, the decision of the Court directing taxation and the certificate of the taxing officer as to the result of such taxation shall together be deemed to be a decree.

Taxing officer

99. The Registrar shall be a taxing officer with power to tax the costs as between party and party of or arising out of any application or appeal to the Court.

Reference on taxation

100. (1) Any person who is dissatisfied with a decision of the Registrar in his capacity as taxing officer may require any matter of law or principle to be referred to a Judge of

the Court for his decision and the Judge shall determine the matter as the justice of the case may require. For the purpose of this sub-rule, any decision extending or refusing to extend time for the lodging of a bill of costs shall be deemed to involve a matter a principle.

(2) Any person who contends that a bill of costs as taxed is, in all the circumstances, manifestly excessive or manifestly inadequate, may require the bill to be referred to a Judge and the Judge shall have power to make such deduction or addition as will render the bill reasonable. Save as in this sub-rule provided, there shall be no reference on a question of quantum only.

(3) An application for a reference may be made to the Registrar informally at the time of taxation or by writing within 14 days thereafter.

(4) A reference to a Judge may be adjourned by him for the consideration of the Court.

(5) Any person dissatisfied with a decision of a Judge given under sub-rule (1) or sub-rule (2) may apply to the Court to vary, discharge or reverse the same. Such application may be made either informally to the Judge at the time of the decision or by writing to the Registrar within seven days of that time.

Payment out of security for costs

101. Where security for costs has been lodged, the Registrar may pay out the same either by consent of the parties or in conformity with the decision of the Court and having regard to the rights of the parties thereunder.

Costs improperly incurred

102. If it shall appear to the Court that costs have been incurred improperly or without reasonable cause, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the advocate, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court may call on the advocate by whom such costs have been so incurred to show cause why such costs should not be borne by the advocate personally, and thereupon may make such order as the justice of the case may require.

Improper agreement for remuneration

103. Any agreement whereby the remuneration of an advocate or the amount thereof is dependent upon the result of any proceedings in the Court shall be void.

THE FIRST SCHEDULE

Forms

FORM CA 1

APPLICATION

Rule 40(2)

Delete inappropriate words.
 In the Falkland Islands Court of Appeal
 Civil / Criminal Application No. of 19
 In the matter of an intended Appeal / Civil / Criminal Appeal No. of 19
 between Appellant
 and Respondent
 (1) Insert judgment, order, conviction, sentence, or as the case may be.
 (Appeal from the (1) of the Supreme Court of
 the Falkland Islands dated the
 day of 19 in Civil/Criminal Application/Appeal No. of 19

APPLICATION is hereby made to the Falkland Islands Court of Appeal for an
 order that

 on the grounds that

And for an order that the costs of and incidental to this application abide the
 result of the said appeal.

The application will be supported by the affidavit of
 sworn on the day of 19

The address for service of the applicant is

Dated this day of 19

Signed

Applicant
 Advocate for the Applicant

Lodged in the Registry on the day of 19

Registrar

(Heading as in proceedings appealed from)

NOTICE OF APPEAL

(1) Delete as
necessary.

TAKE NOTICE that being dissatisfied
with the decision of the Honourable Mr Justice
given at on the day of 19
intends to appeal to the Falkland Islands Court of Appeal against the whole
of the said decision / such part of the said decision (1) as decides that
.....
.....

The address for service of the appellant is

It is intended to serve copies of this notice on

Dated this day of 19

Signed

Applicant
Advocate for the Applicant

To - The Registrar of the Supreme Court of

Lodged in the Supreme Court of at am/pm
this day of 19

Registrar

[NOTE: Rule 56 requires a person on whom this notice is served

- (a) within 21 days, to lodge with the Registrar and serve on the
appellant notice of a full and sufficient address for service;
and
- (b) within a further 14 days, to serve a copy of such address for
service on every other person named in the notice of appeal
as a person intended to be served.

You need not comply with this requirement if your address for service
is unchanged from your address of record in the proceedings in the
Supreme Court.]

(Heading as in proceedings appealed from)

NOTICE OF ADDRESS FOR SERVICE

TAKE NOTICE that the address for service of
a respondent served with notice of appeal, is

Dated this day of 19

Signed

Respondent
Advocate for the Applicant

To - The Registrar of the Court of Appeal

Copies to be served on

Lodged with the Registrar at am / pm on the day
of 19

Registrar

IN THE FALKLAND ISLANDS COURT OF APPEAL

Civil Appeal No. of 19

Between

..... Appellant

and

..... Respondent

(Appeal from a of the Supreme Court of the
Falkland Islands dated the
day of 19 in Civil Case/ Civil Appeal / Bankruptcy
Cause / Matrimonial Cause / Miscellaneous Cause No of 19

MEMORANDUM OF APPEAL

..... the above-named appellant
appeals to the Falkland Islands Court of Appeal against the whole /
part of the above-mentioned decision on the following grounds,
namely -

1.
2.

etc.

It is proposed to ask the Court for an order that

.....

*Signed*Appellant

Advocate for the Appellant

To - The Honourable the Judges of the Falkland Islands Court of
Appeal.

Copies to be served on

Lodged with the Registrar at am / pm on the day
of 19

Registrar

FORM CA 5

Rule 67(3)

Heading as in Form CA 4

NOTICE OF CROSS-APPEAL

TAKE NOTICE that on the hearing of this appeal, the above-named respondent will content that the above-mentioned decision ought to be varied or reversed to the extent and in the manner and on the grounds hereinafter set out, namely-

1.
2.

etc.

It is proposed to ask the Court for an order that

.....

It is intended to serve copies of this notice on

.....

Signed

Respondent

Advocate for the Respondent

To - The Honourable the Judges of the Falkland Islands Court of Appeal.

Lodged with the Registrar at am / pm on the day
of 19

Registrar

Heading as in Form CA 4

NOTICE OF GROUNDS FOR AFFIRMING THE DECISION

TAKE NOTICE that on the hearing of this appeal
the above-named respondent, will content that the above-mentioned
decision ought to be affirmed upon grounds other than those relied
upon by the Supreme Court, namely-

1.
2.

etc.

It is intended to serve copies of this notice on

Dated this day of 19

Signed

Respondent

Advocate for the Respondent

To - The Honourable the Judges of the Falkland Islands Court of
Appeal.

Lodged with the Registrar at am / pm on the day
of 19

Registrar

(Headings as in the proceedings appealed from)

NOTICE OF APPEAL

TAKE NOTICE that
appeals to the Falkland Islands Court of Appeal against the
decision of the Honourable Mr Justice
given on the day of 19 whereby the
appellant was convicted of
and sentenced to

The appeal is against conviction only / conviction and sentence /
sentence only.

The address for service of the appellant is

Dated this day of 19

Signed

Appellant

Advocate for the Appellant

To - The Registrar of the Supreme Court of

Lodged in the Supreme Court of
at am / pm on the day of 19

Registrar

FORM CA 8

Rule 84(4)

IN THE FALKLAND ISLANDS COURT OF APPEAL

Criminal Appeal No. of 19

Between

..... Appellant

and

..... Respondent

(Appeal from a of the Supreme Court of
 (Mr Justice) dated the day of
 19 in Criminal Case No. of 19)
 Appeal

MEMORANDUM OF APPEAL

..... the above-named appellant, appeals
 to the Falkland Islands Court of Appeal against the above-mentioned
 decision, whereby the appellant was convicted of
 and sentenced to on
 the following grounds, namely -

1.
2.

etc.

*Signed*Appellant

Advocate for the Appellant

To - The Honourable the Judges of the Falkland Islands Court of
 Appeal.

Lodged with the Registrar at am / pm on the day
 of 19

Registrar

THE SECOND SCHEDULE

Rule 93

FEES

PART I. Fees in connection with applications, other than applications relating to criminal appeals from a Supreme Court in its original jurisdiction and other than applications under rule 99.

	£
1. Upon lodging an application	5.00
2. Upon lodging an affidavit, other than an affidavit annexed to an application	.50
3. Upon giving notice under rule 51	10.00

PART II. Fees in connection with civil appeals

4. Upon lodging a notice of appeal	10.00
5. Upon lodging a notice of address for service or a notice of change of address	.50
6. Upon a lodging a memorandum of appeal -	
(a) against an interlocutory decision	25.00
(b) against a final decision -	
(i) where the appeal is against an award of money or the refusal to make such an award or against a decision as to the ownership of or entitlement to the possession of property - if the amount of the money (exclusive of any interest awarded thereon) or the value of the property	
(A) does not exceed £1,000	£50.00
(B) exceeds £1,000,	
for the first £1,000	£50.00
and for each subsequent £1,000 or part thereof up to £100,000	£2.00
and for each subsequent £1,000 or part thereof	£1.00
but so that the fee shall not exceed £500,000;	
(ii) in any other case, £40.00 with an additional fee of £20.00 for each day or part of a day of hearing after the first, but so that the fee shall not exceed £200.00	25.00
7. Upon lodging a notice of cross-appeal	25.00
8. Upon lodging a notice of grounds for affirming the decision	5.00
9. Upon lodging a notice withdrawing an appeal, or a notice of cross-appeal, or a notice of grounds for affirming the decision	5.00

PART III. Fees in connection with criminal appeals.

10.	Upon lodging a notice of appeal from the Supreme Court in its appellate jurisdiction	5.00
11.	For preparing the record of appeal in such an appeal, for each folio or part thereof	
(a)	for the first copy	.50
(b)	for each additional copy	.10

PART IV. Miscellaneous

12.	For sealing an order in any civil application or appeal	1.00
13.	For preparing certified copies of any document, for each folio or part thereof	
(a)	for the first copy	.50
(b)	for each subsequent copy	.10

Dated this 21st day of May 1997

Alan Huggins
(Sir Alan Huggins)
 President

SUBSIDIARY LEGISLATION

ANTARCTICA

The Antarctic Act 1994 (Commencement) Order 1997

S. R. & O. No. 12 of 1997

Made: 14 July 1997
Published: 25 July 1997
Coming into force: on publication

IN EXERCISE of my powers under article 1(2) of the Antarctic Act 1994 (Overseas Territories) Order 1994(a), I make the following Order—

Citation

1. This Order may be cited as the Antarctic Act 1994 (Commencement) Order 1997.

Partial commencement of the Antarctic Act 1994 in the Falkland Islands

2.—(1) The Antarctic Act 1994(b), except sections 3, 4 and 6, shall come into force in the Falkland Islands on 1st August 1997.

(2) In paragraph (1), “the Antarctic Act 1994” means that Act in the form it appears in the Schedule to the Antarctic Act 1994 (Overseas Territories) Order 1995.

Made this 14th day of July 1997

R P Ralph
Governor

EXPLANATORY NOTE

(not forming part of the above Order)

This Order, made under article 1(2) of the Antarctic Act 1994 (Overseas Territories) Order 1995, brings most of the provisions of the Act into force in the Falkland Islands on 1st August 1997.

(a) SI 1995/1030

(b) 1994 c.15

STATUTORY INSTRUMENTS

1997 No. 1175

UNITED NATIONS

The Iraq and Kuwait
(United Nations Sanctions) (Dependent Territories)
(Amendment) Order 1997

Made - - - - - *8th April 1997*

Laid before Parliament *14th May 1997*

Coming into force *1st June 1997*

At the Court at Windsor Castle, the 8th day of April 1997

Present,

The Queen's Most Excellent Majesty in Council

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 Iraq and Kuwait (United Nations Sanctions) (Dependent Territories) (Amendment) Order 1997 and shall come into force on 1st June 1997.

(2) In this Order “the Order” means the Iraq and Kuwait (United Nations Sanctions) (Dependent Territories) Order 1990(b).

Amendment of Article 3 of the Order

2. In paragraph (1) of Article 3 of the Order the words “by the Governor under this Order or” shall be inserted after the words “a licence granted”.

N. H. Nicholls
Clerk of the Privy Council

(a) 1946 c.45.

(b) S.I. 1990/1652, as amended by S.I. 1990/1770.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, amends the Iraq and Kuwait (United Nations Sanctions) (Dependent Territories) Order 1990 by permitting the Governor of a dependent territory to issue licences in relation to the exportation of goods from Iraq and Kuwait.



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 8

29th August 1997

No. 18

The following is published in this Supplement -

Statutory Instruments 1985 No. 444 (incorporating amendments from 1997 No. 864)

**The Falkland Islands Constitution Order 1985
(as amended by the Falkland Islands Constitution (Amendment) Order 1997)**

(Consolidated Version of the Falkland Islands Constitution Order 1985 prepared at the Attorney General's instruction incorporating amendments made by the Falkland Islands Constitution (Amendment) Order 1997 - page numbers do not correspond with the original document)

STATUTORY INSTRUMENTS

1985 No. 444 (incorporating amendments from 1997 No. 864)

SOUTH ATLANTIC TERRITORIES

The Falkland Islands Constitution Order 1985
(as amended by the Falkland Islands Constitution (Amendment) Order 1997)

Made: 20th March 1985 (19th March 1997)
Laid before Parliament: 28th March 1985 (26th March 1997)
Coming into Operation: 18th April 1985 (1st September 1997)

At the Court at Buckingham Palace, the 20th day of March 1985 (19th 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, publication and commencement

- 1.— (1) This Order may be cited as the Falkland Islands Constitution Order 1985.
- (2) This Order shall be published in the Gazette.
- (3) This Order shall come into operation on the 18th day of April 1985 (amendments come into operation on 1st September 1997).

Interpretation

- 2.—(1) In this Order, unless the context otherwise requires—

“the appointed day” means such day (being the day appointed for polling at the general election of elected members of the Legislative Council next following the commencement of this Order) as may be prescribed by the Civil Commissioner by proclamation published in the Gazette;

(a) 1887 c. 54 and 1945 c. 7 (9 & 10 Geo. 6).

"the Constitution" means the Constitution set out in Schedule 1 to this Order;

"the Falkland Islands" means the colony of the Falkland Islands.

(2) The provisions of sections 87 to 89 of the Constitution shall apply for the purposes of interpreting sections 1 to 5 of, and Schedules 2 and 3 to, this Order and otherwise in relation thereto as they apply for the purpose of interpreting and in relation to the Constitution.

Constitution

3. Subject to the transitional provisions set out in Schedule 3 to this Order, the Constitution shall come into effect in the Falkland Islands on the appointed day.

Revocation

4. The instruments specified in Schedule 2 to this Order are revoked with effect from the appointed day.

Power reserved to Her Majesty

5. There is reserved to Her Majesty full power to make laws for the peace, order and good government of the Falkland Islands including, without prejudice to the generality of the foregoing, laws amending or revoking this Order or the Schedules hereto.

G. I. de Deney,
Clerk of the Privy Council.

4

SCHEDULE 1 TO THE ORDER

**THE CONSTITUTION OF THE
FALKLAND ISLANDS**

Arrangement of Sections

CHAPTER I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Section

1. Fundamental rights and freedoms of the individual.
2. Protection of right to life.
3. Protection of right to personal liberty.
4. Protection from slavery and forced labour.
5. Protection from inhuman treatment.
6. Protection of freedom of movement.
7. Protection from deprivation of property.
8. Protection of person or property from arbitrary search or entry.
9. Protection of freedom of conscience.
10. Protection of freedom of expression including freedom of the press.
11. Protection of freedom of assembly and association.
12. Protection from discrimination on grounds of race, sex etc.
13. Provisions to secure protection of the law.
14. Derogations from fundamental rights and freedoms under emergency powers.
15. Protection of persons detained under emergency laws.
16. Enforcement of protective provisions.
17. Interpretation and savings.

CHAPTER II

THE GOVERNOR

18. The Governor.
19. Acting Governor.
20. Defence and internal security.

CHAPTER III

THE LEGISLATURE

21. Establishment and composition of the Legislative Council.
22. Constituencies.
23. Qualifications for election.
24. Disqualifications for election.
25. Vacation of seats.

26. Vacation of seat on sentence.
27. Qualification of electors.
28. General elections and filling vacant seats.
29. Prorogation and dissolution.
30. Determination of questions as to membership.

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POWERS AND PROCEDURES OF THE LEGISLATIVE COUNCIL

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33. Presiding.
34. Clerk of the Legislative Council.
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37. Quorum.
38. Voting.
39. Transaction of business notwithstanding vacancies.
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43. Freedom of speech in proceedings.
44. Rules for the enactment of laws.
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53. Tenure of office of elected members of the Executive Council.
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THE JUDICATURE

- 77. Supreme Court.
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RULES FOR THE ENACTMENT OF LAWS.

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CHAPTER I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Whereas all peoples have the right to self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law;

And whereas the realization of the right of self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations;

And whereas every person in the Falkland Islands is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, regardless of race, place of origin, political opinions or affiliations, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience, of expression (including freedom of the press) and of peaceful assembly and association; and
- (c) protection for his family life, his personal privacy, the privacy of his home and other property and from deprivation of property without fair compensation:

Fundamental rights and freedoms of the individual.

1. The provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid individual rights and freedoms, subject to such limitations on that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life.

2.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a crime of treason of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable—

- (a) for the defence of any person from violence or for the defence of property;

- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence,

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

Protection of right to personal liberty.

3.—(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say—

- (a) in consequence of his unfitness to plead to a criminal charge;
- (b) in execution of the sentence or order of a court, whether established for the Falkland Islands or some other country, in respect of a criminal offence of which he has been convicted;
- (c) in execution of an order of a court punishing him for contempt of that court or of another court or of a tribunal;
- (d) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him by law;
- (e) for the purpose of bringing him before a court in execution of the order of a court;
- (f) upon reasonable suspicion of his having committed or of being about to commit a criminal offence under any law;
- (g) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (h) for the purpose of preventing the spread of an infectious or contagious disease;
- (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (j) for the purpose of preventing the unlawful entry of that person into the Falkland Islands or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from the Falkland Islands or for the purpose of restricting that person while he is being conveyed through the Falkland Islands in the course of his extradition or removal as a convicted prisoner from one country to another; or

- (k) to such an extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within the Falkland Islands or prohibiting him from being within such an area or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of the Falkland Islands in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed orally and in writing as soon as reasonably practicable, in language that he understands, of the reason for his arrest or detention.

(3) Any person who is arrested or detained shall have the right, at any stage and at his own expense, to retain and instruct without delay a legal practitioner of his own choice, and to hold private communications with him, and in the case of a minor he shall also be afforded a reasonable opportunity for communication with his parent or guardian:

Provided that when the person arrested or detained is unable to retain a legal practitioner of his own choice or be represented by a legal practitioner at the public expense, he may be represented, and hold private communication with, such person as the court may approve.

(4) Any person who is arrested or detained—

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

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

(5) If any person arrested or detained as mentioned in subsection (4)(b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial and such conditions may include bail.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation for such unlawful arrest or detention from the person who made the arrest or effected the detention, from any person or authority on whose behalf the person making the arrest or effecting the detention was acting or from them both:

Provided that a judge, a magistrate or a justice of the peace or an officer of a court or a police officer acting in pursuance of the order of a judge, a magistrate or a justice of the peace shall not be under any personal liability to pay compensation under this subsection in consequence of any act performed by him in good faith in the discharge of the functions of his office and any liability to pay any such compensation in consequence of any such act shall be a liability of the Crown.

(7) For the purposes of subsection (1)(b) of this section, a person charged with a criminal offence in respect of whom a special verdict has been returned that he was guilty of the act or omission charged but was insane when he did the act or made the omission shall be regarded as a person who has been convicted of a criminal offence and the detention of that person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

Protection from slavery and forced labour.

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

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression “forced labour” does not include—

- (a) any labour required in consequence of the sentence or order of a court;
- (b) any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
- (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (d) any labour required during any period of public emergency or, in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

Protection from inhuman treatment.

5. No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

Protection of freedom of movement.

6.—(1) A person shall not be deprived of his freedom of movement, that is to say, the right to move freely throughout the Falkland Islands, the right to reside in any part of the Falkland Islands, the right to enter the Falkland Islands, the right to leave the Falkland Islands and immunity from expulsion from the Falkland Islands.

(2) Any restrictions on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) for the imposition of restrictions on the movement or residence within the Falkland Islands, of any person or on any person's right to leave the Falkland Islands that are reasonably required in the interests of defence, internal security, public safety or public order;
- (b) for the imposition of restrictions on the movement or residence within the Falkland Islands or on the right to leave the Falkland Islands of persons generally or any class of persons that are reasonably required in the interests of defence, internal security, public safety, public order, public morality, or public health except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;
- (c) for the imposition of restrictions, by order of a court, on the movement or residence within the Falkland Islands of any person or on any person's right to leave the Falkland Islands either in consequence of his having been found guilty of a criminal offence under a law or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings relating to his extradition or lawful removal from the Falkland Islands;
- (d) for the imposition of restrictions on the freedom of movement of any person who does not belong to the Falkland Islands;
- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in the Falkland Islands;
- (f) for the imposition of restrictions upon the movement or residence within the Falkland Islands or on the right to leave the Falkland Islands of any public officer that are reasonably required for the proper performance of his functions;
- (g) for the removal of a person from the Falkland Islands to be tried or punished in some other country for a criminal offence under the law of that country or to undergo imprisonment in some other country in execution of the sentence

of a court in respect of a criminal offence under a law of which he has been convicted; or

- (h) for the imposition of restrictions on the right of any person to leave the Falkland Islands that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue only of such provision as is referred to in subsection (3)(a) of this section so requests at any time after that restriction was imposed or six months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal consisting of a president appointed by the Chief Justice and two other members appointed by the Governor, acting in his discretion.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity for or expediency of continuation of that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

Protection from deprivation of property.

7.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except in accordance with the provisions of a law applicable to that taking of possession or acquisition and where the following conditions are satisfied, that is to say—

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

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right—
 - (i) in satisfaction of any tax, rate, statutory contribution, levy or due;
 - (ii) by way of penalty for breach of the law of forfeiture in consequence of breach of the law;
 - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
 - (iv) in the execution of judgements or orders of a court in proceedings for the determination of civil rights or obligations;
 - (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;
 - (vi) in consequence of any law with respect to the limitation of actions or acquisitive prescriptions;
 - (vii) for so long as may be necessary for the purposes of any examination, investigation, trial or enquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

- (b) to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including any interest in or right to or over property), that is to say—
 - (i) enemy property;
 - (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the person entitled to the beneficial interest therein;

- (iii) the property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
- (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or by order of a court for the purposes of giving effect to the trust.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right to or over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no monies have been invested other than monies provided from the public funds of the Falkland Islands.

(4) For the purposes of subsection (1) of this section "purposes" are "public" if they are intended to result or result in a benefit or advantage to the community and, without prejudice to the generality of the expression, includes the development, utilization or disposal of property (in whole or in part) for the promotion of the physical, economic, social or aesthetic well-being of the community; and "property" does not include any minerals in, under or upon any land or waters.

Protection of person or property from arbitrary search or entry.

8.—(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required in the interests of defence, internal security, public safety, public order, public morality, public health, public revenue, town and country planning, the development or utilization of mineral resources, or the development and utilization of property in such a manner as to promote the public benefit;
- (b) that authorises an officer or agent of the Government, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, or to that authority or body corporate, as the case may be;

- (c) that is reasonably required for the purpose of preventing or detecting crime;
- (d) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
- (e) that authorises, for the purpose of enforcing the judgment or order of a court in any proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of conscience.

9.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

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

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

(4) Nothing contained or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required—

- (a) in the interests of defence, internal security, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

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

Protection of freedom of expression including freedom of the press.

10.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression.

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

(3) For the purposes of this section expression may be oral or written or by codes, signals, signs or symbols and includes recordings, broadcasts (whether on radio or television), printed publications, photographs (whether still or moving), drawings, carvings and sculptures or any other means of artistic expression.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) that is reasonably required—

- (i) in the interests of defence, internal security, public safety, public order, public morality or public health; or
- (ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings and proceedings before statutory tribunals, preventing the disclosure of information received in confidence, maintaining the authority and independence of the Legislative Council and the courts, or regulating telephony, posts, telegraphy, broadcasting or public shows; or

(b) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association.

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

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) that is reasonably required:

(i) in the interests of defence, internal security, public order, public morality or public health; or

(ii) for the purpose of protecting the rights or freedoms of other persons; or

(b) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection from discrimination on grounds of race, sex, etc.

12.—(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions or affiliations, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as the law makes provision—

(a) for the appropriation of public revenues or other public funds;

(b) with respect to persons who do not belong to the Falkland Islands; or

(c) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to qualifications (not being qualifications specifically relating to race,

place of origin, political opinions or affiliations, colour, creed or sex) for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established by any law for public purposes.

(6) Subsection (2) of this section shall not apply to anything that is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 6, 8, 9, 10, and 11 of this Constitution, being such a restriction as is authorised by paragraph (a) or (b) of subsection (3) of section 6, subsection (2) of section 8, subsection (4) of section 9, subsection (4) of section 10 or subsection (2) of section 11, as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

Provisions to secure protection of the law.

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

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

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) shall be informed orally and in writing as soon as reasonably practicable, in a language that he understands, of the nature of the offence with which he is charged;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal practitioner of his own choice or, where so provided by any law, by a legal practitioner at the public expense or, when he is unable to retain a legal practitioner of his own choice or at the public expense, by such person as the court may approve;
- (e) shall be afforded facilities to examine in person or by the legal practitioner or approved person representing him the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

- (f) shall be permitted to have without payment the assistance of an interpreter if, in the opinion of the court, he has an insufficient understanding of the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence—

- (i) except where, under the provisions of any law entitling him thereto, he is given adequate notice of the charge, the date, time and place of the trial or continuance thereof and afforded a reasonable opportunity of appearing before the court:

Provided that where the foregoing conditions have been complied with, and the court is satisfied that owing to circumstances beyond his control he cannot appear, the trial shall not take place or continue in his absence; or

- (ii) unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

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

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

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

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

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

(8) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court or other authority from excluding from the proceedings persons other than the parties thereto and the legal practitioners (or approved persons) representing them to such an extent as the court or other authority—

- (a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or
- (b) may by law be empowered or required to do in the interests of defence, internal security, public safety, public order or public morality.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

- (a) subsection (2)(a) of this section, to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or
- (c) subsection (5) of this section, to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; but any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention, the provisions of subsection (1), paragraphs (d) and (e) of subsection (2), and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (2) of this section to the extent that it authorises the trial of a defendant by a magistrate for a summary offence to take place in the defendant's absence.

(14) In this section "criminal offence" means a criminal offence under any law.

Derogations from fundamental rights and freedoms under emergency powers.

14. Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of sections 3, 6(1) and (3), 8, 10, 11 or 12 of this Constitution to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in the Falkland Islands during that period.

Protection of persons detained under emergency laws.

15.—(1) When a person is detained by virtue of any such law as is referred to in section 14 of this Constitution the following provisions shall apply, that is to say—

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

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

(3) Nothing contained in subsection (1)(d) or subsection (1)(e) of this section shall be construed as entitling a person to legal representation at public expense.

Enforcement of protective provisions.

16.—(1) If any person alleges that any of the provisions of sections 1 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and
- (b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (3) of this section,

and may make such declaration and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 1 to 15 (inclusive) of this Constitution:

Provided that the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court (other than the Supreme Court, the Court of Appeal, or a court-martial) any question arises as to the contravention of any of the provisions of sections 1 to 15 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the Supreme Court in pursuance of subsection (3) of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(5) The Supreme Court shall have such powers in addition to those conferred by this section as may be prescribed by Ordinance for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the Supreme Court).

Interpretation and savings.

17.—(1) In this Chapter, unless the context otherwise requires—

“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law having jurisdiction in the Falkland Islands, other than a court established by a disciplinary law, and includes Her Majesty in Council and, in section 2 of this Constitution, a court established by a disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means—

- (a) a naval, military or air force;
- (b) the Police Force; or
- (c) a prison service;

“member” in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

“legal practitioner” means a person entitled to be in or enter the Falkland Islands and to practise before a court;

(2) In relation to any person who is a member of a disciplined force raised in accordance with such provisions as may be prescribed by Ordinance, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 4 and 5 of this Constitution.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in the Falkland Islands, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(4) In this Chapter “public emergency” means any period during which—

- (a) Her Majesty is at war; or
- (b) the provisions of Part II of the Emergency Powers Order in Council 1939(a) are in operation in the Falkland Islands.

(a) See S.I. 1952 at p. 621.

(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
 - (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.

CHAPTER II

THE GOVERNOR

The Governor.

18.—(1) There shall be a Governor of the Falkland Islands who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

(2) The Governor shall have such powers and duties as are conferred upon him by or under this Constitution or any other law and such other powers and duties as Her Majesty may from time to time be pleased to assign to him and, subject to the provisions of this Constitution and any other law, he shall do or execute all things that belong to his office according to such instructions, if any, as Her Majesty may, through a Secretary of State, from time to time see fit to give him:

Provided that the question whether the Governor has in any matter complied with any such instructions shall not be enquired into in any court of law.

(3) A person appointed to the office of Governor shall, before entering upon the functions of that office, make oaths of allegiance and for the due execution of that office.

(4) All references to the Civil Commissioner or to the officer administering the Government in any law in force in the Falkland Islands immediately before the appointed day shall, unless the context otherwise requires, be construed as references to the Governor.

(5) Where the Governor is directed by this Constitution to exercise any function in accordance with the advice of or after consultation with any person or authority, the question whether he has so exercised that function shall not be enquired into in any court of law.

Acting Governor.

19.—(1) During any period when the office of Governor is vacant or the holder thereof is for any reason unable to perform the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and performed by such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State.

(2) Before assuming the functions of the office of Governor, the person designated shall make the oaths directed by section 18(3) of this Constitution to be made by the Governor.

(3) The person designated shall not continue to act in the office of Governor after the Governor has notified him that he is about to assume or resume the functions of that office.

Defence and internal security.

20. The Governor shall consult with the Commander British Forces before exercising any function which appears to the Governor to relate to defence or internal security (with the exception of the police) and shall act in accordance with the advice which the Commander British Forces then tenders to him; and he shall likewise act in accordance with the advice of the Commander British Forces on any matter on which the Commander British Forces considers it necessary in the interests of defence or internal security (with the exception of the police) to give advice to the Governor:

Provided that the question whether the Governor has on any matter consulted with the Commander British Forces or acted in accordance with his advice shall not be enquired into in any court of law.

CHAPTER III

THE LEGISLATURE

Establishment and composition of the Legislative Council.

21.—(1) There shall be a Legislative Council for the Falkland Islands.

(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.

Constituencies.

22.—(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.

(2) For the purposes of this section the boundaries of the Stanley constituency shall be such as shall be prescribed by the Ordinance which shall make provision for elections to the Legislative Council and "Camp" shall be the remainder of the Falkland Islands.

Qualifications for election.

23. Subject to the provisions of section 24 of this Constitution, any person who is a Commonwealth citizen of the age of twenty-one or upwards, is registered as a voter in the constituency in which he is seeking election and is not prohibited by any law from so voting shall be qualified to be elected as a member of the Legislative Council.

Disqualifications for election.

24.—(1) No person shall be qualified to be elected as a member of the Legislative Council who—

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State;
- (b) is a member of the regular armed forces of Her Majesty;
- (c) holds, or is acting in, a public office except as may be specified (either individually or by reference to a class of office or otherwise) by Ordinance;

- (d) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged;
 - (e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law;
 - (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;
 - (g) is disqualified for membership of the Legislative Council by any law relating to offences connected with elections; or
 - (h) is disqualified for election by any law by reason of his holding, or acting in, any office the functions of which involve—
 - (i) any responsibility for, or in connection with, the conduct of any election; or
 - (ii) any responsibility for the compilation or revision of any register of voters.
- (2) The reference in subsection (1)(b) of this section to a member of the regular armed forces of Her Majesty shall not include a reference to a member of the Falkland Islands Defence Force.
- (3) For the purposes of subsection (1)(f) of this section—
- (a) where a person is serving two or more terms of imprisonment that are required to be served consecutively he shall be regarded as serving a single term of imprisonment for the aggregate period of those terms; and
 - (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.
- (4) If it is so prescribed by Ordinance—
- (a) a person may stand as a candidate for election as such notwithstanding that he holds or is acting in a public office which has not been specified, in the manner prescribed in subsection (1)(c) of this section, if he undertakes to relinquish or, as the case may be, to cease to act in that office if he is elected as a member of the Legislative Council; and

- (b) any office the emoluments of which are paid, directly or indirectly, out of public funds, but which would not otherwise be a public office for the purposes of this section, shall be deemed to be a public office for those purposes.

(5) Any Ordinance made in pursuance of paragraph (c) of subsection (1) of this section or of paragraph (a) of subsection (4) of this section may contain incidental and consequential provisions, including provision that a member who has given such an undertaking as if referred to in the said paragraph (a) shall be incapable of taking his seat in the Legislative Council until he has fulfilled that undertaking and shall vacate his seat if he has not fulfilled it within such time as is specified by such Ordinance; and for the avoidance of doubt it is hereby declared that, where provision is made in pursuance of paragraph (b) of subsection (4) of this section in respect of any office, provision may also be made in pursuance of the said paragraph (c) or the said paragraph (a) in respect of that office.

Vacation of seats.

25. The seat of an elected member of the Legislative Council shall become vacant—

- (a) if he resigns it by writing under his hand addressed to the Governor;
- (b) if he is absent from the meetings of the Legislative Council in such circumstances and for such period as may be prescribed by the Standing Orders of the Council;
- (c) if he ceases to be a Commonwealth citizen or, by virtue of his own act, becomes under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State;
- (d) if any circumstances arise that, if he were not a member of the Legislative Council, would cause him to be disqualified for election thereto by virtue of paragraphs (a), (b), (c), (d), (e), (g) or (h) of section 24(1) of this Constitution; or
- (e) in the circumstances specified in the next following section.

Vacation of seat on sentence.

26.—(1) Subject to the provisions of this section, if a member of the Legislative Council is sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term exceeding twelve months, he shall forthwith cease to perform his functions as a member of the Council and his seat shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the Governor may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence.

(2) If at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of twelve months or less or a punishment other than imprisonment is substituted, his seat in the Legislative Council shall not become vacant under the provisions of the foregoing subsection, and he may again perform his functions as a member of the Council.

(3) For the purposes of this section—

- (a) where a person is sentenced to two or more terms of imprisonment that are required to be served consecutively he shall be regarded as serving a single term of imprisonment for the aggregate period of those terms; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

Qualifications of electors.

27.—(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 Islands 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.

(2) No person shall be qualified to be registered as an elector under this section who on the qualifying date—

- (a) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law;
- (b) is under sentence of death imposed on him by a court in any part of the Commonwealth or is serving a sentence of imprisonment (by whatever named called) for a term exceeding 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;
- (c) is disqualified by or under any law from being registered as an elector by reason of having been convicted of an offence relating to elections;
- (d) is a member of the regular armed forces of Her Majesty, unless he is, for the purposes of Chapter 1 of this Constitution, regarded as belonging to the Falkland Islands; or

- (e) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State.

(3) The provisions of section 24(3) of this Constitution shall apply for the purposes of paragraph (b) of the foregoing subsection as they apply for the purposes of paragraph (f) of section 24(1).

(4) (a) In this section "qualifying date" and "qualifying period" means such date or period as may be prescribed by or under any Ordinance as the date or period with reference to which the qualifications of persons for registration as electors for elections of members of the Legislative Council are to be ascertained; and a different qualifying period may be prescribed in respect of persons not born in the Falkland Islands.

(b) In this section "resident" shall have such meaning as may be prescribed by or under any Ordinance.

(5) The reference in subsection (2)(d) of this section to a member of the regular armed forces of Her Majesty shall not include a reference to a member of the Falkland Islands Defence Force.

General elections and filling vacant seats.

28.—(1) A general election shall be held at such time after every dissolution of the Legislative Council as the Governor shall appoint by proclamation published in the Gazette:

Provided that the date so appointed shall not be more than 70 days after the date of dissolution.

(2) Whenever an elected member of the Legislative Council vacates his seat for any reason, other than a dissolution of the Council, an election shall be held to fill the vacancy, on such date as the Governor shall appoint by proclamation published in the Gazette, within 70 days of the occurrence of the vacancy unless the Council is sooner dissolved or under Section 29(3) will be dissolved within 126 days of the occurrence of the vacancy.

Prorogation and dissolution.

29.—(1) The Governor may at any time prorogue the Legislative Council by proclamation published in the Gazette.

(2) The Governor may at any time dissolve the Legislative Council by proclamation published in the Gazette.

(3) The Governor shall dissolve the Legislative Council at the expiration of four years from the date when the Council first meets after the appointed day or from the date when it first meets after any general election, unless it has been sooner dissolved.

Determination of questions as to membership.

30.—(1) The Supreme Court shall have jurisdiction to hear and determine any question whether—

- (a) any person has been validly elected as a member of the Legislative Council; or
- (b) any member of the Legislative Council has vacated his seat or is required, under the provisions of section 26 of this Constitution, to cease to perform his functions as such.

(2) An application to the Supreme Court for the determination of—

- (a) any question under paragraph (a) of the last foregoing subsection may be made by any person entitled to vote in the election to which the application relates or by any person who was a candidate at that election or by the Attorney General;
- (b) any question under paragraph (b) of the last foregoing subsection may be made by any person registered as a voter in the constituency for which the member concerned was elected or by any elected member of the Legislative Council or by the Attorney General;

and if an application under this subsection is made by a person other than the Attorney General the Attorney General may intervene and may then appear or be represented in the proceedings.

(3) Provision may be made by Ordinance with respect to—

- (a) the circumstances and manner in which and the imposition of conditions upon which any application may be made to the Supreme Court for the determination of any question under this section; and
- (b) the powers, practice and procedure of the Supreme Court in relation to any such application.

(4) No appeal shall lie from any determination by the Supreme Court in proceedings under this section.

(5) In the exercise of his functions under this section the Attorney General shall not be subject to the direction or control of any other person or authority.

CHAPTER IV

POWERS AND PROCEDURES OF THE LEGISLATIVE COUNCIL

Power to make laws.

31. Subject to the provisions of this Constitution, the Governor, with the advice and consent of the Legislative Council, may make laws for the peace, order and good government of the Falkland Islands.

Sessions of the Legislative Council.

32.—(1) Each session of the Legislative Council shall be held at such place within the Falkland Islands and shall begin at such time as the Governor may appoint by proclamation published in the Gazette:

Provided that a period of twelve months shall not elapse between the date when the Legislative Council last sat and the date appointed for the first sitting of its next session.

(2) Each session of the Legislative Council shall terminate when the Council is prorogued or is dissolved without having been prorogued.

Presiding.

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.

Clerk of the Legislative Council.

34. There shall be a Clerk of the Legislative Council whose office shall be a public office.

Participation by non-members.

35.—(1) The Commander British Forces shall have the right to take part in the proceedings of the Legislative Council except that he may not vote.

(2) The Attorney General shall, with the consent of the person presiding, have the right to take part in the proceedings of the Legislative Council, except that he may not vote.

(3) The person presiding may, provided the Legislative Council considers it desirable, summon any other person to a meeting of the Council notwithstanding that that person is not a member of the Council; and any person so summoned shall be entitled to take part as if he were a member in the proceedings of the Council relating to the matter in respect of which he was summoned, except that he may not vote.

Oaths.

36. No *ex officio* or elected member of the Legislative Council shall take part in its proceedings (other than proceedings for the purposes of this section) unless he has made and subscribed before the Governor, or such other person authorised in that behalf by him, the oath of allegiance.

Quorum.

37.—(1) If at any sitting of the Legislative Council any member of the Council who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the Standing Orders of the Council the person presiding at the sitting ascertains that a quorum is still not present, the Council shall be adjourned.

(2) For the purpose of the preceding sub-section a quorum shall consist of six members excluding the person presiding at the sitting.

Voting.

38.—(1) Save as otherwise provided in this Constitution, any question proposed for decision at a sitting of the Legislative Council shall be determined by a majority of the votes of the elected members present and voting.

(2) Subject to the provisions of the next following subsection, the person presiding at a sitting of the Legislative Council shall not vote unless on any question the votes are equally divided, in which case, except as otherwise provided in this section, he shall have and shall exercise a casting vote.

(3) The person presiding shall have a casting vote only if he is an elected member of the Legislative Council; and if upon any question before the Council the votes of the members are equally divided, and the person presiding is not an elected member, the motion shall be declared lost.

Transaction of business notwithstanding vacancies.

39. Subject to section 37 of this Constitution, the Legislative Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof (including any vacancy not filled when the Council is first constituted or is reconstituted at any time) and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so took part therein.

Standing Orders.

40.—(1) Subject to the provisions of this Constitution, the Legislative Council may make Standing Orders for:

- (a) the regulation and orderly conduct of its own proceedings and the despatch of business at its sittings; and
- (b) for the passing, entitling, numbering and publication of bills and their presentation to the Governor for his assent:

Provided that no such Standing Orders shall have effect until the Governor, acting in his discretion, by writing under his hand approves them.

(2) Subject as aforesaid the procedure of the Legislative Council at any sitting shall be determined by the person presiding at the sitting.

Penalty for sitting or voting when unqualified.

41.—(1) Any person who sits or votes in the Legislative Council knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to such fine as may be provided for by the Standing Orders of the Council.

(2) Any such penalty shall be recoverable by civil action in the Supreme Court at the suit to the Attorney-General.

Privileges of Legislative Council and members.

42. Provision may be made by Ordinance prescribing the privileges, immunities and powers of the Legislative Council and its committees, or the privileges and immunities of the members and officers of the Council or of other persons concerned in the business of the Council or its committees, for the purpose of ensuring the due discharge of the functions of the Council and its members at sittings of the Council, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of the members thereof.

Freedom of speech in proceedings.

43. Without prejudice to any provision made by Ordinance pursuant to the provisions of the preceding section of this Constitution, no civil or criminal proceedings may be instituted against any member of the Legislative Council for words spoken before, or written in a report to, the Council or a committee thereof when sitting in public or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise.

Rules for the enactment of laws.

44.—(1) All laws made under section 31 of this Constitution shall be styled “Ordinances” and the words of enactment shall be “Enacted by the Legislature of the Falkland Islands, as follows”.

(2) The Governor and the Legislative Council shall in the making of laws observe, so far as practicable, the rules set forth in Annex A to this Constitution.

Introduction of Bills etc.

45.—(1) Subject to the provisions of this Constitution and of the Standing Orders of the Legislative Council, any member may introduce any Bill or propose any motion for debate in, or may present any petition to the Council, and the same shall be debated and disposed of according to the Standing Orders of the Council.

(2) Except on the recommendation of the Governor, the Legislative Council shall not—

- (a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding—
 - (i) makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of the Falkland Islands, or for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to the Government of the Falkland Islands; or
 - (ii) would effect any alteration in the salary, allowances or other conditions of service (including leave, passages and promotion) of any public officer or in the law, regulations or practice governing the payment of pensions, gratuities or other like benefits to any public officer or former public officer or his widow, children, dependants or personal representatives;
- (b) proceed upon any motion (including any amendment to a motion) the effect of which in the opinion of the person presiding is that provision would be made for any of the purposes aforesaid: or

- (c) receive any petition which, in the opinion of the person presiding, requests that provision be made for any of the purposes aforesaid.

Assent to Bills.

46.—(1) A Bill passed by the Legislative Council shall not become a law until—

- (a) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of his assent; or
- (b) Her Majesty has given Her assent to it through a Secretary of State, and the Governor has signified that assent by proclamation published in the Gazette.

(2) When a Bill is presented to the Governor for his assent, he shall, acting in his discretion but subject to the provisions of this Constitution and of any instructions given through a Secretary of State, declare that he assents or refuses to assent to it, or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that the Governor shall reserve for the signification of Her Majesty's pleasure any Bill which appears to him to be in any way repugnant to, or inconsistent with, the provisions of this Constitution.

Publication and commencement of laws.

47. No law made under section 31 of this Constitution shall come into operation until it has been published in the Gazette but the coming into operation of any such law may be postponed and any such law may be given retrospective effect.

Disallowance of laws.

48.—(1) Any Ordinance to which the Governor has given his assent may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever any Ordinance has been disallowed by Her Majesty the Governor shall, as soon as practicable, cause notice of such disallowance to be published in the Gazette and the law shall be annulled with effect from the date of the publication of that notice.

(3) Section 16(1) of the Interpretation Act 1978(a) shall apply to the annulment of any Ordinance under this section as it applies to the repeal of an Act of Parliament of the United Kingdom, save that any enactment repealed or amended by or in pursuance of that Ordinance shall have effect as from the date of the annulment as if that Ordinance had not been made.

(a) 1978 c.30.

Governor's reserved power.

49.—(1) If the Governor considers that it is expedient that any Bill introduced or any motion proposed at any sitting of the Legislative Council held in accordance with the provisions of this Chapter should have effect, then, if the Council fails to pass the Bill or to carry the motion within such time and in such form as the Governor thinks reasonable and expedient, the Governor may, at any time that he thinks fit, and notwithstanding any provision of this Constitution or of any Standing Order of the Council, declare that the Bill or motion shall have effect as if it had been passed or carried by the Council either in the form in which it was introduced or proposed or with such amendments as the Governor thinks fit that have been moved or proposed in the Council, including any committee thereof; and the Bill or motion shall be deemed thereupon to have been so passed or carried and the provisions of this Constitution and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly:

Provided that the Governor shall not exercise his powers under this subsection without prior instructions from a Secretary of State, unless in his judgment the matter is so urgent that it is necessary for him to do so before having consulted a Secretary of State.

(2) The Governor shall forthwith report to a Secretary of State every case in which he makes any such declaration and the reasons therefore.

(3) If any member of the Legislative Council objects to any declaration made under this section, he may, within fourteen days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting and the Governor shall forthwith forward a copy of such statement to a Secretary of State.

(4) Any declaration made under this section, other than a declaration relating to a Bill, may be revoked by a Secretary of State and the Governor shall forthwith cause notice of the revocation to be published in the Gazette; and from the date of such publication any motion that is deemed to have been carried by virtue of the declaration shall cease to have effect and section 16(1) of the Interpretation Act 1978 shall apply to the revocation as it applies to the repeal of an Act of Parliament.

(5) The powers conferred upon the Governor by this section shall be exercised by him in his discretion.

(6) The motions to which this section applies are—

- (a) any motion relating to or for the purposes of a Bill;
- (b) any motion proposing or amending a resolution which, if passed by the Legislative Council, would have the force of law; and
- (c) any motion proposing or amending a resolution upon which the coming into force or continuance in force of any subordinate legislation depends.

CHAPTER V

THE EXECUTIVE

Executive authority.

50.—(1) The executive authority of the Falkland Islands is vested in Her Majesty.

(2) Subject to the provisions of this Constitution, the executive authority of the Falkland Islands shall be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him.

(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.

(4) Nothing in this section shall preclude persons or authorities other than the Governor from exercising such functions as are or may be conferred upon them by any law.

Executive Council.

51. There shall be an Executive Council which shall consist of three of the elected members of the Legislative Council, elected in accordance with the provisions of section 52 of this Constitution, and two *ex-officio* members, namely the Chief Executive and the Financial Secretary. 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.

Election of elected members of the Executive Council.

52.—(1) At the first meeting of the Legislative Council after every general election the elected members shall elect three of their number to be members of the Executive Council for a period of twelve months from the date of their election to the Executive Council.

(2) Thereafter such elections shall be held before the expiry of each period of twelve months (or as soon as practicable thereafter) or when the Legislative Council first meets after any dissolution thereof.

(3) A person shall be eligible for election to the Executive Council notwithstanding that he is a member of the Executive Council then in being.

(4) If the seat of an elected member of the Executive Council becomes vacant during any such twelve-month period the elected members of the Legislative Council shall as soon as possible meet and elect one of their number to fill the seat for the remainder of the duration of that twelve-month period.

(5) To be effective for the purposes of this section, or section 54(1) of this Constitution, any election must result in the Executive Council being composed of at

least one elected member representing the Camp constituency and at least one elected member representing the Stanley constituency.

Tenure of office of elected members of the Executive Council.

53. The seat of an elected member of the Executive Council shall become vacant—

- (a) if he resigns his seat in the Executive Council by writing under his hand addressed to the Governor;
- (b) when the Legislative Council first meets after any dissolution thereof;
- (c) if he ceases to be a member of the Legislative Council for any reason other than a dissolution thereof;
- (d) if he is absent from the Falkland Islands without the permission of the Governor;
- (e) if at the expiry of the period for which he is elected to sit on the Executive Council he has not been re-elected for a further period; or
- (f) if his election to the Executive Council is revoked by a resolution of the Legislative Council.

Temporary members of the Executive Council.

54.—(1) Whenever an elected member of the Executive Council is by reason of his illness or absence from the Falkland Islands or for any other reason incapable of performing the functions of his office, then the elected members of the Legislative Council shall, if the Governor informs them that is desirable, elect a person from among their number to be temporarily a member of the Executive Council.

(2) A person elected under this section to be temporarily a member of the Executive Council shall vacate his seat when he is informed by the Governor that the circumstances giving rise to his election have ceased to exist.

(3) Subject to the provisions of this section, the provisions of this Constitution shall apply in relation to a person elected to be temporarily a member of the Executive Council as they apply in relation to the member on account of whose incapacity he was elected.

Attendance of non-members at meetings of the Executive Council.

55.—(1) The Commander British Forces and the Attorney General shall have the right to attend all meetings of the Executive Council and take part in their proceedings, except that if a matter is put to the vote they may not vote.

(2) The person presiding may, when in his opinion the business before the Executive Council makes it desirable, summon any person to a meeting of the Council

notwithstanding that that person is not a member of the Council; and any person so summoned shall be entitled to take part as if he were a member in the proceedings of the Council relating to the matter in respect of which he was summoned, except that he may not vote.

Summoning of meetings of the Executive Council.

56.—(1) Subject to the provisions of this section, the Executive Council shall not be summoned except by the Governor, acting in his discretion, who may summon a meeting of the Council at any time and, subject to the provisions of section 59, shall determine what business shall be transacted at that meeting

(2) The Governor shall summon a meeting of the Executive Council if requested in writing to do so by not less than two of its members.

Presiding in the Executive Council.

57. There shall preside at any meeting of the Executive Council—

- (a) the Governor; or
- (b) in the absence of the Governor, such member of the Executive Council as the Governor, acting in his discretion, may appoint to preside at that meeting.

Oaths.

58. No *ex-officio* or elected member of the Executive Council shall take part in its proceedings (other than proceedings for the purposes of this section) unless he has made and subscribed before the Governor the oath of secrecy; and no other person shall take part in the proceedings of the Council (other than proceedings as aforesaid) unless he has so made and subscribed the oath of secrecy:

Provided that the Executive Council may exempt any person who is not a member of it from this requirement.

Quorum.

59. No business (except that of adjournment) shall be transacted at a meeting of the Executive Council if less than three members are present.

The Governor to propose questions.

60. The Governor shall alone be entitled to submit questions to the Executive Council but if he shall decline to so submit any question when requested in writing by any member so to do, it shall be competent for such member to require that there be recorded in the minutes his written application, together with the answer returned by the Governor thereto.

The Governor to consult the Executive Council.

61.—(1) Subject to the provisions of this section, in the formulation of policy and in the exercise of the functions conferred upon him by this Constitution or any other law the Governor shall consult with the Executive Council.

(2) The Governor shall not be obliged to consult with the Executive Council:

- (a) when acting under instructions given to him by Her Majesty through a Secretary of State pursuant to the provisions of section 18 of this Constitution;
- (b) when the matter is one on which he is required by the provisions of section 20 of this Constitution to consult the Commander British Forces or on which the Commander British Forces has, in accordance with those provisions, given advice to the Governor;
- (c) when exercising any function conferred upon him by this Constitution or any other law where it is provided, either expressly or by necessary implication, that he exercise such function in his discretion or in his judgment or in accordance with the advice of, or after consultation with, any person or authority other than the Executive Council.
- (d) if, in his judgment, the service of Her Majesty would sustain material prejudice thereby;
- (e) if, in his judgment, the matter is too unimportant; or
- (f) if, in his judgment, the urgency of the matter requires him to act before he can consult the Executive Council:

Provided that in any case falling solely within paragraph (f) of this subsection he shall, as soon as practicable, communicate to the Executive Council the measures which he has adopted and the reasons therefor.

The Governor may act against advice of the Executive Council.

62.—(1) In any case in which the Governor consults the Executive Council, he may act against the advice given to him by the Council if he thinks it right to do so.

(2) Where the Governor acts, in pursuance of subsection (1) of this section, against the advice of the Executive Council, he shall without delay report the matter to a Secretary of State with the reasons for his action.

(3) Whenever the Governor acts against the advice of the Executive Council any member of it may require that there shall be recorded in the minutes any advice or opinion he gave upon the question at issue and his reasons.

(4) The question whether the Governor has exercised any power after consultation with the Executive Council shall not be inquired into in any court of law.

Minutes.

63.—(1) Minutes shall be kept of all the proceedings of the Executive Council and, whenever practicable, at every meeting of the Council the minutes of the last preceding meeting shall be confirmed, with or without amendment as the case may require, before proceeding to the despatch of any other business.

(2) Twice in each year a full transcript of all minutes of the Executive Council for the preceding half year shall be transmitted to a Secretary of State.

Advisory Committee on the Prerogative of Mercy.

64.—(1) There shall be an Advisory Committee on the prerogative of mercy which shall consist of—

- (a) two elected members of the Legislative Council appointed by the Governor after consultation with the elected members of the Legislative Council;
- (b) the Chief Executive;
- (c) the Attorney-General;
- (d) the Senior Medical Officer.

(2) An appointed member of the Advisory Committee shall vacate his office—

- (a) if his appointment is revoked by the Governor, acting in his discretion;
- (b) if he ceases to be member of the Legislative Council or is required, under section 26 of this Constitution, to cease to perform his functions as such;
- (c) in any other case, at the expiration of four years from the date of his appointment.

(3) The Advisory Committee shall determine its own procedure.

Power of pardon etc.

65.—(1) The Governor, acting after consultation with the Committee, may in her Majesty's name and on her Majesty's behalf—

- (a) grant to any person concerned in or convicted of an offence a pardon, either free or subject to lawful conditions;

- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for any offence; or
- (d) remit the whole or any part of any punishment imposed on any person for any offence or any penalty of forfeiture otherwise due to Her Majesty on account of such an offence.

(2) Whenever any person has been sentenced to death by any court of law in the Falkland Islands, the Governor shall cause a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge, a report on the case by the Chief Justice or, if the Chief Justice presided at the trial, by the Attorney General), together with such other information derived from the record of the case or elsewhere as may be required by or furnished to the Governor, to be taken into consideration at a meeting of the Committee.

(3) The Governor shall not exercise his powers under this section in relation to any such person as is referred to in the last preceding subsection unless it appears to him to be expedient to do so upon receiving the advice of the Committee thereon; but he shall decide according to his own deliberate judgment, whether the members of the Committee concur therein or not, causing his reasons to be entered in the minutes of the Committee in any case in which he decides to act in opposition to the judgment of the majority of the members of the Committee.

(4) The provisions of this section shall not apply in relation to any conviction by a court-martial established under any Act of the Parliament of the United Kingdom, any punishment imposed in respect of any such conviction or any penalty or forfeiture due under any such Act.

(5) In this section "the Committee" means the Advisory Committee on the Prerogative of Mercy.

Powers of Attorney General in relation to criminal proceedings.

66.—(1) The Attorney General shall have power in any case in which he considers it desirable so to do—

- (a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(2) The powers of the Attorney-General under the preceding subsection may be exercised by him in person or through other persons acting in accordance with his general or special instructions.

(3) The powers conferred upon the Attorney-General by paragraphs (b) and (c) of subsection (1) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(4) In the exercise of the powers conferred upon him by this section the Attorney-General shall not be subject to the direction or control of any person or authority.

(5) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court of law, or any case stated or question of law reserved for the purposes of any such proceedings to any other court of law, shall be deemed to be part of those proceedings.

Grants of land.

67. Subject to the provisions of any law, the Governor or any person duly authorised by him in writing under his hand may, in Her Majesty's name and on Her behalf, make and execute under the public seal grants and dispositions of any land or other immovable property in the Falkland Islands that may be lawfully granted or disposed of by Her Majesty.

CHAPTER VI

FINANCE

Consolidated Fund.

68. All revenues or other moneys raised or received for the purposes of the Government (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose or that may by or under any law be retained by the authority that received them for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund.

Withdrawals.

69.—(1) No moneys shall be withdrawn from the Consolidated Fund except—

(a) to meet expenditure that is charged upon the Fund by this Constitution or by any other law; or

(b) where the issue of those moneys has been authorised by an appropriation Ordinance or in such manner, and subject to such conditions, as may be prescribed in pursuance of section 71 of this Constitution.

(2) No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorised by or under a law.

(3) No moneys shall be withdrawn from the Consolidated Fund except in such manner as may be prescribed by Ordinance.

(4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents for Oversea Governments and Administrations or the investment of any such moneys in such securities as may be prescribed by Ordinance or in which a trustee would be entitled to invest shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

Authorisation of expenditure.

70.—(1) The Financial Secretary shall cause to be prepared and laid before the Legislative Council before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of the Falkland Islands for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a bill, to be known as an appropriation bill, introduced into the Legislative Council to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.

(3) If in any financial year it is found—

(a) that the amount appropriated by the appropriation Ordinance for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the appropriation Ordinance; or

(b) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the appropriation Ordinance or for a purpose for which no amount has been appropriated by the appropriation Ordinance,

the Financial Secretary shall cause a supplementary estimate showing the sums required or spent to be prepared and laid before the Legislative Council and the heads of expenditure shall be included in a supplementary appropriation bill to provide for the

appropriation of those sums which shall be introduced in the Legislative Council before the end of the financial year or, if that is not possible, within 30 days thereafter.

Expenditure in advance of appropriation.

71. If the appropriation Ordinance in respect of any financial year has not come into operation by the beginning of that financial year, the Financial Secretary may, to such extent and subject to such conditions as may be prescribed by Ordinance, authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the appropriation Ordinance, whichever is the earlier.

Contingencies Fund.

72.—(1) There shall be such provision as may be prescribed by Ordinance for the establishment of a Contingencies Fund and for authorising the Financial Secretary, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the Legislative Council and an appropriation bill shall be introduced therein, as soon as possible for the purpose of replacing the amount so advanced.

Public debt.

73.—(1) All debt charges for which the Falkland Islands are liable shall be charge on the Consolidated Fund.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of the Falkland Islands or the Consolidated Fund and the service and redemption of debt thereby created.

Audit.

74.—(1) The public accounts of the Falkland Islands and of all courts of law and all authorities and officers of the Government shall be audited and reported on by the Principal Auditor and for that purpose the Principal Auditor or any person authorised by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts:

Provided that, if it is so prescribed in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be specified by or under that law.

(2) The Principal Auditor shall submit his reports to the Governor who shall cause them to be laid before the Legislative Council.

(3) In the exercise of his functions under this Constitution the Principal Auditor shall not be subject to the direction or control of any person or authority.

CHAPTER VII

THE PUBLIC SERVICE

Power to constitute offices.

75. The Governor may, in Her Majesty's name and on Her Majesty's behalf, constitute offices for the Falkland Islands and shall so constitute the offices of Chief Executive, Financial Secretary, Attorney General and Principal Auditor.

Power to make appointments, etc.

76. Subject to the provisions of this Constitution, the Governor, acting in his discretion or after consultation with such persons or authority as may be prescribed by Ordinance, may, in Her Majesty's name and on Her Majesty's behalf—

- (a) make, confirm and terminate appointments to any public office;
- (b) exercise disciplinary control over public officers;
- (c) except as otherwise prescribed by law, make and terminate appointments to any other office in the service of the Crown in a civil capacity in the Falkland Islands, and, except as otherwise prescribed by law, all such appointments shall be held during Her Majesty's pleasure.

CHAPTER VIII

THE JUDICATURE

Supreme Court.

77.—(1) There shall be a Supreme Court for the Falkland Islands which shall have unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) The Supreme Court shall, subject to section 80 of this Constitution, consist of one judge, that is to say, the Chief Justice.

Court of Appeal.

78.—(1) There shall be a Court of Appeal for the Falkland Islands.

- (2) The Court of Appeal shall, subject to section 80 of this Constitution, consist of—
- (a) a President and two Justices of Appeal or such a greater number of Justices of Appeal as may be prescribed by Ordinance; and
 - (b) the Chief Justice of the Supreme Court as an *ex-officio* member of the Court of Appeal for all purposes except for the purpose of constituting the Court of Appeal for the hearing and determination of an appeal from his own decision.
- (3) The office of a Justice of Appeal shall not without his consent be abolished during his continuance in office.
- (4) For the purposes of any determination of the Court of Appeal—
- (a) an uneven number of judges shall sit, which, in the case of any final determination by the court other than the summary dismissal of an appeal, shall not be less than three; and
 - (b) any determination by the court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit to determine that matter.

Appointment of judges.

79.—(1) The Chief Justice, the President of the Court of Appeal and the Justices of Appeal shall be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State.

(2) No person shall be qualified for appointment as Chief Justice, President of the Court of Appeal or Justice of Appeal unless—

- (a) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or of a court having jurisdiction in appeals from any such court; or
 - (b) he is entitled to practise as an advocate in such a court and has been entitled for not less than ten years to practise as an advocate or as a solicitor in such a court.
- (3) For the purposes of this section, a person shall be regarded as entitled to practise as an advocate or, as the case may be, as a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or, as the case may be, of solicitors) notwithstanding that—
- (a) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or
 - (b) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practise.

Acting Judges.

80.—(1) If—

- (a) the office of Chief Justice is vacant, or if the holder thereof is for any reason unable to perform the functions of his office; or
- (b) if it appears to the Governor that the state of business in the Supreme Court so requires,

the Governor, acting in his discretion but whenever possible after consulting the Chief Justice, may appoint a person possessing such legal qualifications and experience as he may deem appropriate—

- (i) to sit as an acting judge of the Supreme Court; and
- (ii) to discharge such of the functions of the office of Chief Justice and for such period as may be specified in the instrument of appointment.

(2) If the office of the President of the Court of Appeal is vacant, or if the holder thereof is for any reason unable to perform the functions of his office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder thereof has resumed those functions, as the case may be, such one of the Justices of Appeal as the Governor, acting in his discretion, may appoint for the purpose shall discharge those functions.

(3) If the office of a Justice of Appeal is vacant, or if any Justice of Appeal is discharging the functions of the office of President or is for any reason unable to perform the functions of his office, the Governor, acting in his discretion, may appoint a person possessing such legal qualifications and experience as the Governor, after consultation with the President, may deem appropriate to sit as an acting judge of the Court of Appeal.

(4) Any person appointed under this section to sit as an acting judge of the Supreme Court or of the Court of Appeal shall, unless he is removed from office under the next following section, continue to sit for such period as may be specified in the instrument of his appointment or, if no such period is specified, until his appointment is revoked by the Governor, acting in his discretion:

Provided that a person whose appointment so to sit has expired or been revoked may, unless he has been removed from office as aforesaid, continue so to sit for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to any proceedings that were commenced before the expiration or revocation of his appointment.

Tenure of office of judges.

81.—(1) Subject to the provisions of this section, a person holding the office of Chief Justice, of President of the Court of Appeal or of Justice of Appeal shall vacate his

office upon the expiration of such period as may be specified in the instrument of his appointment to that office:

Provided that a Chief Justice, a President of the Court of Appeal or a Justice of Appeal may, unless he has been removed from office under subsection (3) of this section, sit after the date on which he vacates his office under this subsection as an acting judge of the Supreme Court or, as the case may be, of the Court of Appeal for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to any proceedings commenced before him before that date.

(2) The Chief Justice, the President of the Court of Appeal, a Justice of Appeal or an acting judge of the Supreme Court or of the Court of Appeal may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of the next following subsection.

(3) The Chief Justice, the President of the Court of Appeal, a Justice of Appeal or an acting judge of the Supreme Court or of the Court of Appeal, shall be removed from office by the Governor if the question of removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1933(a) or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(4) If the Governor considers that the question of removing the Chief Justice, the President of the Court of Appeal, a Justice of Appeal or an acting judge of the Supreme Court or of the Court of Appeal from office for inability as aforesaid or misbehaviour ought to be investigated, then—

- (a) the Governor shall appoint a tribunal, which shall consist of a chairman and not less than two other members selected by the Governor from among persons who hold or have held high judicial office:
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly.

(a) 1833 c. 41.

(5) The provisions of sections 9, 10, 11, 12, 13 and 14 of the Commissions of Inquiry Ordinance^(a) shall apply in relation to a tribunal appointed under the last foregoing subsection as they apply in relation to the Commissions appointed under that Ordinance and for that purpose those provisions shall have effect as if they formed part of this section:

Provided that the tribunal may sit outside the Falkland Islands at such place as the Governor may appoint.

(6) If the question of removing the Chief Justice, the President of the Court of Appeal, a Justice of Appeal or an acting judge of the Supreme Court or of the Court of Appeal from his office has been referred to a tribunal under subsection (4) of this section, the Governor may suspend him from performing the functions of his office, and any such suspension may at any time be revoked by the Governor and shall in any case cease to have effect—

- (a) if the tribunal advises the Governor that he should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(7) The powers of the Governor under this section shall be exercised by him in his discretion.

Oaths.

82. Before entering upon the functions of his office, the Chief Justice, any acting judge of the Supreme Court and every judge of the Court of Appeal shall make and subscribe before the Governor or some other person authorised in that behalf by the Governor the oath of allegiance and the oath of office.

Jurisdiction of the Court of Appeal.

83.—(1) The Court of Appeal shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) In connection with any appeal from the Supreme Court the Court of Appeal shall, subject to the provisions of this Constitution and any other law, have all the jurisdiction and powers of the Supreme Court; and decisions of the Court of Appeal on such appeals shall, subject as aforesaid, be enforced in the Falkland Islands in the same way as decisions of the Supreme Court.

(3) The Court of Appeal may, in accordance with such directions as the President may from time to time issue, sit in the Falkland Islands or elsewhere for the purpose of exercising its jurisdiction in respect of the Falkland Islands.

(a) Chapter 12 of the Laws of the Falkland Islands.

Practice and procedure on appeals to Court of Appeal.

84.—(1) Subject to the provisions of this Constitution, the President of the Court of Appeal may make rules for regulating the practice and procedure of the court with respect to appeals and, in connection with such appeals, for regulating the practice and procedure in the Supreme Court.

(2) Subject to the provisions of section 78(4) of this Constitution, rules made under this section may fix the number of judges who may sit for any purpose.

Appeals to the Court of Appeal.

85.—(1) In the following cases an appeal shall lie from decisions of the Supreme Court to the Court of Appeal as of right, that is to say—

- (a) final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;
- (b) final decisions in any civil proceedings where the matter in dispute on the appeal is of the value of £1000 or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of £1000 or upwards:

Provided that the figure of £1000 may be increased from time to time by Ordinance;

- (c) final decisions in proceedings under section 16 of this Constitution;
- (d) final decisions in proceedings for dissolution or nullity of marriage; and
- (e) in such other cases as may be prescribed by Ordinance.

(2) In the following cases an appeal shall lie from decisions of the Supreme Court to the Court of Appeal, with the leave of the Supreme Court or of the Court of Appeal, that is to say:—

- (a) where the decision appealed against is a final decision in civil proceedings and in the opinion of the court giving leave, the question involved in the appeal is one that, by reason of its great or general importance or otherwise, ought to be submitted to the Court of Appeal; and
- (b) in such other cases as may be prescribed by Ordinance.

(3) The foregoing provisions of this section shall be subject to the provisions of section 30(4) of this Constitution.

(4) In this section the references to final decisions of a court do not include any determination thereof that any application made thereto is merely frivolous or vexatious.

CHAPTER IX

MISCELLANEOUS

The Public Seal.

86. The Governor shall cause to be kept and used a public seal for the Falkland Islands which shall be used for sealing all things that should pass the seal.

Reappointments and concurrent appointments.

87.—(1) Where any person has vacated any office established by this Constitution he may, if qualified, again be appointed or elected to that office in accordance with the provisions of this Constitution.

(2) Where this Constitution vests in any person or authority the power to make any appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of that office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

Resignations.

88.—(1) Any person who is appointed or elected to any office established by or pursuant to this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed.

(2) The resignation of any person from any such office as aforesaid shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or any person authorised by that person or authority to receive it or when the resignation is expressed to take effect, whichever is the later.

Interpretation.

89.—(1) In this Constitution unless the context otherwise requires—

“citizen” means a person who is a British citizen, a British Dependent Territories citizen or a British Overseas citizen;

“Commander British Forces” means the Officer for the time being commanding Her Majesty's Forces in the Falkland Islands;

“financial year” means any period of twelve months beginning on 1 July in any year or such other date as may be prescribed by Ordinance;

“the Gazette” means the Falkland Islands Government Gazette;

“the Government” means the Government of the Falkland Islands;

“law” means any law in force in the Falkland Islands or any part thereof, including any instrument having the force of law and any unwritten rule of law and “lawful” and “lawfully” shall be construed accordingly;

“the Legislature” means the Governor acting with the advice and consent of the Legislative Council and includes the Governor acting in exercise of the powers conferred on him by section 49 of this Constitution;

“minerals” includes any mineral oil or relative hydro-carbon and natural gas existing in its natural condition in strata;

“oath” includes affirmation;

“oath of allegiance” means the oath of allegiance set out in Annex B to this Constitution;

“oath of office” means, in relation to any office, the oath for the due execution of that office set out in Annex B to this Constitution;

“oath of secrecy” means the oath of secrecy set out in Annex B to this Constitution;

“public office” means any office of emolument in the public service and includes an office of emolument in the Police Force;

“public officer” means a person holding or acting in any public office and includes an officer or member of the Police Force;

“the public service” means, subject to the provisions of this section, the service of the Crown in a civil capacity in respect of the government of the Falkland Islands;

“session” means the meetings of the Legislative Council commencing when the Council first meets after its prorogation or dissolution at any time and terminating when the Council is prorogued or is dissolved without have been prorogued;

“sitting” means in relation to the Legislative Council the period during which the Council is sitting continuously without adjournment and includes any period during which it is in committee.

(2) In this Constitution, unless the context otherwise requires, references to an office in the public service shall not be construed as including references to the office of—

- (a) an elected member of the Legislative Council;
- (b) a member of the Advisory Committee on the Prerogative of Mercy;
- (c) a judge of the Supreme Court or of the Court of Appeal;

- (d) save in so far as may be provided by Ordinance, a member of any council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law.

(3) For the purpose of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of his former tenure of any office.

(4) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including, to the extent of his authority, a reference to any person for the time being authorised to exercise the functions of that office.

(5) Except in the case where this Constitution provides for the holder of any office to be such person holding or acting in any other office as may for the time being be designated in that behalf by some other specified person or authority, no person may, without his consent, be nominated for election to any such office or be appointed to or to act therein or otherwise be selected therefor.

(6) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service.

(7) Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified by or under that law.

(8) Where this Constitution vests in any person or authority the power to appoint any person to act in or to exercise the functions of any office if the holder thereof is himself unable to exercise those functions, no such appointment shall be called in question on the grounds that the holder of the office was able to exercise those functions.

(9) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

(10) Without prejudice to the provisions of section 14 of the Interpretation Act 1978(a) (as applied by subsection (11) of this section), where any power is conferred by this Constitution to make any order, regulation or rule or give any direction or make any designation, the power shall be construed as including the power, exercisable in like manner and subject to the like conditions, if any, to amend or revoke any such order, regulation, rule, direction, or designation.

(a) 1978 c. 30.

(11) The Interpretation Act 1978 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of Parliament of the United Kingdom.

Section 44

ANNEX A TO THE CONSTITUTION

RULES FOR THE ENACTMENT OF LAWS

1. Matters having no proper relation to each other shall not be provided for by the same law; no law shall contain anything foreign to what the title of the law imports; and no provision having indefinite duration shall be included in any law expressed to have limited duration
2. All laws shall be distinguished by titles, and shall be divided into successive sections consecutively numbered, and to every section there shall be annexed a short indication of its contents.
3. All laws shall be numbered consecutively in a separate series for each year commencing in each year with the number one so that:
 - (a) a law assented to by the Governor is included in the series for the year it is passed or deemed to have been passed by the Legislative Council; and its position in such series is determined by reference to the day on which the Governor gave his assent thereto;
 - (b) a law assented to by Her Majesty through a Secretary of State is included in the series for the year in which the Governor signified such assent by proclamation in the Gazette; and its position in such series is determined by reference to the day on which assent was so signified.
4. Copies of all laws shall be printed and each law shall bear the following:
 - (a) in the case of a law assented to by the Governor, particulars of the day on which he gave such assent;
 - (b) in the case of a law assented to by Her Majesty through a Secretary of State, particulars of the day on which the Governor signified such assent thereto by proclamation in the Gazette;
 - (c) particulars of the day on which the law was published in the Gazette; and
 - (d) particulars of the day on which the law came into operation or, if that day shall not have been determined, a reference to the provision in the law or otherwise whereby it may be determined.
5. The Governor shall not, without having previously obtained instructions through a Secretary of State, assent to any Bill within any of the following classes, unless such

Bill contains a clause suspending the operation thereof until the signification of Her Majesty's pleasure thereon, that is to say—

- (a) any Bill for the divorce of married persons;
- (b) any Bill whereby any grant of land or money, or other donation or gratuity may be made to himself;
- (c) any Bill affecting the currency of the Falkland Islands or relating to the issue of bank notes;
- (d) any Bill establishing any banking association or altering the constitution, rights or duties of any such association;
- (e) any Bill imposing differential duties;
- (f) any Bill the provisions of which shall appear to him to be inconsistent with obligations imposed upon the United Kingdom by treaty;
- (g) any Bill affecting the discipline or control of Her Majesty's Forces by land, sea or air;
- (h) any Bill of an extraordinary nature and importance whereby Her Majesty's prerogative, or the rights or property of Her subjects not residing in the Falkland Islands, or the trade, transport or communications of any territory under Her Majesty's sovereignty may be prejudiced;
- (i) any Bill whereby persons of any community or religion may be subjected or made liable to disabilities or restrictions to which persons of other communities or religions are not also made liable, or become entitled to any privilege or advantage which is not conferred on persons of other communities or religions;
- (j) any Bill which makes provision for the holder of any public office to stand for election to the Legislative Council;
- (k) any Bill for such an Ordinance as is referred to in section 76 of the Constitution;
- (l) any Bill vesting in the Crown ownership of any minerals;
- (m) any Bill which determines or regulates the privileges, immunities or powers of the Legislative Council or of its members; and
- (n) any Bill containing provisions which have been disallowed:

Provided that the Governor may, without such instructions as aforesaid and although the Bill contains no such clause as aforesaid, assent to any such Bill (except a Bill the provisions of which appear to him to be inconsistent

with obligations imposed upon the United Kingdom by treaty) if he shall have satisfied himself that an urgent necessity exists requiring that the Bill be brought into immediate operation; but in any such case he shall forthwith transmit a copy of the law to a Secretary of State together with his reasons for so assenting.

6.—(1) Every Bill (not being a Government measure) intended to affect or benefit some particular person, association or corporate body, shall contain a clause saving the rights of Her Majesty, Her Heirs and Successors, all bodies politic and corporate, and all others except such as are mentioned in the Bill and those claiming by, from or under them.

(2) No such Bill shall be introduced into the Legislative Council until due notice has been given by not less than three successive publications of the Bill in the Gazette; and the Governor shall not assent thereto in Her Majesty's name unless it has been so published; and a certificate under the hand of the Governor signifying that such publication has been made shall be transmitted to Her Majesty through a Secretary of State with the Bill.

7. When any law has been enacted, the Governor shall at the earliest convenient opportunity transmit through a Secretary of State, for the signification of Her Majesty's pleasure, a transcript in duplicate of the law duly authenticated under the Public Seal and by his own signature, together with an explanation of the reasons and occasion for the enactment of the law.

ANNEX B TO THE CONSTITUTION

OATHS AND AFFIRMATIONS

OATH (OR AFFIRMATION) OF ALLEGIANCE

I, _____ do swear (or solemnly affirm) that I will faithfully bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

So help me God. (To be omitted in affirmation).

OATH (OR AFFIRMATION) FOR DUE EXECUTION OF OFFICE

I, _____ do swear (or solemnly affirm) that I well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office (here insert the description of the office).

So help me God. (To be omitted in affirmation).

OATH (OR AFFIRMATION) OF SECRECY

I, _____ do swear (or solemnly affirm) that I will be a true and faithful Councillor and that I will not, except in the course of my duties as a Councillor or with the authority of the Civil Commissioner, reveal the business or proceedings of the Executive Council at any meeting of the Council or the nature or contents of any document or any other matter communicated to me in my capacity as a Councillor or for the purposes of any such meeting.

So help me God. (To be omitted in affirmation).

SCHEDULE 2 TO THE ORDER

THE SPECIFIED INSTRUMENTS

The Falkland Islands Letters Patent 1948(a);
 The Falkland Islands Letters Patent 1954(b);
 The Falkland Islands Letters Patent 1962(c);
 The Falkland Islands (Legislative Council) Order in Council 1948(d);
 The Falkland Islands (Legislative Council) (Amendment) Order in Council 1950(e);
 The Falkland Islands (Legislative Council) (Amendment) Order in Council 1951(f);
 The Falkland Islands (Legislative Council) (Amendment) Order 1955(g);
 The Falkland Islands (Legislative Council) (Amendment) Order 1964(h);
 The Falkland Islands (Legislative Council) (Amendment) Order 1972(i);
 The Falkland Islands (Legislative Council) (Amendment) Order 1973(j);
 The Falkland Islands (Legislative Council) (Amendment) Order 1975(k);
 The Falkland Islands (Legislative Council) (Amendment) Order 1977(l);
 The Falkland Islands and Dependencies (Interim Administration) Order 1982(m);
 The Falkland Islands and Dependencies (Interim Administration) Order 1983(n);
 The Falkland Islands Court of Appeal Order 1965(o);
 The Instructions passed under the Royal Sign Manual and Signet to the Governor and Commander in Chief of the Falkland Islands and the Dependencies thereof of 13th December 1948, as amended by the Additional Instructions of 27th November 1951, 15th November 1955(p), 10th September 1964(q), 10th April 1973(r) and 31st March 1977(s).

(a) Rev. VII, p. 586.

(b) S.I. 1954 II, p. 2991.

(c) S.I. 1962 I, p. 1039.

(d) S.I. 1948/2573.

(e) S.I. 1950/1184.

(f) S.I. 1951/1946.

(g) S.I. 1955/1650.

(h) S.I. 1964/1397.

(i) S.I. 1972/668.

(j) S.I. 1973/598.

(k) S.I. 1975/1706.

(l) S.I. 1977/423.

(m) S.I. 1982/824.

(n) S.I. 1983/1110.

(o) S.I. 1965/589.

(p) S.I. 1955 II, p. 3187.

(q) S.I. 1964 III, p. 5254.

(r) S.I. 1973 I, p. 2635.

(s) S.I. 1977 I, p. 2185.

SCHEDULE 3 TO THE ORDER

TRANSITIONAL PROVISIONS

Arrangement of Paragraphs

Paragraph

1. Existing laws.
2. Regulations for first general election.
3. Standing Orders of the Legislative Council.
4. General election.
5. Existing public officers.
6. Pending proceedings.
7. Military Commissioner.
8. Interpretation.

Existing laws.

1.—(1) The existing laws shall, as from the appointed day, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution is prescribed or provided for by or under an existing law (including any amendment to any such law made under this paragraph), that prescription or provision shall, as from the appointed day have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution) as if it has been made under the Constitution.

(3) The Governor may by order made at any time within twelve months after the appointed day make such alterations to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the Constitution or otherwise for giving effect or enabling effect to be given to those provisions.

(4) The provisions of this paragraph shall be without prejudice to any powers conferred by the Constitution or by any other law upon any person or authority to make provision for any matter, including the alteration of any existing law.

(5) For the purposes of this paragraph the expression "existing law" means any Ordinance, rule, regulation, order or other instrument made in pursuance of or continued in force by or under the former Constitution and having effect as part of the law of the Falkland Islands immediately before the appointed day but does not include any Act of Parliament of the United Kingdom or Order in Council or other instrument made under any such Act.

Regulations for first general election.

2.—(1) The Civil Commissioner, acting in his discretion, may at any time after the commencement of this Order by regulations make provision for the election of the elected members of the Legislative Council; and such regulations may contain any matter for which provision is made in, or could by Ordinance be made under, Chapter III of the Constitution.

(2) No election of members of the Legislative Council shall be held under regulations made under this section until the appointed day; but electoral districts may be established, registration of voters take place and all other things necessary or expedient to prepare for such elections may be done in pursuance of such regulations at any time after the commencement of this Order.

(3) Any regulations made under this section may amend or revoke any law relating to elections to the Legislative Council established by the former Constitution and may bring it into conformity with the Constitution.

(4) Regulations made under this section shall be published by the Civil Commissioner in the Gazette.

(5) Until such time as it is otherwise provided by Ordinance made under the Constitution the provisions of any regulations made under this section shall have effect on and after the appointed day as if they had been so made.

Standing Orders of the Legislative Council.

3. The Standing Orders of the Legislative Council under the former Constitution as in force immediately before the appointed day shall, until it is otherwise provided under section 40(1) of the Constitution, be the Standing Orders of the Legislative Council, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

General Election.

4. A general election of members of the Legislative Council shall be held not later than 13th October 1985; and if such election is not held by the date on which, in accordance with the provisions of the former Constitution, the Civil Commissioner is required to dissolve the Legislative Council, the Civil Commissioner may, by order published in the Gazette, prescribe a later date for such dissolution, provided that such date shall be no later than the appointed day.

Existing public officers.

5.—(1) Subject to the provisions of the Constitution every person who immediately before the appointed day held or was acting in an office established under the former Constitution shall, as from the commencement of the Constitution, continue to hold or act in that office or the corresponding office established by the Constitution as if he had been appointed thereto in accordance with the provisions of the Constitution:

Provided that any person who under any law in force immediately before the appointed day would have been required to vacate his office at the expiration of any period shall vacate his office at the expiration of that period.

(2) The reference in subsection (1) of this section to offices established under the former Constitution does not include a reference to the office of elected member of the Legislative Council or of the Executive Council.

Pending proceedings.

6. Any proceedings pending immediately before the appointed day in the Supreme Court or the Court of Appeal established for the Falkland Islands may be continued after the appointed day in the Supreme Court or, as the case may be, the Court of Appeal established by the Constitution.

Military Commissioner.

7. As from such day (not being before the commencement of this Order or on or after the appointed day) as may be prescribed by the Civil Commissioner by notice published in the Gazette, the Falkland Islands and Dependencies (Interim Administration) Order 1982(a) shall have effect as follows:

- (a) the provisions regarding the Military Commissioner in sections 3 and 6 thereof shall no longer have effect; and
- (b) the references in sections 5, 7 and 8 thereof to the Military Commissioner shall be construed as references to the Commander British Forces.

Interpretation.

8. In this schedule "the Constitution" means the Constitution set out in Schedule 1 to this Order and "the former Constitution" means the constitution of the Falkland Islands as in force immediately before the appointed day.

EXPLANATORY NOTE *(This Note is not part of the Order.)*

This Order establishes a new Constitution for the Falkland Islands.

(a) S.I. 1982/824.



**THE
FALKLAND ISLANDS GAZETTE
Supplement**

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4th September 1997

No. 19

The following is published in this Supplement -

The Fishing Licences (Applications and Fees) Regulations Order 1997, (S.R. & O. No.13 of 1997).

SUBSIDIARY LEGISLATION

FISHERIES

THE FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 1986

(No. 11 of 1986)

The Fishing Licences (Applications and Fees) Regulations Order 1997

S. R. & O. No. 13 of 1997

Made: 2 September 1997

Published: 4 September 1997

Coming into operation: on publication

IN EXERCISE, of my powers under section 20 of the Fisheries (Conservation and Management) Ordinance 1986(a) I make the following Order—

Commencement and citation

1. (1) This Order may be cited as the Fishing Licences (Applications and Fees) Regulations Order 1996 and shall come into operation on the date it is first published in the Gazette and cease to have effect on 30th June 1998.

(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;

"combination vessel" means a fishing boat which is equipped so as to be able to catch or take fish both by jigging machines and by trawl or trawls;

"jigger" means a fishing boat which is equipped so as to be able to catch or take fish by means of jigging machines;

"trawler" means a fishing boat which is equipped so as to be able to catch or take fish by means of a trawl or trawls;

"southern area" means those areas of the FICZ which lie to the South of latitude 51°15' South and to the East of longitude 60° West and South of latitude 52°00' South and to the West of Longitude 60° West;

"northern area" means those areas of the FICZ which lie to the North of latitude 51°15' South, and to the East of longitude 60° West and North of latitude 52° South and to the West of longitude 60° West;

"the fishing season" means—

(a) in relation to an 'A' licence, the period commencing on 1st January 1998 and ending on 30th June 1998;

(b) in relation to a 'B' licence, the period commencing on 15th February 1998 and ending on 15th June 1998;

(c) in relation to a 'C' licence, the period commencing on 1st February 1998 and ending on 31st May 1998;

(d) in relation to a 'W' licence, the period commencing on 1st January 1998 and ending on 30th June 1998;

(e) in relation to an 'F' licence, the period commencing on 1st January 1998 and ending on 30th June 1998;

(f) in relation to a 'G' licence, the period commencing on 1st March 1998 and ending on 31st May 1998;

"principal regulations" means the Fishing Regulations Order 1987 .

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 'A' licence;
- (b) a 'B' licence ;
- (c) a 'C' licence;
- (d) an 'F' licence;
- (e) a 'W' licence; and
- (f) a 'G' licence.

(2) An 'A' 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.

(3) A 'B' licence issued under these Regulations shall authorise the catching or taking within the northern area and the FOCZ of *Illex argentinus* and *Martialia hyadesi*.

(4) A 'C' licence issued under these Regulations shall authorise the catching or taking within the southern area of squid of the species *Loligo gahi*.

(5) An 'F' 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.

(6) A 'W' 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.

(7) A 'G' licence issued under these Regulations shall authorise the catching or taking of *Illex argentinus* and *Martialia hyadesi* and 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).

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 Tuesday, 30th September 1998.

(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 'A' licences.

(2) Table 2 of the Schedule to these Regulations applies in respect of the fees payable for type 'B' licences granted to any jigger.

(3) Table 3 of the Schedule to these Regulations applies in respect of the fees payable for type 'B' licences granted to any trawler or combination vessel.

(4) Table 4 of the Schedule to these Regulations applies in respect of the fees payable for type 'C' licences.

(5) Table 5 of the Schedule to these Regulations applies in respect of the fees payable for type 'F' licences.

(6) Table 6 of the Schedule to these Regulations applies in respect of the fees payable for type 'W' licences.

(7) Table 7 of the Schedule to these Regulations applies in respect of the fees payable for type 'G' licences.

(8) All fees payable under this regulation shall be paid in pounds Sterling and in accordance with the principal Regulations.

(9) 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.

Licences in rotation

8. (1) The Director of Fisheries may, if he thinks fit, grant a licence in respect of one or more vessels in rotation for one another.

(2) Where a licence is granted under paragraph (1) the Director of Fisheries shall impose such conditions in the licence as are necessary to make clear and ensure—

(a) that only one vessel is permitted to fish within the fishing waters at any one time;

(b) that proper and adequate notice is given to him of the intention to substitute one vessel for another and that any vessel previously permitted to fish in the fishing waters has ceased to do so before another vessel is permitted to commence fishing;

(c) that all and any other conditions specially necessary to promote the proper conservation and management of fish within the fishing waters appear therein.

(3) The Director of Fisheries may require—

(a) that, where appropriate so as to take into consideration the overall fishing capacity of vessels as they are rotating for one another, a special licence fee calculated by reference to a formula approved by the Governor and published in the Gazette shall be paid in respect of a rotating licence; and

(b) that an administration fee of such amounts as he may fix in the circumstances of the case shall be paid before one vessel is substituted for another under a rotating licence.

(4) A rotating licence is not transferable except as expressly permitted thereby.

9. (1) The Director of Fisheries may, if he thinks fit, grant a 'B' licence for such period within the fishing season as he thinks fit.

(2) Where a licence is granted under paragraph (1) a special fee, calculated by reference to a formula approved by the Governor and published in the Gazette, shall be paid.

10. The fees for transshipment or transshipment and export licences for the period 1st January 1998 to 30th June 1998 shall be £1500 per transshipment operation.

THE SCHEDULE

Provision as to fishing licences in respect of the fishing season

TABLE 1

Finfish only - Type 'A' 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 except Toothfish (*Dissostichus eleginoides*) and Skate (*Rajidae*).
3. The season for this type of licence commences on 1st January 1998 and ends on 30th June 1998 and will be subject to a closed area and provisions of 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 the gross tonnage as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules in respect of the vessel to be licensed;

B. A licence is not transferable.

FORMULA

Fee payable per licensed month of fishing is calculated by adding £5,000 to the relevant Finfish (Species Restricted) type 'W' licence fee, taking account of the GT of the vessel.

TABLE 2

Jiggers - Squid North - Type 'B' 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 jiggers licensed to take squid in the FICZ northern area and FOCZ and not to trawlers or combination vessels.

3. The season for this type of licence commences on 15th February 1998 and ends on 15th June 1998.

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 the gross tonnage as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules in respect of the jigger to be licensed; 'D' means the number of double jigging machines located upon the jigger to which the licence relates and 'S' means the number of single jigging machines located upon the jigger to which the licence relates.

B. A licence is not transferable.

FORMULA

Whichever of the following is applicable—

I. Where the vessel held and utilised a comparable licence in respect of the First Season of 1997

Fee payable is the result of

$$£(0.978 * GT * (S + 1.5D)) + 80563$$

II. In any case to which Formula I does not apply—

$$£(1.291 * GT * (S + 1.5D)) + 106343$$

TABLE 3

Trawlers - Squid North - Type 'B' 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 and combination vessels licensed to take squid in the northern area and FOCZ and not to jiggers.
3. The season for this type of licence commences on 15th February 1998 and ends on 15th June 1998. (Note: Vessels fishing under a Type 'B' licence using a bottom or demersal trawl are subject to The Fishing (Nets and Supplementary Net Equipment) Regulations Order 1990, but vessels fishing under such a licence using any other kind

of trawl have until 15th June 1998 been exempted by the Director of Fisheries from the provisions of that Order).

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 in respect of the vessel to be licensed;

B. A licence is not transferable.

FORMULA

$$£(3.17 * GT) + 90975$$

TABLE 4

Trawlers - Squid South - Type 'C' 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 squid in the southern area.
3. The season for this type of licence commences on 1st February 1998 and ends on 31st May 1998 and is exempt from the provisions of The Fishing (Nets and Supplementary Equipment) Regulations Order 1990 within the shaded (valid) area.
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 in respect of the vessel to be licensed;

B. A licence is not transferable.

FORMULA

Fee payable is the result of

$$£(88.78 * GT) + 101572$$

TABLE 5

Skate Only - Type 'F' 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 January 1998 and ends on 30th June 1998 and will be subject to a closed area and the provisions of 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 in respect of the vessel to be licensed;

B. A licence is not transferable.

FORMULA

Fees payable per licensed month of fishing is the result of

$$£(2.778 * GT) + 22445$$

TABLE 6

Finfish Only - Species Restricted - Type 'W' 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 January 1998 and ends on 30th June 1998 and will be subject to closed areas and the provisions of 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 in respect of the vessel to be licensed;

B. A licence is not transferable.

FORMULA

Fees payable per licensed month of fishing is the result of whichever of the following is applicable:

I. Where the vessel has a GT of 1400 or less;

$$£(0.496 * GT) + 12443$$

II. Where the vessel has a GT of more than 1401 but less than 2200;

$$£(21.519 * GT) - 16990$$

III. Where the vessel has a GT of more than 2201 but less than 3500;

$$£(17.271 * GT) - 7641$$

IV. Where the vessel has a GT of more than 3501 but less than 4000;

$$£(91.146 * GT) - 266208$$

V. Where the vessel has a GT of 4001 or greater;

$$£(27.646 * GT) - 12228$$

TABLE 7

Squid and Finfish (Species Restricted) - Type 'G' 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 *Illex argentinus* and *Martialia hyadesi* and any finfish except Hake (*Merluccius spp.*), Toothfish (*Dissostichus eleginoides*) or Skate (Rajidae).

3. The season for this type of licence commences on 1st March 1998 and ends on 31st May 1998 and will be subject to a closed area and the provisions of The Fishing (Nets and Supplementary Net Equipment) Regulations Order 1990. Applications for this licence type must be in respect of vessels which will engage in fishing using bottom or demersal trawls.

4. Fees calculated by the Formula set out in this Table are payable in respect of the 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 in respect of the vessel to be licensed;

B. A licence is not transferable.

FORMULA

Fees payable is the result of:

$$£(26.06 * GT) + 22633$$

Made this 2nd day of September 1997

R. P. Ralph
Governor



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SUBSIDIARY LEGISLATION

ANTARCTICA

The Antarctic Regulations 1997

(S.R.&O. No. 14 of 1997)

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SCHEDULE 1***Restricted Areas*****SCHEDULE 2*****Antarctic Historic Sites and Monuments*****SCHEDULE 3*****Protected Places***

SUBSIDIARY LEGISLATION

ANTARCTICA

The Antarctic Regulations 1997

(S.R.&O. No. 14 of 1997)

Made: 3 September 1997

Published: 12 September 1997

Coming into force: on publication

IN EXERCISE of my powers under sections 9(1), 10(1), 11(1), 14(1), 25(1) and (3), 29 and 32 of the Antarctic Act 1994(a), and of all other powers enabling me in that behalf, I hereby make the following Regulations—

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Antarctic Regulations 1997, and shall come into force upon publication in the *Gazette*.

Interpretation

2.—(1) In these Regulations “the Act” means the Antarctic Act 1994(a), and expressions used in these Regulations have, unless the contrary intention appears, the meaning which they bear in the Act.

(2) Any reference in these Regulations to a communication “in writing” shall include a reference to a communication by telex, facsimile or other similar instantaneous means which produces a document containing a text of the communication.

(3) Any reference in these Regulations to the Governor with respect to the application, grant, production, revocation or suspension of a permit for the purposes of section 11 or 12 of the Act shall include a reference to any person exercising the powers of the Governor for those purposes in accordance with a delegation given under section 16 of the Act.

(a) 1994 c 15 in the form in which it applies in the Falkland Islands by virtue of the Antarctic Act 1994 (Overseas Territories) Order 1995 (SI 1995/1030)

(4) Any reference in these Regulations to a numbered regulation shall be construed as a reference to the regulation bearing that number in these Regulations.

(5) Any period of time specified in these Regulations by reference to days, working days or months-

(a) where such period is expressed to begin after a particular date, shall begin on the first day after that date, and shall be inclusive of the last day unless that day falls on a Saturday, Sunday, Christmas Day, Good Friday or any other day appointed by law to be a public holiday in the Falkland Islands, in which case the period shall run to the immediately following working day; and

(b) where such period is expressed to run or to expire before a particular date or event, the period shall be calculated to expire on the last working day before the particular date or the date of that event.

(6) In computing any period of time specified in these Regulations by reference to working days there shall be disregarded the whole of any Saturday, Sunday, Christmas Day, Good Friday or any other day appointed by law to be a public holiday in any part of the Falkland Islands.

Service of documents

3.—(1) Anything required to be served on any person under these Regulations or the Act shall be set out in a notice in writing which may be served either-

(a) by delivering it to that person;

(b) by leaving it at his proper address;

(c) by sending it by post to that address; or

(d) by sending it to him at that address by telex, facsimile or other similar instantaneous means which produces a document containing a text of the communication, in which event the document shall be regarded as served when it is transmitted,

and where the person is a body corporate the document may be served, by any of these means, upon the Secretary of that body.

(2) When a document is sent by post it shall be deemed to have been received 7 working days after despatch if posted to an address within the Falkland Islands and 15 working days if posted to an address elsewhere.

(3) For the purposes of this regulation the proper address of any person shall in the case of a body corporate be the registered or principal office of that body and in any other case shall be the last known address of the person.

PART 2

PERMITS

Applications for permits under sections 3, 4, 5 and 6 of the Act

4.—(1) An application for a permit under section 3, 4, 5 or 6 of the Act shall be made to the Governor in such form, and accompanied by such number of copies, as he may require.

(2) No later than 10 days after making the application, the applicant shall cause notice of the application to be published in the *London Gazette* in such form and containing such information as the Governor may require.

(3) The applicant shall during the period the application is pending—

(a) make available a copy of the application for inspection during normal office hours by any person who may so request; and

(b) provide copies of the application to any person on receipt of a request in writing, subject to payment of reasonable charges for supplying the copies, including postage.

Initial Environmental Evaluation

5.—(1) If the Governor considers that the activity for which an application has been made under regulation 4 is likely to have more than a negligible impact on the environment of Antarctica, he shall, unless he has required the applicant to submit a draft Comprehensive Environmental Evaluation in accordance with regulation 6(1), require the applicant to submit to him an Initial Environmental Evaluation.

(2) An Initial Environmental Evaluation shall be in such form, and accompanied by such number of copies, as the Governor may require and shall contain sufficient information for the Governor to be able to assess—

(a) the scale of the impact which the proposed activity may have on the environment of Antarctica;

(b) whether, in the light of existing and known planned activities, it may have a cumulative impact; and

(c) whether there may be alternative ways of carrying out the proposed activity which might lessen the environmental impact or possible cumulative impact.

(3) The applicant shall during the period the application is pending—

(a) make available a copy of the Initial Environmental Evaluation for inspection during normal office hours by any person who may so request; and

(b) provide copies of the Initial Environmental Evaluation to any person on receipt of a request in writing, subject to payment of reasonable charges for supplying the copies, including postage.

(4) The Governor shall annually send to the Secretary of State a list of the Initial Environmental Evaluations submitted to the Governor in accordance with this regulation during the preceding 12 months.

Comprehensive Environmental Evaluation

6.—(1) If the Governor at any time after the making of an application considers that the activity which is the subject of the application is likely to have more than a minor or transitory impact on the environment of Antarctica, he shall require the applicant to submit to him a draft Comprehensive Environmental Evaluation.

(2) Such draft Comprehensive Environmental Evaluation shall be in such form, and accompanied by such number of copies, as the Governor may require and shall contain sufficient information for the Governor to be able to consider or determine-

- (a) possible alternatives to the proposed activity, including the alternative of not proceeding with it;
- (b) the initial environmental reference state with which predicted changes are to be compared, and the likely future environmental state in the absence of the proposed activity;
- (c) whether the methods and data used to forecast the impacts of the proposed activity are satisfactory for that purpose;
- (d) the nature, extent, duration and intensity of the likely direct impacts of the proposed activity;
- (e) possible indirect or second order impacts of the proposed activity;
- (f) any cumulative impacts of the proposed activity in the light of existing activities and other known planned activities;
- (g) the measures which could be taken to minimise or mitigate impacts of the proposed activity, and whether a monitoring programme to verify foreseen impacts or detect unforeseen impacts, and provide early warning of any adverse effects of the activity, should be provided for;
- (h) the measures which could be taken to deal promptly and effectively with accidents;
- (i) whether there may be any unavoidable impacts of the proposed activity;
- (j) the effects of the proposed activity on the conduct of scientific research and on other existing uses and values; and

(k) whether there are gaps in knowledge or uncertainties with regard to the possible impact of the proposed activity.

(3) (a) When so required by the Governor, the applicant shall submit to him a final Comprehensive Environmental Evaluation in such form, and accompanied by such number of copies, as the Governor may require.

(b) When making such a requirement the Governor shall provide the applicant with—

(i) any comments in writing on the draft Comprehensive Environmental Evaluation which have been received by the Governor from any person in accordance with paragraph (5);

(ii) any comments on such Evaluation from another Contracting Party;

(iii) any advice in respect of such Evaluation from the Committee for Environmental Protection established under the Protocol; and

(iv) an account of the consideration by the Antarctic Treaty Consultative Meeting of such Evaluation in the light of such advice,

and the applicant shall, in preparing the final Comprehensive Environmental Evaluation, take into account such comments, advice and account and include or summarise them in the final Comprehensive Environmental Evaluation.

(4) The Governor shall as soon as conveniently may be after receipt transmit the draft and the final Comprehensive Environmental Evaluation to the Secretary of State and shall provide any person with copies on request in writing subject to payment of reasonable charges for supplying the copies, including postage.

(5) The Governor shall, by a notice published in the *London Gazette*, notify receipt by him of each draft Comprehensive Environmental Evaluation and each final Comprehensive Environmental Evaluation state where the same may be inspected, and where and how copies may be obtained and invite comments in writing, in the case of a draft Comprehensive Environmental Evaluation, within 90 days of publication of the notice and, in the case of a final Comprehensive Environmental Evaluation, within 30 days of the publication of the notice.

(6) The Governor in taking his decision whether to grant a permit shall take into account any comments in writing submitted to him by any person in accordance with paragraph (5), if the comments are received within the relevant period specified in that paragraph.

Refusal of Permits under sections 3, 4, 5 and 6 of the Act

7. If the Governor decides not to grant a permit under section 3, 4, 5 or 6 of the Act he shall so inform the applicant in writing giving his reasons.

Applications for and refusals of permits under sections 11 and 12 of the Act

8.—(1) An application for a permit under section 11 or 12 of the Act shall be made to the Governor in such form, and accompanied by such number of copies, as he may require.

(2) If the Governor decides not to grant such a permit he shall so inform the applicant in writing giving his reasons.

Production of permits

9.—(1) Subject to the provisions of this regulation, when there is reason to believe that a person has carried out (or is carrying out or may be about to carry out) an activity for which a permit is required by section 3(1), 4(1), 5(1), 6(1), 7(1), 8(1), 9(1) or 11(1) of the Act, an authorised person may require that person to produce, or cause to be produced, within 5 days after the request has been made, a permit granted under the Act authorising that activity.

(2) Where a permit has been granted to a person in respect of another specified person or of persons of a specified description, the requirement in paragraph (1) to produce the permit shall apply also to such person or persons.

(3) The requirements of the preceding paragraphs may be satisfied by the production of a true photocopy of the permit.

(4) An authorised person shall have the power to inspect and copy any permit which he has the power pursuant to this regulation to require to be produced to him.

(5) For the purpose of this regulation—

“authorised person” means the Governor and the Secretary of State and—

(a) in the Falkland Islands—

(i) a justice of the peace;

(ii) a police officer;

(iii) a customs or immigration officer; or

(iv) any other person authorised by the Governor in writing for the purpose of this regulation either generally or in a particular case,

(b) anywhere in Antarctica—

(i) a station manager (that is to say any person who is for the time being running a station in Antarctica on behalf of the Director of the British Antarctic Survey);

- (ii) any person authorised by the Governor in writing for the purpose of this regulation either generally or in a particular case; or
 - (iii) in respect of permits granted under section 12 of the Act, any person designated as an observer by a party to the Antarctic Treaty in accordance with Article VII thereof;
- (c) only in the British Antarctic Territory
- (i) a magistrate of the British Antarctic Territory; or
 - (ii) a public officer of the British Antarctic Territory;
- (d) south of the Antarctic Convergence: in respect of permits granted under section 11 of the Act, any person designated as an inspector by a Member of the Commission for the Conservation of Antarctic Marine Living Resources under Article XXIV of the Convention;
- (e) in respect of a British vessel in the seas south of 60 degrees South latitude
- (i) a British naval officer; or
 - (ii) the master of a vessel operated by or on behalf of the British Antarctic Survey.

Revocation and suspension of permits

10.—(1) Subject to the provisions of this regulation, the Governor may revoke or suspend wholly or in part any permit granted under the Act; and where a permit has been granted in respect of more than one specified person (or vessel or aircraft), or in respect of persons (or vessels or aircraft) of a description specified in the permit, the revocation or suspension may be limited to such persons (or such vessels or aircraft), or to persons (or vessels or aircraft) of such description, as may be specified by the Governor in the notice of revocation or suspension.

(2) Save as provided in paragraph (3), the Governor may exercise his powers under paragraph (1) only after giving 28 days notice to the permit-holder of his intention to do so and after due consideration of any representations made in writing by or on behalf of the permit-holder (or any person specified or of a description specified in the permit).

(3) If, by reason of the urgency of the matter, it appears to the Governor to be necessary for him to do so he may provisionally suspend a permit without complying with the requirements of paragraph (2), but he shall in any such case comply with those requirements as soon thereafter as is reasonably practicable, and shall then either—

- (a) revoke the provisional suspension of the permit; or

(b) substitute therefor a definitive revocation or suspension which, if a definitive suspension, may be for the same or a different period as the provisional suspension (if any).

(4) The powers vested in the Governor by paragraph (1) and paragraph (3) may be exercised by him if it appears to him that—

(a) the permit was procured by fraud or misrepresentation;

(b) the application for the permit contained a material error or omission;

(c) the holder of the permit, or a person or persons specified in it, or of a description specified in it, are not fit and proper persons to carry out an activity authorised by the permit;

(d) there has been a material change in the circumstances under which an activity authorised by the permit would be or is being carried out (including receipt by the Governor of information as to the environmental impact of the activity which was not previously available) such that the continuation of the activity would have an unacceptable impact on the Antarctic environment;

(e) the carrying out or continuation of an activity authorised by the permit would be undesirable because of an emergency which has arisen subsequent to the grant of the permit;

(f) the person to whom the permit was granted (or any person or persons specified in it or of a description specified in it) will not be able to comply with a material condition of the permit;

(g) there has been a breach of a condition of the permit;

(h) the holder of the permit has purported to transfer, or has given possession of, the permit (or a copy of it) to a person who is not entitled to hold it; or

(i) the permit (or a copy of it) has been altered or defaced.

(5) The permit-holder or any person having possession or custody of any permit which has been revoked or suspended under this regulation shall surrender it and any copies of it to the Governor within a reasonable time of being required by him to do so.

(6) References in this regulation to the "permit-holder" are references to the person to whom any permit to which this Part applies has been granted.

PART 3

APPEALS

Appeals against revocation of permits granted under section 3, 4, 5 or 6 of the Act

11.—(1) Subject to the modifications specified in paragraph (2) of this regulation, Part 3 of the United Kingdom Regulations shall have effect in the Falkland Islands so as—

(a) to confer a right of appeal to the Antarctic Act Tribunal (“the Tribunal”) established by regulation 11 (1) of the United Kingdom Regulations from and against the revocation or suspension by the Governor under regulation 10 of a permit granted under section 3, 4, 5 or 6 of the Act in its application to the Falkland Islands under the Order in Council (“Falkland Islands Appeals”), in the same way as it confers a right of appeal from and against the revocation or suspension by the Secretary of State under regulation 10 of the United Kingdom Regulations of a permit granted by the Secretary of State under sections 3, 4, 5 or 6 of the Act in the form it has effect in the United Kingdom (“United Kingdom Appeals”).

(b) to confer upon the Tribunal the like jurisdiction and powers in relation to Falkland Islands Appeals as it has under the United Kingdom Regulations in relation to United Kingdom Appeals; and

(c) to make the like provision in relation to procedural and other matters in relation to Falkland Islands Appeals as is made in relation to United Kingdom Appeals by regulation 13 of the United Kingdom Regulations.

(2) For the purpose of the application of Part 3 of the United Kingdom Regulations in accordance with paragraph (1) above, the words “Secretary of State” in regulations 11(3), 11(4), 13(1) and 13(7)(b) of the United Kingdom Regulations shall be replaced by the word “Governor”;

(3) In this regulation—

(a) “the Order in Council” means the Antarctic Act 1994 (Overseas Territories) Order 1995(b); and

(b) “the United Kingdom Regulations” means the Antarctic Regulations 1995(c).

(b) SI 1995/1030

(c) SI 1995/490

PART 4

SPECIAL AREAS

Restricted Areas

12. For the purposes of section 9(1) of the Act, the areas listed and described in Schedule 1 to these Regulations are hereby designated as areas restricted under the Protocol.

Antarctic Historic Sites and Monuments

13. For the purposes of section 10(1) of the Act, the sites and monuments listed in Schedule 2 to these Regulations are hereby designated as Antarctic Historic Sites and Monuments.

Protected Places

14. For the purposes of section 11(1) of the Act, the places listed in Schedule 3 to these Regulations are hereby designated as places protected under the Convention.

PART 5

OFFENCES UNDER THE ACT

Application of Part 5

15. This Part applies when the Governor has reasonable grounds for believing that a United Kingdom national (hereinafter referred to as "the suspect") has committed an offence under the Act (hereinafter referred to as "the offence") and is in any part of Antarctica or, in respect of those offences referred to in section 29(1)(a) of the Act, is in any part of the area south of the Antarctic Convergence.

Arrest and conveyance in custody

16.—(1) A court in the Falkland Islands may, on the application of a person entitled under section 28 of the Act to institute proceedings in that court in respect of the offence, issue a warrant for the arrest of the suspect and his conveyance in custody to the Falkland Islands.

(2) Once arrested the person the subject of the warrant (hereinafter referred to as "the accused") shall be deemed to be in legal custody at any time when, being in the British Antarctic Territory (or any other part of Antarctica), or other British territory, or on board a British ship or British aircraft, he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(3) A person authorised by the warrant to take the accused to or from any place or to keep him in custody (hereafter referred to as "the authorised person") shall have all the powers, authority, protection and privileges of a police officer.

(4) If the accused escapes he may be arrested without warrant by a constable and taken to any place to which he may be taken under the warrant.

(5) In paragraph (2)—

"British aircraft" means a British-controlled aircraft within the meaning of section 92 of the Civil Aviation Act 1982(d) (application of criminal law to aircraft) or one of Her Majesty's aircraft;

"British hovercraft" means a British-controlled hovercraft within the meaning of that section as applied in relation to hovercraft by virtue of provisions made under the Hovercraft Act 1968(e) or one of Her Majesty's hovercraft; and

"British ship" means a British ship for the purpose of the Merchant Shipping Acts 1894 to 1988 or one of Her Majesty's ships;

and in this paragraph references to Her Majesty's aircraft, hovercraft or ships are references to aircraft, hovercraft or, as the case may be, ships belonging to or exclusively employed in the service of Her Majesty in right of the Government of the United Kingdom.

(6) In paragraph (4) "police officer" means

(a) in relation to the Falkland Islands, any person who is a police officer in the Falkland Islands and any person who at the place in question has under any enactment, including paragraph (3), the powers of a police officer in the Falkland Islands; or

(b) in relation to a British territory outside the Falkland Islands, any person who is a police officer in that territory or any person who in that territory has the powers of a police officer.

Physical evidence

17.—(1) The authorised person may seize and detain any article which may be evidence connected with the offence and convey it to the Falkland Islands.

(2) Where it is necessary for any article to be accompanied by any certificate, affidavit or other verifying document the authorised person shall also furnish for transmission such document of that nature as may be specified in any direction given by the Governor.

(d) 1982 c 16

(e) 1968 c.59

(3) Where the article consists of a document, the original or a copy may be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it may be transmitted.

Attendance of witnesses

18.—(1) This regulation applies where the Governor is notified by the court in the Falkland Islands where the accused is being tried or is to be tried that a United Kingdom national who has been called to give evidence (hereinafter referred to as “the witness”) has failed to comply with the order of the court, or is believed by the court to be unlikely to comply, and is in Antarctica or in the area south of the Antarctic Convergence, as the case may be.

(2) If the Governor receives a notification in accordance with paragraph (1) he may issue a warrant for the arrest of the witness.

(3) The provisions of paragraphs (2) to (6) of regulation 16 shall apply to the arrest and conveyance in custody of the witness as they apply to the accused.

(4) Once in the Falkland Islands the witness shall be delivered by the authorised person to the court which made the notification under paragraph (1).

Made this 3rd day of September 1997

R. P. Ralph
Governor

SCHEDULE 1

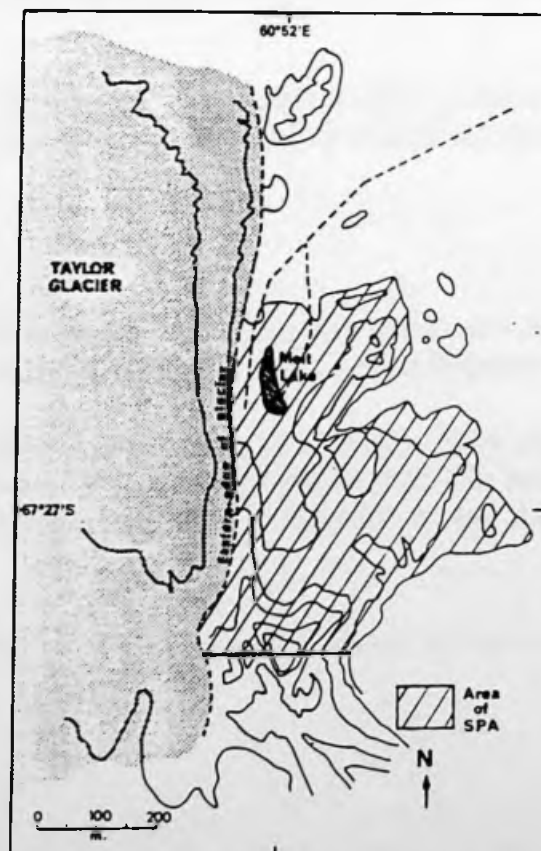
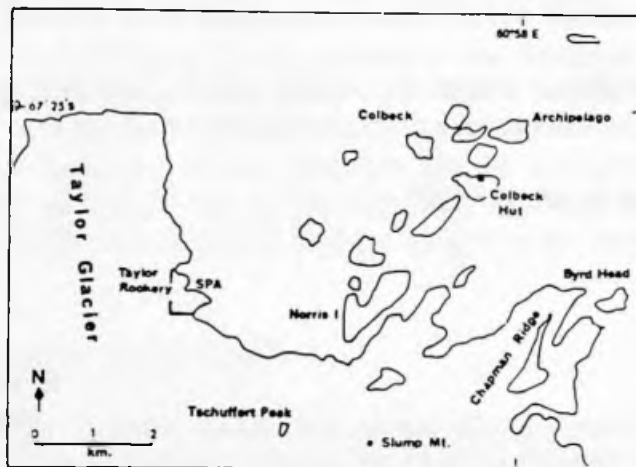
Regulation 12

RESTRICTED AREAS

Specially Protected Area No. 1
Taylor Rookery, MacRobertson Land
Latitude 67 degrees 26' S; Longitude 60 degrees 50' E

The Area consists of the whole of the northernmost rock exposure on the east side of Taylor Glacier, MacRobertson Land (Lat. 67 degrees 26' S; Longitude 60 degrees 50' E). The rookery is located on a low lying rock outcrop in the south-west corner of a bay formed by Taylor Glacier to the west, the polar ice cap to the south and the islands of Colbeck Archipelago to the east. The Area is surrounded by sea ice to the north and east. The Area is some 90 km west of Mawson station. There is ice-free terrain adjacent to the glacier on the western boundary and to the south the rock rises steeply to meet the ice of the plateau.

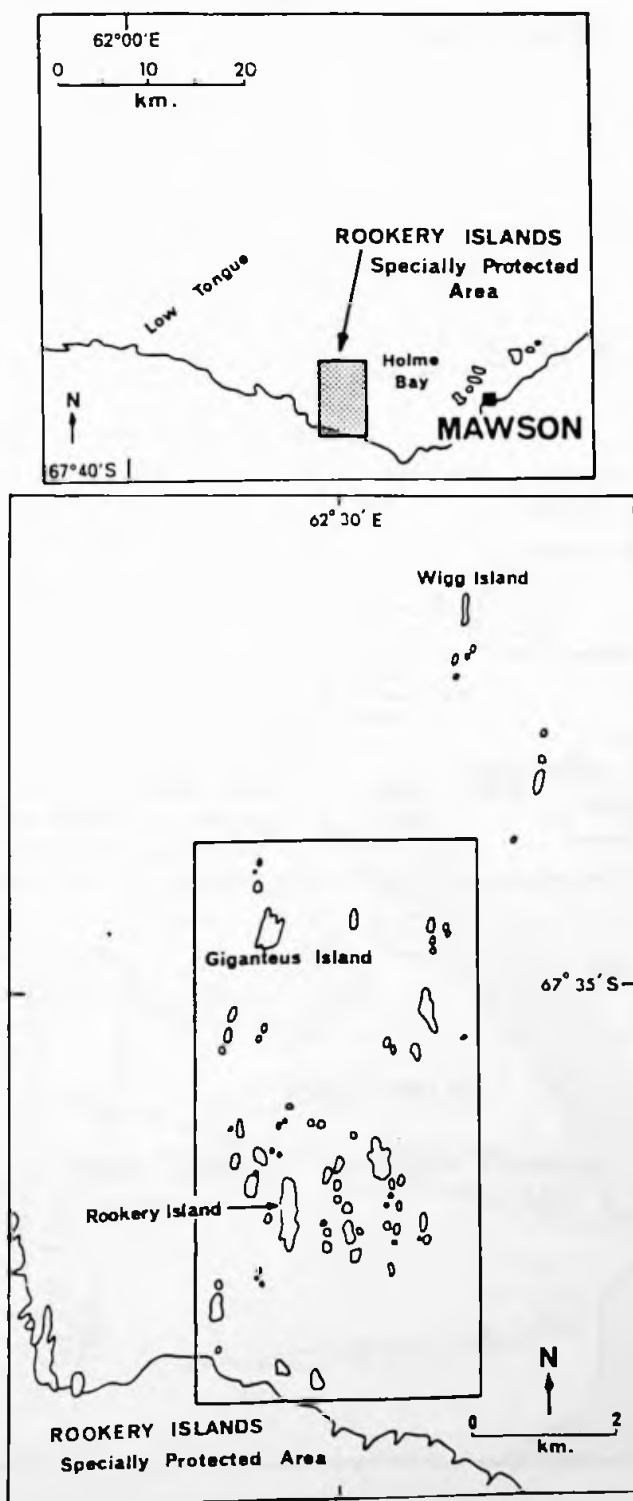
There are no boundary markers since the Area is easily defined by its natural features.



Specially Protected Area No. 2
Rookery Islands, Holme Bay, MacRobertson Land
Latitude 67 degrees 37' S; Longitude 62 degrees 33' E

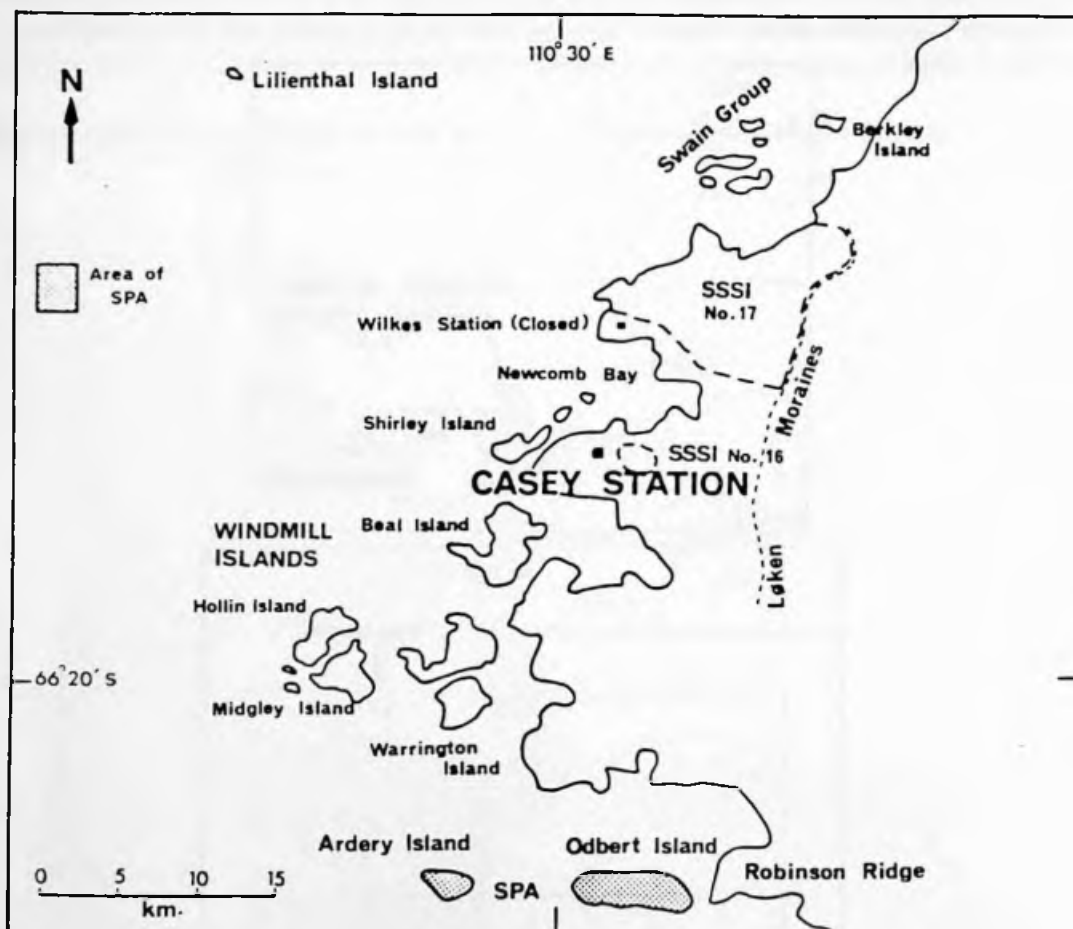
The Rookery Islands are a group of small islands and rocks in the south-western part of Holme Bay, MacRobertson Land, approximately 10 km to the west of Mawson station. The Area comprises the islands and rocks lying within the rectangular area shown on the maps below, the general location of which is latitude 67 degrees 37' S, longitude 62 degrees 33' E. There are no boundary markers delimiting the site.

There are approximately 75 small islands. They range in size from small rocks which barely remain above water at high tide to the largest islands of the group which are Giganteus Island (approximately 400 m Longitude, 400 m wide and 30 m high) and Rookery Island which is of similar size but slightly more elongated. Rookery Island is the highest of the group reaching an altitude of 62 m.



Specially Protected Area No. 3
Ardery Island and Odbert Island, Budd Coast
Lat. 66 degrees 22' S; Longitude. 110 degrees 33' E

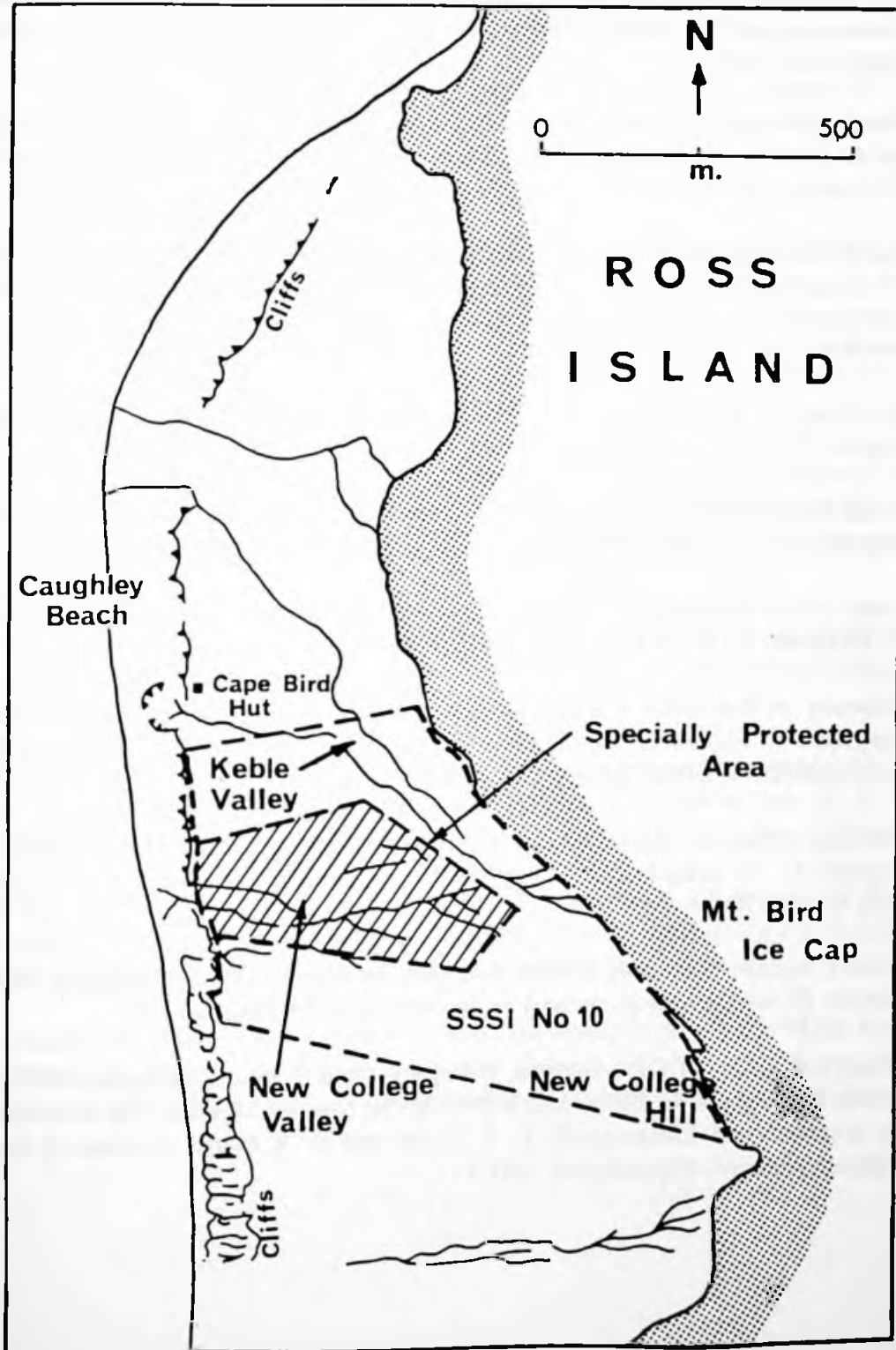
Ardery Island (Lat. 66 degrees 22' S, Longitude. 110 degrees 28' E) and Odbert Island (Lat. 66 degrees 22' S, Longitude. 110 degrees 33' E) form part of the Windmill Islands group lying in the eastern end of Vincennes Bay off the Budd Coast. They are located 5 km and 0.6 km respectively to the west of Robinson Ridge, south of Casey Station. Odbert Island is approximately 2.5 km Longitude and 0.5 km wide. In some years the island remains joined to Robinson Ridge on the mainland by sea ice. Ardery Island is a steep ice-free island approximately 1 km Longitude and 0.5 km wide, with an east-west orientation.



Specially Protected Area No. 20
"College Valley", Caughley Beach, Cape Bird, Ross Island
Latitude 77 degrees 14' S; Longitude 166 degrees 23' E

The Area is in latitude 77 degrees 14' S, longitude 166 degrees 23' E, in the northern part of the Cape Bird ice-free area. It lies between Northern Rookery and Middle Rookery and is about 250 m south of the summer research station, Cape Bird Hut.

The Area consists of the generally west-facing ice-free slopes lying between the cliff top above Caughley Beach and a line parallel to and about 100 m west of the edge of the Mount Bird Ice Cap, and between a line south of the main stream bed of "Keble Valley" and the south ridge of "New College Valley". Its total area is about 10 hectares.



SCHEDULE 2

Regulation 13

ANTARCTIC HISTORIC SITES AND MONUMENTS

1. Flag mast erected in December 1965 at the South Geographical Pole by the First Argentine Overland Polar Expedition.
2. Rock cairn erected in January 1961 and plaques at Syowa Station (Latitude 69 degrees 00' S, Longitude 39 degrees 35' E) in memory of Shin Fukushima.
3. Rock cairn and plaque on Proclamation Island, Enderby Land (Latitude 65 degrees 51' S, Longitude 53 degrees 41' E), erected in January 1930 by Sir Douglas Mawson to commemorate the British, Australian and New Zealand Antarctic Research Expedition of 1929-31.
4. Station building to which a bust of V. I. Lenin is fixed, together with a plaque in memory of the conquest of the Pole of Inaccessibility by Soviet Antarctic explorers in 1958 (Latitude 83 degrees 06' S, Longitude 54 degrees 58' E).
5. Rock cairn and plaque at Cape Bruce, MacRobertson Land (Latitude 67 degrees 25' S, Longitude 60 degrees 47' E), erected in February 1931 by Sir Douglas Mawson to commemorate the British, Australian and New Zealand Antarctic Research Expedition.
6. Rock cairn at Walkabout Rocks, Vestfold Hills, Princess Elizabeth Land (Latitude 68 degrees 22' S, Longitude 78 degrees 33' E), erected in 1939 by Sir Hubert Wilkins.
7. Stone with inscribed plaque, erected at Mirny Observatory, Mabus Point (Latitude 66 degrees 33' S, Longitude 93 degrees 01' E), in memory of Ivan Kharna.
8. Metal monument-sledge at Mirny Observatory, Mabus Point (Latitude 66 degrees 33' S, Longitude 93 degrees 01' E), with plaque in memory of Anatoly Shcheglov.
9. Cemetery on Buromskiy Island, near Mirny Observatory (Latitude 66 degrees 32' S, Longitude 93 degrees 01' E), in which are buried Soviet, Czechoslovak and GDR citizens, members of Soviet Antarctic Expeditions.
10. Building (Magnetic observatory) at Dobrowolsky Station, Bunger Hills (Latitude 66 degrees 16' S, Longitude 100 degrees 45' E), with plaque in memory of the opening of Oasis Station in 1956.
11. Heavy tractor at Vostok Station (Latitude 78 degrees 28' S, Longitude 106 degrees 48' E), with plaque in memory of the opening of the station in 1957.
12. Cross and plaque at Cape Denison, George V Land (Latitude 67 degrees 00' S, Longitude 142 degrees 42' E), erected in 1913 by Sir Douglas Mawson. The cross and plaque commemorate Lieutenant B. E. S. Ninnis and Dr X Mertz, members of the Australasian Antarctic Expedition of 1911-14.

13. Hut at Cape Denison, George V Land (Latitude 67 degrees 00' S, Longitude 142 degrees 42' E), built in January 1912 by Sir Douglas Mawson for the Australasian Antarctic Expedition of 1911-14.

14. Remains of rock shelter at Inexpressible Island, Terra Nova Bay (Latitude 74 degrees 54' S, Longitude 163 degrees 43' E), constructed in March 1912 by Victor Campbell's Northern Party, British Antarctic Expedition, 1910-13.

15. Hut at Cape Royds, Ross Island (Latitude 77 degrees 38' S, Longitude 166 degrees 07' E), built in February 1908 by Ernest Shackleton.

16. Hut at Cape Evans, Ross Island (Latitude 77 degrees 38' S, Longitude 166 degrees 24' E), built in February 1911 by Captain Robert Falcon Scott.

17. Cross on Wind Vane Hill, Cape Evans, Ross Island (Latitude 77 degrees 38' S, Longitude 166 degrees 24' E), erected by the Ross Sea Party of Ernest Shackleton's Trans-Antarctic Expedition, 1914-16, in memory of three members of the party who died in the vicinity in 1916.

18. Hut at Hut Point, Ross Island (Latitude 77 degrees 51' S, Longitude 166 degrees 37' E), built in February 1902 by Captain Robert Falcon Scott.

19. Cross at Hut Point, Ross Island (Latitude 77 degrees 51' S, Longitude 166 degrees 37' E) erected in February 1904 by the British Antarctic Expedition, 1901-04, in memory of T. Vince.

20. Cross on Observation Hill, Ross Island (Latitude 77 degrees 51' S, Longitude 166 degrees 40' E), erected in January 1913 by the British Antarctic Expedition 1910-13, in memory of Captain Robert Falcon Scott's party which perished on the return journey from the South Pole, March 1912.

21. Stone hut at Cape Crozier, Ross Island (Latitude 77 degrees 32' S, Longitude 169 degrees 18' E), constructed in July 1911 by Edward Wilson's party (British Antarctic Expedition 1910-13).

22. Hut at Cape Adare (Latitude 71 degrees 17' S, Longitude 170 degrees 15' E), built in February 1899 during the Southern Cross Expedition led by C. E. Borchgrevink.

23. Grave at Cape Adare (Latitude 71 degrees 17' S, Longitude 170 degrees 15' E), of Norwegian biologist, Nicolai Hanson, a member of C. E. Borchgrevink's 'Southern Cross' Expedition, 1899-1900. (The first known grave in the Antarctic.)

24. Rock cairn, known as 'Amundsen's Cairn', on Mount Betty, Queen Maud Range (Latitude 85 degrees 11' S, Longitude 163 degrees 45' W) erected by Roald Amundsen on 6 January, 1912, on his way back to 'Framheim' from the South Pole.

25. Hut and plaque on Peter I Oy (Latitude 68 degrees 47' S, Longitude 90 degrees 42' W), built by the Norwegian Captain Nils Larsen in February 1929 at Framnaesodden.
26. Abandoned installations of Argentine Station 'General San Martin' on Barry Island, Debenham Islands, Marguerite Bay (Latitude 68 degrees 08' S, Longitude 67 degrees 08' W), with cross, flag mast, and monolith built in 1951.
27. Cairn with plaque on Megalestris Hill, Petermann Island (Latitude 65 degrees 10' S, Longitude 64 degrees 10' W), erected in 1908 by the second French expedition led by J-B. Charcot.
28. Rock cairn at Port Charcot, Booth Island (Latitude 65 degrees 03' S, Longitude 64 degrees 01' W), with wooden pillar and plaque inscribed with the names of the first French expedition led by J-B. Charcot which wintered here in 1904 aboard *Le Francais*.
29. Lighthouse named 'Primero de Mayo' erected on Lambda Island, Melchior Islands (Latitude 64 degrees 18' S, Longitude 62 degrees 59' W).
30. Shelter at Paradise Harbour (Latitude 64 degrees 49' S, Longitude 62 degrees 51' W), erected in 1950 near the Chilean Base 'Gabriel Gonzales Videla' to honour Gabriel Gonzales Videla.
31. Memorial plaque marking the position of a former cemetery on Deception Island (Latitude 62 degrees 59' S, Longitude 60 degrees 34' W) where some 40 Norwegian whalers were buried in the first half of the twentieth century.
32. Concrete monolith, near Arturo Prat Base on Greenwich Island (Latitude 62 degrees 29' S, Longitude 59 degrees 40' W), erected in 1947.
33. Shelter and cross with plaque near Arturo Prat Base, Greenwich Island (Latitude 62 degrees 30' S, Longitude 59 degrees 41' W), erected in memory of Lieutenant-Commander Gonzalez Pacheco.
34. Bust of the Chilean naval hero Arturo Prat erected in 1947 at the base of the same name on Greenwich Island (Latitude 62 degrees 30' S, Longitude 59 degrees 41' W).
35. Wooden cross and statue of the Virgin of Carmen erected in 1947 near Arturo Prat Base on Greenwich Island (Latitude 62 degrees 30' S, Longitude 59 degrees 41' W).
36. Metal plaque at Potter Cove, King George Island (Latitude 62 degrees 13' S, Longitude 58 degrees 42' W), erected by Eduard Dallmann to commemorate the visit of his German expedition on 1 March, 1874.
37. Statue of Bernard O'Higgins, erected in 1948, in front of the station of the same name (Latitude 63 degrees 19' S, Longitude 57 degrees 54' W.)

38. Hut on Snow Hill Island (Latitude 64 degrees 24' S, Longitude 57 degrees 00' W) built in February 1902 by the main party of the Swedish South Polar Expedition, led by Otto Nordenskjöld.
39. Stone hut at Hope Bay (Latitude 63 degrees 24' S, Longitude 56 degrees 59' W), built in January 1903 by a party of the Swedish South Polar Expedition.
40. Bust of General San Martin, grotto with a statue of the Virgin of Lujan, and a flag mast at Base 'Esperanza', Hope Bay (Latitude 63 degrees 24' S, Longitude 56 degrees 59' W), erected in 1955 together with a graveyard with stele in memory of members of Argentine expeditions who died in the area.
41. Stone hut on Paulet Island (Latitude 63 degrees 35' S, Longitude 55 degrees 47' W), built in February 1903 by the Norwegian C. A. Larsen, of the Swedish South Polar Expedition led by Otto Nordenskjöld, together with the grave of a member of that expedition.
42. Area at Scotia Bay, Laurie Island, South Orkney Island (Latitude 60 degrees 46' S, Longitude 44 degrees 40' W), in which are found: stone hut built in 1903 by the Scottish Expedition led by W. S. Bruce; the Argentine Meteorological and Magnetic Observatory, built in 1903; and a graveyard with seven tombs dating from 1903.
43. Cross erected in 1955, at a distance of 1,300 metres north-east of the Argentine Base 'General Belgrano' at Piedrabuena Bay, Filchner Ice Shelf (Latitude 77 degrees 49' S, Longitude 38 degrees 02' W).
44. Plaque erected at the temporary Indian station 'Dakshin Gangotri', Princess Astrid Kyst, Dronning Maud Land (Latitude 70 degrees 45' S, Longitude 11 degrees 38' E), listing the names of the members of the First Indian Antarctic Expedition which landed nearby on 9 January 1982.
45. Plaque on Brabant Island, on Metchnikoff Point, (Latitude 64 degrees 02' S, Longitude 62 degrees 34' W), erected by de Gerlache to commemorate the first landing on Brabant Island by the Belgian Antarctic expedition 1897-99.
46. The buildings and installations of Port Martin base, Terre Adelie (Latitude 66 degrees 49' S, Longitude 141 degrees 24' E) constructed in 1950 by the 3rd French expedition and partly destroyed by fire during the night of 23 to 24 January 1952.
47. Wooden building called 'Base Marret' on the Ile des Petrels, Terre Adelie (Latitude 66 degrees 40' S, Longitude 140 degrees 01' E).
48. Cross erected on the North-East headland of the Ile des Petrels, Terre Adelie (Latitude 66 degrees 40' S, Longitude 140 degrees 01' E) in memory of Andre Prudhomme.
49. The concrete pillar erected in January 1959 by the First Polish Antarctic Expedition at Dobrolowski Station on the Bunger Hill (Latitude 66 degrees 16.3' S, Longitude 100 degrees 45' E, h = 35.4m) to measure acceleration due to gravity.

50. A commemorative plaque mounted on a sea cliff on the Fildes Peninsula, King George Island, Maxwell Bay (Latitude 62 degrees 12' S, Longitude 58 degrees 54' W), south-west of the Chilean and Soviet stations in memory of Professor Siedlecki Tazar.

51. The grave of Włodzimierz Puchalski, surmounted by an iron cross, on a hill to the south of Arctowski Station on King George Island (Latitude 62 degrees 09' S, Longitude 58 degrees 28' W).

52. Monolith erected to commemorate the establishment in February 1985 of the 'Great Wall Station' on Fildes Peninsula, King George Island (Latitude 62 degrees 13' S, Longitude 58 degrees 58' W), in the South Shetland Islands.

53. Monoliths and commemorative plaques and bronze busts of Luis Pardo Villalon on Elephant Island (Latitude 61 degrees 03' S., Longitude 54 degrees 50' W.) and their replicas on the Chilean bases 'Arturo Prat' (Latitude 62 degrees 30' S., Longitude 59 degrees 49' W.) and 'Rodolfo Marsh' (Latitude 62 degrees 12' S., Longitude 62 degrees 12' W.), celebrating the rescue of survivors of the British ship "Endurance" by the Chilean Navy cutter "Yelcho".

54. Richard E. Byrd Historic Monument, McMurdo Station, Antarctica (Latitude 77 degrees 51' S, Longitude 166 degrees 40' E) with inscriptions describing the polar achievements of Richard Evelyn Byrd.

55. East Base, Antarctica, Stonington Island (Latitude 68 degrees 11' S, Longitude 67 degrees 00' W). Buildings and artefacts used during the Antarctic Service Expedition (1940-41) and the Ronne Antarctic Research Expedition (1947-48).

56. Waterboat Point, Danco Coast, Antarctic Peninsula (Latitude 64 degrees 49' S, Longitude 62 degrees 52' W). The remains and immediate environs of the Waterboat Point hut, situated close to the unoccupied Chilean station, 'President Gabriel Gonzalez Videla'.

57. Commemorative plaque at Yankee Bay, MacFarland Strait, Greenwich Island, South Shetland Islands, near the Chilean refuge located at Latitude 62 degrees 32' S, Longitude 59 degrees 45' W, to the memory of Captain Robert MacFarlane.

58. Cairn with memorial plaque erected at Whalers' Bay, Deception Island, South Shetland Islands, in the vicinity of the whalers' cemetery (Latitude 62 degrees 59' S, Longitude 60 degrees 34' W) to honour Captain Adolfus Amadus Andresen.

59. A cairn on Half Moon beach, Cape Shirreff, Livingston Island, South Shetland Islands (Latitude 62 degrees 29' S, Longitude 60 degrees 47' W), commemorating the officers, soldiers and seamen on board the San Telmo, which sank in September 1819.

60. Wooden plaque and rock cairn located at Penguins bay, southern coast of Seymour Island (Marambio), James Ross Archipelago (Latitude 64 degrees 16'00" S, Longitude 56 degrees 39'10" W) in memory of the 1903 Swedish Expedition led by Dr Otto Nordenskjöld.

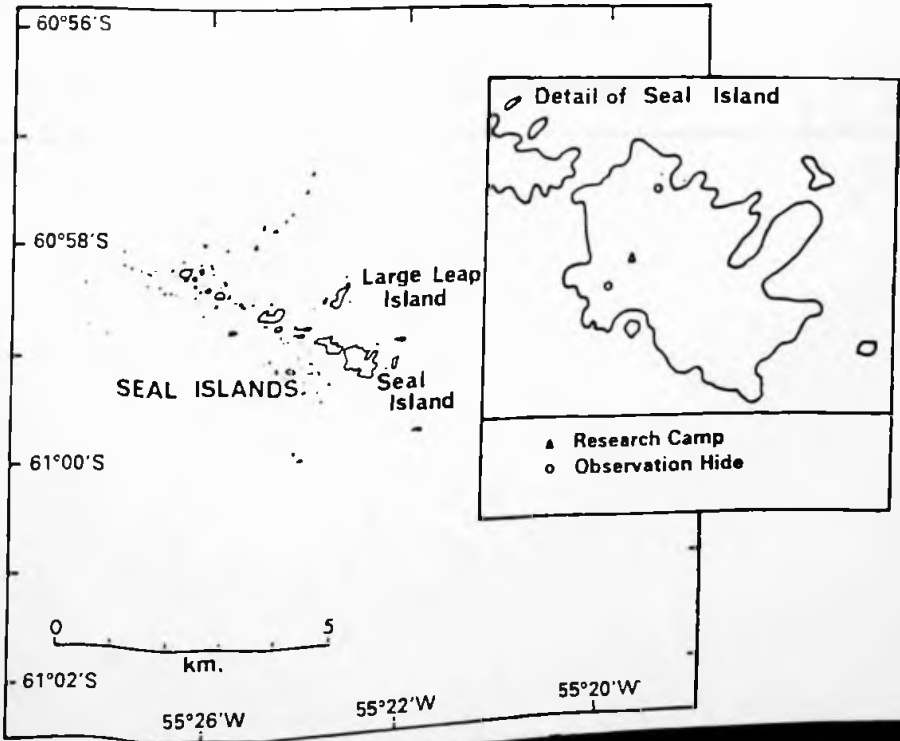
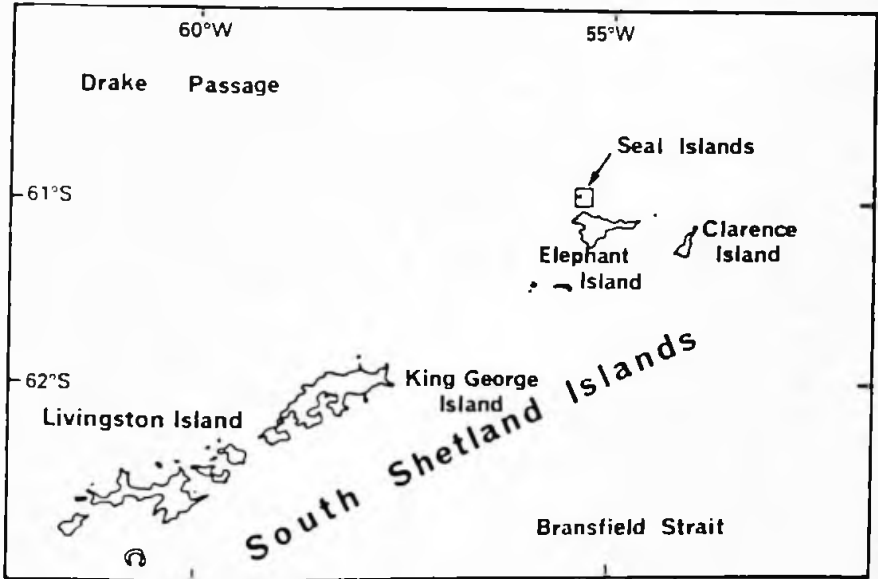
SCHEDULE 3
PROTECTED PLACES

Regulation 14

No. 1
Seal Islands, South Shetland Islands
Latitude 60 degrees 59' S; Longitude 55 degrees 23' W

The Seal Islands are composed of small islands and skerries located approximately 7 km north of the Northwest corner of Elephant Island, South Shetland Islands. The Seal Islands Protected Place includes the entire Seal Islands group, which is defined as Seal Island plus any land or rocks exposed at mean low tide within a distance of 5.5 km of the point of highest elevation on Seal Island. Seal Island is the largest island of the group, and is situated at Lat. 60 degrees 59' S, Longitude. 55 degrees 23' W.

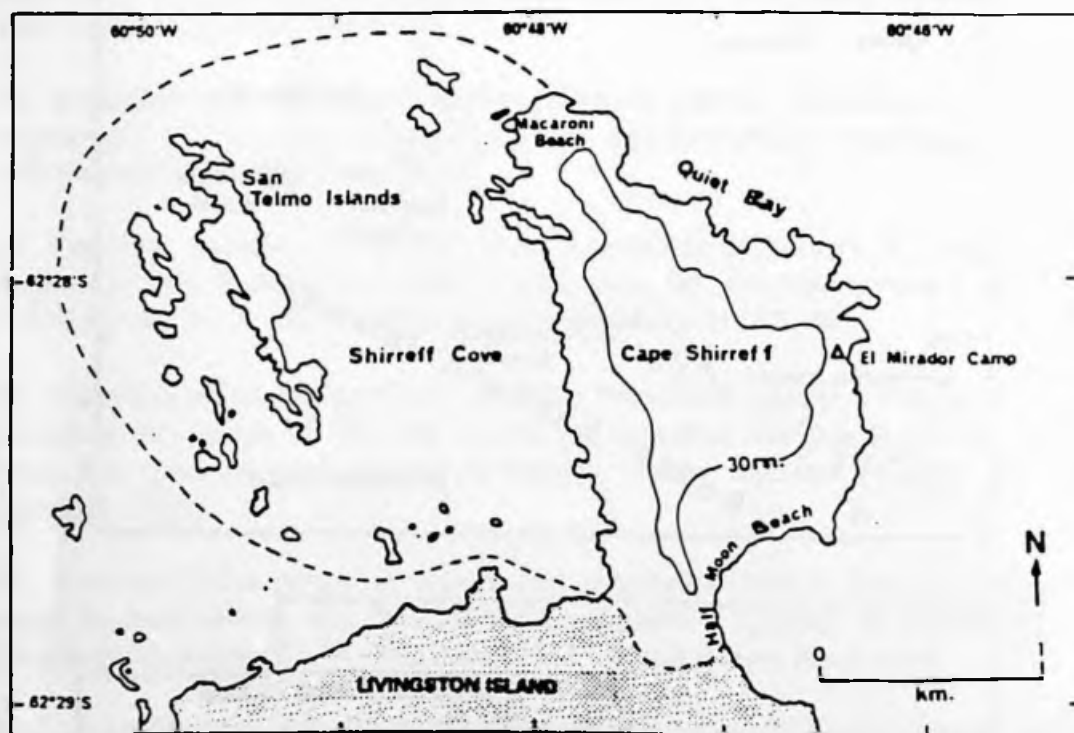
The Seal Islands cover an area approximately 5.7 km from east to west and 5 km from north to south. Seal Island is joined to the adjacent island to the west by a narrow sand bar that is approximately 50 m long.



No. 2
Cape Shirreff and the San Telmo Islands,
South Shetland Islands
Lat. 62 degrees 27' S; Longitude. 60 degrees 47' W

Cape Shirreff is a low, ice-free peninsula towards the western end of the north coast of Livingston Island, South Shetland Islands, situated at Lat. 62 degrees 27' S, Longitude. 60 degrees 47' W, between Barclay Bay and Hero Bay. San Telmo Island is the largest of a small group of ice-free rock islets, approximately 2 km west of Cape Shirreff. Cape Shirreff is approximately 3 km from north to south and 0.5 to 1.2 km from east to west.

No man-made markers indicate the limits of the Protected Place, the boundaries being defined by natural features (i.e. coastlines or glacial margins). Its southern boundary is bordered by a permanent glacial ice barrier, which is located at the narrowest part of the Cape. The eastern side of the base of the Cape has two beaches with a total length of about 600 m. Above this the extremity of the Cape has a rocky barrier about 150 m long. The western side is formed by almost continuous cliffs 10 to 15 m high. Near the southern base of the Cape on the western side is a small sandy beach approximately 50 m long.



EXPLANATORY NOTE

(not forming part of the above Regulations)

These Regulations, made under the Antarctic Act 1994 in the form in which it applies to the Falkland Islands by virtue of the Antarctic Act 1994 (Overseas Territories) Order 1995 (SI 1995/1030), prescribe the procedure by which applications can be made for permits under the Act, including provisions relating to environmental evaluations, production of permits and their revocation or suspension. The Regulations establish a Tribunal to hear appeals against revocation or suspension. The Regulations designate special areas protected under the Act. There are also provisions regarding offences. The Regulations will come into force in accordance with regulation 1.

Information on the implementation of the Act and the Regulations, including application forms, may be obtained from the Governor's Office, Government House, Stanley, Falkland Islands; telephone + 500 27433; fax +500 27434.



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 8

26th September 1997

No. 21

The following is published in this Supplement -

The St. Mary's Walk Sheltered Housing (Declaration) Order 1997, (S.R. & O. No. 15 of 1997).

SUBSIDIARY LEGISLATION

ELECTIONS

The St Mary's Walk Sheltered Housing (Declaration) Order 1997

S. R. & O. No. 15 of 1997

Made: 26 September 1997

Published: 26 September 1997

Coming into force: on publication

IN EXERCISE of my powers under section 59A of the Electoral Ordinance 1988(a), I make the following Order—

Citation and commencement

1. This Order may be cited as the St Mary's Walk Sheltered Housing (Declaration) Order 1997 and shall come into force upon publication in the *Gazette*.

Declaration of institution

2. The sheltered accommodation units at St Mary's Walk in Stanley are together declared to be an institution for the purposes of section 59A of the Electoral Ordinance 1988.

Made this 26th day of September 1997

R P Ralph
Governor

EXPLANATORY NOTE (not forming part of the above Order)

This Order has the effect of declaring the sheltered housing accommodation units at St Mary's Walk to be an institution for the purposes of the Electoral Ordinance 1988. This will enable the returning officer to make arrangements for residents of the units to vote in elections during a visit by a mobile electoral team.

(a) No 21 of 1988 (as amended by No 16 of 1992)



**THE
FALKLAND ISLANDS GAZETTE
Supplement**

PUBLISHED BY AUTHORITY

Vol. 8

30th September 1997

No. 22

The following is published in this Supplement -

The Environment Protection (Overseas Territories) (Amendment) Order 1997.

STATUTORY INSTRUMENTS

1997 No. 1748

MARINE POLLUTION

The Environment Protection
(Overseas Territories) (Amendment) Order 1997

Made - - - - - 22nd July 1997

Coming into force - - - 21st August 1997

At the Court of Buckingham Palace, the 22nd day of July 1997

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 26 of the Food and Environment Protection Act 1985(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:

1. This Order may be cited as the Environment Protection (Overseas Territories) (Amendment) Order 1997 and shall come into force on 21st August 1997.

2. The Environment Protection (Overseas Territories) Order 1988(b) shall be amended by adding to Schedule 2 (which specifies the Territories to which that Order applies) the following entries:

Falkland Islands

South Georgia and the South Sandwich Islands.

N.H. Nicholls
Clerk of the Privy Council

(a) 1985 c. 48.
(b) S.I. 1988/1084.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends to the Falkland Islands and to South Georgia and the South Sandwich Islands the provisions of the Food and Environment Protection Act 1985 which control the deposit of substances and articles in the sea and under the sea bed.



**THE
FALKLAND ISLANDS GAZETTE
Supplement**

PUBLISHED BY AUTHORITY

Vol. 8

24th October 1997

No. 23

The following are published in this Supplement -

**The Supplementary Appropriation (1997-1998) Ordinance 1997;
The Firearms (Special Exemption) (Amendment) Order 1997.**

ELIZABETH II



Colony of the Falkland Islands

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

SUPPLEMENTARY APPROPRIATION (1997-1998) ORDINANCE 1997

(No. 15 of 1997)

ARRANGEMENTS OF PROVISIONS

Section

1. Short title
2. Appropriation of further sum
3. Replenishment of Contingencies Fund

Schedule 1

Schedule 2

ELIZABETH II



Colony of the Falkland Islands

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

SUPPLEMENTARY APPROPRIATION (1997-1998) ORDINANCE 1997

(No. 15 of 1997)

An Ordinance

(assented to: 22 October 1997)
(commencement: on publication)
(published: 24 October 1997)

To appropriate and authorise the withdrawal from the Consolidated Fund of the additional sum of £2,348,460 for the service of the financial year ending 30 June 1998.

ENACTED by the Legislature of the Falkland Islands as follows—

Short Title

1. This Ordinance may be cited as the Supplementary Appropriation (1997-1998) Ordinance 1997.

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 1997 and ending on 30 June 1998 ("the financial year") the further sum of £2,348,460 in addition to sums already appropriated by Ordinance.

Replenishment of Contingencies Fund

3.—(1) The Financial Secretary shall out of the sums appropriated by section 2 replenish the Contingencies Fund to the extent that sums specified in the Schedules have, prior to the commencement of this Ordinance, been withdrawn from the

Contingencies Fund by the authority of Contingencies Fund Warrants the authority of which lapses on the commencement of this Ordinance.

(2) In subsection (1) "the Contingencies Fund Warrants" means Contingencies Fund Warrant Numbers 1 to 6 of 1997/1998.

SCHEDULE 1

HEAD OF SERVICE

<u>PART I OPERATING EXPENDITURE</u>		£
100	Aviation	5,510
200	Health and Social Services	4,500
250	Education and Training	1,500
320	Fisheries	6,800
350	Public Works	30,000
390	Fox Bay Village	200
500	Falkland Islands Defence Force	9,950
650	Pensions and Gratuities	950
TOTAL OPERATING BUDGET		<u>59,410</u>
<u>PART II CAPITAL BUDGET</u>		£
950	Expenditure	<u>375,260</u>
TOTAL SUPPLEMENTARY EXPENDITURE		<u><u>434,670</u></u>

SCHEDULE 2

HEAD OF SERVICE

<u>PART I OPERATING EXPENDITURE</u>		£
100	Aviation	63,000
250	Education and Training	19,740
350	Public Works	96,360
400	Agriculture	2,390
600	Central Administration	42,800
TOTAL OPERATING BUDGET		<u>224,290</u>
<u>PART II CAPITAL BUDGET</u>		£
950	Expenditure	<u>1,689,500</u>
TOTAL SUPPLEMENTARY EXPENDITURE		<u><u>1,913,790</u></u>

Passed by the Legislature of the Falkland Islands this 15th day of October 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

FIREARMS

(S.R. & O. No. 16 of 1997)

The Firearms (Special Exemption)(Amendment) Order 1997

Made: 16th October 1997

Published: 24th October 1997

Coming into force on publication

IN EXERCISE of my powers under section 25(1) of the Firearms and Ammunition Ordinance 1987(a) 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 Firearms (Special Exemption)(Amendment) Order 1997 and shall come into force on publication in the *Gazette*.

Amendment of Firearms (Special Exemption) Order 1995

2. The Schedule to the Firearms (Special Exemption) Order 1995(b) is amended by the addition, at the end of that Schedule, of the following—

"Barry Elsby and
Bernadette Paver

Moody Brook House and
adjacent smallholding

Control of
vermin"

Made this 16th day of October 1997

R P Ralph
Governor

(a) No 4 of 1987 as amended by No 17 of 1995

(b) SR & O No 9 of 1995

EXPLANATORY NOTE
(not forming part of above Order) ~

This Order, by amending the Schedule to the principal Order, enables the persons named to possess and discharge firearms to control vermin on their property, Moody Brook House and the adjacent smallholding, which is part of Stanley Common on which the possession and discharge of firearms by them would otherwise be forbidden by section 25 of the Firearms and Ammunition Ordinance 1987. Article 2(2) of the principal Order requires them to take all steps necessary or expedient to prevent injury by the discharge of firearms.



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 8

30th October 1997

No. 24

The following is published in this Supplement -

The Falkland Islands Pensions Scheme Bill 1997.

Pensions Bill - Errors for Correction.

Explanatory Memorandum

Clause 26 "whoo" to "who"

Arrangement of Provisions

Clause 19 "17(1)(c) or (e)" should be "17(2)(c) or (e)"

Clause 17(3)

reference should be "(2)" not "(1)"

Clause 18(2)(b)

delete "subsection (4) and"

and "employee's relevant monthly earnings" are not defined and will be inserted as subsection (4) prior to Legislative Council.

Clause 19 Heading

Change reference from "17(1)(c) or (e)" to "17(2)(c) or (e)"

Clause 19(1)

Change reference from "17(1)(c) or (e)" to "17(2)(c) or (e)"

Clause 28(5)

Reference should be "(4)" not "(5)"

THE FALKLAND ISLANDS PENSIONS SCHEME BILL

Arrangement of provisions

Chapter I General Provisions

1. Short title and commencement
2. Interpretation
3. Meaning of "normal retirement age"
4. General purpose of Ordinance

Chapter II The Pensions Board

5. The Pensions Board
6. Principal functions of the Board
7. Principles governing investment decisions for Scheme
8. Rules of investment
9. Employer-related investments
10. Appointment of professional advisers
11. Appointment of fund manager and delegation of investment powers
12. The functions of the fund manager
13. The Scheme accounts
14. Expenses of the Scheme
15. Whistle-blowing
16. Resolution of disputes

Chapter III The Falkland Islands Pensions Scheme

17. Membership of the Scheme.
18. Contributions to the Scheme by the Financial Secretary
19. Notices under section 17(1)(c) or (e)
20. Contributions under section 17(2)(c) or (e)
21. Contributions to the Scheme by other persons
22. Additional voluntary contributions
23. Transfer values
24. Members' individual accounts
25. Annual notification to members of value of individual accounts
26. Refund of contributions in certain cases

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Benefits under the Scheme
General

- 27. General provisions as to benefits under the Scheme and interpretation of Chapter IV
- 28. Benefits which must be provided under the Scheme
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- 34. Inalienability of pension
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Chapter V
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- 37. Sex discrimination claims to Summary Court.
- 38. Supplementary provisions relating to claims to Summary Court
- 39. Information and records required for purposes of Ordinance
- 40. Criminal offences
- 41. Offences by bodies corporate
- 42. Disapplication of existing legislation to members of Scheme
- 43. Financial provisions

SCHEDULES:—

Schedule 1: The Pensions Board

Part I: General provisions

Part II: Provisions relating to employee members

Schedule 2: Functions of the Pensions Board

Schedule 3: Application of Ordinance to persons in government service on 1st January 1997

THE FALKLAND ISLANDS PENSIONS SCHEME BILL

(No. of 1997)

A Bill

To establish the Falkland Islands Pensions Scheme and to make provision for the payment of retirement pensions and other benefits to or in respect of members of the Scheme; and for connected matters.

<i>(assented to:</i>	<i>1997)</i>
<i>(commencement:</i>	<i>1st January 1998)</i>
<i>(published:</i>	<i>1997)</i>

BE IT ENACTED by the Legislature of the Falkland Islands as follows:—

CHAPTER I

GENERAL PROVISIONS

Short title and commencement.

1.—(1) This Ordinance may be cited as the Falkland Islands Pensions Scheme Ordinance 1997.

(2) This Ordinance shall come into force on 1st January 1998.

Interpretation

2.—(1) In this Ordinance—

“accounting period”, in relation to the Scheme, has the meaning given by section 13;

“additional voluntary contribution” means any contribution made to the Scheme by a person within section 17(2)(a), (c) or (e) in respect of himself, other than a contribution which is made in accordance with the arrangement by virtue of which he is a member of the Scheme;

“the Board” means the Pensions Board constituted in accordance with section 5;

“an employee contribution” has the meaning given by section 20(1);

“financial year”, in relation to the Scheme, has the meaning given

by section 13;

"fund manager" means the person appointed to be fund manager in accordance with section 11;

"member", in relation to the Scheme, means a member of the Scheme within the meaning of section 17;

"member's individual account" has the meaning given by section 24;

"normal retirement age" has the meaning given by section 3;

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Governor;

"the Scheme" means the Falkland Islands Pensions Scheme established in accordance with this Ordinance;

"the Scheme Fund" means all the cash, investments and other assets of the Scheme;

"transfer value" shall be construed in accordance with section 23.

(2) For the purposes of this Ordinance—

(a) a person is employed in government service if he is a public officer;

(b) any reference to an employee is to a person who—

(i) works under a contract of service, or

(ii) is employed in government service, or

(iii) is a director or other officer of an incorporated or unincorporated body;

and references to an employer shall be construed accordingly.

(3) In this Ordinance any reference to a self-employed person is to a person who works under a contract for services or who, not being an employee, otherwise works for gain or reward.

(4) In this Ordinance any reference to employment is a reference to employment as an employee or to employment as a self-employed person or, where the context permits, to both.

(5) Notices given for the purposes of this Ordinance shall be in writing and in the case of notices given to the Board shall be in such form (if any) as the Board may require.

Meaning of "normal retirement age"

3.—(1) Subject to the following provisions of this section, in this Ordinance "normal retirement age" means, in relation to any individual—

- (a) the age which he will have attained on the date he is required to retire by his terms of employment, disregarding any provision which may be made allowing him to retire before that date in any circumstance or allowing him to continue in work after that date in any circumstances; or
- (b) if, whether because he is unemployed or for any other reason, no provision is made for any date to be his normal retirement date, the date of his 60th birthday.

(2) A person's normal retirement date must fall on or after his 50th birthday and on or before his 64th birthday, and for the purposes of this Ordinance—

- (a) if the terms of a person's employment provide for him to retire earlier than the date of his 50th birthday, his normal retirement date shall be taken to be the date of his 50th birthday;
- (b) if the terms of a person's employment provide for him to retire after his 64th birthday, his normal retirement date shall be taken to be the date of his 64th birthday.

General purpose of Ordinance

4. This Ordinance establishes the Falkland Islands Pension Scheme to provide for the payment of retirement pensions and other benefits to or in respect of employees and self-employed persons who are (or were) members of the Scheme.

CHAPTER II THE PENSIONS BOARD

The Pensions Board

5.—(1) There shall be a Pensions Board ("the Board") the members of which shall be the Financial Secretary and at least 6 others, but not more than 8, appointed by the Governor in accordance with the following provisions of this section.

(2) Subject to sub-paragraphs (3) and (4), the Governor shall appoint as members of the Board—

- (a) after consulting the Executive Council, one person who in the opinion of the Governor has appropriate knowledge and experience of investment matters;
- (b) after consulting employers or representatives of employers (other than the Falkland Islands Government), at least one but not more than 2 persons to represent the interests of those employers;
- (c) after consulting representatives of employees who are members of the Scheme, at least 2 but not more than 4 persons to represent the interests of those employees; and
- (d) after consulting the Executive Council, representatives of employers of persons who are or are eligible to be members of the Scheme (other than the Falkland Islands Government), representatives of employees who are or are eligible to be members of the Scheme and such other persons as appear to the Governor to be appropriate, one other person.

(3) The Governor shall not at any time appoint, under paragraph (c) of subsection (2), more than 3 persons as representatives of members of the Scheme who are employed in government service unless there are at that time 2 members of the Board appointed under paragraph (b) of that subsection.

(4) A person is disqualified from appointment under any provision of subsection (2) if—

- (a) he is an auditor of any employer whose employees are or are eligible to be members of the Scheme, or

(b) he is or is an associate of the Scheme auditor or actuary or of any other professional adviser to the Board.

(5) A person is disqualified from appointment under paragraph (a) of subsection (2) if he has any interest in the assets of the Scheme otherwise than as a member of the Board.

(6) Any consultation for the purposes of this section shall be carried out in such manner as the Governor may determine.

(7) Schedule 1 shall have effect with respect to the Pensions Board.

Principal functions of the Board

6.—(1) The Board shall in accordance with the provisions of this Ordinance—

- (a) be responsible for the administration and management of the Scheme,
- (b) hold as legal owner all contributions, transfer payments, investments and other amounts paid to or accruing to the Scheme,
- (c) invest the contributions and other payments and income of the Scheme (subject to the retention in a bank account of such sums as the Board considers appropriate); and
- (d) ensure that benefits represented by accrued rights under the Scheme are provided to members and others.

(2) Schedule 2, which confers other functions on the Board, shall have effect.

Principles governing investment decisions for Scheme

7.—(1) The Board shall prepare, keep under review and revise from time to time a Statement of Principles in accordance with which investment decisions concerning the Scheme Fund shall be taken.

(2) The Statement of Principles shall set out the Board's policy—

- (a) for securing compliance with section 8;
- (b) concerning—

(i) the classes of investments which may be made by the Board;

(ii) the balance to be maintained between different classes of investments;

(iii) risk;

(iv) the expected return on investments;

(v) the realisation of investments; and

(vi) such other matters as may be prescribed by regulations made by the Governor.

(3) Before preparing or revising the Statement of Principles the Board shall—

(a) obtain and consider the written advice on the proposed Statement or revision of a person (other than the fund manager appointed under section 11)—

(i) whom the Board reasonably believes to be qualified to provide such advice by his ability in and practical experience of financial matters and by his knowledge and experience of the management of the investments of occupational pension schemes, and

(ii) who is an authorised person or an exempted person, within the meaning of the Financial Services Act 1986; and

(b) consult employers, employees and self-employed persons in the Falkland Islands or their representatives, and such other persons as the Board may consider appropriate.

(4) Any consultation for the purposes of this section shall be carried out in such manner as the Board may determine.

Rules of investment

8.—(1) The Board shall comply with the following rules in exercising any power of investment—

(a) the Board may not invest in any security or other asset if the Governor acting in his discretion has notified the Board that in the opinion of the Governor any investment in that asset, or in a class of assets which includes that asset,

- would be contrary to the interests of the Falkland Islands;
- (b) regard must be had to the need for diversification of investments, in so far appropriate to the Scheme;
- (c) regard must be had to the suitability to the Scheme of investments of the description proposed and of the investment proposed as an investment of that description;
- (d) before making any investment other than an investment falling within Part I of the Trustee Investments Act 1961, the Board must be satisfied that the investment is satisfactory having regard to paragraphs (b) and (c) above and to the Statement of Principles;
- (e) consideration must be given to the determination of the length of time for which any investment should be retained and the intervals at which its retention should be reviewed, and proper advice on the question of its retention must be obtained and considered at those intervals;
- (f) the Statement of Principles must be complied with so far as is reasonably practicable.

Employer-related investments

9.—(1) The Governor may by regulations prohibit the acquisition by the Board of employer-related investments either wholly or subject to such restrictions or conditions as the Governor may consider appropriate.

(2) In this section “employer-related investments” means—

- (a) shares or securities issued by an employer, or by any person who is connected with or an associate of the employer,
- (b) land which is occupied or used by, or subject to a lease in favour of, an employer, or any such person,
- (c) property other than land which is used for the purposes of any business carried on by an employer, or any such person,
- (d) loans to an employer, or any such person, and
- (e) any other investment prescribed by regulations made under this section.

(3) In this section—

“employer” means any person who employs any person who is a member of the Scheme (other than the Falkland Islands

Government),

“loan” includes any sum due and payable by or on behalf of an employer to the trustees or manager of the Scheme in their capacity as such trustees or manager (other than a contribution to the Scheme payable by or in respect of any member of the Scheme), and

“shares or securities” means any asset, right or interest within paragraph 1, 2, 4 or 5 of Schedule 1 to the Financial Services Act 1986;

and in subsection (2) above the references to a person being connected with another or being an associate of another shall be construed in accordance with section 208 and 211(2) of the Taxes Ordinance 1997 respectively.

Appointment of professional advisers

10.—(1) The Board shall appoint—

- (a) an auditor to the Scheme, and
- (b) an actuary to the Scheme,

on such terms and conditions as the Board may determine.

(2) The Board shall not appoint a person—

- (a) as auditor to the Scheme unless he holds an appropriate qualification for the purposes Part II of the Companies Act 1989 (qualifications for company auditors), or
- (b) as actuary to the Scheme unless he is either the Government Actuary or an individual who is a member of the Institute of Actuaries or the Faculty of Actuaries.

or in either case unless he meets such other requirements as to qualifications and experience as the Governor may by regulations prescribe.

Appointment of fund manager and delegation of investment powers

11.—(1) The Board shall appoint a fund manager to whom subsection (2) applies and shall delegate to that fund manager their functions relating to the acquisition and disposal of investments, including any discretionary powers.

(2) This subsection applies to a person if—

- (a) he is an authorised person or an exempted person, within the meaning of the Financial Services Act 1986, and

- (b) in the opinion of the Board he has appropriate knowledge and experience to enable him to carry out the functions of the fund manager in accordance with the contract and any relevant provisions of this Ordinance, and
- (c) the Governor has, after consultation with the Board, approved him for the purposes of this section, and
- (d) the Board have entered into a contract which complies with subsection (3) for the management of the fund by that person.

(3) A contract complies with this subsection if it does not exclude or restrict the liability of the fund manager for breach of an obligation under any rule of law to take or exercise skill in the performance of investment functions whether by—

- (a) making the liability or its enforcement subject to restrictive or onerous conditions, or
- (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or
- (c) excluding or restricting rules of evidence or procedure.

or otherwise.

The functions of the fund manager

12.—(1) The fund manager shall manage the investments of the Scheme in accordance with this Ordinance and any directions given by the Board.

(2) Any provision of this Ordinance which imposes any restriction or duty on the Board with respect to any function which has been delegated to the fund manager shall apply in relation to the fund manager as it applies to the Board.

The Scheme accounts

13.—(1) The Board shall ensure that true and fair accounts are kept of the Scheme Fund for each financial year of the Scheme, are audited by the Scheme auditor and are submitted to the Board before the end of June following that year; and the Governor may by regulations prescribe the contents of those accounts.

(2) For the purposes of this Ordinance—

- (a) a financial year of the Scheme shall be the period of 12 months beginning on 1st January in each year and the first financial year shall be deemed to have begun on 1st January 1997; and
- (b) an accounting period of the Scheme shall be a period for which accounts are kept in accordance with subsection (1).

(3) The Scheme auditor shall prepare and annex to the audited accounts such reports and other information as the Board may require and such other reports and information as may be prescribed.

(4) The Board shall, within 7 days of receipt of the accounts, deliver to the Governor a copy of the accounts, together with all notes, reports and other information accompanying or annexed to the accounts.

Expenses of the Scheme

14.—(1) The Governor may by regulations provide for the expenses of the Scheme, including indirect costs, to be met wholly or partly by any one or more of the following persons—

- (a) the employers who make contributions to the Scheme, including the Falkland Islands Government,
- (b) any employee who makes contributions to the Scheme but whose employer does not make such contributions in respect of that employee, or
- (c) any self-employed person who makes contributions to the Scheme, or
- (d) any other person who makes contributions to the Scheme.

(2) Regulations under subsection (1) may make different provision in relation to different kinds of expenses.

Whistle-blowing

15.—(1) If the Scheme auditor or actuary has reasonable cause to believe that—

- (a) any duty relevant to the administration of the scheme imposed by any enactment or rule of law on the Board, the fund

manager, an employer, any professional adviser or any prescribed person acting in connection with the scheme has not been or is not being complied with, and

- (b) the failure to comply is likely to be of material significance in the administration of the Scheme or of benefits to the members.

he must immediately give a written report of the matter to the Governor.

(2) The Scheme auditor or actuary must, in any prescribed circumstances, immediately give a written report of any prescribed matter to the Governor.

(3) No duty to which the auditor or actuary is subject shall be regarded as contravened merely because of any information or opinion contained in a written report under this section.

(4) If any professional adviser (other than the auditor or actuary), any member of the Board or the fund manager or any person involved in the administration of the Scheme has reasonable cause to believe as mentioned in paragraphs (a) and (b) of subsection (1), he may give a report of the matter to the Governor.

(5) No duty to which any such adviser, trustee or manager or other person is subject shall be regarded as contravened merely because of any information or opinion contained in a report under this section; but this subsection does not apply to any information disclosed in such a report by the legal adviser to the scheme if he would be entitled to refuse to produce a document containing the information in any proceedings in any court on the grounds that it was the subject of legal professional privilege.

(6) If it appears to the Governor that the auditor or actuary has failed to comply with subsection (1) or (2), he may direct the Board to dismiss him from his post as the auditor or, as the case may be, the actuary; and the Board shall give immediate effect to any such direction.

Resolution of disputes

16.—(1) Without prejudice to paragraph 2 of Schedule 2, the Board shall secure that arrangements for the resolution of disagreements between employers and employees and any other prescribed persons about matters relating to the

Scheme (other than such matters as may be prescribed) are made and implemented.

(2) The arrangements must—

(a) provide for a person, on the application of a complainant of a prescribed description, to give a decision on such a disagreement, and

(b) require the Board or the fund manager on the application of such a complainant following a decision given in accordance with paragraph (a), to reconsider the matter in question and confirm the decision or give a new decision in its place.

(3) Regulations may make provision about—

(a) applications for decisions under such arrangements, and

(b) the procedure for reaching and giving such decisions, including the times by which applications are to be made and decisions given.

(4) Applications and decisions under subsection (2) must be in writing.

(5) Arrangements under subsection (1) must be in place and have effect not later than 1st July 1998.

CHAPTER III
THE FALKLAND ISLANDS PENSIONS SCHEME

Membership of the Scheme.

17.—(1) Subject to the provisions of this Ordinance, a member of the Scheme is a person in respect of whom any contribution has been made to the Scheme.

(2) Subject to the provisions of this Ordinance, contributions may be made in respect of the following persons—

- (a) any person employed in government service not falling within paragraph (b);
- (b) any person employed in government service—
 - (i) whose place of work is outside the Falkland Islands, and
 - (ii) who was not engaged in the Falkland Islands, and
 - (iii) who has notified the Board that he wishes to make voluntary contributions on his own behalf;
- (c) any employee of a company registered in the Falkland Islands which has notified the Board that the employee is to be a member of the Scheme;
- (d) any other employee of a company registered in the Falkland Islands who has notified the Board that he wishes to make voluntary contributions on his own behalf;
- (e) any other employee whose place of work is in the Falkland Islands and whose employer has notified the Board that the employee is to be a member of the Scheme;
- (f) any employee who is not a member by virtue of any of paragraphs (a) to (e), and who has notified the Board that he wishes to make voluntary contributions on his own behalf;
- (g) any self-employed person who has notified the Board that he wishes to make voluntary contributions on his own behalf;
- (h) any other person habitually resident in the Falkland Islands who has notified the Board that he wishes to make voluntary contributions on his own behalf.

(3) A contribution may not be made in respect of any person for any period—

- (a) beginning before 1st January 1998; or
- (b) in the case of a contribution made in respect of any person within any provision of subsection (1) other than paragraph (a), beginning before the date on which the notice under the paragraph in question is served on the Board; or
- (c) beginning on or after his 64th birthday.

(4) A contribution may not be made—

- (a) by or in respect of any person within subsection (2)(f) or (g) in respect of any period during which he does not have a place of employment in the Falkland Islands, or
 - (b) by a person within subsection (2)(h) at any time when he has ceased to be habitually resident in the Falkland Islands,
- unless a contribution has previously been made by or in respect of that person under that or any other provision of subsection (2).

(5) A contribution may not be made in respect of the employee of any person within subsection (2)(a), (c) or (e) at any time when his employment with that person, and any other employment as respects which contributions have been made in accordance with this Ordinance to the Scheme, does not exceed 3 months in aggregate (but without prejudice to the payment of contributions in respect of that 3 month period after it has elapsed).

(6) For the purposes of this section—

- (a) any reference to the Falkland Islands includes a reference to any designated area within the meaning of Proclamation No.1 of 1991;
- (b) temporary absences shall be disregarded in determining where any person has a place of work or is habitually resident.

(7) A member ceases to be a member of the Scheme—

- (a) when he ceases to have a individual account maintained in his name in accordance with section 24, whether because contributions have been returned to him in accordance with section 26 or because benefits have been provided to or in respect of him in accordance with Chapter IV, or

(b) on his death (if earlier).

(8) Schedule 3, which contains provisions relating to persons employed in government service on 1st January 1997, shall have effect.

Contributions to the Scheme by the Financial Secretary

18.—(1) Any contribution, except any additional voluntary contribution, made in respect of any person employed in government service, other than a person within section 17(2)(b), shall be made by the Financial Secretary.

(2) Any contribution made by the Financial Secretary in respect of any person—

(a) shall, subject to subsection (3), be made in respect of each month during which he is employed in government service, and

(b) shall, subject to subsection (4) and paragraph 8 of Schedule 3, be paid to the Board monthly in arrears at the rate of 10 per cent. of the employee's relevant monthly earnings.

(3) Periods of employment as respects which contributions are required to be made in accordance with this section in respect of any person include periods when the employee is on paid leave, but do not include any of following periods unless and to the extent that the Financial Secretary considers it appropriate so to do in any particular case—

(a) any period during which the employee is seconded to another employer, and

(b) any period during which the employee is on a training or retraining course, whether in the Falkland Islands or elsewhere.

Notices under section 17(1)(c) or (e)

19.—(1) A notification to the Board by an employer for the purposes of section 17(1)(c) or (e) ("an employee notice") need not extend to all the employees of that person except that an employer must extend such a notice to an employee of his if to do otherwise would amount to discrimination against that employee on grounds of sex.

(2) Before an employer gives an employee notice to the Board in respect of any employee, the employer shall give notice to the Board, in such form as the Board may require, stating—

- (a) whether contributions are to be made by the employer or by the employee or by both, and
- (b) the rate at which contributions are to be made.

(3) An employer may not give an employee notice to the Board in respect of any person unless the contract of employment under which he employs that person provides for that person to be a member of the Scheme and makes provision for the deduction and payment of contributions in compliance with this Ordinance and any regulations made under it.

Contributions under section 17(2)(c) or (e)

20.—(1) A contribution may be made in respect of employee who falls within section 17(2)(c) or (e) either by his employer or by himself or by both; and any such contribution is referred to in this Ordinance as “an employee contribution”.

(2) An employee contribution shall be made on a regular basis and the amount of a regular contribution (payable by the employer or by the employee) for any period by or in respect of the employee shall be determined by the employer as a percentage of that employee's earnings from his employment with that employer for that period.

(3) The frequency at which and method by which contributions are to be made shall be determined by the Board.

(4) An employee contribution made by the employee shall not exceed—

- (a) an amount equal to 5 per cent. of his earnings from the employment in question for that period, or
- (b) an amount equal to the amount of the contribution payable by his employer for that period (if any),

whichever is the less.

(5) For the purposes of this section any computation of the amount of a person's earnings for any period shall be based on the gross amount of his earnings for that period.

(6) The Board shall refuse to allow an employee to become a member of the Scheme by virtue of a notice given under section 17(2)(c) or (e) unless the terms of his contract of employment provide—

- (a) that the amount of any contribution payable by the employee expressed as a percentage of his gross earnings cannot be reduced to a lower percentage during the course of that employment unless there is a corresponding and compensating increase in the employer's contributions; and
- (b) that employee contributions payable by the employee or by the employer (or by both if that is provided for in the contract in the first instance) will continue to be made during the course of the contract.

(7) Regulations shall be made requiring the employer—

- (a) to make deductions from the employee's remuneration for periods as respects which any contribution which the employee is liable to make to the Scheme is payable, and
- (b) to account to the Board for those deductions.

(8) Regulations under subsection (7) may contain such supplementary provisions as appear to the Governor to be necessary or appropriate, including the imposition of criminal and civil penalties and the provision of remedies for recovery of sums which have not been accounted for in accordance with paragraph (b) of that subsection or for any other failure to comply with the regulations.

Contributions to the Scheme by other persons

21.—(1) This section applies in relation to any contribution, not being an additional voluntary contribution, made in respect of a person within any provision of section 17(2) other than paragraph (a), (c) or (e).

(2) Any contribution in respect of a person may only be made by that person.

(3) Any notice given by a person under any of paragraphs (b), (d) and (f) to (h) of section 17(2) shall be in such form and contain such information as the Board may require.

(4) Any contributions to which this section applies shall be made by such method as the Board may specify.

Additional voluntary contributions

22.—(1) An additional voluntary contribution may be made to the Scheme by any member of the Scheme within section 17(2)(a), (c) or (e) at any time otherwise than in accordance with section 18 or 20.

(2) An additional voluntary contribution may not be made unless the person proposing to make it has given notice to the Board of his intentions, which must include details of the amount and date of payment of the contribution, and the payment must be made in such way as the Board may specify.

(3) The Governor may by regulations make provision for the payment by employers of additional voluntary contributions on behalf of their employees, and such regulations—

- (a) may make provision for the deduction of sums from the employee's remuneration, and
- (b) may contain such supplementary provisions as appear to the Governor to be necessary or appropriate, including the imposition of criminal and civil penalties and the provision of remedies for recovery of sums which have not been accounted for in accordance with the regulations or for any other failure to comply with the regulations.

Transfer values

23.—(1) The Board shall accept sums representing transfer values of accrued units or rights of any kind in or under other pension schemes for employees and self-employed persons.

(2) Subject to and in accordance with regulations, the Board may at any time pay sums representing the accrued value of a person's individual member's account at that time to another scheme providing benefits corresponding to the benefits provided by the Falkland Islands Pension Scheme.

Members' individual accounts

24.—(1) The Board shall maintain in the name of each member an individual account showing the accumulated value of the member's share in the Scheme Fund (calculated in accordance with subsection (2)) and any other prescribed particulars.

(2) The member's individual account shall show during each accounting period of the Scheme the number of fund units purchased in that period by—

- (a) the contributions made in respect of the member in that period;
 - (b) any sums representing transfer values paid into the Scheme in that period in accordance with section 23 by any other person in respect of the member;
 - (c) such share of any income or other sums accruing to the Scheme in the immediately preceding accounting period of the Scheme as the Board shall have determined to be appropriate to be allocated for the benefit of the member;
- and shall also show the aggregate number of fund units allocated to the member's individual account in earlier periods.

(3) The member's individual account shall also show the basis of his membership, and, if that has changed at any time, the current and earlier bases shall be shown.

Annual notification to members of value of individual accounts

25.—(1) As soon as is reasonably practicable after the end of each accounting period of the Scheme, and in any event within 3 months of its end, the Board shall send to each member a statement relating to his individual member's account showing, with respect to the period during which he has been a member of the Scheme (up to the end of that accounting period)—

- (a) the aggregate amount of any employees' contributions made by the member;
- (b) if he is or has been an employee, the aggregate amount of any employees' contributions made by his employer;
- (c) the aggregate amount of any contributions made by the member in accordance with section 21;
- (d) the aggregate amounts of any additional voluntary

contributions made by the member:

- (e) the aggregate amount of any transfer values paid into the fund for the benefit of the member;
- (f) the aggregate amount of any sums allocated for that benefit of that member as mentioned in section 24(2)(c);

and such other information as may be prescribed.

(2) In relation to the first accounting period of the Scheme, subsection (1) above shall have effect with the omission of the words "and in any event within 3 months of its end".

Refund of contributions in certain cases

26.—(1) Subject to the following provisions of this section, the Board shall pay—

- (a) to a member of the Scheme within section 17(2)(a), (c) or (e) whose employment terminates before he has completed 2 years, an amount equal to the aggregate of the employee contributions and any other contributions which have been made in respect of the employee to the Scheme;
- (b) to a member within any of paragraphs (b), (d), (f), (g) and (h) who has been a member for less than 2 years and notifies the Board that he is ceasing to make contributions to the Scheme with effect from the termination date, an amount equal to the contributions which have been made in respect of that person.

(2) In this section the "termination date" means—

- (a) in a case within subsection (1)(a), the date on which the employment in question ceases;
- (b) in any other case, such date as may be specified in the notice as the termination date, which must be a date not earlier than the date of the notice and not later than the expiry of the 2 year period referred to in subsection (1)(b).

(3) A payment under subsection (1) shall not be made to a person unless the Board is satisfied either that he has ceased to be resident or habitually resident in the Falkland Islands or that he intends to cease to be so resident within 6 months of the termination date.

(4) A payment under subsection (1) shall not be made to a person if, in a case within paragraph (a) of that subsection, if he is in employment again within 3 months of the termination date.

(5) A payment under subsection (1) shall not be made to a person if a transfer value has been paid into the Scheme in respect of that person.

(6) A payment under subsection (1) shall not be made in any case where an election has been made under section 29 that the benefits under that section shall be paid instead of a refund of contributions under this section.

(7) A person to whom contributions are refunded under subsection (1) above ceases to be a member of the Scheme with effect from the termination date.

(8) A payment under subsection (1) shall be made within 4 months of the termination date.

(9) The Board may refuse to make a payment under subsection (1) if they are not satisfied that the conditions for the payment are satisfied.

Chapter IV
Benefits under the Scheme
General

General provisions as to benefits under the Scheme and interpretation of Chapter IV

27.—(1) Benefits shall be payable to or in respect of members of the Scheme in accordance with the provisions of this Chapter.

(2) In this Chapter—

“accrued value of his account”, in relation to any person at any time, means the value of that person’s individual member’s account at that time;

“approved pension provider” means a body authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on long term insurance business in the United Kingdom, and such other person as the Governor may specify in regulations for the purposes of this section; and

“qualifying annuity” has the meaning given by section 31.

Benefits which must be provided under the Scheme

28.—(1) Subject to the provisions of this Ordinance, a member of the Scheme on his retirement shall be entitled—

(a) if he so elects, to receive a sum of such amount as may be specified in the election, which may not exceed one-quarter of the accrued value of his account as at the date of his retirement, and

(b) to enter into a qualifying annuity contract with an approved pension provider for an annuity payable on his retirement in consideration of the payment of a sum equal to that value, or to the remainder if he elects to take part as a lump sum under paragraph (a).

(2) The member may choose any approved pension provider he wishes to provide the annuity but if he does not, the Board shall choose an approved pension provider for him.

(3) For the purposes of this section a person shall be deemed to have retired on the date he reaches normal retirement age unless the arrangements by virtue of which he is a member of the Scheme otherwise provide, but—

- (a) he shall not be entitled to any of the benefits mentioned in subsection (1) before his 50th birthday;
- (b) such benefits may not be paid in respect of any time falling before his 50th birthday;
- (c) must come into payment on or before his 64th birthday.

(4) A member may elect to defer the payment of the lump sum or the purchase of the annuity, or both, for such period, ending on or before his 64th birthday, as he may specify in the election.

(5) An election under subsection (5) may be withdrawn, by notice to the Board, at any time before the date of deferment specified in the election; and any such election shall have effect on such date as may be specified in the notice, not being earlier than 3 months after the date the notice is given to the Board.

Optional benefits

29.—(1) Subject to the following provisions of this section, the employer of a member of the Scheme within section 17(2)(a), (c) or (e) or, in the case of any other member, the member of the Scheme may enter into arrangements with the Board for the payment of—

- (a) benefits to the member's spouse and dependants in the event of his death before retirement and before any benefit under section 28 becomes payable to him (irrespective of whether any benefit under paragraph (b) has been paid), and
- (b) additional benefits to the member in the case of his retirement on grounds of ill-health before he becomes entitled to any other benefit under this Ordinance.

(2) Benefits shall not be payable under subsection (1) to or in respect of any person within section 17(2)(a), (c) or (e), if at the time of his death or his becoming ill or disabled no contributions to the Scheme have been made by or in respect of him by virtue of section 17(5).

(3) Where benefits are payable under subsection (1) to or in respect of a

person as respects whom a refund of contributions is also due in accordance with section 26, that person or, if he has died, his personal representatives shall elect whether the benefits under this section are to be paid or the contributions are to be refunded under section 26, and where an election is made that the contributions are to be refunded, benefits shall not be payable under this section.

An election under this subsection shall be made by notice to the Board.

(4) Additional benefits shall not be payable under subsection (1)(b) to any member unless the Board is satisfied that the member has retired from work due to disablement or to a serious breakdown or deterioration in his health.

(5) Arrangements made in pursuance of subsection (1) in relation to any member for the payment of additional benefits under subsection (1)(b) may include provision for the cessation of payment of any annuity if the member's health is restored, but an annuity shall not cease to be payable under such provision except with the approval of the Board.

The discretionary trusts

30.—(1) Where, by reason of the death of a member of the Scheme, a sum of money is to be held and applied by the Board in accordance with this section, the following provisions shall apply.

(2) Subject to subsection (4), the Board shall hold the money as legal owner and shall have power to pay or apply the whole or any part of that sum to or for the benefit of all or any of the relatives and dependants, living or en ventre sa mere at the date of death of the deceased, or any other individual (not being a body corporate) whose name has been notified to the Board in writing by the deceased, in such shares and proportions as the Board shall in its absolute discretion decide, but in exercising its discretion under this subsection, the Board shall not be bound by any nomination or request of the deceased person.

(3) The Board shall have power, in connection with the application of any part of the money for the benefit of any one or more of the relatives and dependants of the deceased, to declare trusts and constitute separate trustees of any such trust and to provide for their remuneration.

(4) If the Board does not exercise its powers under subsections (2) and (3) above within 24 months of the death of the individual then—

- (a) if at the end of that 24 month period there is no person entitled to the money as the heir or legatee of the individual or on his intestacy, the amount held by the Board under this section, together with any interest thereon, shall revert to the general capital of the Scheme Fund and be used for the purposes of the Scheme;
- (b) if paragraph (a) does not apply, the Board shall hold the money on trust for the personal representatives of the deceased absolutely.

(5) In this section "relative" means, in relation to any deceased member—

- (a) the person of the opposite sex who, at the time of the death is ordinarily living with that member as that member's partner, whether or not they are legally married, or
- (b) any child or remoter issue (whether natural or adoptive) of such person and the widow or widower of any such child or remoter issue;
- (c) the father or mother (whether natural or adoptive) of that person and the widow or widower of such father or mother; and
- (d) the child or remoter issue (whether natural or adoptive), excluding the deceased person, and the widow or widower of any such child or remoter issue of the father or mother (whether natural or adoptive) of that person;

and for the purposes of this subsection "child" includes a child born outside a lawful marriage.

Qualifying annuities

31.—(1) An annuity contract is a qualifying annuity contract in relation to a member only if it complies with the following provisions of this section, disregarding subsection (3) or (4), or both, where they are inapplicable to that member.

(2) The annuity contract must provide for an annuity to be payable to the member for his life.

(3) The annuity contract must provide for a spouse's pension which must not be less than half the annuity payable to the member under the contract but

which must not be greater than that annuity.

(4) The annuity contract must provide that—

(a) in the event that the member dies leaving any dependants, and

(b) either—

(i) at the time of his death a spouse's pension is not payable to his spouse, or

(ii) at any time during the period of the dependency, a spouse's pension ceases to be payable,

a dependant's pension will, either at his death or, as the case may be, at that later time, become payable to or in respect of each of the member's dependants.

(5) A dependant's pension must be payable at a rate equal to one-quarter of the member's pension, or if there are more than 2 dependants of the same member, such lower rate as will ensure that the aggregate amount of dependants' pensions payable at any time does not exceed one-half of the amount the member's pension would have been if it had been payable at that time.

(6) The annuity contract must provide for any annuity payable under the contract to be increased annually by at least 3 per cent.

(7) The annuity contract must provide that, in the event of the member's death before the fifth anniversary of the date on which the annuity became payable to him, an amount equal to the aggregate of the sums which would have been payable to him if he had died on the day immediately following that anniversary shall be paid to the Board, who shall hold and apply the sum in accordance with section 30.

(8) The annuity contract must provide that any annuity payable under it shall not be capable of assignment or surrender.

(9) For the purposes of this section, a "spouse's pension" means an annuity payable to the spouse of a deceased person from the day immediately following that person's death until the spouse's death.

(10) For the purposes of this section, a "dependant's pension" means an annuity payable to a dependant of a deceased person in accordance with subsections (4) and (5) until the date on which the dependency ceases or, if

earlier, the death of the dependant.

(11) For the purposes of this section, "spouse", in relation to any member, means a person of the opposite sex who, at the time of the retirement of that member or at the time the annuity is purchased if later, is the wife or husband of, and ordinarily living with, that member, or if there is no such person—

- (a) the person of the opposite sex who, at the time of the retirement of that member or at the time the annuity is purchased if later, is ordinarily living with that member as that member's partner, whether or not they are legally married, or
- (b) has, before the annuity is purchased, been nominated by the member to the Board as the person to be treated as his spouse for the purposes of the payment of benefits under the Scheme and that nomination has been accepted by the Board; or
- (c) if the Board has reasonable grounds for believing that any other person ought to be treated as the member's spouse, that other person.

If more than one person qualifies for a spouse's pension under paragraphs (a), (b) and (c), the Board shall have absolute discretion to determine which of them shall be entitled to the pension.

(12) In this section "dependant", in relation to any member, means a child of the member under the age of 18 years and any other person who in the opinion of the Board—

- (a) is unable by reason of any physical or mental disability or illness to maintain themselves to any extent, and
- (b) is to any extent financially dependent on the member at the time of the retirement of that member or at the time the annuity is purchased if later, and
- (c) may reasonably be regarded as being likely to remain so dependent for at least 5 years (assuming the member does not die during that time);

and in relation to a child of the member who does not fall within paragraph (a), the period of dependency ceases when he attains his 18th birthday.

Death before becoming entitled to pension, and severe illness at retirement

32.—(1) If a member of the Scheme dies while unemployed and before any benefit under section 28(1) has become payable to him, the Board shall hold and apply an amount equal to the accrued value of his account in accordance with section 30.

(2) In any case where—

(a) at the time a member of the Scheme retires from his employment, the Board has reasonable grounds for believing that he is ill and is unlikely to live more than a few months, and

(b) at that time, benefits under section 28(1) would, apart from this subsection, become payable to him,

the Board may, if it considers the circumstances of the particular case justify the exercise of its powers under this subsection, and with the agreement of the member, make arrangements for the application of an amount equal to or less than the accrued value of his account to be applied otherwise than in accordance with section 28(1).

(3) Where arrangements are made under subsection (2) as respects an amount less than the accrued value of his account, the remainder shall be applied without regard to that subsection.

Benefits for Government employees

Benefits payable on death

33.—(1) In the case of any member of the Scheme within section 17(2)(a) who dies while he is employed in government service (and before he has reached the age of 64 years) ("the deceased member"), an amount equal to the accrued value of his account as at the time of his death, less any additional voluntary contributions which he has made to the Scheme, shall be held by the Board and, subject to subsection (4), applied in accordance with section 30.

(2) If the accrued value of his account, less any such voluntary contributions, is less than the aggregate of—

(a) a sum equal to twice the member's annual salary as at the time of his death, and

(b) such amount as is necessary to enable the Board to arrange for the provision of—

(i) a spouse's pension (within the meaning of section 31(9) and (11)) equal to one-third of his annual salary as at that time, and

(ii) a dependant's pension equal to one-ninth of that salary for each of his dependants during the period from his death until the end of the period of dependency,

the Financial Secretary shall pay to the Board an amount equal to the amount of the shortfall.

In this subsection "dependant" has the meaning given by section 31(12).

(3) The Board shall transfer an amount equal to the aggregate of—

(a) the accrued value of his account, less any voluntary contributions, and

(b) any amount paid, in respect of that member, to the Board by the Financial Secretary accordance with subsection (2),

to a separate account which the Board shall apply in arranging for the provision of the pensions mentioned in subsection (2), and such sums as may remain after that provision has been made shall be held and applied in accordance with section 30.

(4) An amount equal to the aggregate of the additional voluntary contributions which the deceased member made to the Scheme shall be deemed to be a debt due to him immediately before his death and may accordingly be paid to his personal representatives by the Board.

Restrictions on assignment, forfeiture of pension etc

Inalienability of pension

34.—(1) Subject to subsection (5), where a member is entitled, or has an accrued right to a pension under the Scheme—

(a) the entitlement or right cannot be assigned, commuted or surrendered,

(b) the entitlement or right cannot be charged or a lien exercised in respect of it, and

(c) no set-off can be exercised in respect of it,

and an agreement to effect any of those things shall be unenforceable.

(2) Where by virtue of this section a person's entitlement, or accrued right to a pension under the Scheme cannot, apart from subsection (5), be assigned, no order can be made by any court the effect of which would that he would be restrained from receiving that pension.

(3) Where a bankruptcy order is made against a person, any entitlement or right of his which by virtue of this section cannot, apart from subsection (5), be assigned is excluded from his estate for the purposes of the Bankruptcy Act 1914.

(4) Subsection (2) does not prevent the making of an attachment of earnings order under the Attachment of Earnings Act 1971.

(5) Subsection (1) does not apply to any of the following, or any agreement to effect any of the following—

(a) an assignment in favour of the member's widow, widower or dependant;

(b) a surrender, at the member's option for the purpose of—

(i) providing benefits for that person's widow, widower or dependant, or

(ii) acquiring entitlement to further benefits under the Scheme for the member,

(c) a commutation—

(i) of the member's benefit on or after retirement or exceptional circumstances of serious ill health;

(ii) in prescribed circumstances, of any benefit for the member's widow widower or dependant, or

(iii) in other prescribed circumstances;

(d) subject to subsection (6), a charge or lien on, or set-off against, the member's entitlement, or accrued right, to a pension (except to the extent that it includes transfer credits other than prescribed transfer credits) for the purpose of enabling the employer to obtain the discharge by him of some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act

or omission by him:

- (e) subject to subsection (6), except in prescribed circumstances a charge or lien on, or set-off against, the member's entitlement, or, accrued right, to pension, for the purpose of discharging some monetary obligation due from the person in question to the scheme and—
 - (i) arising out of a criminal, negligent or fraudulent act or omission by him, or
 - (ii) in the case of a trust scheme of which the member is a trustee, arising out of a breach of trust by him.

(6) Where a charge, lien or set-off is exercisable by virtue of subsection (5)(d) or (e)—

- (a) its amount must not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the member's entitlement or accrued right, and
- (b) the member must be given a certificate showing the amount of the charge, lien or set-off and its effect on his benefits under the scheme,

and where there is a dispute as to its amount, the charge, lien or set-off must not be exercised unless the obligation in question has become enforceable under an order of a competent court or in consequence of an award of an arbitrator.

Forfeiture, etc.

35.—(1) Subject to the provisions of this section and section 36, a member's entitlement, or accrued right, to a pension cannot be forfeited except by reference to—

- (a) a transaction or purported transaction which under section 34 is of no effect, or
- (b) the bankruptcy of the person entitled to the pension or whose right to it has accrued,

whether or not that event occurred before or after the pension became payable.

(2) Where such forfeiture as is mentioned in subsection (1)(a) or (b) occurs, any pension which was, or would but for the forfeiture have become, payable may, if the Board so determine, be paid to all or any of the following—

- (a) the member of the scheme to or in respect of whom the pension was, or would have become, payable,
- (b) the spouse, widow or widower of the member,
- (c) any dependant of the member, and
- (d) any other person falling within a prescribed class.

(3) Subsection (1) does not prevent forfeiture of a member's entitlement to a pension by reference to his having been convicted of one or more offences—

- (a) which are committed before the pension becomes payable, and
- (b) which are—

(i) offences of treason,

(ii) offences under the Official Secrets Acts 1911 to 1939 for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years,

(iii) any other offence prescribed by regulations.

(4) Subsection (1) does not prevent forfeiture by reference to a failure by any person to make a claim for pension—

- (a) where the forfeiture is in reliance on any enactment relating to the limitation of actions, or
- (b) where the claim is not made within six years of the date on which the pension becomes due.

(5) Subsection (1) does not prevent forfeiture in prescribed circumstances.

(6) In this section and section 36, references to forfeiture include any manner of deprivation or suspension.

Forfeiture by reference to obligation to employer

36.—(1) Subject to subsection (2), section 35(1) does not prevent forfeiture of a member's entitlement, or accrued right, to a pension under the Scheme by reference to his having incurred some monetary obligation due to his employer and arising out of a criminal, negligent or fraudulent act or omission by the person.

(2) A member's entitlement or accrued right to a pension may be forfeited by virtue of subsection (1) to the extent only that it does not exceed the amount of the monetary obligation in question, or (if less) the value (determined in such manner as may be prescribed) of the member's entitlement or accrued right to the pension.

(3) Such forfeiture as is mentioned in subsection (1) must not take effect where there is a dispute as to the amount of the monetary obligation in question, unless the obligation has become enforceable under an order of a competent court or in consequence of an award of an arbitrator.

(4) Where a member's entitlement or accrued right to a pension is forfeited by virtue of subsection (1), the member must be given a certificate showing the amount forfeited and the effect of the forfeiture on his benefits under the scheme.

(5) Where such forfeiture as is mentioned in subsection (1) occurs, an amount not exceeding the amount forfeited may, if the Board so determine, be paid to the employer.

CHAPTER V

SUPPLEMENTARY PROVISIONS

Sex discrimination claims to Summary Court

37.—(1) An employee may present a complaint to the Summary Court that his or her employer has failed to comply with section 19(1), and on such a complaint—

(a) it shall be for the employee to show that discrimination has taken place; and

(b) it shall be for the employer to show the ground on which the discrimination took place;

and if the employee shows that discrimination has taken place it shall be assumed that it was on the grounds of sex in the absence of evidence to the contrary.

(2) The Summary Court shall not consider a complaint under this section unless it is presented within 3 months of the date on which the discrimination occurred or within such further period as the Court considers reasonable in a case where it is satisfied that it was not reasonably practicable for the for the complaint to be presented within that 3 month period.

(3) Where the Court finds the complaint well-founded, it shall make a declaration that the complainant has been discriminated against on grounds of sex and shall award such sum (if any) to be paid by the employer to the Board of such amount as the Court considers necessary to make good to the complainant his or her loss of future pension entitlement.

Supplementary provisions relating to claims to Summary Court

38.—(1) In the following provisions of the Employment Protection Ordinance 1989 ("the 1989 Ordinance")—

(a) section 105 (employee ordinarily working outside Falkland Islands), and

(b) section 110 and Schedule 4 (death of employee or employer), any reference to Part III of that Ordinance includes a reference to section 37 of and paragraphs 8, 9 and 10 of Schedule 1 to this Ordinance.

(2) Sections 114 and 115 of the 1989 Ordinance shall apply in relation to a complaint to the Summary Court under this Ordinance and to a decision or

determination of that Court on such a complaint as they apply to a complaint under that Ordinance.

(3) Any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of section 37 of and paragraphs 8, 9 and 10 of Schedule 1 to this Ordinance, or
- (b) to preclude any person from presenting a complaint to the Summary Court by virtue of any such provision.

Information and records required for purposes of Ordinance

39.—(1) The Governor may by regulations—

(a) require—

(i) employers whose employees are or are to be members of the Scheme, and

(ii) members and past members of the Scheme,

to give prescribed information to the Board for the purposes of any provision of this Ordinance;

(b) make provision as to the form and content of any election or nomination which a person may make under this Ordinance;

(c) require the Board or the fund manager, or both, to keep such records as may be prescribed.

(2) Regulations under this section may create criminal offences for breaches of the regulations punishable on conviction with a fine at level 7 on the standard scale or such lower fine as the regulations may specify.

Criminal offences

40. Any person who fails to comply with any requirement of this Ordinance commits an offence and shall be liable on conviction to a fine not exceeding level 7 on the statutory scale or to imprisonment for 2 years.

Offences by bodies corporate

41.—(1) Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as to a director of a body corporate.

Disapplication of existing legislation to members of Scheme

42. The provisions of the Pension Ordinance 1965 and the Pensions (Unestablished Locally Recruited Employees) Ordinance 1980 shall not apply in relation to any person who is a member of the Scheme.

Financial provisions

43. Expenditure incurred by the Financial Secretary in pursuance of this Ordinance or any regulations made under it shall be paid out of and charged upon the Consolidated Fund.

Section 5.

SCHEDULE 1
THE PENSIONS BOARD

PART I
GENERAL PROVISIONS

The constitution of the Board

1.—(1) The Pensions Board shall be a body corporate.

(2) The Pensions Board shall not be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown, and its property shall not be regarded as the property of the Crown.

Membership of the Board and Chairman

2.—(1) Subject to the provisions of this Ordinance, a person shall hold office as a member of the Board in accordance with the terms of his appointment.

(2) The members of the Board (other than the Financial Secretary) shall be appointed for a period of at least 1 year but not more than 3 years, but without prejudice to their re-appointment to the Board.

(3) The person appointed under section 5(2)(a) shall be the Chairman of the Board.

(4) A person may at any time resign office as chairman or other member of the Board by giving at least 3 months written notice of his resignation to the Governor, or such shorter period as the Governor may agree.

(5) The Governor may at any time remove the Chairman or any other member of the Board from his office as Chairman or member and shall immediately remove any member who is disqualified from being a member by virtue of paragraph 3.

(6) The Governor shall exercise his powers under sub-paragraph (5) by written notice which may have immediate effect.

(7) If the Chairman is removed or resigns his office of Chairman, his appointment as member of the Board shall also terminate on his removal or resignation, but, in the case of his resignation, without prejudice to his re-appointment to the Board by the Governor.

Disqualification from membership of Board

3.—(1) A person shall be disqualified from being a member of the Board if—

- (a) he has been convicted (whether in the Falkland Islands or elsewhere) of an offence involving dishonesty or deception, or
- (b) he is an undischarged bankrupt, or
- (c) he has made a composition contract or an arrangement with his creditors and has not been discharged in respect of it, or
- (d) he is subject a disqualification order under the Company Directors Disqualification Act 1986 or to an order under section 429(2)(b) of the Insolvency Act 1986, or
- (e) he is subject to an order under section 3 of the Pensions Act 1995 disqualifying him from being a trustee of any trust scheme, or
- (f) he has been removed as a trustee by an order made by the High Court on the grounds of misconduct or mismanagement in the administration of the scheme for which he was responsible or to which he was party or which he had, by his conduct, contributed to or facilitated.

(2) Sub-paragraph (1)(a) to (f) apply where the events in question occurred before as well as after, the commencement of this Ordinance.

(3) A person who acts as member of the Board while disqualified by virtue of paragraph (1) shall be guilty of an offence and liable to a fine not exceeding level 12 on the standard scale, or to imprisonment for 7 years.

Conflict of interest

4. A person shall not be disqualified from being a member of the Board by reason only that he is a member of the Scheme, and a person who is a member both of the Board and of the Scheme may exercise his functions as member of the Board as if he were not also a member of the Scheme, and retain any benefit which accrues to him as a result of the exercise of those functions.

Remuneration etc. of members of the Board

5. The Board may pay, or make provision for paying, to or in respect of the Chairman or any other member of the Board such salaries or other remuneration and such pensions, allowances, fees, expenses or gratuities (including payments in respect of loss of office or retirement) as the Board may with the approval of the Governor determine.

Staff — appointment, remuneration etc

6.—(1) The Board shall appoint—

- (a) subject to the approval of the Governor, a secretary to the Board, and
- (b) such other staff as may be necessary for the discharge of the functions of the Board,

on such terms and conditions as the Board may determine.

(2) This paragraph is without prejudice to any other provision of this Ordinance as to the appointment of any person by the Board.

Proceedings of the Board

7.—(1) The quorum of the Board shall be 4, one of whom must be either the Financial Secretary or the member appointed under section 5(2)(d), one of whom must have been appointed under section 5(2)(b) and one of whom must have been appointed under section 5(2)(c).

(2) If the Chairman is absent from any meeting of the Board, the Financial

Secretary shall chair that meeting, and if the Financial Secretary is also absent, the members present shall elect one of their number to take the chair for that meeting.

(3) Decisions at meetings of the Board shall be made by a simple majority of the members present at the meeting.

(4) Minutes of meetings of the Board shall be taken by the secretary to the Board and circulated to members.

(5) Subject to the preceding provisions of this paragraph, the Board shall determine its own procedure.

PART II

PROVISIONS RELATING TO EMPLOYEE MEMBERS

Time of for performance of duties and for training

8.—(1) The employer of a person who is a member of the Board shall permit that employee to take time off during his working hours for the purpose of—

- (a) performing any of his duties as member of the Board, or
- (b) undergoing training relevant to the performance of those duties.

(2) The amount of time off which an employee is to be permitted to take under this paragraph and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard in particular to—

- (a) how much time off is required for the performance of the duties of a member of the Board and the undergoing of relevant training, and how much time off is required for performing the particular duty or, as the case may be, for undergoing the particular training, and
- (b) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.

(3) An employee may present a complaint to the Summary Court that his employer has failed to permit him to take time off as required by this section; and

section 36(1) of the Employment Protection Ordinance 1989 shall apply in relation to a complaint under this subsection as it applies in relation to a complaint under section 33 of that Ordinance.

(4) For the purposes of this section, the working hours of an employee are any time when in accordance with his contract of employment he is required to be at work.

Payment for time off

9.—(1) An employer who permits an employee to take time off under paragraph 8 must pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he must be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.

(4) The average hourly earnings mentioned in sub-paragraph (3) are those of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a Falkland Islands measure of average hourly earnings which is reasonable in the circumstances.

(5) A right to be paid an amount under this section does not affect any right of an employee in relation to remuneration under his contract of employment, but—

- (a) any contractual remuneration paid to an employee in respect of a period of time off to which this section applies shall go towards discharging any liability of the employer under this section in respect of that period, and
- (b) any payment under this paragraph in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

(6) An employee may present a complaint to the Summary Court that his

employer has failed to pay him in accordance with this section; and section 36(1) and (3) of the Employment Protection Ordinance 1989 shall apply in relation to a complaint under this subsection as it applies in relation to a complaint under section 31 of that Ordinance.

Right not to suffer detriment or be unfairly dismissed

10.—(1) Subject to sub-paragraph (2), an employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a member of the Board, the employee performed (or proposed to perform) any functions as such member.

(2) Sub-paragraph (1) does not apply where the detriment in question amounts to dismissal, except where an employee is dismissed in circumstances in which, by virtue of section 106 of the Employment Protection Ordinance 1989 ("the 1989 Ordinance") section 52 of that Ordinance does not apply to the dismissal.

(3) An employee may present a complaint to the Summary Court that he has been subjected to a detriment in contravention of this paragraph, and on such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(4) The Summary Court shall not consider a complaint under this paragraph unless it is presented—

- (a) before the end of the period of 3 months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
- (b) within such further period as the court considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.

(5) For the purposes of sub-paragraph (4)—

- (a) where an act extends over a period, the "date of the act" means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected do the failed act if it was to be done.

(6) The dismissal of an employee by an employer shall be regarded for the purposes of Part VI of the 1989 Ordinance as unfair if the reason (or, if more than one, the principal reason) for it is that, being a member of the Board, the employee performed (or proposed to perform) any functions as such member.

(7) Where the reason or the principal reason for which an employee was selected for dismissal was that he was redundant, but it is shown—

(a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and

(b) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was that specified in sub-paragraph (6),

then, for the purposes of Part VI of the 1989 Ordinance, the dismissal shall be regarded as unfair.

(8) Section 52 of the 1989 Ordinance (right of employee not to be unfairly dismissed) applies to a dismissal regarded as unfair by virtue of sub-paragraph (6) or (7) regardless of the period for which the employee has been employed and of his age; and accordingly section 63(1) of that Ordinance (which provides a qualifying period and an upper age limit) does not apply to such a dismissal.

Section 6.

SCHEDULE 2
FUNCTIONS OF THE PENSIONS BOARD

Powers of investment

1.—(1) Subject to the provisions of this Ordinance—

- (a) the Board shall have power to invest any money received on account of the Scheme in any investment mentioned in Part I of the Trustee Investment Act 1961 or in any other investment, and shall also have power to sell, convert, vary or transpose any investments or assets, and
- (b) all investments and money for the time being standing to the account of the Scheme shall be held under the legal control of and by or in the name of the Board provided that such investments and money may be placed by the Board in the name of or under the control of such body corporate as nominee for the Board as they shall from time to time select.

(2) Without prejudice to the generality of the foregoing provisions the Board may invest or apply sums—

- (a) in the purchase from any insurance company of any annuity or annuities for the life or lives of any person or persons or for any period or periods whether depending upon or calculated by reference to life or not;
- (b) in effecting and paying premiums in respect of any policy or policies of life insurance and
- (c) in the underwriting, sub-underwriting or guaranteeing the subscription of any funds, securities, bonds, debenture stocks or shares;
- (d) in the purchase of assets of a non-income producing nature with the particular power of entering into any transaction calculated in the opinion of the Board to offset or reduce a risk of loss to the Fund.

(3) Sub-paragraph (2)(d) authorises the Board to deal in foreign currencies (either at the official rate of exchange or any other rates), options, traded options and traded futures, whether for present or future settlement.

(4) The power to make investments for the purposes of the Scheme may not be restricted by reference to the consent of any employer (including the Falkland Islands Government), whether by the Statement of Principles or otherwise.

(5) The Board may, with the consent of the Governor, raise or borrow any money upon such terms as they think fit and may secure such money by charging all or any part of the Fund, and money so raised or borrowed shall be applied for all or any of the purposes of the Scheme whether in the purchase of any investment or otherwise.

Power to act on advice and determinations of questions of entitlement etc

2.—(1) Subject to the provisions of this Ordinance, the Board shall have power—

- (a) to act on the advice or opinion (whether or not obtained by them) of the Scheme actuary or accountant or of any lawyer, broker, accountant, investment adviser, medical practitioner, surveyor or other suitably qualified person and, to the extent provided by paragraph 4, shall not be responsible for any loss occasioned by so acting, and
- (b) subject to section 16, to settle, compromise or submit to arbitration, any claim or matter relating to the Scheme.

(2) Subject to the provisions of this Ordinance, the Board shall have full power—

- (a) to determine whether or not any person is entitled from time to time to any benefit or payment in accordance with the Scheme and in deciding any question of fact they shall be at liberty to act upon such evidence or presumption as they shall in their discretion think sufficient (whether or not the evidence would be admissible in any legal proceedings or the presumption is a legal presumption), and
- (b) conclusively to determine all questions and matters of doubt arising on or in connection with the Scheme, whether relating to its construction or the benefits under it or otherwise.

(3) In order to maintain continuance of approval of the Scheme by the Board of Inland Revenue and its treatment as an exempt approved scheme under Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 and to comply with the preservation requirements of the Pensions Act 1995, the Board is empowered to give such undertakings to the Board of Inland Revenue and the Occupational Pensions Regulatory Authority in respect of the provisions of pensions and benefits under the Scheme as shall from time to time be required.

(4) The Board with the consent of the Governor shall have power to employ such agents as they think fit in the transaction of any business of the Scheme or the Fund including the payment of pensions and other benefits and any valid receipt therefor given to such shall be a good and sufficient discharge to the Board

(5) Except for any sum directed to be held and applied in accordance with section 30, where any period or time is specified by or under this Ordinance as the period within which or the date by which anything is to be done by or to or in respect of any person who is or is eligible to be a member, the Board may, on written application being made in that behalf, notwithstanding that the period has expired or the date has passed, extend that period or fix a later date on such terms and conditions as the Board may determine.

Incidental and other powers

3. Without prejudice to the preceding provisions of this Schedule, the Board may do anything which is calculated to facilitate the discharge of its functions or is incidental to the discharge of its functions.

Restriction on liability of the Board

4. The Board and any Member of the Board shall not be liable for any act or omission not due to its or his own wilful neglect or default.

Section 17.

SCHEDULE 3

APPLICATION OF ORDINANCE TO PERSONS IN GOVERNMENT SERVICE
ON 1ST JANUARY 1997

General rule

1. The provisions of this Ordinance shall have effect in accordance with this Part of this Schedule in relation to any person to whom paragraph 2 applies.

2.—(1) This paragraph applies to any person who was employed in government service immediately before 1st January 1997 and who continued to be so employed on that day, other than a person within sub-paragraph (2).

(2) A person is within this sub-paragraph if he—

(a) was employed in government service immediately before 1st January 1997 otherwise than under a contract for a fixed term, and

(b) has, before 1st January 1998, made an election in writing not to join the Scheme,

or if his place of work on 1st January 1997 was outside the Falkland Islands and he was not engaged in the Falkland Islands.

(3) This paragraph shall apply to a person employed in government service on 1st January 1997 whether or not that person continues to be so employed on 1st January 1998.

Transfer values

3.—(1) The Financial Secretary shall transfer to the Board sums by way of transfer values, calculated in accordance with the formula set out in sub-paragraph (2), in respect of each person to whom paragraph 2 applies, together with a further sum or sums representing interest on any such sum from 1st January 1997 until the date of payment to the Board at the rate of 10 per cent. per annum.

(2) Any sum which is to be paid to the Board by the Financial Secretary in pursuance of this paragraph shall be calculated in accordance with the following formula—

$$AV = (ERP) \frac{N}{M} \cdot (ERLS) \left(\frac{1+p}{1+i} \right)^z$$

where—

- AV is the assumed capital cost of a retirement pension for the employee in question under the existing legislation or what would be that cost if his pension were funded;
- ERP is the annualised value of the retirement pension which would be payable under the existing legislation to the employee in question if he had not become a member of the Scheme and if he continued in government service, at the salary paid to him as at 1st January 1997, until normal retirement age;
- N is the aggregate length of service of the employee in government service as at 31st December 1996, expressed as whole calendar months;
- M is the anticipated aggregate length of service of the employee in government service as at his normal retirement age, assuming he continues in government service until that age, expressed as whole calendar months;
- ERLS is the capitalised value of any lump sum which would be payable under the existing legislation to the employee in question if he had not become a member of the Scheme and if he continued in government service, at the salary paid to him as at 1st January 1997, until normal retirement age;
- p is the assumed future annual rate of retail price inflation in the Falkland Islands, which for the purposes of this section is 4.5 per cent.
- i is the assumed future annual rate of return on the transfer value in the Falkland Islands, which for the purposes of this section is 10 per cent;
- z is the difference between the employee's normal retirement age and his age on the anniversary of his birth nearest to 31st December 1996.

(3) For the purposes of sub-paragraph (2), "existing legislation", in relation to any person, means the legislation in force on 31st December 1996 which made provision for the payment of a pension to or in respect of that person in the event that he reached normal retirement age without ceasing to be in government service.

Contributions attributable to periods falling in the year 1997

4.—(1) The Financial Secretary shall pay to the Board a sum, or sums which in aggregate are, equal to the amount of contributions which he would

have made under section 18 in respect of periods falling in 1997 if this Ordinance had come into force on 1st January 1997, together with a further sum or sums representing interest on any such sum from the date on which the contribution which it represents would have been made (had this Ordinance come into force on that date) until the date of payment to the Board.

(2) Interest under sub-paragraph (1) shall be paid at the rate of 10 per cent. per annum.

Protection of pensions

5.—(1) This paragraph applies in relation to any member who had reached the age of 40 years before 1st January 1997 and shall apply at the time he reaches his normal retirement age (the "retirement date").

(2) The Financial Secretary shall transfer to the Board such sum, if any, as may be necessary to ensure that the accumulated value of the member's share in the Scheme Fund (calculated in accordance with section 24(2)) at the retirement date is not less than the amount which would have been required to purchase an annuity and pay any lump sum which he would have received in accordance with the provisions of the existing legislation (within the meaning of paragraph 3(3)) if he had retired from government service on that date.

(3) For the purpose of determining, in relation to any person at his retirement date, whether or not any sum is to be transferred to the Board in accordance with sub-paragraph (2), the following assumptions shall be made—

- (a) that he had remained employed in government service until his retirement date;
- (b) that the existing legislation was applicable to him at that time;
- (c) that his salary at his retirement date was the same as it had been on 31st December 1996; and
- (d) that in the case of any person who had reached the age of 60 years before 1st January 1997, that his retirement date was 31st December 1996.

(4) The Board shall allocate any sum transferred in accordance with this paragraph in relation to any person to that person's individual member's account.

Benefits payable where employment terminated in 1997

6.—(1) Where a person's employment in government service terminated during the year 1997, whether because he retired or died or for any other reason, then, subject to the following provisions of this paragraph, the provisions of this Ordinance shall apply in relation to that person as if they had come into force on 1st January 1997 (with any necessary modifications).

(2) In this paragraph an "original annuity" means an annuity—

- (a) paid by way of pension to or in respect of any person who was employed in government service at any time, and
- (b) brought into payment in 1997.

(3) The Financial Secretary shall give notice to the Board that, as respects any original annuity identified in the notice and within such time as may be specified in the notice, he will pay into the Scheme such sum as may be necessary to enable the Board to arrange for another annuity to be paid on the same terms and to the same person as it was being paid at the time the notice is given.

(4) The Board shall accept any sums paid to it under this section and shall make all necessary arrangements for the payment of the annuity in accordance with subsection (3).

(5) Where the terms on which an original annuity, identified in a notice under subsection (3), was first brought into payment allowed for further annuities or sums to be paid to other persons if any specified event occurs, the Board shall ensure that such annuities or sums are paid to those persons if that event occurs.

(6) Where a lump sum has been paid to any person during 1997 to or in respect of a person within sub-paragraph (1), then the amount of that lump sum shall be set off against any entitlement that person or any other person may have by virtue of that sub-paragraph to any other lump sum payment, and if the earlier payment is less than any such other lump sum, the Board shall arrange for a sum equal to the difference to be paid in satisfaction of that entitlement; and the Financial Secretary shall provide any necessary sums.

(7) Any entitlement to any benefit under the legislation referred to in section 42 of any person to or in respect of whom the original annuity was paid shall cease as soon as arrangements made in accordance with sub-paragraph (4)

for the payment of an annuity to the person to whom the original annuity was paid come into effect.

Scheme expenses

7. Section 14 shall apply to expenses which are incurred in relation to contributions payable by virtue of this Part of this Schedule as it applies in relation to other expenses.

Increase of contributions in certain cases

8.—(1) In relation to any person who was employed in government service immediately before 1st January 1997 and was 25 years of age or more on that day, section 18(2)(b) shall have effect as if for “10 per cent.” there were substituted—

- (a) as respects any period falling between his 40th and 45th birthdays, “15 per cent.”;
- (b) as respects any period falling between his 45th and 50th birthdays, “20 per cent.”;
- (c) as respects any period falling between his 50th and 64th birthdays, “25 per cent.”.

(2) In calculating the length of any period for the purposes of sub-paragraph (1), the day which is the later of the 2 birthdays shall be disregarded.

(3) Sub-paragraph (1) shall not apply in relation to any person who ceases to be employed in government service on or after 1st January 1997 as respects any subsequent period of employment in government service.

EXPLANATORY MEMORANDUM

This Bill provides for the establishment of the Falkland Islands Pension Scheme. This Scheme will be open to employees of the Falkland Islands government, to employees in the private sector, to the self-employed and to others resident in the Falkland Islands. The Scheme will provide money-purchase benefits for members and their partners and dependants and will be fully funded. Additional voluntary contributions will also be possible so that the value of a member's fund can be increased according to his or her own perceived needs. Employers in the private sector will be free to choose whether or not to make contributions in respect of their employees. Employees whose employers have not chosen to participate in the Scheme will be free to join on their own behalf if they wish.

CHAPTER I

This Chapter contains the general interpretative provisions for the substantive provisions of the Bill.

CLAUSE 1

Subsection (1) of this clause contains the short title of the Bill.

Subsection (2) provides for Bill to come into force on 1st January 1998. Transitional provision is made in Schedule 3 to apply the Scheme to those employed in government service in 1997.

CLAUSE 2

This clause defines various expressions used in the Bill. In particular it provides that references to employee include references to those employed in government service and to directors and other officers of companies.

CLAUSE 3

This clause defines "normal retirement age" as being the age when a person would generally be able to retire on a pension. For the purposes of the Scheme, it cannot be earlier than the person's 50th birthday or later than his 64th birthday: this will prevent pensions and other benefits being paid under the Scheme before an employee reaches 50 years of age (irrespective of what his contract of employment may provide) unless he dies or becomes ill or disabled.

CLAUSE 4

This clause sets out the general purpose of the Bill which is to establish the new Scheme in order to provide retirement benefits to people in the Falkland Islands.

CHAPTER II

This Chapter is concerned with the establishment of the Pensions Board and its powers and duties.

CLAUSE 5

This clause contains the detailed provisions relating to membership of the Board. *Subsection (1)* limits the membership to a minimum of 7 and a maximum of 9 members. The Financial Secretary will always be a member.

Subsection (2) requires the Governor to appoint one person to be Chairman, one or 2 members to represent the interest of employers other than the government, 2 to 4 to represent the interests of employees who are members of the Scheme and one other person. The Governor will consult widely before the appointments are made.

Subsection (3) ensures that the representatives of the employees in government service do not outnumber the other representative members of the Board.

Subsection (4) to (6) prevent an auditor from being appointed to the Board if he is the auditor of any employer whose employees are members of the Scheme or is the Scheme auditor or is associated with the Scheme auditor, actuary or other professional adviser.

CLAUSE 6

This clause sets out the principal functions of the Board. Broadly speaking, these will be to hold and administer the assets of the Scheme and to ensure that the members receive the benefits they are entitled to under the Scheme.

CLAUSE 7

This clause requires the Board to produce a Statement of Principles which will set out the principles which will govern the investment policy of the Board.

The Statement will be prepared with the advice of an experienced person who is permitted to give investment advice in the United Kingdom under the Financial Services Act 1986. In addition the Board must consult employers and employees in the Falkland Islands or their representatives as to the content of the Statement, and may consult any other person the Board considers appropriate.

CLAUSE 8

This clause prescribes rules on investment which the Board must comply with in exercising its powers under the Ordinance. These rules prohibit the Board from making any investment which the Governor has notified the Board would be contrary to the interests of the Falkland Islands. The rules also require the Board to have regard to the need for diversification of investments, the suitability of any investment and to give particular consideration to the time for which any investment should be held. Overall the Board is required to comply with the Statement of Principles so far as is reasonably practicable.

CLAUSE 9

This clause enables the Governor to prohibit the making of any investment if it is an employer-related investment. These are defined in the clause and include shares and securities issued by an employer of a member of the Scheme or any associate or connected person of such an employer, land occupied by such an employer or person and loans made by such an employer.

CLAUSE 10

This clause requires the Board to appoint an auditor and actuary to the Scheme. The auditor must be qualified to act as an auditor to a company in accordance with Part II of the Companies Act 1989, broadly that he holds a recognised UK or overseas qualification as an auditor. The actuary must either be the Government Actuary or a member of the Institute of Actuaries or the Faculty of Actuaries.

CLAUSE 11

This clause requires the Board to appoint a fund manager to manage the Scheme Fund on a day-to-day basis. The fund manager will be bound by the Statement of Principles and the rules of investment to the same extent as the Board. The fund manager will have to be an authorised person under the Financial Services Act 1986 and additionally has appropriate knowledge and experience to enable him to carry out his functions as fund manager of the Scheme. The Governor must approve the appointment. The clause ensures that personal responsibility will rest with the fund manager for decisions taken as subsection (3) requires the agreement for his appointment to include liability on his part for any lack of skill when acting as fund manager.

CLAUSE 12

This clause sets out the functions of the fund manager referred to in the preceding paragraph.

CLAUSE 13

This clause makes provision for the keeping of accounts of the Fund. The Board must ensure that true and fair accounts are kept for each financial year of the Fund. These accounts must be submitted to the Board by the end of June following the financial year to which they relate. The Governor is given power to prescribe the contents of the Scheme accounts.

Subsection (2) defines the Scheme's financial year as the 12 months beginning with 1st January in each year. An accounting period of the Scheme is the period for which accounts are kept.

Subsection (3) requires the auditor to include in the accounts such other information as the Board may require or as may be prescribed by regulations and subsection (4) requires the Board to give a copy of the accounts to the Governor.

CLAUSE 14

This clause allows the Governor to make regulations providing for the expenses of the Scheme to be met by contributing employers, employees, self-employed contributors and other contributors or by any one or more of those contributors, it is expected that in the first instance the Scheme expenses will be met by the Falkland Islands Government.

CLAUSE 15

This clause requires the auditor and actuary to "blow the whistle" on any suspected wrong-doing either comes across in the course of their activities relating to the Scheme. The auditor or actuary must tell the Governor without delay of any breach of any duty on the part of any person connected with the administration of the Scheme. The auditor and actuary risk losing their appointments if they do not comply with this provision.

Subsection (2) confers protection on the actuary and auditor from actions for breach of confidentiality and similar actions and the clause also protects in a similar way other professional advisers who blow the whistle on any wrong-doing related to the administration of the Scheme.

CLAUSE 16

This clause requires the Board to make arrangements for the resolution of disputes between employers and employees relating to any aspect of the Scheme. The arrangements will authorise an independent person to hear and resolve the points in issue and the Board or fund manager will have to take into account that person's findings.

The arrangements must have been made by 1st July 1998.

CHAPTER III

This Chapter makes provision with respect to the membership of the Scheme and contributions to the Scheme.

CLAUSE 17

Clause 17 sets out the descriptions of persons who can be members of the Scheme. They are:

- i. any person employed by the Falkland Islands government;
- ii. Any employee of a company registered in the Falkland Islands;
- iii. any other employee who is working in the Falkland Islands;
- iv. Any other employee not working in the Falkland Islands provided that he has been a member under any other category in the past;
- v. any self-employed person working in the Falkland Islands or who has previously worked in the Falkland Islands;
- vi. Any person who is habitually resident in the Falkland Islands.

Employees of the Falkland Islands government will be members and have contributions made for them by the government, except for those employees who were not recruited in the Falkland Islands and do not work in the Falkland Islands. Those employees will be able to join the Scheme if they wish by making their own arrangements with the Board and paying their own contributions. Other employers may make their employees members of the Scheme and may make contributions to the Scheme in respect of their employees. If the employers do not make their employees members, the employees may make their own arrangements with the Board to become members and make contributions themselves.

All other members will have to make their own arrangements with the Board. The general rule is that contributions may not be made before the member joins the Scheme or after his 64th birthday. Contributions in respect of employees whose employers have joined them to the Scheme cannot be made until they have been employees for 3 months, but once the 3 month period has elapsed, contributions for those 3 months will be paid in arrears.

A person ceases to be a member when his share in the Scheme Fund comes to an end which will usually be when his pension comes into payment. It will also come to an end if his contributions are refunded to him under clause 26.

CLAUSE 18

This clause makes provision with respect to the contributions to be made by the government for its own employees.

The contributions will be paid by the Financial Secretary monthly in arrears, at the rate of 10 per cent. of the employee's salary for the month in question. Contributions may not be made when the employee is on secondment or on a training course: in such cases the making of contributions is discretionary.

Special provision is made in Schedule 3 with respect to existing government employees.

CLAUSE 19

This clause allows an employer other than the government to choose which of his employees if any to make members of the Scheme. The only restriction is that a person must be included if to exclude him or her would amount to discrimination on grounds of sex. Further provisions relating to claims for breach of this protection are contained in section 37.

An employer must give the Board notice of his intention to make his employees members of the Scheme and is prevented from doing so unless the contracts of employment of his employees provide for them to be members and for the deduction of contributions and payment to the Board.

CLAUSE 20

This clause makes provision for the payment of contributions in respect of employees whose employers have given notice to the Board under clause 19, "employee contributions". Such a contribution can be made either by the

employer or by the employee or by both. The total amount of these contributions is to be decided by the employer but a limit is placed upon the maximum amount the employee can contribute: it must not exceed 5 per cent of his gross earnings for the period to which the contribution relates or, if less, the amount of the employer's contribution if any.

The Board must refuse to allow an employer to make an employee of his a member unless the contract of employment only permits reductions of the employee's contributions if there is a corresponding increase in the employer's contributions and requires the contributions to be made during the whole term of the contract.

Regulations will be made with respect to the deduction by the employer of employees' contributions from employees' salaries and their payment to the Board.

CLAUSE 21

This clause makes provision with respect to contributions other than those to which clauses 18 and 20 relate or additional voluntary contributions.

There are few restrictions on these contributions as they are entirely voluntary on the part of the member. The amounts and times when payment will be made are left to the member. The Board is given power to require information to be included in the notice under clause 17 by virtue of which a person becomes a member and to specify the method of payment of contributions under this clause.

CLAUSE 22

This clause allows additional voluntary contributions to be made by employees whose employers have made them members of the Scheme. It is not necessary for other members to have this facility as there is sufficient flexibility in clause 21 to allow them to increase their contributions as required. Under this clause other employees will be able in effect to increase their contributions when they wish and thereby increase their pension entitlement in the future.

The Governor may make regulations for the deduction in appropriate cases of additional voluntary contributions from employees' salaries and for the payment to the Board of those contributions.

CLAUSE 23

This clause requires the Board to accept transfer values into the Scheme from other pension schemes in respect of any member of the scheme.

Subsection (2) also allows the Board to pay transfer values out of the Scheme into other pension funds, but subject to regulations which will ensure that such payments are only made to bona fide pension schemes.

CLAUSE 24

This clause contains provisions relating to the member's individual account. This will be the record maintained by the Board of each member's accumulated

interest in the Scheme Fund. This will include all contributions made in respect of the member, any transfer value paid into the Scheme for him and any share in the income of the fund allocated to the member by the Board.

CLAUSE 25

This clause requires the Board to give each member a statement showing the value of his individual account and any other prescribed information. This statement will generally be sent out by the end of March in each year but for 1998 this requirement is relaxed and the statements will be sent out as soon as possible.

CLAUSE 26

This clause makes provision for the refund of contributions in certain cases. This is only permissible in the case of a person who has been a member for less than 2 years and who has left or is intending to leave the Falkland Islands. If he is an employee whose employer has made a member, it will only be possible if his employment terminates within the 2 year period and he does not obtain other employment within 3 months of the termination of that earlier employment. It will not be possible to refund contributions to any person as respects whom a transfer value has been paid into the Scheme or where benefits are to be paid under clause 29.

CHAPTER IV

This Chapter contains the principal provisions of the Ordinance relating to the benefits which will be provided under the Scheme.

CLAUSE 27

This clause provides that benefits will be payable under the Scheme in accordance with Chapter IV and defines expressions used in the Chapter.

CLAUSE 28

This clause specifies the benefits which must be provided under the Scheme for each member out of the value of his individual member's account. First there must be the right for the member to take up to one-quarter of that value as a lump sum. Secondly, there must be an annuity payable under a contract which complies with clause 31.

The annuity must be provided by an approved pension provider defined in clause 27 as a body authorised to carry on long term insurance under the Insurance Companies Act 1982 or any other person specified in regulations. The member may choose the pension provider: if he does not, the Board will select one for him.

The entitlement to these benefits crystallises on the date when the member retires which for this purpose is the date when he reaches his normal retirement date. That date is defined in clause 3 for the majority of employees as the date when

he would normally retire according to his contract of employment. If the contract allows him to retire before 50, it will be his 50th birthday and if it allows him to retire after 64, it will be his 64th birthday. In the case of a person who does not have a contract of employment, it will be taken to be his 60th birthday.

A member can defer payment of his annuity or lump sum or both if he wishes until his 64th birthday or any earlier time he may choose.

CLAUSE 29

This clause describes the benefits which may be provided under the Scheme but which are not mandatory.

First, benefits may be provided where the member dies before his normal retirement date for his surviving partner and dependants. Secondly, provision may be made for the payment of benefit where the member becomes ill or disabled before he reaches normal retirement age. These benefits will only be payable if the Board is satisfied that the member concerned has retired from work on account of ill-health or disablement. Provision may be made for the cessation of this benefit if the member recovers his health but only with the approval of the Board.

These benefits will only be payable where the employer or the member have made arrangements with the Board for their payment, and those arrangements will include financial provision allowing the benefits to be paid.

Benefits under this clause will not be payable where the member is an employee who has not completed the "probationary" 3 month period during which contributions are not payable.

In circumstances where benefits could be paid under this clause and contributions could be refunded under clause 26, the member concerned or his personal representatives if he has died, must elect whether to take benefits under this clause or to have the contributions refunded.

CLAUSE 30

This clause sets out the powers and duties of the Board in certain cases of the death of a member. These are where the member dies after retirement but before the 5th anniversary of the date the retirement annuity became payable to him and where a member dies before reaching normal retirement age and before any other benefit under the Scheme has become payable to him.

The Board is given discretion to hold and apply the money for the benefit of the relatives and dependants of the deceased or any person notified to the Board by the deceased. If there are no such persons and no heirs or legatees of the deceased person, the money will revert to the Scheme Fund. If there are such persons or heirs or legatees and the Board does not disburse all the funds the moneys will be held on trust for the deceased member's personal representatives.

CLAUSE 31

This clause specifies the conditions which need to be satisfied in relation to an annuity contract for it to be a "qualifying annuity contract".

The contract must provide for the member's retirement annuity to be payable until the death of the member. It must also provide for a surviving spouse's pension to be payable in the event of the member's death of an amount not less than half the member's pension. The clause also makes provision for the payment of dependants' pensions which at most will be equal to one-quarter of the member's pension but will be reduced according to the number of dependants so that in total not more than one-half of the member's pension is payable.

The contract must provide for any annuity payable under it to be increased annually by at least 3%.

The contract must provide that if the member dies before the 5th anniversary of the date his annuity came into payment, an amount equal to the sums which would have been payable under the annuity if he had died immediately after that anniversary shall be paid to the Board and held in accordance with clause 30.

The contract must prohibit assignment or surrender of the annuity.

For the purposes of this clause, "spouse" includes the member's partner even if not his lawful spouse. "Dependant" includes any child of the member under 18 years and any other person financially dependant on the member.

CLAUSE 32

This clause requires the Board to hold an amount equal to the value of the member's individual account in accordance with clause 30 in any case where the member dies while unemployed and without any benefits having been paid to him under clause 28(1).

If at the time when a member retires benefits would be payable to him in accordance with clause 28 but the member is very ill, the Board may with the agreement of the member make arrangements for an amount equal the value of his account to be applied otherwise than in accordance with clause 28.

CLAUSE 33

This clause makes provision for the payment of benefits to Falkland Islands government employees, other than those recruited outside the islands and not working there, in the event of their death while still employed in government service. An amount equal to the value of his individual's member's account less any additional voluntary contributions will be held in accordance with clause 30. If that is not sufficient to enable the payment of a lump sum equal to twice the member's salary at the time of his death, a spouse's annuity equal to one-third of that salary and dependants' annuities each equal to one-ninth of that salary, the government will make up the shortfall.

Any additional voluntary contributions paid by the member will be paid to his personal representatives.

CLAUSE 34

This clause prohibits the assignment, commutation or surrender of an annuity under the Ordinance. In addition such pensions are not subject to any lien or charge and cannot be made subject to set-off.

There are exceptions to these prohibitions. For example, assignments and surrenders are permitted if made to or for the benefit of the member's widow, widower or dependant.

CLAUSE 35

This clause makes comparable provision in relation to forfeiture as clause 34 makes in relation to assignment. Provision is made for forfeiture to take place on the bankruptcy of the member or if he attempts to make an arrangement which is inoperative under clause 34. In the latter case the Board may still determine that the pension shall be paid to the member or the member's spouse or dependants. Forfeiture is also possible where a person is convicted of treason or of breach of the Official Secrets Acts.

CLAUSE 36

This clause allows forfeiture of a pension to take place where there is an outstanding debt due to an employer arising out of some criminal or negligent action. For example an employee guilty of embezzlement from his employer will be at risk of having his pension forfeited to make good the default.

CHAPTER V

This Chapter contains miscellaneous supplementary provisions.

CLAUSE 37

This clause provides a remedy to an employee who has been discriminated against on grounds of sex by his or her employer not making the employee a member of the Scheme. The employee may make a complaint to the Summary Court and where the court finds that such discrimination did take place it may make an order requiring the employer to pay the employee such sum as may be necessary to make good to the employee his or her loss of pension entitlement. On a complaint under this clause, the burden of showing that discrimination has taken place shall lie with the employee but if that is established, it will be for the employer to show the ground on which the discrimination took place.

CLAUSE 38

This clause contains supplementary provisions relating to claims to the Summary Court. These will be claims under clause 37 or under Schedule 1. These provisions will exclude claims where the complainant is working outside the Falkland Islands and will allow claims to continue where the complainant dies. Other provisions relate to the bringing of appeals against decisions of the Summary Court to the Appeal Court and for procedural matters.

CLAUSE 39

This clause enables the Governor to make regulations requiring employers and members of the Scheme to give information to the Board, relating to the form and content of forms which may be required under the Ordinance and for record-keeping by the Board and by the fund manager.

CLAUSE 40

This clause provides that failure to comply with the requirements of the Ordinance will be a criminal offence punishable on conviction to a fine not exceeding level 7 on the standard scale (£10,000) or to imprisonment for 2 years.

CLAUSE 41

This clause ensures that directors and other officers of bodies corporate who consent to or connive at the commission of an offence under the Ordinance by the body corporate will also be guilty of an offence.

CLAUSE 42

This clause disapplies the legislation which currently makes provision for the payment of pensions to those in government service from anyone who is a member of the Scheme.

CLAUSE 43

This clause provides that all expenses of the Financial Secretary under the Ordinance will be met out of the Consolidated Fund.

SCHEDULE 1

This Schedule makes provision with respect to the membership of the Pensions Board and its staff.

The Board will be a body corporate but is not a Crown body.

Members of the Board appointed by the Governor will be appointed for a period between 1 and 3 years initially but may be reappointed. The Chairman of the Board will be the person appointed under clause 5(2)(a). A Board member may resign as such on giving 3 months notice, or a shorter period of notice with the agreement of the Governor.

The Governor may remove any member of the Board including the Chairman from office and must remove anyone who is disqualified under paragraph 3.

Paragraph 3 disqualifies from office as member of the Board any person guilty of an offence involving dishonesty or deception, any person who is an undischarged bankrupt, and any person who is disqualified from being a trustee or a company director. It will be a criminal offence to act as a member of the Board whilst disqualified.

Provision is made to allow Board members to act as such notwithstanding that

they are also members of the Scheme. Provision is also made to allow the payment salaries and other expenses to Board members.

The Board must appoint a secretary, subject to the approval of the Governor, and shall appoint such other staff as may be necessary.

Paragraph 7 makes provision relating to the procedural matters. The quorum of the Board is to be 4, and decisions of the Board are to be taken by a simple majority vote. Broadly the procedure at meetings of the Board will be determined by the Board.

Part II of the Schedule contains provisions protecting employee members of the Board from interference by their employers in the exercise of their duties. Complaints may be made to the Summary Court in cases where the employer has not permitted an employee to take time off work for his duties as a Board member, or for training for such duties, or where the employer has not paid the employee for such time taken off work. In addition a complaint may be made to the Summary Court that the employer has dismissed the employee or otherwise acted to his detriment, because the employee is a member of the Board. In all these cases the Court will have power to order compensation payments or reinstatement.

SCHEDULE 2

This Schedule confers powers on the Board which are additional to those set out in clause 6. Wide powers of investment are given and the Board is also given power to purchase annuities from insurance companies.

The Board cannot be restricted in its choice of investment by having to seek the agreement of any employer including the government to that investment. The Board is given power to borrow money and to deal in foreign currency and options, amongst other investments.

The Board is given power to seek and to act upon professional advice and to settle or arbitrate claims relating to the Scheme.

The Board is given power to determine all matters of entitlement to pensions and other benefits under the Scheme.

There is a general power in the Board to do anything to facilitate, or which is incidental to, the discharge of its functions.

The Board and members of the Board will not be liable for any act or omission unless it is due to their own act or default.

SCHEDULE 3

This Schedule deals with the payment of transfer values in respect of government employees who were employed on and immediately before 1st January 1997. It also provides for the payment of contributions in respect of employees in government service during 1997. There is also a protection of pension provision for those aged 40 or over on 1st January 1997. And contributions made in respect of those in government service and aged 25 years or more on that date will be made at a higher rate than for other government employees.



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The Drug Trafficking and Other Offences (External Confiscation Orders and External Forfeiture Orders) Order 1997, (S.R. & O. No. 16 of 1997).

SUBSIDIARY LEGISLATION

CRIMINAL LAW

Drug Trafficking and Other Offences (External Confiscation Orders and External Forfeiture Orders) Order 1997

S. R. & O. No. 16 of 1997

Made: 30 October 1997
Published: 31 October 1997
Coming into force: 1 November 1997

IN EXERCISE of the powers conferred on me by section 24(3) of the Drug Trafficking Offences Ordinance 1989(a), section 10 of the Criminal Justice (Amendment) Ordinance 1991(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 Drug Trafficking and Other Offences (External Confiscation Orders and External Forfeiture Orders) Order 1997 and shall come into force on 1st November 1997.

Interpretation

2.—(1) In this Order—

“a court of a designated country” includes a court of any state or territory of a designated country;

“appropriate authority of a designated country” means—

(a) the authority specified opposite that country in Schedule 3 of this Order or, as the case may be Schedule 4;

(b) where no authority is so specified, the authority appearing to the court to be the appropriate authority for the purposes of this Order;

“customs officer” has the same meaning as it has under the Customs Ordinance(c);

(a) No 20 of 1989

(b) No 20 of 1991

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

“designated country”—

(a) in relation to external confiscation orders, has the meaning given by section 24(1) of the 1989 Ordinance (that is to say, England, Scotland and Northern Ireland and any country which is for the time being designated by Order in Council under section 26 of the Drug Trafficking Offences Act 1986^(d) of the United Kingdom);

(b) in relation to external forfeiture orders means a country or territory designated under article 5 of this Order;

“drug trafficking offence” means any offence corresponding or similar to—

(a) an offence under section 4 of the Misuse of Drugs Ordinance 1987^(e) (production, supply and possession for supply of controlled drugs);

(b) an offence under section 18 of that Ordinance (assisting in or inducing commission outside the Falkland Islands of an offence punishable under a corresponding law);

(c) an offence under—

(i) section 182 of the Customs Ordinance (improper importation);

(ii) section 128 of that Ordinance;

in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Ordinance 1987;

(d) an offence under section 23 of the 1989 Ordinance;

(e) an offence under sections 13, 15 or 19 of the 1991 Ordinance;

(f) an offence under section 1 of the Criminal Law Act 1977^(f) in its application to the Falkland Islands;

(g) an offence under section 1 of the Criminal Attempts Act 1981^(g) in its application to the Falkland Islands of attempting to commit any of those offences;

(h) any offence of inciting another to commit any of those offences, whether under section 17 of the Misuse of Drugs Ordinance 1987 or at common law;

^(d) 1986 c.32

^(e) No 16 of 1987

^(f) 1977 c.45: applied to the Falkland Islands by Schedule 1 Crimes Ordinance 1989 (No 10 of 1989) as substituted by paragraph 5 of Schedule 1 to Criminal Law (Amendment) Ordinance 1992 (No 10 of 1992)

^(g) 1981 c.45: applied to the Falkland Islands by Schedule 1 Crimes Ordinance 1989 as substituted by paragraph 5 of Schedule 1 to the Criminal Law (Amendment) Ordinance 1992

(i) aiding, abetting, counselling or procuring the commission of any of those offences;

“offence to which this Order applies” means a drug trafficking offence or any offence corresponding or similar to an offence to which sections 49 to 65 of the Criminal Justice Ordinance 1989 apply;

“police officer” includes a customs officer;

“property” includes money and all other property, real or personal, heritable or movable, including things in action and other intangible or incorporeal property;

“Secretary of State” means Her Majesty’s Secretary of State for Foreign and Commonwealth Affairs;

“the 1989 Ordinance” means the Drug Trafficking Offences Ordinance 1989;

“the 1991 Ordinance” means the Criminal Justice (Amendment) Ordinance 1991.

(2) This Order applies whether the property is situated in the Falkland Islands or elsewhere.

(3) The following provisions shall have effect for the interpretation of this Order.

(4) Property is held by any person if he holds any interest in it.

(5) Proceedings are instituted in a designated country when—

(a) under the law of the designated country concerned one of the steps specified in relation to that country in the right-hand column of Schedule 1 to this Order has been taken there in respect of an alleged drug-trafficking offence; or

(b) where no steps have been specified in relation thereto as mentioned in subparagraph (a), the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of that offence; or

(c) an application has been made to a court in a designated country for an external forfeiture order,

and where the application of this paragraph 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.

(6) Proceedings are concluded—

(a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings;

(b) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all property liable to be recovered, or otherwise).

(7) 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 varied or set aside.

External confiscation orders: modification of 1986 Act Orders

3.—(1) Schedule 2 to this Order shall have effect for the purpose of further modifying the 1986 Act Orders (which apply in the Falkland Islands by virtue of section 23(1) of the 1989 Ordinance but subject to the modifications required by section 23(2) of that Ordinance) in their application to the Falkland Islands.

(2) In this article—

“the 1986 Act Orders” means—

(a) the Drug Trafficking Offences Act 1986 (Designated Countries and Territories) Order 1990(h) (in Schedule 1 referred to as “the principal Order”);

(b) the Drug Trafficking Offences Act 1986 (Designated Countries and Territories) (Amendment) Order 1991(i);

(c) the Drug Trafficking Offences Act 1986 (Designated Countries and Territories) (Amendment) Order 199(j);

(d) the Drug Trafficking Offences Act 1986 (Designated Countries and Territories) (Amendment) Order 1993(k);

(e) the Drug Trafficking Offences Act 1986 (Designated Countries and Territories) (Amendment) (No 2) Order 1993(l); and

(f) the Drug Trafficking Offences Act 1986 (Designated Countries and Territories) (Amendment) Order 1994(m);

(3) Subject to the provisions of Schedule 1, section 23(2) of the 1989 Ordinance continues to have effect to modify the 1986 Act Orders in their application to the Falkland Islands.

(h) SI 1990/1199

(i) SI 1991/1465

(j) SI 1992/1722

(k) SI 1993/1792

(l) SI 1993/3158

(m) SI 1994/1641

External forfeiture orders

4.—(1) An order made by a court of a designated country for the forfeiture and destruction or forfeiture and other disposal, of anything in respect of which an offence to which this Order applies has been committed or which was used or intended for use in connection with the commission of such an offence is referred to in this Order as an “external forfeiture order”.

(2) In paragraph (1) of this article the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

(3) A person against whom an external forfeiture order has been made, or a person against whom proceedings which may result in an external forfeiture order being made have been, or are to be, instituted in a court in a designated country, is referred to as “the defendant”.

Designation of countries and territories

5. There are hereby designated for the purposes of section 10 of the 1991 Ordinance for the purposes of the application of this Order to drug trafficking offences, each of the countries and territories specified in Schedule 3 to this Order;

Restraint Orders

6.—(1) The Supreme Court may in accordance with this paragraph by an order (referred to in this Order as “restraint order”) prohibit any person, subject to such conditions and exceptions as may be specified in the order, from dealing with any property liable to forfeiture, that is to say any property in respect of which an external forfeiture order has been made in the proceedings referred to in paragraphs (2) or (3) of this article.

(2) A restraint order may be made where—

- (a) proceedings have been instituted against the defendant in a designated country;
- (b) the proceedings have not been concluded, and
- (c) either an external forfeiture order has been made in the proceedings or it appears to the Supreme Court that there are reasonable grounds for believing that such an order may be made in them.

(3) A restraint order may also be made where—

- (a) it appears to the Supreme Court that proceedings are to be instituted against the defendant in a designated country; and
- (b) it appears to the Supreme Court that there are reasonable grounds for believing that an external forfeiture order may be made in them.

(4) Where the court has made an order under paragraph (1) of this article by virtue of paragraph (3) of it, the court shall discharge the order if the proposed proceedings are not instituted within such time as the court considers reasonable.

(5) A restraint order—

(a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external forfeiture order has been registered under article 11 of this Order, by or on behalf of the Attorney General;

(b) may be made on an *ex parte* application to a judge in chambers; and

(c) notwithstanding any provision of the Rules of the Supreme Court⁽ⁿ⁾ or Order 11 of the Rules of the Supreme Court of England and Wales^(o) in their application to the Falkland Islands^(p) may provide for service on or notice to, persons affected by the order in such manner as the Supreme Court may direct.

(6) A restraint order—

(a) may be discharged or varied in relation to any property; and

(b) shall be discharged when proceedings in relation to which the order was made are concluded.

(7) An application for the discharge or variation of a discharge order may be made by any person affected by it.

(8) Where the Supreme Court has made a restraint order, the court may at any time appoint a receiver—

(a) to take possession of any property specified in the restraint order, and

(b) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the court, and may require any person having possession of the property in respect of which a receiver is appointed under this article to give possession of it to the receiver.

(9) For the purposes of this article, dealing with any property held by any person includes (without prejudice to the generality of the expression) removing the property from the Falkland Islands.

(n) Vol II Laws of the Falkland Islands (1950 Edition) pp 115-128 as amended by SR&O No 19 of 1992

(o) SI 1965/1776

(p) Under r.58 of the Rules of the Supreme Court of the Falkland Islands

(10) Where a restraint order has been made, a police officer may for the purpose of preventing any property specified in the restraint order being removed from the Falkland Islands seize the property.

(11) Property seized under paragraph (10) of this article shall be dealt with in accordance with the directions of the court which made the order.

Applications for restraint orders

7. An application under article 5(5) of this Order shall be supported by an affidavit which shall—

(a) state, where applicable, the grounds for believing that an external forfeiture order may be made in the proceedings instituted or to be instituted in the designated country concerned;

(b) to the best of the deponent's ability, give particulars of the property in respect of which the order is sought and specify the persons holding such property;

(c) in a case to which article 6(3) of this Order applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

and the affidavit may, unless the court otherwise directs, contain statements of information or belief with the sources and grounds thereof.

Disposal of forfeited property

8.—(1) Where an external forfeiture order has been registered in the Supreme Court under article 11 of this Order, the Supreme Court may, on the application of the Attorney General or some person authorised by him, order the forfeiture of the property specified in the external forfeiture order.

(2) Property forfeited under paragraph (1) of this article shall be disposed of in accordance with the court's directions.

(3) The court shall not in respect of any property exercise the powers conferred by paragraphs (1) and (2) of this article unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

Exercise of powers by Supreme Court or receiver

9.—(1) This article applies to the powers conferred on the Supreme Court by articles 6 and 8 or on a receiver appointed under article 6 of this Order.

(2) The powers shall be exercised with a view to recovering property which is liable to be recovered under an external forfeiture order registered in the Supreme Court under article 11 of this Order or, as the case may be, with a view to recovering property which may become liable to be recovered under any external forfeiture order which may be made in the defendant's case.

Receivers: supplementary provisions

10.—(1) Where a receiver appointed under article 6 of this Order takes any action—

(a) in relation to property which is not liable to recovery under an external forfeiture order, being action which he would be entitled to take if it were such property,

(b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid by the person on whose application the receiver was appointed.

Registration of external forfeiture orders

11.—(1) On an application made by or on behalf of the government of a designated country, the Supreme Court may register an external forfeiture order made there if—

(a) it is satisfied that at the time of registration the order is in force and not subject to appeal;

(b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and

(c) it is of the opinion that enforcing the order in the Falkland Islands would not be contrary to the interests of justice.

(2) In paragraph (1) of this article “appeal” includes—

(a) any proceedings by way of discharging or setting aside a judgment;

(b) an application for a new trial or a stay of execution.

(3) The Supreme Court shall cancel the registration of an external forfeiture order if it appears to the court that the order has been satisfied by the forfeiture of the property liable to be recovered under the external forfeiture order or by any other means.

Proof of orders and judgment of court in a designated country

12.—(1) For the purposes of this Order—

(a) any order made or judgment given by a court in a designated country purporting to bear the seal of that court, or to be signed by any person in his

capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person;

(b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court in a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court in a designated country is duly authenticated for the purposes of paragraph (1)(b) above if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the designated country.

Evidence in relation to proceedings and orders in a designated country

13.—(1) For the purposes of this Order, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating—

(a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;

(b) in a case to which article 2(5)(b) applies, that the defendant has been notified as specified in that paragraph;

(c) that an external forfeiture order is in force and is not subject to appeal;

(d) that property recoverable in the designated country under an external forfeiture order remains unrecovered there;

(e) that any person has been notified of any proceedings in accordance with the law of the designated country; or

(f) that an order (however described) made by a court of the designated country is for the forfeiture and destruction or the forfeiture and other disposal of anything in respect of which an offence to which this Order applies has been committed or which was used in connection with the commission of such an offence,

shall, in any proceedings in the Supreme Court, be admissible as evidence of the facts so stated.

(2) In any such proceedings a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court in a designated country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of paragraph (2) of this article if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in the designated country, or by or on behalf of the appropriate

authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be original document containing or summarising the evidence or a true copy of that document.

(4) Nothing in the article shall prejudice the admission of any evidence, whether contained in any document or otherwise, which is admissible apart from this article.

Certificate of appropriate authority

14. Where in relation to any designated country no authority is specified in Schedule 2 to this Order, a certificate made by the Governor to the effect that the authority specified therein is the appropriate authority for the purposes of this Order shall be sufficient evidence of that fact.

Representation of government of a designated country

15. A request for assistance sent to the Governor by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Attorney General or any person authorised by him to act on its behalf in any proceedings in the Supreme Court under article 11 or any other provision of this Order.

Made this 30th day of October 1997

R P Ralph
Governor

SCHEDULE 1

Article 2(5)

INSTITUTION OF PROCEEDINGS

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Anguilla	<p>(a) when a summons or warrant is issued in respect of an offence</p> <p>(b) when a person is charged with an offence after being taken into custody without a warrant</p> <p>(c) when a bill of indictment is preferred</p>
Argentina	when a judge has ordered that a person be detained for the purpose of testifying in connection with the commission of an offence
Australia	<p>(a) when an information has been laid before a justice of the peace</p> <p>(b) when a person is charged with an offence after having been taken into custody without a warrant</p> <p>(c) when a bill of indictment is preferred</p>
the Bahamas	<p>(a) when an information has been laid before a justice of the peace</p> <p>(b) when a person is charged with an offence after having been taken into custody without a warrant</p> <p>(c) when a bill of indictment is preferred</p>
Bahrain	when a bill of indictment is lodged in court against any person for an offence
Barbados	<p>(a) when an information has been laid before a magistrate</p> <p>(b) when a person is charged with an offence</p> <p>(c) when a bill of indictment is preferred</p>
Bermuda	when an information is laid charging a person with an offence
British Virgin Islands	<p>(a) when a summons or warrant is issued in respect of an offence</p> <p>(b) when a person is charged with an offence after having been taken into custody without a warrant</p> <p>(c) when an indictment is preferred</p>
the Cayman Islands	<p>(a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence</p> <p>(b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section</p>

Ecuador	when a writ is issued by a judge initiating criminal proceedings
Germany	when a person is notified that he is accused of an offence and will be brought before a court
Gibraltar	when a person is charged with an offence, whether by the laying of an information or otherwise
Guernsey	when a person is charged with an offence
Guyana	when a charge has been laid against a person for an offence
Hong Kong	(a) when a magistrate issues a warrant or summons (b) when a person is charged with an offence (c) when an indictment is preferred
India	(a) when information relating to the commission of any crime is received by any law of enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law (b) when any allegation is made orally or in writing to a court of law that a person has committed an offence; (c) when any investigation or inquiry into the commission of an offence is directed by a court of law
Isle of Man	(a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody (d) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917
Italy	(a) where a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress (b) when a proposal for the application of a preventative measure (" <i>misura di prevenzione</i> ") is laid before a court
Jersey	(a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island (b) when a person is arrested and charged with an offence (c) when a summons in respect of an offence is served on a person at the instance of the Attorney General

Malaysia	when a person is charged with an offence
Montserrat	(a) when a judge issues a summons or warrant in respect of an offence (b) when a person is charged with an offence after being taken into custody without a warrant
Netherlands	(a) when a pre-trial financial investigation has been initiated (b) when the provisional measure has been ordered by an investigating magistrate (c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted (d) when a public prosecutor has laid an indictment
Panama	where a person has been charged with an offence
Saudi Arabia	when an information has been laid before a judicial authority
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion
United Mexican States	when criminal proceedings are instituted by a judicial authority
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence
Uruguay	when criminal proceedings are instituted by a judicial authority

SCHEDULE 2

Article 3(1)

Interpretation

1. In this Schedule "the principal Order" means the Drug Trafficking Offences Act 1986 (Designated Countries and Territories) Order 1990 as amended by the Orders mentioned in sub-paragraphs (b) to (f) of article 3(2) of this Order.

General modification

2. Every reference in the principal Order (including the Schedules thereto)—

(a) to England and Wales or to the United Kingdom shall be replaced by a reference to the Falkland Islands;

(b) to the Crown Prosecution Service or to the Commissioners of Customs and Excise shall be replaced by a reference to the Attorney General.

Exclusion of article 1(2) of principal Order

3. Article 1(2) of the principal Order shall, so far as concerns the Falkland Islands, be deemed never to have appeared therein.

Comparative table

4. For the purposes of the application of the principal Order in the Falkland Islands, every provision of the Drug Trafficking Offences Act 1986 ("the 1986 Act") mentioned in the left-hand column of the following Table shall be taken to correspond to the provision of the Drug Trafficking Offences Ordinance 1989 ("the 1989 Ordinance") mentioned immediately opposite to it in the right-hand column of that Table—

Comparative Table

Provision of 1986 Act

Corresponding provision of 1989 Ordinance

Section 1	Section 3
Section 2	Section 5
Section 3	Section 6
Section 4	Section 7
Section 5	Section 8
Section 6	Section 9
Section 7	Section 10
Section 8	Section 11
Section 9	Section 12
Section 10	Section 13
Section 11	Section 14
Section 12	Section 15
Section 13	Section 16
Section 14	Section 17

Section 15	Section 18
Section 17	Section 19
Section 17A	Section 20
Section 18	Section 21
Section 19	Section 22
Section 24	Section 23
Section 26	Section 24
Section 26A	Section 25
Section 27	Section 26
Section 28	Section 27
Section 29	Section 28
Section 30	Section 29
Section 31	Section 30
Section 32 (1) - (3)	Section 31
Section 38	Section 2
Section 39	Section 33

Modification of effect of article 9 of the principal Order

5. Article 9 of the principal Order shall be deemed to have had effect on 5 July 1990 (that is to say, the date on which the principal Order came into force in accordance with article 1(1) thereof) so as to disapply from that date the application in the Falkland Islands of the Drug Trafficking Offences Act 1986 (United States of America) Order 1989(q).

Schedule 1 to the principal Order

6. The contents of Schedule 1 to the principal Order are replaced by the contents of Schedule 3 to this Order.

Article 3(2) and Schedule 2 of and to the principal Order

7.(1) Subject to sub-paragraph (2) of this paragraph, article 3(2) of and Schedule 2 of the principal Order shall be deemed to have effect in the Falkland Islands so as to make the like modifications of the provisions of the 1989 Ordinance as, in accordance with the Table set out in paragraph 4 of this Schedule, are to be taken to correspond with the provisions of the 1986 Act modified by them.

(2) The provisions of the 1989 Ordinance modified by sub-paragraph (1) of this paragraph are further modified or re-modified as provided by section 24(2) of the 1989 Ordinance and paragraph 2 of this Schedule.

Appendix to Schedule 3 to the principal Order

8. The contents of the Appendix to Schedule 3 to the principal Order are replaced by the contents of Schedule 1 to this Order.

SCHEDULE 3

Article 5

DESIGNATED COUNTRIES - DRUG TRAFFICKING OFFENCES

<i>Designated country</i>	<i>Appropriate authority</i>
<hr/>	
Afghanistan	
Anguilla	the Attorney General of Anguilla
Antigua and Barbuda	
Argentina	
Armenia	
Australia	
Azerbaijan	
the Bahamas	
Bahrain	
Bangladesh	
Barbados	
Belarus	
Belgium	
Bermuda	
Bhutan	
Bolivia	
Bosnia and Herzegovina	
Brazil	
British Virgin Islands	the Attorney General of the British Virgin Islands
Brunei	
Burkina Faso	
Burma	
Burundi	
Cameroon	

Canada	
the Cayman Islands	the Attorney General of the Cayman Islands
Chile	
China	
Colombia	
Costa Rica	
Croatia	
Cyprus	
the Czech Republic	
Denmark	
Dominica	
Dominican Republic	
Ecuador	
Eqypt	
El Salvador	
Fiji	
Finland	
France	
Germany	
Ghana	
Gibraltar	the Attorney General of Gibraltar
Grenada	
Guatemala	
Guernsey	Her Majesty's Attorney General for the Bailiwick of Guernsey
Guinea	
Guyana	
Honduras	
India	the Ministry of Home Affairs
Iran	

Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	
Ivory Coast	
Japan	
Jersey	Her Majesty's Attorney General for the Bailiwick of Jersey
Jordan	
Kenya	
Latvia	
Luxembourg	
Macedonia	
Madagascar	
Malaysia	
Mauritania	
Monaco	
Montserrat	the Attorney General of Montserrat
Morocco	
Nepal	
Netherlands	
Nicaragua	
Niger	
Nigeria	
Oman	
Pakistan	
Panama	
Paraguay	
Peru	
Portugal	
Qatar	
Romania	

the Russian Federation
Saudi Arabia
Senegal
Seychelles
Slovakia
Slovenia
Spain
Sri Lanka
Sudan
Suriname
Syria
Sweden
Togo
Tunisia
Uganda
Ukraine
United Mexican States
United States of America
Uruguay
Venezuela
Yugoslavia
Zambia
Zimbabwe

EXPLANATORY NOTE
(not forming part of the above Order)

This Order further modifies, in its application to the Falkland Islands, the Drug Trafficking Offences Act 1986 (Designated Countries and Territories) Order 1990 ("the 1990 Order") (as amended by subsequent Orders made under the 1986 Act), which applies in the Falkland Islands under, and subject to the modifications made by, the provisions of section 24(2) of the Drug Trafficking Offences Ordinance 1989. The effect of the 1990 Order as modified is that the Drug Trafficking Offences Ordinance

1989, subject to modifications, applies to an order made by a court in a designated country or territory for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value.

The Order also provides for the enforcement in the Falkland Islands of orders made in a designated country or territory for the forfeiture and destruction or other disposal of property used in connection with the commission of a drug trafficking offence. These powers will also apply to proceedings which have been or are to be instituted in a designated country or territory and may result in an order being made there. *Article 5* and *Schedule 3* to the Order designate countries and territories for the purpose of enforcement of forfeiture orders of courts in those countries and territories and proceedings which may lead to such an order being made. *Schedule 3* includes those countries and territories to which the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on 20th December 1988, applies.



THE FALKLAND ISLANDS GAZETTE Supplement

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Vol. 8

20th November 1997

No. 26

The following are published in this Supplement -

Notice No. 40, Environmental Impact Statement Exploratory Drilling in Tranches A, B, C, D and F;

The Environmental Assessment for the Proposed Exploration Drilling Operations Offshore the Falkland Islands.

**ENVIRONMENTAL IMPACT STATEMENT
EXPLORATORY DRILLING IN TRANCHES A, B, C, D AND F.**

Shell Exploration and Production South West Atlantic BV, Amerada Hess (Falkland Islands) Limited, LASMO International Limited and IPC Falklands Limited have submitted to the Governor an environmental impact assessment entitled "Environmental Assessment for the Proposed Exploration Drilling Operations Offshore the Falkland Islands".

The Governor has decided pursuant to section 66(2) of the Offshore Minerals Ordinance 1994 to publish the environmental impact assessment in the Gazette. The Governor invites any person who wishes to do so within 42 days of the date of this Gazette, to make written representations to him in relation to the contents of the document and as to the applicants' intentions stated therein as to the protection of the environment. Any written representations sent should be addressed and sent to the Governor care of the Director of Oil, Department of Oil, Ross Road, Stanley, Falkland Islands.

Interested persons should note that the Governor will be sending a copy of any written representations he receives to the oil companies who submitted the environmental impact assessment. The oil companies may make written representations in reply to the Governor within 28 days thereafter.

The Governor will not grant consent to the exploratory drilling works until after consideration by the Executive Council of—

- (1) any written representations received as a result of this notice; and
- (2) any written representations made by the oil companies in reply.

Dated this 20th day of November 1997

Environmental assessment for
the proposed exploration
drilling operations offshore
the Falkland Islands

ERT 97/061

operators

Shell Exploration & Production South West Atlantic BV

contact

Dr Ali Onder

Amerada Hess (Falkland Islands) Ltd

contact

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Summary

This report presents the findings of an Environmental Impact Assessment (EIA) conducted by Environment and Resource Technology Ltd (ERT) on behalf of Shell Exploration and Production South West Atlantic BV, Amerada Hess (Falkland Islands) Limited, LASMO International Ltd and IPC Falklands Ltd. The EIA applies to an exploratory drilling programme proposed for the northern licence Tranches A, B, C, D and F, offshore the Falkland Islands.

The four operators have addressed the importance of appropriate environmental management from the initiation of exploration activities. This report therefore addresses the potential environmental impacts from the proposed drilling programme and details the procedures that will be in place to minimise and/or avoid the identified impacts.

The operators have contracted the *Borgny Dolphin* semi-submersible drilling rig which will be mobilised from the North Sea to complete the proposed programme. Drilling is due to commence in May 1998 and continue through the rest of the year and into 1999. The duration of drilling operations at each well site is dependent on the total well depth, but estimated to be between 45 and 90 days. Following the drilling of each well there may be a well testing phase, after which each well will be suspended or abandoned.

The proposed well sites are located over 150 km north of the Falkland Islands, at the edge of the continental shelf. Water depths at the drilling locations range from less than 200 m in the south to 500 m in the north. This area of the continental shelf represents the convergence zone of the east and west Falkland current and is an area of upwelling and high biological productivity, supporting ecologically important populations of krill. Krill are an important food source for the marine life of the area including seabirds and commercial fish and squid resources.

Seabed communities will be influenced by sediment type and water depth. Extrapolation of existing research on the seabed sediments and fauna of the Patagonian shelf suggests that the infauna will be diverse and dominated by polychaete worms. The epifauna is likely to include echinoderms, corals, sponges and crabs. Specific characteristics of the benthic fauna around the drilling locations will be confirmed prior to drilling operations.

The coastal areas of the islands support internationally important breeding populations of many seabird species. In addition, the waters offshore the islands support large numbers of migrant seabirds. However the marine distribution and abundance of both breeding and migrant species is not well studied.

Offshore are dominated by commercial fishing and fishing industry revenue is the mainstay of the Island's economy. Commercially important cephalopod species are the Patagonian (*Loligo*), short fin and Argentine (*Illex*) squid. *Illex* represent the largest resource and is fished for to the north and west of the Islands, including the area of the northern Tranches. March to June represents the main fishing season. Southern blue whiting and hoki are the most important commercial finfish species.

As part of the assessment, the expected discharges and inputs from exploration drilling operations have been described and where possible quantified. Consideration has been given to all aspects of the proposed programme from rig tow to well abandonment. Having identified the potential impacts, consideration is given to the procedures in place to minimise or avoid these impacts.

From routine operations the effects of drill cuttings discharges have the greatest potential for environmental impact. However on the basis of past experience in the use of water based muds for single exploration wells, these effects are not considered to be significant. Other effects from routine operations will have a minor or negligible environmental impact. These include:

- seabed disturbance from rig anchoring operations;
- potential interference to other sea users, including fishing, due to the physical presence of the rig;
- chemical discharges from cementing and well completion activities;
- atmospheric emissions and potential hydrocarbon fallout to sea from well testing;
- atmospheric emissions from power generation exhausts;
- aqueous discharges from the rig's drainage and sewage systems and rig washing.

Risk analysis has shown that the greatest potential for a spill would be a diesel spill or leak of less than 1 tonne. Following such a spill it is unlikely that there would be any measurable impacts upon the environment.

The greatest, but highly unlikely environmental threat would result from a large oil spill, for example from a well blowout. Analysis of historical blow out data and oil spill modelling results has shown that there is a low probability (6.75×10^{-7} per well year) of oil reaching the north coast of the Falkland Islands from the northern Tranches. As the risk of an oil spill beaching is very low it is therefore the offshore marine resources that can be considered to be at greatest risk from an oil spill. Offshore flightless birds eg penguins will be vulnerable to surface pollution. There may also be limited mortality to krill populations in the immediate vicinity of a spill location.

In light of the low level of impacts predicted from routine operations, and the management and control measures that will be in place, it is considered that the drilling programme proposed by the operators will not have any significant environmental impacts. However in the unlikely event of a large accidental oil spill the potential exists for significant impact to offshore resources.

1 Introduction

1.1 Background

Following the Falkland Islands first offshore licensing round, four of the operators who were successful in gaining licensed Tranches (see Figure 1.1) have conducted seismic survey and now propose to undertake exploration drilling activities during 1998 and 1999.

- Shell Exploration and Production South West Atlantic BV (SEPSWA) (operator) with Agip South Atlantic BV (partner) (hereafter referred to as Shell).
- Amerada Hess (Falkland Islands) Limited (operator) with Fina Exploration Atlantic BV, Argos Evergreen Ltd, Murphy South Atlantic Oil Company and Teikoku Oil (Falkland Islands) Co Ltd (partners) (hereafter referred to as Amerada Hess).
- LASMO International Ltd (Operator) with Desire Petroleum Ltd and Clyde Euro plc (partners) (hereafter referred to as LASMO).
- IPC Falklands Ltd (operator) with Sands Oil and Gas Ltd (partner) (hereafter referred to as IPC).

From the initiation of exploration activities offshore the Falkland Islands the operators have addressed the importance of appropriate environmental protection. It is recognised internationally that if appropriate procedures are in place the risk of any major environmental impact from exploration drilling operations is low. The purpose of this report is therefore to provide an assessment of the potential environmental effects that may arise from exploration drilling operations. Having identified the potential impacts offshore the Falklands, procedures in place to minimise these impacts are considered. Where appropriate, additional mitigation measures have been recommended.

1.2 Environmental policy and management

Each operator is committed to ensure that all operations are carried out with due regard for environmental protection and to meet legal requirements and consents (ref Appendix A). All four operators have established corporate environmental policies.

This is achieved through the implementation of company environmental management systems (EMSs). These systems enable environmental issues to be efficiently and systematically managed for continuous improvement. A key element within any EMS is the evaluation of the effects of operations on the environment. Emissions and discharges from the proposed operation are compared to internal requirements and with industry and government standards. Potential environmental impacts on the environment are then evaluated and prioritised action plans developed to reduce environmental effects. Key elements in a typical EMS are illustrated in Figure 1.2.

In addition to the evaluation of environmental effects the EMS's ensure that all contractors comply to company environmental standards. These includes the auditing of facilities and training of contractor personnel on the environmental sensitivities in areas of operation.

Figure 1.1 Location of tranches acquired by Shell, Amerada Hess, LASMO and IPC in the offshore waters of the Falkland Islands (adapted from NERC, 1994)

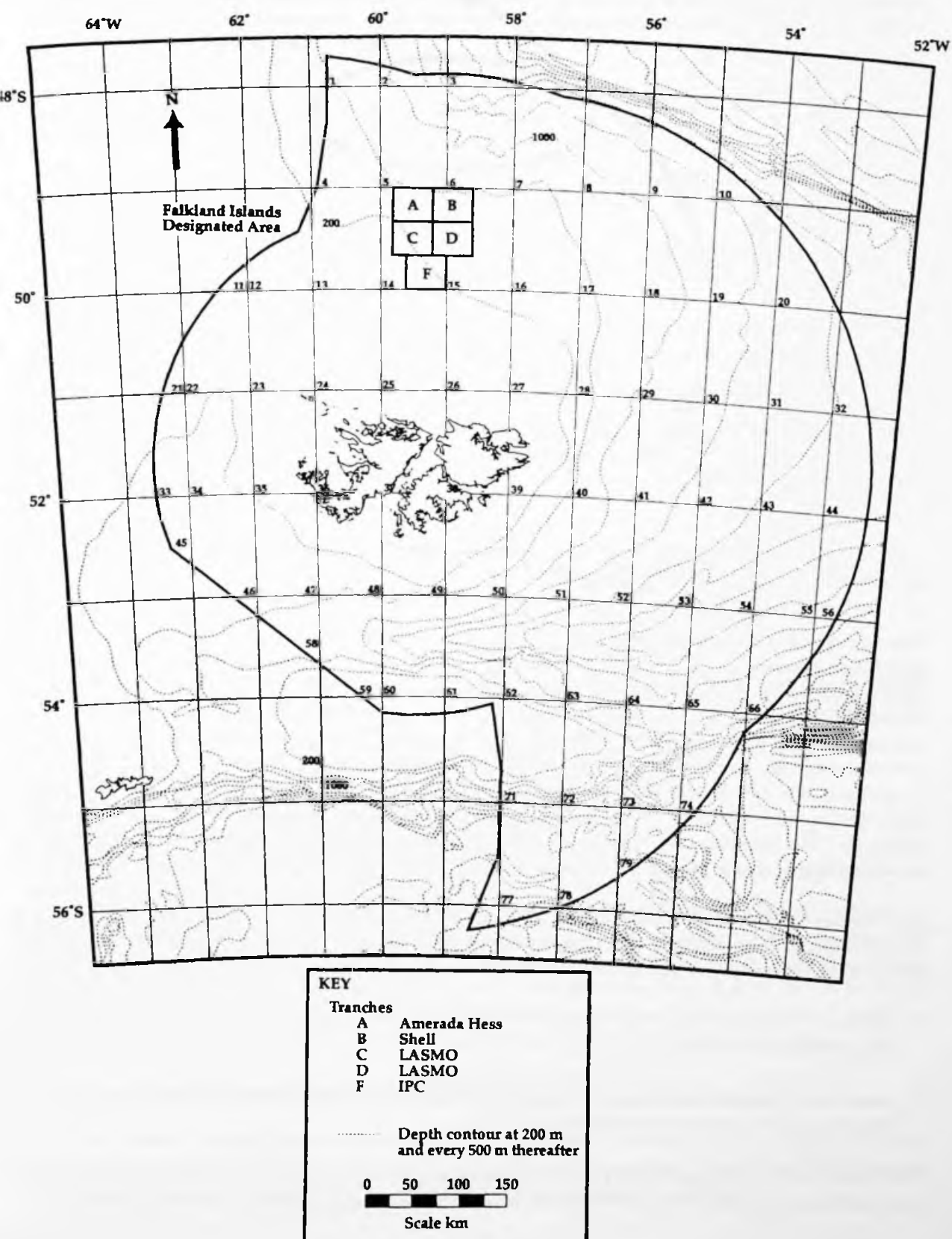
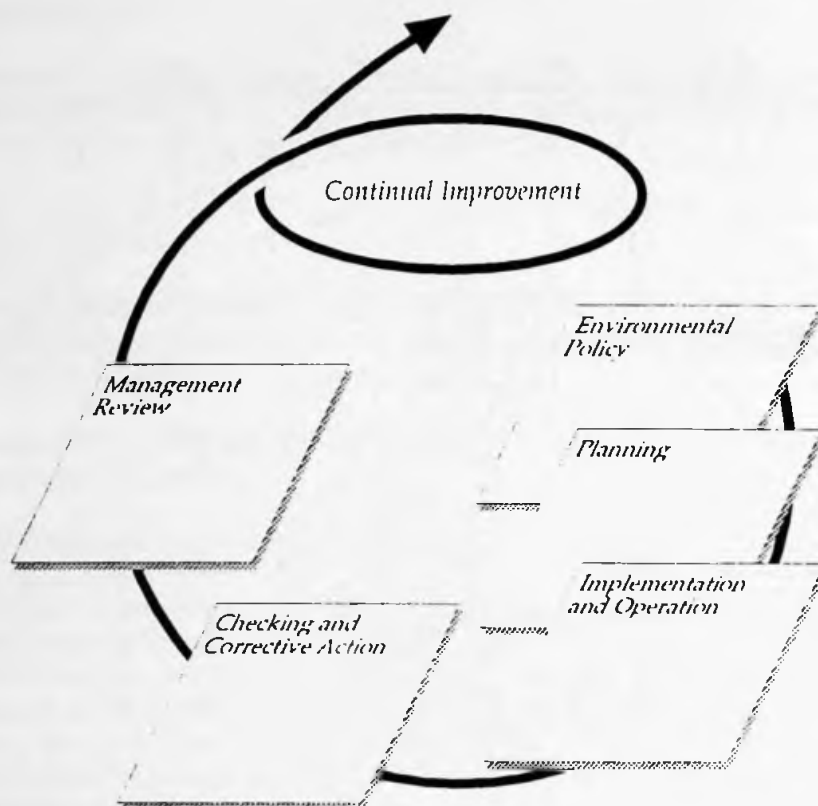


Figure 1.2 Key elements in a typical environmental management system



This approach has been demonstrated in activities offshore the Falkland Islands to date. Prior to licence application operators undertook preliminary studies to ascertain the environmental sensitivities of the licence Tranches and surrounding area. These studies were used to indicate the nature of environmental management planning that would be appropriate. Upon award of licences an Environmental Working Group consisting of the operators who successfully acquired Tranches was established to manage the environmental issues associated with the exploration activities in the northern Tranches. The resultant programme of work has included environmental assessment of seismic operations, this present study to assess the key environmental issues related to exploration drilling operations and oil spill contingency planning. The operators have also committed to undertake studies to increase the environmental understanding of certain aspects of the Falklands environment.

Such studies not only add to the scientific understanding of the offshore area of interest but also enable the planning of future oil and gas industry activities to take into account identified environmental sensitivities. Prior to exploration drilling operations the operators have committed to undertake:

- Metocean survey within the northern Tranches to determine the water current and wave characteristics of the area.
- An offshore baseline sampling survey and sample analysis to characterise the seabed sediments and benthic fauna of the northern Tranche area.

In addition, the Environmental Working Group will audit the drilling rig prior to drilling operations and make the rig crew aware of the environmental sensitivities of the area offshore the Falkland Islands.

In addition to the operator working group, industry together with a number of Falkland government departments and other organisations has established the Falkland Islands Exploration and Production Environmental Forum. This Forum enables dialogue between the Falkland Islanders and the operating companies including discussion over industry involvement in potential future environmental projects. At present the Forum is considering a survey to establish a better understanding of offshore abundance and distribution of seabirds and cetaceans.

1.3 Proposed drilling programme

The proposed exploration drilling programme will commence in March 1998 when the drilling rig the *Borgny Dolphin* will be mobilised from the North Sea to the Falkland Islands. Drilling will begin in May 1998 and continue throughout the rest of the year and into 1999 until all exploration wells have been completed. At present it is planned to drill five definite wells with the option to drill a further three commitment wells.

The *Borgny Dolphin* is a semi-submersible type drilling rig, a floating vessel which is moored by a system of anchors. The wells will be drilled with water based drilling muds. During the drilling of the top hole sections rock cuttings from the well and associated muds will be discharged directly to the seabed. Further well sections will be drilled with a marine riser in place which carries the drill cuttings and mud back to the rig into the solids control system. In this system the cuttings will be separated from the mud. Separated mud is recycled and the 'cleaned' cuttings disposed of overboard. The duration of drilling operations at each well site is dependent on the total well depth but estimated to be between 45 and 90 days.

Once each well has been drilled well testing may then be carried out to assess reservoir characteristics. This is achieved by the controlled flow of reservoir fluids to the rig where they are then burnt in a test flare. If well testing is carried out it is estimated the rig will be on location at each site for an additional 15 days.

In addition to the drill cutting discharges there are a number of other discharges associated with drilling operations including used cement, sewage, wastes, drainage waters and atmospheric emissions from power generators.

A full description of the proposed drilling operations is presented in Section 2 of this report.

1.4 Key environmental characteristics

In order that the environmental impacts from offshore exploration activities can be adequately addressed it is important to have an understanding of the environment within which these operations will take place. An extensive data base of existing environmental information for offshore the Falkland Islands has been developed from pre-licence application through to the present time. This is presented in Appendix B of this document. In addition to summarising the data presently available, it identifies the key gaps in the existing information that may need to be addressed as operations progress.

The key environmental characteristics are described below.

The harsh physical environment offshore the Falkland Islands experiences predominantly westerly winds, the distribution of which are relatively constant throughout the year. Rapid frontal movements in this area of the south Atlantic can bring about rapid changes in weather conditions.

The northern licence Tranches are located on the edge of the Falkland Islands continental shelf in water depths which range from 150 m in the south to over 500 m in the northeast. Although no specific seabed sampling has been undertaken within the licence Tranches, extrapolation of existing research suggests seabed sediments may be characterised by fine and medium sands (ref Appendix B; Section B3). The exact nature of the seabed sediments will be confirmed prior to exploration drilling operations by a baseline seabed sampling survey in January-February 1998.

This area of the continental shelf represents the convergence zone of the east and west Falklands currents. The general water flow is south to north. Tidal currents are generally negligible in water depths exceeding 200 m (ref Appendix B; Section B4). The ongoing metocean survey will provide a more detailed understanding of the oceanographic conditions of the area once results are available. Although sea ice is not usually encountered off the north coast of the Falkland Islands there is a small potential for icebergs from the Antarctic to be carried into the area.

The northern Tranches lie in the vicinity of an area of upwelling and high biological productivity, and support ecologically important populations of krill. Krill constitute a key food source for cetaceans, seals and penguins in addition to seabirds and commercial fish species and squid. For this reason the waters around the Falkland Islands are the most important ocean feeding ground for marine life between the south American mainland and the islands (ref Appendix B; Section B5).

No quantitative data on benthic populations in the northern licence Tranches are available, however an indication of the likely species present can be given from the extrapolation of existing research (see Appendix D). The infauna is believed to be diverse and dominated numerically by polychaete worms, but is also likely to include significant populations of molluscs and crustaceans. The epifauna is likely to include echinoderms, bryozoans, corals, sponges and crabs. Community composition and structure at individual locations will be influenced by sediment type and water depth (ref Appendix B; Section B5). The specific characteristics of the benthic fauna of the northern Tranches will be confirmed prior to exploration drilling operations by analysis of the samples collected during the baseline seabed sampling survey.

The Falkland Islands support internationally important breeding populations of many seabird species. A high percentage of these are associated with the marine environment. Land based surveys of breeding populations have allowed an understanding of the important breeding habitats and species. The islands represent the most important site in the world for Rockhopper penguins, support over 80% of the world's population of Black-browed albatross and approximately 25% and 35% of the world population of gentoo and Magellanic penguins respectively. The Falklands are also regarded as the main global site for the thin-billed prion and host 16 bird taxa which are endemic to the islands. In addition to breeding populations, the waters offshore the islands support large numbers of migrant seabirds which move north at the start of the winter (ref Appendix B; Sections B5 and B6). However, the marine distribution and abundance of both breeding and migrant species is not well understood.

Twenty three species of cetacean may be found in the waters offshore the Falkland Islands. It may be assumed that most of these species may be present in the study area at some time. Similarly, groups of sea lions and seals may also be encountered in the area during the year (ref Appendix B; Section B5).

Commercially important demersal fish stocks are present in the northern licence Tranches. These include common hake, patagonian hake, hoki, southern blue whiting, Antarctic cod, red cod, kingclip, toothfish, skate and rays. Southern blue whiting and hoki represent the two species of highest catch (23,500 tonnes and 13,750 tonnes respectively during 1996). In addition to finfish species three commercially important cephalopod species, Patagonian (*Loligo*), short fin and Argentine short finned squid (*Illex*) are also present in this area of high biological activity (ref Appendix B; Section B7).

Fishing industry licence revenue forms the mainstay of the islands' economy. *Illex* squid represents the largest fishery resource, which is fished for to the north and northwest of the Islands. Almost 80,000 tonnes were caught during 1996. March to June is the main fishing season for *Illex* which is fished for by Polish, Japanese, Taiwan and Korean jigging vessels. The northern licence Tranches lie at the edge of the continental shelf within the main *Illex* fishing area. *Loligo* is fished for by trawlers from Poland, Spain, the UK and other EC countries to the east and south of the Islands. 61,000 tonnes of this species was caught during 1996, although northern licence Tranches are therefore not an important area for this fishery (ref Appendix B; Section B7).

In addition to fishing activity there are limited other sea users present offshore the north coast of the Falkland Islands. Merchant shipping levels in the northern Tranches are expected to be low. A number of wrecks lie in the vicinity of the Tranches and in view of the past military activity in the Falkland Islands it is possible that unrecorded, unexploded ordinances may be present in offshore waters (ref Appendix B; Section B7).

1.5 Consultation

Experience has shown that communications are one of, if not the most important factor in relations between the oil and gas industry and the authorities and local communities.

In order to ensure that this report appropriately addressed any local concerns with regard to the potential effects from exploration drilling, discussions have been held with the following organisations during the course of this study:

- Fisheries Department, Falkland Islands Government;
- Falklands Conservation;
- Falklands Environmental Task Group (FENTAG);
- Department of Oil, Falkland Islands Government;
- Falkland Islands Exploration and Production Environmental Forum.

2 Proposed drilling operations

2.1 Introduction

Seismic surveys of Tranches A, B, C, D, and F were undertaken by Shell, LASMO, Amerada Hess and IPC between December 1996 and May 1997. As a result of these surveys, it is now proposed to drill exploration wells to assess the commercial viability of any hydrocarbon reserves present. An exploration well, in addition to confirming the presence of oil or gas in a structure, will also provide additional information on which to base any further exploration and future field development plans.

The four operators plan to drill five definite wells with the option to drill a further three commitment wells. This Section of the report describes operations proposed for the undertaking of the exploration drilling programme.

2.2 Proposed operations

All four operators will utilise the same rig for their proposed drilling operations offshore the Falkland Islands. At present the rig is on contract in the North Sea from where it will be mobilised in March 1998. From the North Sea it will be towed to Falkland Islands to commence drilling operations. The rig will be contracted to drill five wells between May 1998 and July 1999, as indicated in the preliminary schedule detailed in Table 2.1.

Table 2.1 Preliminary schedule for drilling operations offshore Falklands

Operation	Start date	Duration
Rig on contract (estimate)	February 1998	
Mobilise rig North Sea to Falkland Islands*	-	60 days
Amerada Hess drill 3,000 m well*	-	45 days†
LASMO drill 3,000 m well*	-	45 days†
Shell drill 4,500 m well*	-	90 days†
IPC drill 3,000 m well*	-	45 days†
Amerada Hess drill 3,000 m well*	-	45 days†
Demobilise rig	July 1999	60 days

* assuming a 'wet' tow

* includes anchor handling

† timing for dryhole only. If well completion and testing is undertaken, an additional 15 days would be expected.

If LASMO, Shell and IPC drill additional commitment wells during the same drilling campaign then the overall programme could be extended by a further 3 x 45 days, with demobilisation being delayed.

2.2.1 Rig selection

The *Borgny Dolphin* has been selected by the operators as the drilling rig for the proposed drilling programme. The rig is a modified Aker H-3 rig design and is a semi-submersible type drilling rig. Semi-submersibles are used in deep water drilling as they are a floating unit which are kept in place by a system of anchors rather than having to be placed on the seabed. The *Borgny Dolphin* has a rectangular working deck with a series of vertical circular-sectioned columns fitted beneath the deck at each side, terminating in underwater pontoon hulls containing large tanks for ballast, fuel and freshwater. The columns and pontoons provide buoyancy to the drill rig, and in addition some of the tanks in them are ballasted in order to submerge the drilling vessel to a sufficient depth to maximise stability and minimise movement from wave action, thereby providing a stable work platform for undertaking drilling operations. In addition to stability, the columns also provide deck strength and support (see Figure 2.1 and Plate 1). The adaptability and stability control of semi-submersible drilling rigs make them ideal for drilling in deep water conditions such as offshore Falklands.

Figure 2.1 *Borgny Dolphin* - Starboard elevation of drill rig

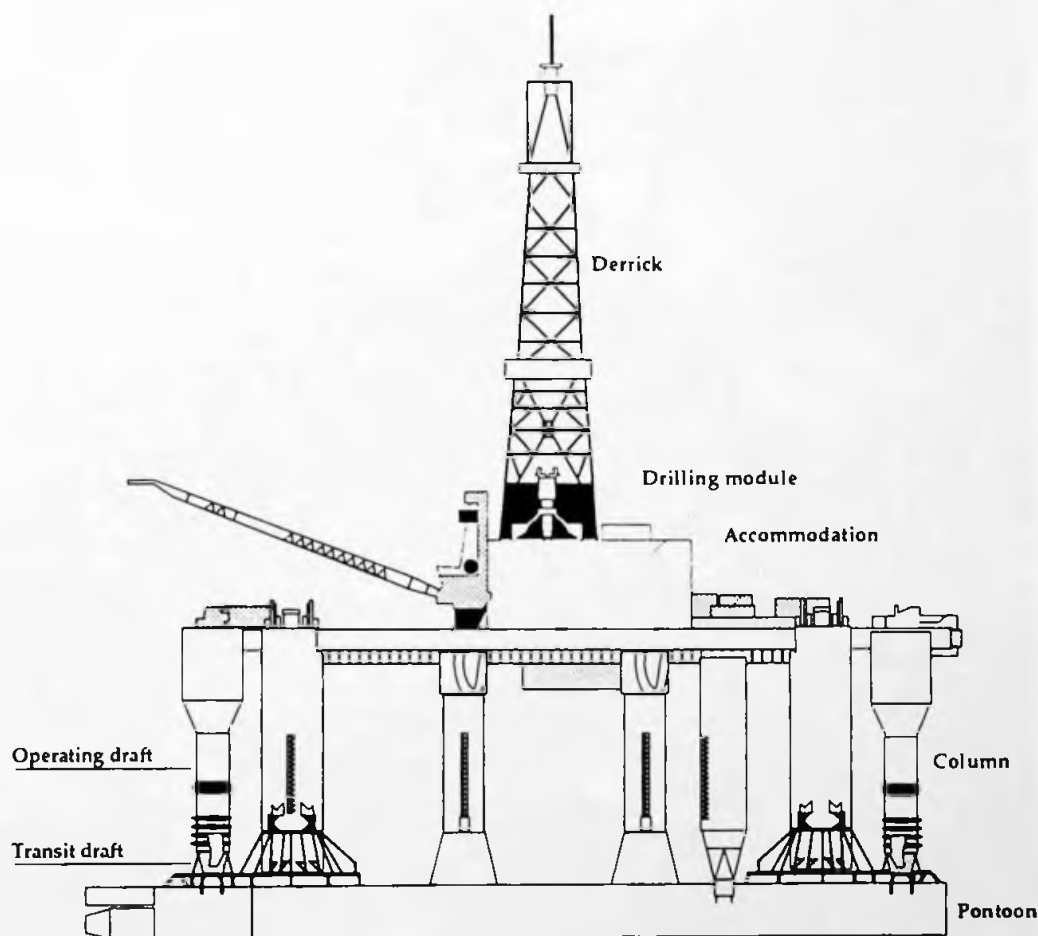
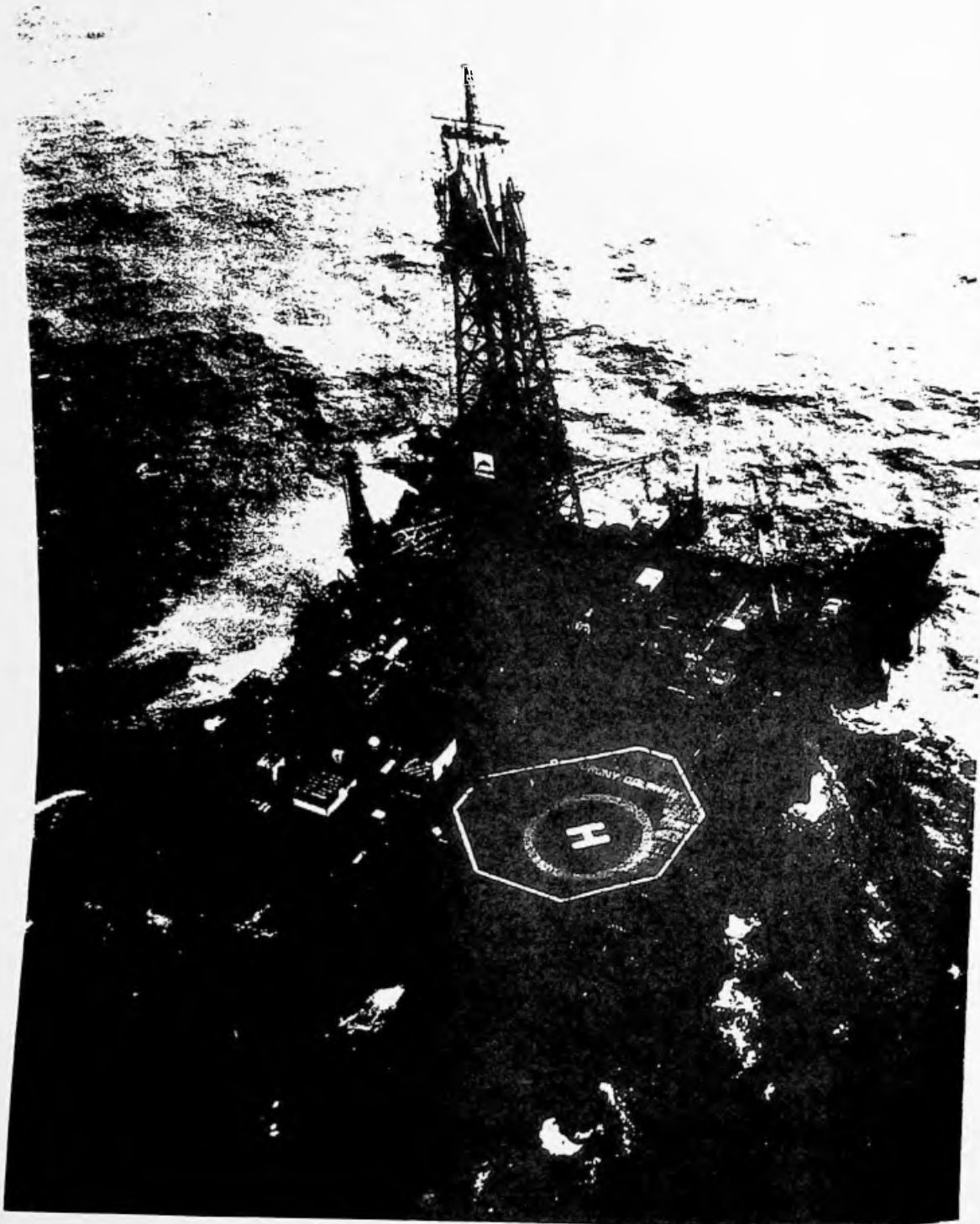


Plate 1 *Borgny Dolphin* - semisubmersible drilling rig



Drilling rig specifications are given below:

Name:	<i>Borgny Dolphin</i>
Owner:	K/S Borgny Dolphin a/s
Operator	Dolphin Drilling Ltd
Dimensions:	
Overall length:	108.20 m
Overall width:	67.36 m
Height of main deck above keel:	36.58 m
Towing draft:	6.71 m
Operating draft:	21.34 m
Operating parameters:	
Maximum operating water depth:	457 metres
Minimum operating water depth:	61 metres
Fuel consumption:	
Transit:	14 tonnes/day
Operating:	10 tonnes/day
Power supply:	4 diesel generators, 1500 kw - 6000 kw each
Storage capacities:	
Fuel oil:	2,300 m ³
Drilling water:	2,295 m ³
Fresh (potable) water:	495 m ³
Liquid mud:	3,000 m ³
Piperack storage:	900 t
Sack material:	6,00 x 100 lb
Bulk mud and cement:	1,837 cu ft
Ballast (seawater):	240 m ³
Mooring system:	12 x 30,000 lb anchors 4,5000 ft continuous length chain maximum chain storage capacity 5,400 ft
Windlass units:	4 x double windlass units with stalling pull of 250 tons each 4 x single windlass units with stalling pull of 250 tons each
Accommodation:	Total number of beds onboard: 104
Propulsion:	2 x steerable kort nozzles rudders Electric DC motors. Total power 3,400 BHP

2.2.2 Tow out and anchoring

As described above, drilling will be undertaken using a semi-submersible drilling rig. The *Borgny Dolphin* will be towed from the North Sea to the Falkland Islands before commencement of the drilling programme.

At the time of writing this report no final decision has been made to whether the rig will be towed 'wet' or 'dry' from the North Sea to the Falklands. In the event the rig is 'wet' towed it will be ballasted to a certain depth and towed by a single vessel through the water. A dry tow would involve the rig being transported on a barge. A dry tow would reduce the travel time between the North Sea and Falkland Islands. Provision will also be made at various stages along the route for areas where the rig can moor/anchor in the event of unsuitable weather conditions. It is not planned the rig will visit the Falkland Islands, unless seeking sheltered waters should it become damaged and seek repairs.

The final approach to the location will be made under tow with assistance from the rig's own propulsion systems. The aftermost anchor on the weather side will be the first to be deployed and is dropped by the rig as it passes from windward over the anchor's seabed position. Following this the towing vessel and the dropped weatherside anchor will keep the rig more or less on location while fine positioning adjustments and anchoring preparations are made. Anchor chain arrangements used will depend on the strength of prevailing tides and currents and presence of any pipelines or other moorings. All twelve of the rig's anchors will be required to keep it in position. Additional piggy-back anchors will be employed if required. This will be dependent on the seabed anchor holding capacity. Two vessels will be required to position the rig and its anchors. A third vessel will also be present to assist if required. The laying of anchors and rig positioning at each location is likely to take approximately two days.

When all anchors have been deployed in their correct position, the rig will be ballasted down and the anchors bedded in firmly by tensioning up each chain, the chains are then slackened off to a working pre-tension suitable for the water depth.

Once the rig is anchored and ballasted, final preparations prior to drilling will be carried out. This will include the loading of supplies from the supply vessel.

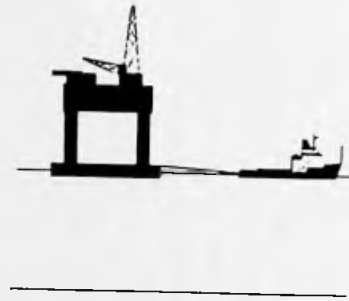
2.2.3 Drilling operations

LASMO, IPC and Amerada Hess propose to drill wells to 3,000 m (9,800 ft) in each of their Tranches, with Shell drilling a well to 4,500 m (14,700 ft). Each of the five planned wells will be drilled using a similar process. Drilling bits of different sizes are used to drill a series of concentric holes from the seabed to the planned well total depth. A drilling fluid (drilling mud) is circulated through the inside of the drill string to the bit to impart hydraulic force which assists in the cutting action of the bit, cooling of the bit and lifting of the cut rock from the well. The drilling fluid is prepared by mixing mud additives and chemicals on site to the desired concentrations in fresh or sea water, such that the required physical properties of the mud result.

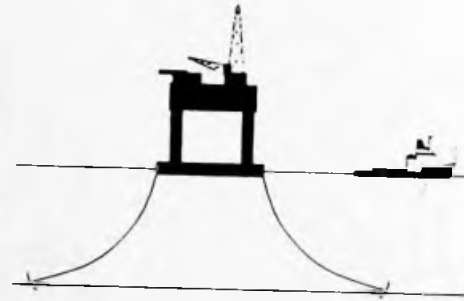
Figure 2.2 illustrates the proposed drilling programme for a typical 3,000 m (9,800 ft) well. Table 2.2 details a representative schedule for drilling operations for a typical 3,000 m (9,800 ft) well.

Figure 2.2

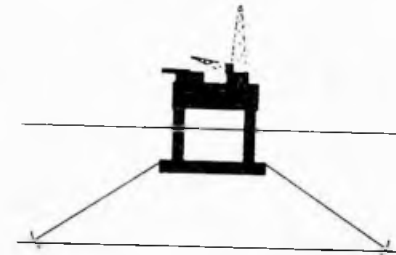
Schematic diagram for running order of typical drilling operations (not to scale)



Tow-out to proposed location.



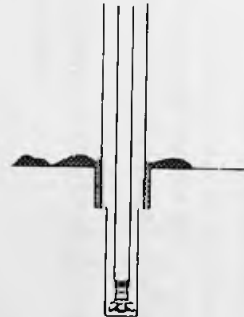
Anchors towed to position.



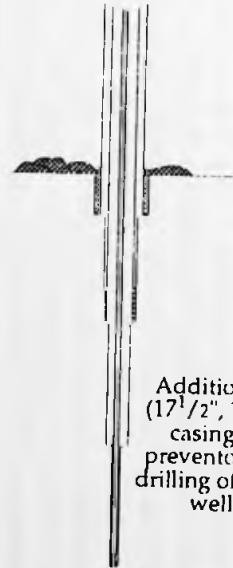
Ballasted down and anchors firmly bedded. Prepare to drill.



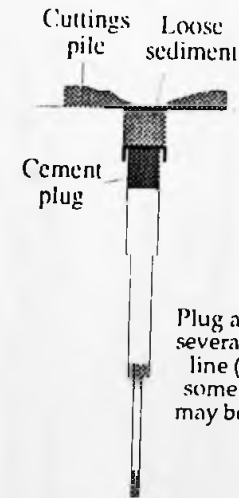
Riserless (open hole) drilling of 36" hole.



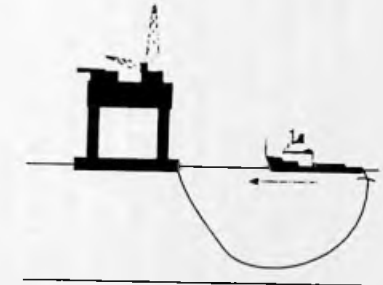
Set 30" conductor and drill 26" hole.



Additional holes drilled ($17\frac{1}{2}$ ", $12\frac{1}{4}$ ", $8\frac{1}{2}$ ") and casings set (blow out preventor installed before drilling of $17\frac{1}{2}$ " hole). Test well if discovery.



Plug and abandon well to several metres below mud line (if well suspended some wellhead facilities may be left on the seabed).



Deballasted and anchors removed prior to moving out to next location.

Table 2.2 Representative schedule for drilling operations for a typical 3,000 m well

	Time (days)	Cumulative time (days)
Mob/tow on location. Prepare for drilling. Run anchors.	3.0	3.0
Drill 36" hole from 1,410 ft to 1,575 ft.	1.0	4.0
Run and cement 30" conductor.	2.0	6.0
Drill 26" hole 1,575 ft to 3,010 ft.	2.0	8.0
Run and cement 20" casing. Run and test BOPs.	4.0	12.0
Drill 17 1/2" hole from 3,010 ft to 4,740 ft.	1.5	13.5
Log. Run and cement 13 3/8" casing.	2.5	16.0
Drill 12 1/4" hole from 4,740 ft to 6,825 ft.	3.0	19.0
Log. Run and cement 9 5/8" casing.	4.0	23.0
Drill 8 1/2" hole from 6,825 ft to 6,990 ft.	1.0	24.0
Core 8 1/2" hole from 6,990 ft to 7,170 ft (2 x 90 ft)	3.0	27.0
Drill 8 1/2" hole from 7,170 ft to 9,940 ft (TD).*	7.0	34.0
Log.	3.0	37.0
P&A.	3.0	40.0
Pull anchors. Prepare for rig move. Tow off location/demob.	2.0	42.0
Total Dry Hole		42.0 days

* For Shell's deeper well, assume a total of 90 days for drilling programme (dry hole).

Drilling at each location will begin as soon as possible after anchoring operations are complete. The well will be spudded (started) using a 36" diameter bit. This will be lowered to the seabed using a guide frame that has been run down on a previously positioned guidebase. A relatively short section of hole will be drilled with the hole opener. This section will be drilled using seawater as the circulation fluid rather than mud which is used on deeper well sections. The water will contain occasional chemical sweeps to clean the hole, the frequency of which will depend on well characteristics. Seawater will be pumped down the drill string to the bit from where it will enter the well. It will gradually be forced up the well section and into the water column. Drill cuttings generated by this section of the well will be passed directly to the seabed at the wellhead where they will accumulate.

Further well sections will be drilled with a riser in place using a low toxicity, water based drilling mud. The operators will operate in accordance with the UK Offshore Chemical Notification Scheme (OCNS). The OCNS groups substances and preparations according to their environmental effects and provides operators and sub-contractors with guidance to the chemicals and components preferred on environmental grounds, thereby enabling them to take this into account when selecting mud and chemical products for use offshore. The scheme aims to control and monitor the use of chemicals by the offshore industry. This will inform the Falkland Islands Government of the substances likely to be used and the potential scale of use, in compliance with FIG licence conditions, and provide for prior consultation between operators and government in the case of proposed large scale use of chemicals, or any chemicals with a high potential for damage to the marine environment.

Under the OCNS, substances and preparations for use by the offshore industry are classified into Groups A to E (A being the most harmful), depending upon biodegradation and bioavailability. The categories enable tonnage triggers to be established for the cumulative quantity of all chemicals used within each group at installations. The triggers are notification limits which restrict the discharge of large amounts of chemicals without consultation between the regulators and operators.

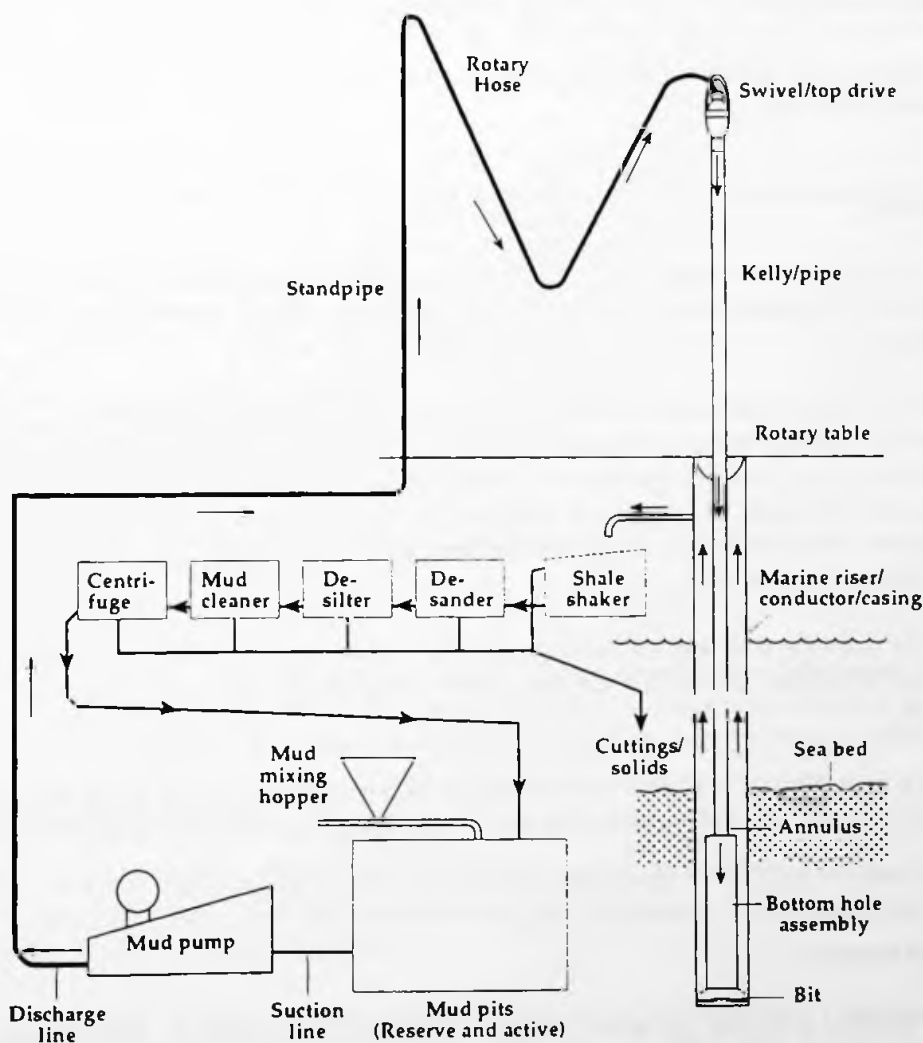
The OCNS categories/groups and notification limits (tonnage triggers) for exploration chemicals are indicated in Table 2.3.

Table 2.3 Annual usage requiring pre-notification for drilling chemicals (including cementing, completion and work-over chemicals) cumulative tonnes (DTI, 1996)

Category/group	Annual usage requiring pre-notification (cumulative tonnes)
4/A	All proposed usage to be notified
3/B	3
2/C	15
1/D	350
0/E	4,750

The drilling mud is stored in dedicated tanks within the drilling unit before being pumped downhole to aid the drilling process. The drilling mud system is a closed system in that the muds which are pumped down the well are returned to the surface and then reused. A typical drilling fluid circulation system is detailed in Figure 2.3.

Figure 2.3 Typical drilling fluid circulation system



Drilling muds perform a variety of functions which are critical to the success of a drilling operation. These functions include:

- maintaining formation pressure so as to prevent formation fluids entering the drill hole;
- creating a downward pressure to prevent the walls of the hole from caving in;
- carriage of drill cuttings to the surface;
- lubricating and cooling the drill bit;
- keeping cuttings in suspension if circulation stops;
- electrical conductivity and resistivity properties assist in obtaining "electric logs".

Drill cuttings and mud will be carried back to the drilling rig and cleaned using shale shakers. Separated mud is recycled and cleaned drill cuttings disposed of overboard. The cuttings cleaning system onboard the *Borgny Dolphin* consists of three Thule VSM shale shakers and one Thule VSM 200 mud cleaner, consisting of hydrocyclones.

When each section of the well has been drilled, steel casing will be run into the hole and cemented into place using a high pressure cementing pump prior to drilling the next section of the well. Setting and cementing casing has the objectives of ensuring pressure control of formations by isolating sections of the well with different pore pressure regimes and preventing the contamination of potential aquifers by hydrocarbons which may occur in other formations. In addition, the uppermost section of casing provides a firm base and anchorage for the blowout preventer (BOP) stacks and for additional smaller strings of smaller diameter casing which will be run into later sections of the hole.

During cementing of the 30" conductor (top well section) there may be some displacement of cement to the seabed adjacent to the well.

2.2.4 Well testing

If the results of logging indicate a potential for hydrocarbon bearing formations the well may be tested. This is achieved by the controlled flow of well fluids to the surface in order to establish information on the reservoir properties.

A production liner or casing will be set to isolate the formation. The specialist well testing equipment required consists of a testing string of production tubing, packers to seal off the production zones, downhole valves that can be remotely operated from the surface and downhole pressure gauges. On the surface, a test separator measures and separates produced solids, oil, gas and water. When the fluids are flowing to the surface, pressure, temperature and flowrate measurements will be taken to confirm the reservoir's performance characteristics.

The produced fluids from the well test will be ignited at the end of the flare bloom. This flaring may be initiated using diesel or similar fuel to start the flare and to ensure combustion is as efficient as possible throughout the test.

Should well testing take place it is estimated that the total testing period would be 15 days per well. During this period it is likely that the burning of hydrocarbons would occur for a maximum of a few days per well.

2.2.5 Well abandonment

On completion of drilling activities the wells will be suspended or abandoned. The procedures will follow industry wide practices and procedures to prevent the contamination of potential aquifers by hydrocarbons and to prevent the flow of hydrocarbons to the surface, by plugging the well bore and physically isolating zones known to contain moveable hydrocarbons.

If the well is suspended retrievable bridge plugs will be set to seal the well as an additional barrier against the well blowing out. A corrosion cap may be set over the wellhead.

If the well is to be abandoned, cement plugs will be set to seal off the well as required. The casing will be cut several metres below the wellhead and guidebases can be recovered, leaving the seabed clear of any obstructions.

2.2.6 Rig move off site

Once the well is secured the rig is ready to move off location to the next well site. This will essentially be a reverse of the installation process. Firstly the rig is deballasted, then each of the anchors will be retrieved and the rig towed to the next location.

2.3 Rig utilities

2.3.1 Power generation

Power onboard *Borgny Dolphin* is provided by a total of four 2,500 BHP diesel generators each capable of developing 1,500 - 6,000 kw. Each of these generators consume 217 gm of fuel per kw hour. There is also a 1,000 BHP emergency generator onboard the rig. This generator consumes 216 gm of fuel per kw hour.

2.3.2 Rig drainage

Drainage discharges from onboard the rig may occur from a variety of sources, including:

- clean area floor drains;
- deluge drains;
- drill floor drainage;
- bilge water;
- machine area floors drainage;
- bunded areas between fuel or chemical storage areas;
- overflow drains in diesel fuel tank systems.

These discharges are handled by a number of systems, as described below.

Clean water drainage

Drainage from this system is designed to handle water run-off from those areas which will not be contaminated by oils or chemicals ie clean areas. This will include rain, seawater and deck washings. Drains from these areas will discharge either directly overboard or via a common collection point.

Bilge and oily water drainage

Both bilge water and drainage from machine area floors are likely to be contaminated with hydrocarbons and/or chemicals. Waters from these areas are therefore separated from clean water drainage and are routed to the oily water treatment system.

Overboard discharge from the oily water treatment system is monitored by an oil-in-water monitor. The overboard pump will automatically shut down if the concentration of oil in discharged water exceeds 15 parts per million (15 ppm) oil in water. Oily residues will be retained onboard for disposal at appropriate waste reception facilities.

Contaminated drainage

This system deals with discharges that have arisen as a direct result of drilling and will include the drill floor and solids control areas. These drains onboard the *Borgny Dolphin* are collected into a collection tank and routed through the shale shakers.

2.4 Rig servicing

The drilling rig operations will be serviced from a temporary supply base which will be established for the duration of the drilling programme. At the time of completing this report the final location for the supply base is not yet decided. Whatever the chosen location the operators will keep any socio-economic impacts to a minimum. The supply base will be the location through which bulk materials and other equipment/supplies required onboard the rig will be transported. It is anticipated two or three vessels in total will provide support to the rig during drilling operations, depending on the supply base location.

The Falkland Islands will act as a transit point for the drill rig crew. Crew changes to and from the rig will take place using a dedicated helicopter, connecting directly with flights from the islands. Helicopter flights to the rig should be no greater than 4-5 per week.

3 Potential environmental impacts from exploration drilling activities

3.1 Introduction

Offshore exploration drilling activities are known to lead to a number of environmental interactions (see Figure 3.1). As with most industrial activities, drilling operations can involve discharges, general disturbance and the risk of accidental releases (see Figure 3.1). This Section of the report discusses the potential environmental impacts of the proposed drilling programme and is based on international experience of offshore exploration drilling operations.

In undertaking this environmental assessment for the proposed exploration drilling operations offshore the Falkland Islands all potential sources of risk to the environment were first identified (Figure 3.2). Each source of risk identified was described and its potential environmental impact considered in brief (Table 3.1). At the same time consideration was given to how such sources of risk might be managed to minimise or mitigate potential impacts. Having identified management and mitigation measures to minimise/avoid impacts a judgement of the remaining risk of potential impact is given (ie residual impact). This has been classified as negligible, minor, moderate or major as defined below:

- Negligible:** effects which are unlikely to be noticed or measurable against background activities.
- Minor:** change which is within scope of existing variability but can be measured and/or noticed.
- Moderate:** change in ecosystem or activity in a localised area for a short time, with good recovery potential. Similar scale of effect to existing variability but may have cumulative implications.
- Major:** change in ecosystem or activity over a wide area leading to medium term damage (+2 years) but with a likelihood of recovery within 10 years.

Figure 3.1 Potential environmental effects from exploration drilling operations (not to scale)

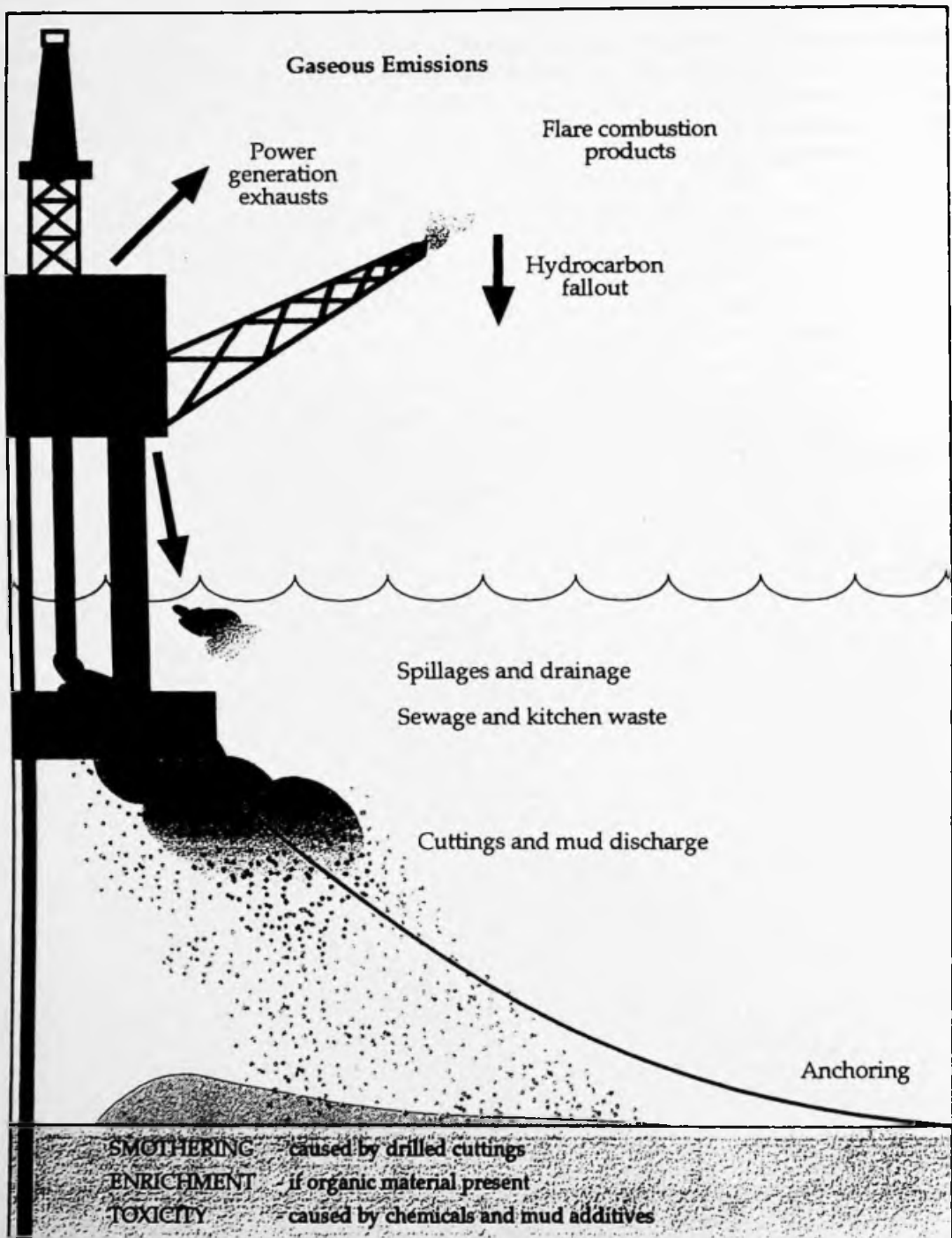


Figure 3.2 Identification of key environmental issues

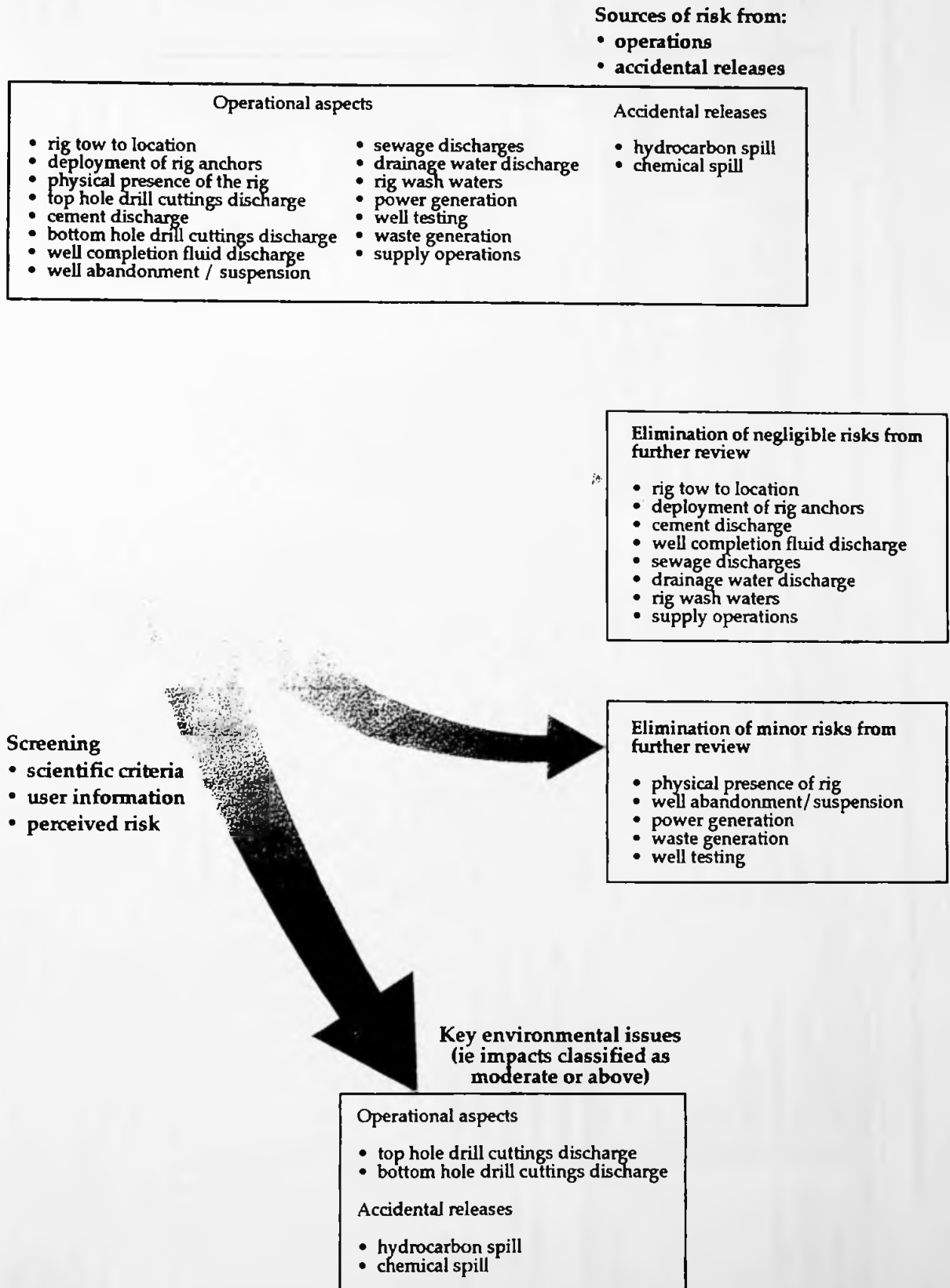


Table 3.1 Assessment of potential environmental impacts and management (control/mitigation) measures for exploration drilling offshore the Falkland Islands

OPERATIONAL ENVIRONMENTAL HAZARDS				
Sources of environmental risk	Potential environmental impact	Environmental consequence offshore the Falkland Islands	Management of environmental impacts	Residual impact
Rig tow to well location	Potential interference with other sea users.	Negligible impact in terms of total shipping movements worldwide.	Early consultation will be entered into with all relevant authorities, with respect to the transport and positioning of the rig. Notification to relevant authorities will be undertaken prior to rig mobilisation, detailing routing and scheduling plans.	Negligible
Deployment of rig anchors	Seabed disturbance, both direct disturbance along anchor drag corridor and indirect disturbance from suspended particles in the water column.	Direct disturbance restricted to narrow corridor occupied by the chains and area of seabed over which anchors are dragged. In total 18,000m ³ of seabed likely to be disturbed during anchor deployment at each well site, over a few days duration. This area of seabed disturbance is minor in terms of overall seabed area offshore the Falkland Islands and in comparison to disturbance from fish trawling activities. Indirect disturbance may also be experienced in the form of resettlement of suspended seabed sediments. This will occur along the main water current axis. Experience shows that loadings would be comparable to natural sediment suspension levels.	No further management required.	Negligible

OPERATIONAL ENVIRONMENTAL HAZARDS CONTINUED

Sources of environmental risk	Potential environmental impact	Environmental consequence offshore the Falkland Islands	Management of environmental impacts	Residual impact
Physical presence of the rig	Potential interference with other sea users.	<p>Rig and 500 m exclusion zone occupy an area of seabed of 0.8 km² from which fishing and other vessel activity would be prohibited. This occupied area is only small in comparison with the overall area offshore the Falkland Islands and the rig will only be on location for a limited period of time. Tranches A, C and F lie within the main fishing area for <i>Illex</i> squid. The fishing season extends from March to June (ref Appendix B; Section B7)</p> <p>Merchant vessel movements through the northern Tranches are believed to be low (ref Appendix B; Section B7). Such vessels will avoid the rig and its exclusion zone in an offshore area.</p>	<p>Consultation with the Falkland Islands Government Fisheries Department has been conducted as part of this study.</p> <p>Regular contact will be maintained with fishing vessels present in the area via the Falkland Island Government Fisheries Department.</p>	Minor
Top hole drill cuttings discharge (detailed description of impact given in Section 2.2)	Localised smothering of the seabed in the immediate vicinity of the well.	<p>Rock cuttings will be discharged directly to the seabed during top hole drilling when no riser is in place. Water current measurements in the area of the licence Tranches suggest that the currents at the seabed will be less than 0.15 m/s (ref Appendix B; Section B4), therefore it is unlikely that the estimated 180 m³ of discharged cuttings (based on a 3,000 m well) (ref Section 3.2.1) will be dispersed outwith the immediate vicinity of the well location. Smothering of seabed fauna will therefore be localised around the well.</p>	<p>Water based drilling fluid will be used to drill the top hole sections.</p> <p>Operators will have chemical management procedures in place to ensure that the drilling fluids will be of low toxicity and good biodegradability.</p> <p>Only chemicals approved under the UK Offshore Chemical Notification Scheme (OCNS) (this is implemented in the Falkland Island offshore waters) will be used and/or discharged offshore.</p>	Moderate

OPERATIONAL ENVIRONMENTAL HAZARDS CONTINUED

Sources of environmental risk	Potential environmental impact	Environmental consequence offshore the Falkland Islands	Management of environmental impacts	Residual impact
Top hole drill cuttings discharge continued		The exact nature of the seabed at the proposed well locations is not known at the present time, but a baseline environmental survey will be completed prior to the commencement of drilling operations.		
Used cement discharge	Minimal amounts of used cementing chemicals will escape to the seabed in the immediate vicinity of the wellhead.	The minimal amounts of cementing chemicals discharged at the wellhead will accumulate within the cuttings pile.	Operators will have chemical management procedures in place to ensure the use of low toxicity products. Only chemicals approved under the UK OCNS will be used and/or discharged offshore.	Negligible
Bottom hole drill cuttings discharge (detailed description of impact given in Section 2.2)	Discharged cuttings and mud have the potential to: <ul style="list-style-type: none"> • cause turbidity within the water column; • physically smother the seabed / infauna; • cause organic enrichment; • cause chemical effects. 	In offshore waters throughout the world drill cuttings and spent water based mud are discharged directly to sea. The controls issued through the UK OCNS on the composition of water base muds ensure that chemical additives do not have a high intrinsic toxicity. It is estimated that approximately 160 m ³ of rock will be discharged through the caisson from a 3,000 m well (ref Section 3.2.1).	Operators will have chemical management procedures in place to ensure that the drilling mud will be of low toxicity and good biodegradability. Diesel will not be used in any muds. Only chemicals approved under the UK OCNS will be used and/or discharged offshore. Oils will only be used in extreme conditions, for example stuck pipe, situations for safety and technical reasons. The solids control system onboard the <i>Borgny Dolphin</i> will separate mud for reuse from the drill cuttings returned to the rig from the well.	Moderate

OPERATIONAL ENVIRONMENTAL HAZARDS CONTINUED

Sources of environmental risk	Potential environmental impact	Environmental consequence offshore the Falkland Islands	Management of environmental impacts	Residual impact
Bottom hole drill cuttings discharge continued			Drill cuttings will be discharged several metres below mean sea level to ensure the efficient dispersion of cuttings and avoid discharge into the zone of greatest biological productivity (ie surface waters). This will also ensure effective dispersion and biodegradability of the cuttings after release.	
Well completion fluid discharge	Potential limited discharge of corrosion inhibitor, biocide and oxygen scavenger during the treating of downhole brine.	In the offshore waters of the Falkland Islands these minimal chemical discharges will quickly disperse and dilute upon release.	Operators will have chemical management procedures in place to ensure the use of low toxicity products. Only chemicals approved under the UK OCNS will be used and/or discharged offshore.	Negligible
Well abandonment/ suspension	Any equipment temporarily remaining above the seabed will be a potential hazard to trawl fishing activities.	Low levels of trawling effort in the area of the northern Tranches throughout the year (ref Appendix B, Section B7) should mean that any charted seabed obstruction can be easily avoided by fishermen.	All wells will be appropriately suspended/ abandoned. The location of suspended/ abandoned well heads will be reported to the relevant authorities for charting, notification etc. Operators will make every effort to locate and remove any debris (resulting from licensed activities) following consultation with appropriate authorities. Should it be necessary to temporarily suspend equipment above the seabed, consultation will be held with appropriate authorities with regard to any appropriate protection measures.	Minor

OPERATIONAL ENVIRONMENTAL HAZARDS CONTINUED				
Sources of environmental risk	Potential environmental impact	Environmental consequence offshore the Falkland Islands	Management of environmental impacts	Residual impact
Sewage discharge	Organic enrichment in immediate vicinity of discharge location.	<p>A personnel compliment offshore of 100 people (max) can be expected offshore during the drilling programme. On average one person produces 320 litres of sewage per day (sanitary wastes and grey water) and typically sewage discharges have a BOD (Biological Oxygen Demand) of 240 mg/l (ICIT, 1993). It can therefore be calculated that 32 m³ of sewage will be generated per day with an estimated BOD of 7.68 kg per day.</p> <p>The surface currents in the vicinity of the discharge location will ensure that no organic enrichment results from the low discharge levels.</p>	No further management required.	Negligible
Drainage water discharge	The only risk of environmental impact is if an operational spill is discharged through drains (see accidental hazards below).	Non oily (clear water) and oily waters are discharged from the rig drainage systems.	<p>The rig drainage system is operated in such a way as to comply with international legislation standards.</p> <p>The rigs water overboard discharge is constantly monitored for 15 ppm oil in water concentration. Discharge is automatically stopped if this level is exceeded.</p>	Negligible
Rig wash water discharge	Minimal chemical contamination to water in immediate vicinity of discharge location.	In offshore waters chemical discharges will quickly dilute and disperse upon release.	<p>Operators will have chemical management procedures in place to ensure the use of low toxicity products.</p> <p>Only chemicals approved under the UK OCNS will be used and/or discharged offshore.</p>	Negligible

OPERATIONAL ENVIRONMENTAL HAZARDS CONTINUED

Sources of environmental risk	Potential environmental impact	Environmental consequence offshore the Falkland Islands	Management of environmental impacts	Residual impact
Power generation	Gaseous emissions will contribute to ozone depletion and greenhouse gases.	Negligible environmental impact from single well exploration drilling programmes in comparison to other industrial sources, but atmospheric emissions are of increasing general global concern.	Turbines will be maintained and operated to manufacturers standards.	Minor
Well testing	<p>Gaseous emissions will contribute to ozone depletion and greenhouse gases.</p> <p>Unburned hydrocarbons may fall out from test burner and result in an oily sheen on the sea surface.</p>	<p>Gaseous emissions to atmosphere include CO₂ and NO_x, with the potential for H₂S and SO₂ depending on the characteristics of the reservoir. Potential emission levels are low in comparison to other industrial sources, but atmospheric emissions are of increasing general global concern.</p> <p>Hydrocarbon fall out from well testing operations will result in input to the water column and can cause minor sheens in the area of the rig.</p>	<p>The duration of periods when hydrocarbons will be burnt will be limited to the operationally required minimum in order to conserve resources and minimise atmospheric emissions.</p> <p>Operators will consider the use of an alternative 'green burner' test flare to improve the quality of flare emissions and prevent hydrocarbon fallout.</p> <p>Test burners will be started up on supplemental fuel to improve flare emission quality. During the test the amounts of these fuels will be modified according to operating guidelines and the visible performance of the flare. In addition, well testing will only commence during daylight hours.</p>	Minor/moderate

OPERATIONAL ENVIRONMENTAL HAZARDS CONTINUED				
Sources of environmental risk	Potential environmental impact	Environmental consequence offshore the Falkland Islands	Management of environmental impacts	Residual impact
Waste generation	Organic enrichment from small amounts of food waste discharged offshore.	Maceration of small amounts of food wastes will reduce particle size of waste to a level which will either degrade naturally, or be readily consumed by fish or seabirds.	All waste transportation and subsequent disposal will be conducted in line with recommendations presented to the Falklands Government in the ongoing waste disposal and management study.	Minor
	Other wastes, including hazardous materials will not be disposed of offshore.	Other wastes including hazardous wastes will not be disposed of offshore, and will be disposed of at appropriate waste disposal sites.	<p>Operators will have waste management procedures in place to ensure that wastes are stored and disposed of appropriately (in line with any of the above recommendations and relevant legislation).</p> <p>All wastes will be secured appropriately offshore to prevent loss overboard.</p> <p>All hazardous wastes will be stored separately from other wastes.</p> <p>The potential for reduction and recycling of waste materials will be considered at all times.</p>	

ACCIDENTAL ENVIRONMENTAL HAZARDS				
Sources of environmental risk	Potential environmental impact	Environmental consequence offshore the Falkland Islands	Management of environmental impacts	Residual impact
Accidental hazards				
Hydrocarbon spill <i>(detailed description of impact given in Section 2.2)</i>	<p>Oiling of offshore bird and animal populations.</p> <p>In the very unlikely event of a blowout there is a very low potential for the oil to beach the north coast of the Falkland Islands.</p>	<p>The largest potential environmental impact from exploration drilling operations is from a large oil spill, however the probability (calculated from historical data) (ref Section 3.2.2) of such an event is very low. The majority of hydrocarbon spills are very small (< 1 tonne) and have a minimum impact on the environment.</p> <p>In the unlikely event of a large hydrocarbon spill a number of offshore marine resources may be at risk to oiling. Offshore flightless birds eg penguins will be vulnerable to surface pollution. There may also be limited mortality to local krill in the immediate vicinity of the oil spill location.</p>	<p>Procedures will be in place to minimise operational leaks and spills:</p> <ul style="list-style-type: none"> • use of drip pans where necessary beneath machinery and plant; • ensure that all pipework and manifolds are oil tight; • supply of absorbent materials to be kept under areas where there is a potential for leak or spillage. <p>Procedures will be in place to minimise the risk of having a spill during bunkering:</p> <ul style="list-style-type: none"> • transfer operations will only be carried out during suitable weather conditions ie good visibility and low/moderate wind speed and sea state; • bunkering will only be carried out during daylight hours; • good direct communications will be maintained between the rig and ship during transfer; • continuous watches will be maintained during bunkering on the supply vessel and rig; • on site dispersant spraying capability will be maintained on the standby vessel. 	<p>Negligible - major</p>

ACCIDENTAL ENVIRONMENTAL HAZARDS CONTINUED				
Sources of environmental risk	Potential environmental impact	Environmental consequence offshore the Falkland Islands	Management of environmental impacts	Residual impact
Hydrocarbon spill continued			<p>The operators will develop an approved oil spill response strategy and detailed plan (see Appendix E). This will include:</p> <ul style="list-style-type: none"> • site specific spill prevention measures; • definition of responsibilities; • description of response strategy; • oil spill modelling results. <p>The standby vessel will be equipped with pollution control/response equipment.</p> <p>Relevant personnel will be trained in the use and operation of:</p> <ul style="list-style-type: none"> • the oil spill response plan; • blow out prevention equipment and procedures. <p>In the event of a major spill event all four operators are members of Oil Spill Response Limited (OSRL). OSRL could mobilise personnel and equipment to support offshore and nearshore response within an estimated timeframe of 30-36 hours.</p>	
Chemical spill	Chemical contamination of resources in the vicinity of the spill location.	In the event of a chemical spill the environmental impact is related to the quantity and properties of the material released. Impact is likely to be restricted to the immediate vicinity of the spill and the spilled chemical expected to quickly dilute and disperse in open area such as offshore the Falkland Islands.	<p>Operators will have chemical management procedures in place to ensure the use of low toxicity products.</p> <p>In the event of a chemical spill all materials will be retained for appropriate disposal, not washed overboard.</p> <p>Damaged or unsuitable chemicals will be retained for appropriate disposal, not discharged to drains.</p>	Minor to moderate

3.2 Key environmental issues

3.2.1 Drill cuttings discharge

As described in Section 2, it is proposed to drill five wells, with an option to drill a further three commitment wells if required. Planned well depths are 3,000 m (9,800 ft) and 4,500 m (14,700 ft). For all wells it is proposed to drill the top section of the hole using seawater as the circulation fluid, with a water based mud for the deeper well sections, when a riser is in place. Table 3.2 indicates the volumes of cuttings that can be expected from a typical 3,000 m (9,800 ft) well.

Table 3.2 Volume of drilling cuttings from a typical 3,000 m well

Section (inches)	Hole capacity (bbls/ft)	Depth (ft)	Depth (m)	Rock mass (tonnes)	Rock volume (m ³)
36.0	1.251	1,580	481	74	34
26.0	0.653	3,010	917	326	148
17.50	0.296	4,740	1,444	179	81
12.25	0.145	6,825	2,080	106	48
8.5	0.070	9,940	3,029	76	35
TOTALS				761	346

Assumes gauge hole

Water depth = 1,410 ft (429 m)

Tophole drilling cuttings

Drill cuttings from the tophole riserless well section will be discharged to the seabed adjacent to the well. In addition there could also be some losses of cement to the seabed from filling the annulus. Again any such cement discharge would remain close to the wellhead.

Cuttings piles from such tophole drilling would contain little contamination, perhaps traces of chemicals used for occasional hole sweeps.

From present data, water currents in the licence Tranches are expected to be low, less than 0.15 m/s (ref Appendix B; Section B4), therefore it is unlikely that the discharged cuttings will be rapidly dispersed outwith the immediate vicinity of the well location.

Until the proposed baseline surveys have been undertaken the exact nature of the benthic (seabed) fauna is unknown, but it can be assumed that the immediate cuttings pile would result in physical smothering of infauna. As there are no expected toxic effects, recolonisation of benthic fauna can be expected (Kingston, 1987 and 1992).

Bottom hole cuttings

The lower hole sections (below 26") will be drilled using a water based (silicate) mud with very low intrinsic toxicity. Drilling fluids and cuttings will be carried to the surface where cuttings will be removed in a solids control system. It is intended to discharge both used water based drilling muds (WBM) and cuttings overboard via a caisson a few meters below the sea surface.

It is estimated that approximately 160 m³ of rock will be discharged from a 3,000 m well (see Table 3.2).

Drill cuttings modelling has been completed for both shallow and deep wells in the northern Tranches. The results showed that in the Tranche area off the edge of the continental shelf (ie Tranches A, B) there is a net current of less than 0.15 m/s. The modelling only considers those drill cuttings discharges from the well sections drilled once the marine riser is in place. These discharges will accumulate on top of those

deposited directly to the seabed from the top hole sections. The majority of the discharges will be restricted to within 200 m of release and the maximum height of the pile is predicted to be less than 80 mm. This has the effect of causing a low density plume of fine cuttings particles downstream of the release point. Within a distance of 0.5 km from the release point only a very fine cover is predicted (< 2 mm thickness) (RGU, 1997) (see Figure 3.3).

In shallower waters on the continental shelf there is no significant residual current and water movement is dominated by tides. In both 150 m and 250 m water depths coarse particle distribution is restricted to within 100 m of the release point. The maximum height of the cuttings pile in both scenarios is predicted to be less than 130 mm. Fine debris (< 2 mm thickness) will be deposited up to 500 m in 150 m of water, and a maximum of 700 m from the release point in 250 m water depth (see Figure 3.4).

Discharged cuttings and mud could have four potential effects on the marine environment:

- they may cause an increase in turbidity in the water column, mainly caused by fine particulates, which can temporarily reduce planktonic photosynthesis or impair feeding or vision of other organisms;
- they may physically smother the seabed and cause:
 - i) potentially suffocate aerobic marine organisms, notably benthic infauna,
 - ii) potential physical alteration to surface sediment structure, with effects on colonisation;
- any organic components may provide a nutrient source eg for bacterial activity with potential beneficial or detrimental (eg organic enrichment : oxygen depletion) effects;
- specific chemicals within muds could have toxic effects.

Studies worldwide have suggested that in cases where water based muds have been used the main impact is physical smothering, often with associated suffocation in the immediate vicinity of the discharge point.

Barites used in the drilling programme will be selected from low contaminant sources to reduce toxic effects. Risk from specific chemical components in water based muds has been minimised by the rigorous implementation of UK OCNS procedures (reference Section 2). This scheme aims to control and monitor the use of chemicals by the offshore industry and is incorporated into Falkland Islands Government licence conditions.

It must be emphasised that studies into the impact of drill cuttings on the seabed relate primarily to the use of oil based muds (OBMs) (studies of the effects of WBMs have been less intensive). There is considerable environmental concern about the impact of OBMs on the seabed, resulting mainly from the early policy of extensive use of OBMs in UKCS operations, initially diesel based, then through a series of alternative muds - low toxicity muds and pseudo-oil based muds (POBMs). Initially there was excessive emphasis placed on removing acute toxicity properties, more recently it was realised that many of the alternative muds have very low biodegradation rates. Key concerns relate to:







- Presence of undegraded hydrocarbons in cuttings piles which are potentially available to the environment in the long term and elevated levels of hydrocarbons in sediments with concentrations varying with distance from the cuttings pile.
- Smothering of benthic organisms within the area of the cuttings pile with recovery likely to be a long process.
- High organic loading and sediment oxygen depletion which increases the smothering effect.
- Toxic effects on marine benthic organisms.

(Kingston 1987 and 1992; Addy *et al*, 1984).

Figure 3.3 Modelling results of overboard discharge of cuttings at the northern location

a) Cuttings dispersion from a 4,500 m (14,700 ft) well



Depth of pile	
	0.1 - 0.19 cm
	0.2 - 0.39 cm
	0.4 - 0.79 cm
	0.8 - 1.59 cm
	1.6 - 2.9 cm
	3.0 - 7.9 cm

b) Cuttings dispersion from a 3,000 m (9,800 ft) well










1 km

The above modelling scenarios assume a water depth of 450 m and that the cuttings are released from a 30 cm diameter caisson at 10m below the sea surface

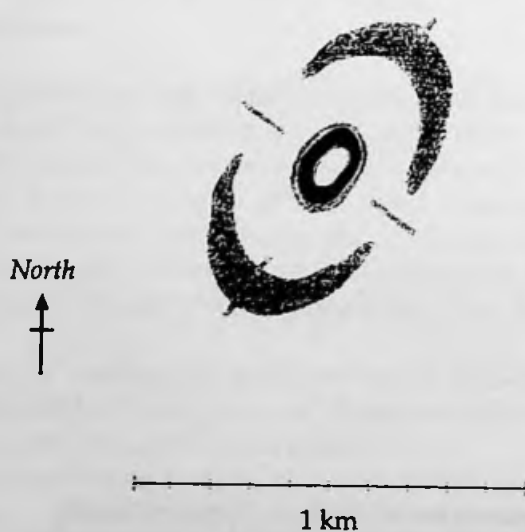
Figure 3.4 Modelling results of overboard discharge of cuttings at the southern location from a 3,000 m well

a) Cuttings dispersion from a 3,000 m (9,800 ft) well in 250 m water depth



Depth of pile	
	0.1 - 0.19 cm
	0.2 - 0.39 cm
	0.4 - 0.79 cm
	0.8 - 1.59 cm
	1.6 - 2.9 cm
	3.0 - 7.9 cm
	8.0 - 12.9 cm

b) Cuttings dispersion from a 3,000 m (9,800 ft) well in 160 m water depth



The above modelling scenarios assume the cuttings are released from a 30 cm diameter caisson at 10 m below the sea surface

The latest step has been the introduction of synthetic mud systems (SMS's) many of which seem to be presenting similar environmental problems. It is not proposed to use any oil or alternative mud based systems in exploration drilling offshore the Falkland Islands. A direct comparison of the effects resulting from the use of OBMs and WBM is provided by the history of the Beatrice field (Addy *et al*, 1984). Localised benthic effects were found after the WBM drilling however after the use of OBM the nature of the effects differed substantially (including marked organic enrichment, elevation of hydrocarbon levels, de-oxygenation of sediments, reduced species richness and increasing abundances of indicator species).

The exact nature of the seabed around the proposed locations is not known at present, but a baseline environmental survey will be completed prior to the commencement of drilling operations. This will allow for the long term monitoring of any contamination. However the use of water based mud will minimise any potential impact.

3.2.2 Accidental releases

Throughout the proposed drilling programmes, and as in all aspects of hydrocarbon exploitation, there is the potential risk of non-routine/accidental events occurring. These in turn may lead to unwanted emissions or impacts. A limited number of incidents have been identified as having a potential to occur, with consequences that may impact the environment. The two main mechanisms for accidental pollution can be identified as:

- a hydrocarbon spill, or
- a mud/chemical spill.

This section of the report examines the above two pollution mechanisms in further detail.

Oil spill risk

The most important environmental risk associated with exploration drilling is an accidental release of hydrocarbons to the sea. Since these spills could occur from a range of incidents, their size could vary greatly. For example, a leak during the transfer of diesel to the rig may cause a small spill several barrels in size, whereas a well blowout from a crude reservoir may result in thousands of tonnes of oil being lost to sea. Obviously when drilling an exploration well there is only a risk of a large oil spill if oil is present in the reservoir. Oil Spill Response Limited (OSRL) have been commissioned by the operators to look at the risk of hydrocarbon spills from the proposed exploration drilling operations. The following section provides a summary of their findings.

Operational spills

Analysis of historical data of reported spills from drilling rigs on the United States and United Kingdom Continental Shelves both indicate that the typical platform spill is less than 1 barrel. In the period 1971 - 1992, the number of United States Offshore Chemical Shelf (US OCS) spills of < 1 barrels represented 92% of the total but only 4.3% of the volume spilled. Whereas the number of spills of > 1,000 barrels stood at 0.1% of total but the majority (77%) of the volume spilled. The United Kingdom Continental Shelf (UKCS) spill data over the period 1977 - 1993 correlates with the US experience. It provides a useful indication of the most likely size of spill and the type of spill that could occur. Examination of this source data shows that the most probable types of spills from a drilling rig are small operational spills of fuel oils such as diesel. Table 3.3 provides summary statistics of diesel spills reported to the UK Department of Trade and Industry (DTI) from the years 1977 to 1993.

Table 3.3 Reported UKCS diesel spills 1977-1993

Spill category	% spilt by volume	% spills by number	Mean spill size (bbls)	Spill range (bbls)
Drilling	4.5	18	4	0.25-15
Collision	12	3	63	0.1-63
Supply	82	49	26.9	0.5-302
Utilities	1.5	30	0.8	0.1-4

The total amount of diesel spilled from the drilling rigs operating on the UKCS over this 17 year period was less than 525 barrels. Table 3.3 shows that spills during supply to the rig are the most common cause of diesel spills, accounting for 49% of the total number of spills and 82% of the total volume of diesel spilt. The size of these spills is scattered; the majority are small and average <1 barrel, but a single spill of 302 barrels was recorded. Incidents involving rig utilities (eg drains) and drilling are much less frequent, and are likely to result in small spills (< 15 barrels).

Exceptional spills

The worst case oil spill scenario in any exploration drilling program would be a spillage of crude oil associated with loss of well control or blowout. Maximum loss of crude oil would result from a continuous release of oil. The flow rate and duration of a well blowout is a function of the geology of the reservoir and drilling history of the well. Events of this nature are very rare and have been declining due to modern technology, however historical precedent dictates that they should not be ignored. On the United States offshore continental shelf there have only been 11 recorded platform spills (blowouts and other spills occurring on the platform) > 1,000 barrels in the period 1964 - 1992, the last being in 1980. Refer to Table 3.4 for incident details (the source data does not distinguish exploration from production installations).

Table 3.4 US OCS platform oil spills > 1,000 bbls 1964-1992

Spill date	US OCS area & block	Volume m ³ ^a	Cause
4/1964	Eugene Island 208	2,559	Freighter struck platform, fire.
10/1964	Ship Shoal 149 & 199	11,869	Platforms in hurricane, blowout.
7/1965	Ship Shoal 29	1,688 ^b	Well blowout.
1/1969	Santa Barbara Channel	80,000	Well blowout.
3/1969	Ship Shoal 72	2,500	Ship struck platform in storm, blowout.
2/1970	Main pass 41	30,000	Well blowout, fire.
12/1970	South Timbalier 26	53,000	Well blowout, fire.
1/1973	West Delta 79	9,935	Structural failure, storage tank rupture.
1/1973	South Pelto 23	7,000	Stationary storage barge sank.
11/1979	Main pass 151	1,500 ^c	Vessel collided with semi-submersible.
11/1989	High Island 206	1,456	Pump failure, tank overflow.

a 1 bbl = 0.159 m³

b Condensate

c Diesel tank of semi-submersible drilling rig damaged.

Table 3.4 illustrates that various causes have been accessory to the well blowouts occurring, such as ship collision, structural damage and adverse weather conditions. These scenarios must not be discounted. The statistical risk of a blowout occurring world-wide from drilling is 2.5×10^{-3} per well year (based on a 100 well study of offshore blowout causes) (Dahl and Bern, 1983).

Oil spill modelling

The risk of a large spill is very low, but its potential consequences need to be considered. OSRL were commissioned to complete an oil spill modelling exercise for a low risk of occurrence blowout situation, to predict likely trajectory and possible fate of spilled oil (see Appendix E). The spill scenario was based on the situation of an ongoing release of $1,000 \text{ m}^3$ per hour for 12 hours. The model considered two spill release locations representing sites in the north and south of the licensed Tranches. Historical wind speed and direction data, together with wind spell (direction-frequency) data was used to model most realistic Falkland's conditions.

The results of the modelling are discussed in detail in 'Oil Spill Response Strategy Recommendations for Falkland Islands Exploration Blocks' (see Appendix E). In summary the results indicate that there would not be beaching of the released oil from the most northerly location. In the unlikely event of a blowout scenario at the southerly release location, there is a small probability of oil beaching, ie 1 in 2,700 blowout events. That is an overall probability of oil beaching of 6.75×10^{-7} per well year.

Potential impact from an offshore oil spill

The consequences to the environment from a hydrocarbon spill depend on a number of factors including; the type of oil released, the weathering characteristics of oil, the prevailing weather conditions and the receiving environment. The risk of a major spill occurring and that spill beaching on the north coast of the Falkland Islands is very low. In addition a large proportion of the Islands' coast is remote and therefore deployment of oil spill response equipment difficult. The main island group is approximately 160 miles (250 km) east-west by 95 miles (150 km) north-south. There are:

- over 400 islands, many of which are heavily indented;
- few habitations, amounting to isolated farms and settlements;
- minimal roads or tracks which leave many coastal areas inaccessible;
- limited harbours;
- few airfields or suitable landing areas.

As the risk of an oil spill beaching is very low it is therefore the offshore marine resources that can be considered to be at greatest risk from an oil spill. Offshore flightless birds eg penguins will be vulnerable to surface pollution. There may also be limited mortality to krill populations in the immediate vicinity of a spill location.

The operators will have procedures in place to minimise the likelihood of any oil spill event. In the unlikely event there is a spill various options could be available to deal with spilled oil. However there are certain constraints in relation to both weather conditions offshore the Falkland Islands and the remoteness of the Islands which limit the number of realistic options. These are discussed in Appendix E of this report.

3.3 Overall assessment

In summary it can be concluded that from routine operations the effects of drill cuttings discharges have the greatest potential for environmental consequence. However on the basis of past experience in the use of water based muds for single exploration wells, these effects are not considered to be significant. Other environmental effects from routine operations; the physical presence of the rig, atmospheric emissions from well testing and power generation and aqueous/chemical discharges will have a minor or negligible impact.

The greatest, but highly unlikely environmental threat would result from a large oil spill, for example from a well blowout. Analysis has shown that the probability of a blowout event resulting in the oiling of the north Falklands coast is 6.75×10^{-7} per well year. As the risk of oil beaching is low it is therefore the offshore marine resources that can be considered to be at greatest risk from an oil spill.

In light of the low level of impacts predicted from routine operations, and the management and control measures that are in place/will be adopted, it is considered that the drilling programme proposed by the operators will not have any significant impacts. However in the unlikely event of a large accidental oil spill the potential exists for significant impact to offshore resources.

Appendix A Policy guidelines and legislation

A.1 Policy guidelines on the environment

Shell, Amerada Hess, LASMO and IPC are committed to conducting their company's business in a manner that is compatible with the balanced environmental and economic needs of the communities in which they operate, and to meet legal requirements and consent standards. They recognise their responsibility to ensure operations are carried out with due regard for environmental protection and have established corporate environment policies.

Commitment to environmental protection is lead by senior management and the responsibility of all employees and contractors. The environmental implications for all phases of activities are considered to enable the effective management of any environmental impacts from operations. In addition environmental performance is continually monitored to ensure environmental targets are met.

A.2 Falklands legislative regime regarding offshore exploration drilling operations

The Falkland Islands are among the overseas countries and territories having special relations with the United Kingdom which are included in Annex 4 (as amended) to the European Community Treaty. European law does not, as a result, have any direct effect in the Falkland Islands. Although some provisions of Falkland Islands law (for example the provisions of Schedule 4 to the Offshore Minerals Ordinance 1994 which deal with the contents of environmental impact assessments and environmental impact statements) are modelled on European Community law.

The Islands have a separate legal and legislative system, (including the power to make laws for the islands) administered by the Falkland Islands Government (FIG). However, the UK Government is responsible for matters of defence and external affairs and on other matters prior approval may be required from a UK Secretary of State. Similarly, legislation formed in the UK may be modified and adopted in the Falklands. Planning controls in the Falklands extend to the twelve nautical mile limit of the territorial sea. This is through the administration of planning legislation in the Falkland Islands on a central and national basis, applicable to the whole of the Islands (including the territorial sea) rather than, as in England, on an administrative county or local authority basis where the boundaries cease at the low water mark. As none of the licence Tranches are closer than 50 nautical miles from the coastline of the Islands, such legislation (including onshore legislation) is outwith the scope of this report.

The legal responsibility for exploration and exploitation of petroleum from the Falkland Islands Continental Shelf rests with the Executive branch of Government and is governed by locally enacted legislation. The key details of current environmental legislation and conditions with regard to proposed exploration drilling operations are summarised in Table A.1. However, it should be noted that the Table does not provide a definitive analysis of the law or of the potential liabilities for environmental damage. Environmental legislation in the Falklands is in the early stages of development and further legislation may be required during the potential future development of the offshore hydrocarbon reserves.

Table A.1 Summary of International and Falklands legislation, and conditions relating to environmental protection and provisions controlling offshore exploration drilling operations

International/ UK	Falklands	Development/area activity	Conditions and standards
Exploration drilling operations			
	Offshore Minerals Ordinance 1994 (OMO 1994)	Exploration/exploitation (and matters connected/ relating to) of minerals in the Continental Shelf and other controlled waters of the Falkland Islands	<p>The Ordinance repeals the Continental Shelf Ordinance of 1991 and provides for petroleum exploration and development. The Ordinance sets terms and conditions attached to the activities defined. Of relevance to drilling operations are the following:</p> <ul style="list-style-type: none"> - Licensing and offences in relation to licences; - Requirements in relation to preparation of environmental impact assessments or environmental impact statements (Sections 64 - 67); - S14(1) gives effect to Schedule 1 - strict liability for certain loss or damage (refer to 'accidental discharges').
	Petroleum Survey Licences (Model Clauses) Regulations 1992		<p>The Petroleum Survey Licences (Model Clauses) Regulations 1992 were made under the Continental Shelf Ordinance 1991 and were continued in force by OMO 1994. The Regulations set out the clauses which are deemed to be incorporated in exploration licences, except to the extent that they are excluded or modified by specific provisions of those licences. The 1992 Regulations were amended by OP(L)R 1995. (refer below)</p>
	Offshore Petroleum (Licensing) Regulations 1995 and Model Clauses (OP(L)R 1995)	Exploration/exploitation licences	<p>The Regulations (together with the Offshore Minerals Ordinance 1994).</p> <ul style="list-style-type: none"> i) regulate the manner in which application may be made for an exploration or exploitation (production) licence; ii) prescribe a form of application (Schedule 1); iii) prescribe Model Clauses for production licences (Schedule 2); and iv) amend the Petroleum Survey Licences (Model Clauses) Regulations 1992 in relation to the Model Clauses for exploration licences.

International/ UK	Falklands	Development/area activity	Conditions and standards
	Offshore Petroleum (Licensing) Regulations 1995 and Model Clauses (OP(L)R 1995)	Exploration/exploitation licences	Exploration licences authorise the Licensee to search for minerals specified, in the seabed and subsoil. They do not authorise boring or extraction of any mineral in the course of exploration. Production licences authorise the Licensee to bore and get the minerals specified in the licence. Each production licence comprises four stages; 3 exploration phases and an exploitation phase.
	Model Clauses for Production Licences in Controlled Waters.		The Model Clauses for Production Licences in Controlled Waters, contained in Schedule 2 to OP(L)R 1995, are deemed to be included in any production licence except to the extent that they are excluded or modified by any clause of such a licence. Controlled waters refers to the areas to which the licence relates
	FIG Environmental Policy Indicative Additional Conditions and Restrictions	Exploration drilling	In addition to the Model Clauses, FIG has produced indicative conditions and restrictions reflecting the environmental policy. These were published to indicate to applicants for licences in the licensing round what conditions, additional to those provided by Model Clauses, might be expected to be included as clauses of the licence. Except insofar as they have actually been included in licensees licences, they do not have effect at all. The indicative conditions and restrictions are divided into 4 categories, 3 of which are relevant to drilling operations: A) <i>General</i> No more than one rig shall operate in any block at any time without the written consent of the Governor. Restrictions may be imposed on the positions in which the Licensee may drill. At least 3 months notice is required in advance of drilling activity

International/ UK	Falklands	Development/area activity	Conditions and standards
	FIG Environmental Policy Indicative Additional Conditions and Restrictions	Exploration drilling	<p>B) <i>Environmental seismic/drilling</i>. Conditions which may include consultation with FIG's Director of Fisheries and the Falkland Islands Environmental Task Group (FENTAG) at least 30 days before exploration drilling work. Prior to commencing drilling operations the proposed drilling mud, any associated chemicals and method of disposal of drill cuttings and spent mud shall be submitted to the Governor and British Geological Survey for review. Also included are indicative conditions relating to the conservation of cetaceans during seismic exploration and other operations under the licence.</p> <p>C) <i>Oil-spills</i>. Refer to 'accidental events'.</p> <p>D) <i>Fisheries interests</i>. The requirement to establish a fisheries liaison officer to promote good working relationships, agree vessel routes, ensure English is spoken on the vessel, take every effort to locate and remove any debris resulting from activities and promptly deal with claims for loss/damage of gear or loss of fishing time arising from such debris.</p>
	The Continental Shelf Operations Notice No 1	Record and sample requirements for surveys and wells	<p>The Notice details the procedures which should be followed concerning the submission of records and samples from surveys or drilled wells. Section 4 is specific to well data and records, detailing the data to be supplied before permission is given to drill and the data and reports that must be supplied on the completion of the well. Licensees are required to advise the FIG's Governor, the Attorney General and the British Geological Survey in writing, 28 days before the proposed drilling activity is due to commence. Reports must be supplied within 3 months of the completion of any well.</p>

International/ UK	Falklands	Development/area activity	Conditions and standards
Routine operations and discharges			
	FIG Environmental Policy Indicative Additional Conditions and Restrictions	Discharges	Section B) <i>Environmental seismic/drilling</i> establishes conditions imposed on the use and discharge of chemicals during drilling. Water based muds must be used wherever technically possible. Prior to drilling operations, Licensees are required to notify the Governor of FIG and the British Geological Survey of the proposed drilling mud, any associated chemicals and method of disposal of drill cuttings and spent mud. After the completion of each well a written report must be submitted detailing the types, quantities and discharge details of any chemicals used.
Convention for the Prevention of Pollution from Land Based Sources 1974 (Paris Convention)/ Prevention of Oil Pollution Act 1971 (POPA) with amendments	Prevention of Oil Pollution Act (Overseas Territories) Order 1982 Offshore Minerals Ordinance 1994	Discharge of oil and oily mixtures	The Order applies the conditions and standards of POPA 1971 to the Falkland Islands with the exception of Section 3, which relates to the UK Continental Shelf. Section 16 of the Ordinance applies Section 3 of POPA 71 to the designated areas of the Falkland Islands Continental Shelf. The Order states that it is an offence to discharge any oil or mixture containing oil (otherwise than from a ship) as the result of any operation for the exploration of the seabed, subsoil or of their natural resources in a designated area.
Oil in Navigable Waters Act 1958 (UK)	Oil in Territorial Waters Ordinance 1960 (as amended in 1987)	Discharge of oil and oily mixtures from vessels	The Ordinance controls the discharge of oil and oily waters from vessels (including unloading and loading from vessels) within the territorial sea of the Falkland Islands.
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters 1972 (London Convention)/ Food and Environment Protection Act (FEPA) 1985	Marine Environment Protection Ordinance 1995	Discharges	Under Section 3 of the Ordinance a licence is required for deposits in Falkland Island waters or controlled waters. A licence is required for deposits from a range of sources which includes vessels, platforms and other man made structures (excluding pipelines).

International/ UK	Falklands	Development/area activity	Conditions and standards
	Deposits in the Sea (Exemptions) Order 1995	Discharges and atmospheric emissions (exhausts)	Approved under Section 5 of the Marine Protection Ordinance 1995, the Order lists 25 categories of materials which do not require a licence under the Ordinance. Included are the disposal of sewage or domestic waste originating on a vessel or platform, drill cuttings and muds under certain circumstances and the incineration of hydrocarbons. Several of these exemptions are encompassed within other legislation, such as the Offshore Minerals Ordinance and the Merchant Shipping (Oil Pollution) Act.
	FIG Environmental Policy Indicative Additional Conditions and Restrictions	Chemical use	Section B) <i>Environmental seismic/ drilling</i> specifies the controls imposed on the use and discharge of chemicals including the requirement to notify the Governor on their use detailing the location and quantities of discharge. The Licensee shall only discharge chemicals which are approved under the UK Harmonised Offshore Chemical Notification Scheme (HOCNS).
Accidental discharges			
	Offshore Minerals Ordinance 1994	Accidental events	Section 14 of the Ordinance imposes on an operator 'strict liability' for loss or damage caused to the environment in defined circumstances (excluding any impact regarded as negligible).
	FIG Environmental Policy Indicative Additional Conditions and Restrictions	Oil spills	Under Section C) <i>Oil-spills</i> , all steps must be taken to prevent the escape of oil. At least 6 months before the implementation of any drilling programme a proposal for an oil spill contingency plan must be submitted to the Governor of FIG for approval. The section details the essential elements that must be provided for within the plan.

International/ UK	Falklands	Development/area activity	Conditions and standards
Convention on the Prevention of Marine Pollution from Ships (as amended by 1978 Protocol) MARPOL 73/78; International Convention on Civil Liability for Oil Pollution 1969 (CLC)	Merchant Shipping (Oil Pollution) Act 1971; Order in Council SI 1975/2167 (as amended by SI 1976/2143); Merchant Shipping Act 1995	Oil spills from vessels	Stipulates the responsibilities of ship owners for damage caused by oil pollution from their ships. It imposes strict liability for any damage caused by contamination resulting from the escape or discharge of persistent oil carried by a vessel, the cost of pollution prevention measures to minimise the damage and the damage resulting from these measures

A.3 Future developments in legislation

The level of statutory protection for the offshore environment of the Falklands Islands has increased over recent years with the adoption of UK legislation, such as merchant shipping legislation. Vessels registered in the Falkland Islands must now comply with the regulations of MARPOL 73/78, with the exception of Annex IV (sewage). However, these controls only extend to those vessels registered in the Falkland Islands and to foreign flagged vessels operating within the 12 mile limit of the territorial sea. Currently there is no policy for monitoring pollution by vessels beyond the territorial sea and limited monitoring takes place within territorial limits and Falklands Islands Harbours (FIG, 1996).

Environmental protection in Falkland waters is provided for through the Offshore Minerals Ordinance 1994. Present controls are based mainly on liability for environmental damage, with the responsibility resting with Licensees to show how environmental protection will be achieved, rather than relying on detailed statutory controls. Additional conditions are provided for within subsidiary legislation and conditions attached to production licences. The provisions within current legislation enables the Governor of FIG to incorporate further obligations, conditions or restrictions on Licensees if necessary.

The present and future waste practices and facilities in the Falkland Islands are being addressed through the development of a National Waste Management Strategy. The aim of this programme is to introduce and maintain waste management and disposal systems resulting in environmentally acceptable practices, consistent with relevant international obligations and suitable to the circumstances of the Falkland Islands. This will have future implications for Licensees as FIG will be addressing the facilities that should be provided and requirements which ought to be imposed in relation to wastes arising from the exploration for and exploitation of petroleum in Falkland Island waters.

Recent developments by the UK Government will affect the application of the London Convention, FEPA 1985 and Marine Environment Protection Ordinance 1995 to the Falkland Islands, as stated in Table 2.1. At present the Environment Protection (Overseas Territories) Order 1988 (SI 1988/1084) made under Section 26 of FEPA 1985, does not apply to the Falkland Islands. The Order applies Parts II (Deposits of Substances and Articles at Sea) and IV (general and supplementary purposes) of FEPA, and Schedules 2, 3 and 4 to FEPA, in a modified form to a number of Dependent Territories. In recent correspondence the Foreign and Commonwealth Office have indicated the UK Government's intention to amend Schedule 2 to the 1988 Order so that it does apply to the Falkland Islands (Lang, 1997). Under Part II of FEPA 1985 a licence is required for the deposit of substances or articles in the sea or under the seabed and for the

incineration of substances or articles at sea. These provisions apply to any vessel or marine structure within territorial waters or fishery limits and to any British vessel or British marine structure wherever it may be. Licensing authorities may also issue licences subject to such provisions necessary to protect the marine environment, the living resources which it supports and human health and to prevent interference with legitimate uses of the sea.

In the longer term the 1996 Protocol to the 1972 London Convention will be given effect in the Falkland Islands by a further Order in Council. The Protocol represents a major change of approach to the question of how to regulate the use of the sea as a depository for waste materials. One is to introduce (in Article 3) what is known as the "precautionary approach". This requires that "appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a casual relation between inputs and their effects." The article also states that "the polluter should, in principle, bear the cost of pollution" and it emphasises that Contracting Parties should ensure that the Protocol should not simply result in pollution being transferred from one part of the environment to another.

The 1972 Convention permits dumping to be carried out provided certain conditions are met. The severity of these conditions varies according to the danger to the environment presented by the materials themselves and there is a "black list" containing materials which may not be dumped at all. The protocol however is much more restrictive. It states (in Article 4) that Contracting Parties "shall prohibit the dumping of any wastes or other matter with the exception of those listed in Annex 1." Of relevance to exploration operations are:

- inert, inorganic geological material;
- organic material of natural origin;
- bulky items primarily comprising iron, steel, concrete and similar unarmful materials for which the concern is physical impact and limited to those circumstances, where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping.

The only exceptions to this are contained in Article 8 which permits dumping to be carried out "in cases of *force majeure* caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels..." (IMO, 1996).

Incineration of wastes at sea was permitted under the 1972 Convention, but this practice has since been specifically prohibited by Article 5 of the Protocol. Incineration at sea of industrial waste and sewage sludge had already been prohibited under amendments to the 1972 Convention adopted in 1993. Also prohibited by Article 6 of the protocol is the practice of exporting wastes which cannot be dumped at sea under the Convention to non-Contracting Parties. Article 9 requires Contracting Parties to designate an appropriate authority or authorities to issue permits in accordance with the Protocol (IMO, 1996).

A.4 Environmental guidelines

In addition to the legislation specific to the exploration of hydrocarbons in the waters offshore the Falklands Islands, the following sub-section details environmental guidelines which will be incorporated by the operators into the planning of their proposed operations.

A.4.1 Exploration and Production Waste Management Guidelines

This document has been produced by the E&P Forum to provide guidance on exploration and production waste management. The guidelines draw together the know-how of oil and gas E&P companies on the range of waste management options available for wastes generated by their activities.

The document is divided into sections which provide:

- general discussions on waste management principles and the development of waste management plans;
- identification and overview of E&P activities and associated wastes; and
- options for waste reduction, recycling, treatment and responsible disposal.

Whilst not all measures discussed in the guidelines are appropriate for implementation in all geographical areas and conditions, operators should be able to use the guidelines to develop a waste management programme appropriate to their activities and to the ecological sensitivity of the operating location.

A.4.2 United Nations Environment Programme (UNEP) Environmental Guidelines for Oil Exploration and Production

The Guidelines are prepared in association with the E&P Forum and consist of Production and Procedures for Environmental Control, a supplement to the main report, and Technical Guidelines on Environmental Aspects of Oil Exploration. The Production and Procedures for Environmental Control document is divided into sections which consider:

- Policies and approaches to environmental control.
- Regulatory framework for environmental protection during oil exploration and production.
- Environmental Impact Assessment.
- Environmental management within a company; including objectives, responsibilities and accountabilities, standards and targets, monitoring and contingency planning.
- Environmental management application to exploration and production activities. This section addresses waste management, monitoring and records and inspection and maintenance.

The main report, Oil Exploration and the Environment provides a 'Technical Guide to Reducing the Environmental Impacts of Exploration Operations.' The Guide provides a general background and description of the activities, materials used, sources of contaminants and potential impacts from exploration operations from seismic to decommissioning operations and provides the following:

- operational guidelines for surveys and exploratory drilling operations;
- determining factors that should be considered in the working environment (safety, exposure levels and training);
- procedures for environmental control; and
- environmental management within a company.

Appendix B The environment of the offshore Falklands

B.1 Introduction

The proposed area for exploration drilling operations lies as two main 'areas' in the North Falkland Basin, 200 km north of the Falkland Islands. These areas extend from latitude 49°00'S - 49°40'S, longitude 58°36'W - 59°48'W (Tranches A, B, C, D) and 49°40'S - 50°20'S, 59°00'W - 59°36'W (Tranches F and I) in the Designated Exploration Area of the Falkland Islands continental shelf (refer to Figure 1.1).

This section describes the main characteristics of the offshore marine environment in the area of the northern licence Tranches. Attention is given to the features of the environment that may be sensitive to, or may affect proposed exploration drilling operations. Consideration is also given to the inshore and coastal environment of the Falkland Islands and the key environmental features and sensitivities are identified and described. Figure 4.1 shows the locations of the key places mentioned in the text.

The information presented in this report draws on and expands upon the data produced in the environmental screening studies completed by the operators as part of their licensing round applications and the Environmental Assessment of Sensitivities to Seismic Operations (ERT, 1996). Extensive searches for both published and unpublished literature throughout the world have been undertaken. Communication was also established with key scientists in the Falkland Islands to ensure that all available information was used in the study. Where appropriate gaps in existing knowledge have been identified, and details provided of ongoing and planned environmental studies to address these gaps.

B.2 Meteorological conditions

B.2.1 Synopsis

The South Atlantic Ocean, including the Falkland Islands is exposed to an almost continuous series of depressions and troughs that move east across the area into the South Pacific. The weather is generally cool and oceanic, dominated by westerly winds, a high percentage of which are from the north west.

Offshore, unpredictable violent storms may occur in the study area, although their frequency increases south of 50°S and in inland waters and passages (Hydrographer of the Navy, 1993). The year round windy climate can be attributed to the fast moving weather systems in the Southern Hemisphere due to the predominance of sea rather than land.

B.2.2 Wind speed and direction

Ships observations made for the sea area 48°00'S - 55°00'S, 58°00'W - 65°00'W, over the period 1854 to 1995 have been compiled by the UK Meteorological Office and are provided in Table 4.1. The results show that the most frequent wind speed throughout the year is force 4 (5.5-7 m/s), representing 22.3% of all observations. 87.4% of observations ranged from force 2 to 7 (2-15 m/s) and 8.1% were gale force 8 (15.5-17.5 m/s) or above. The distribution of wind speeds remains relatively constant throughout the year, although there is a slight increase in observations of higher winds during the winter months.

Figure B.1 Locations of the key places mentioned in the text

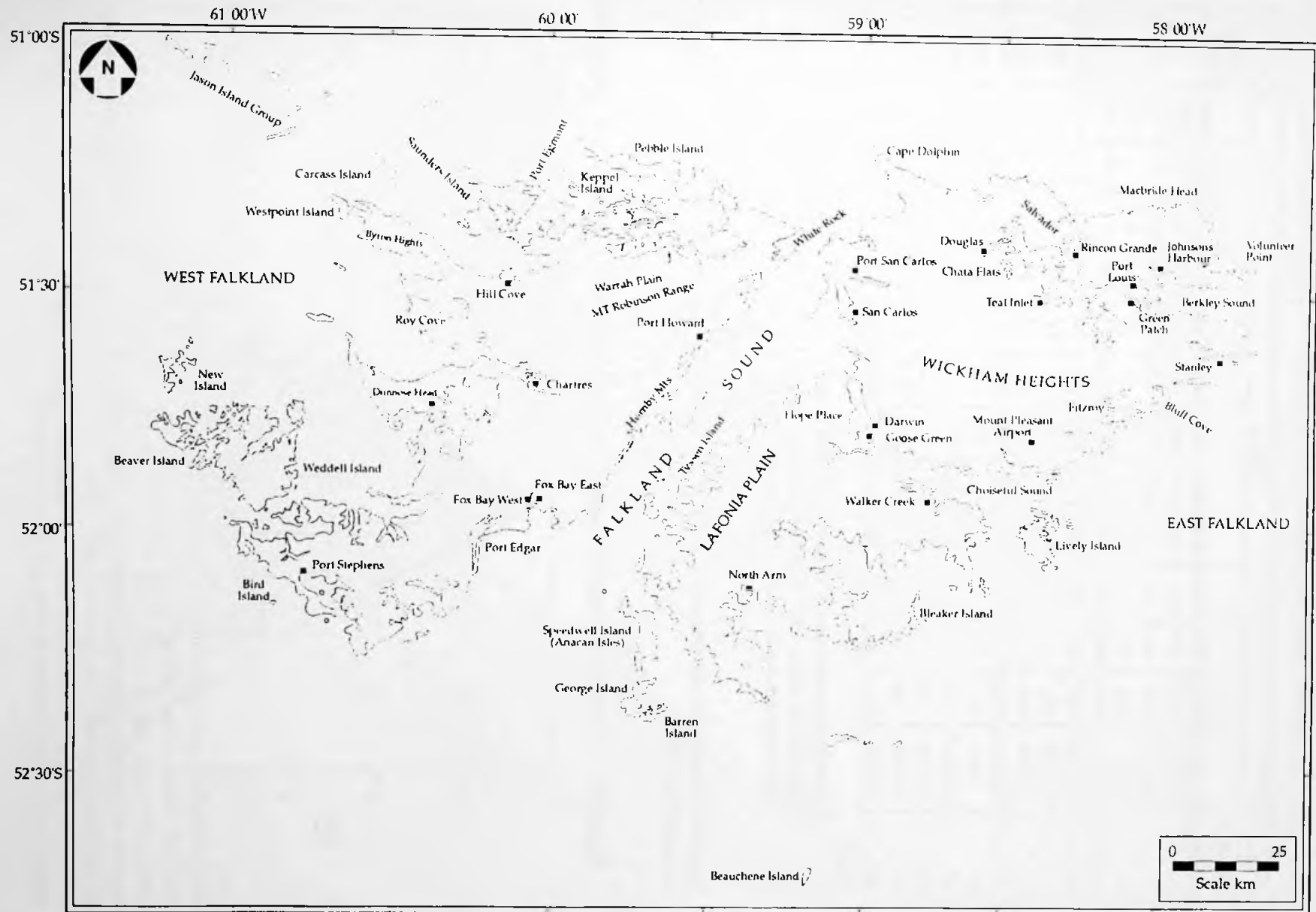


Table B.1 **Summary of ships observations of wind speed for sea area 48.0S 55.0S, 58.0W 65.0W, from 1854 to 1995 (Data source: Meteorological Office, 1996)**

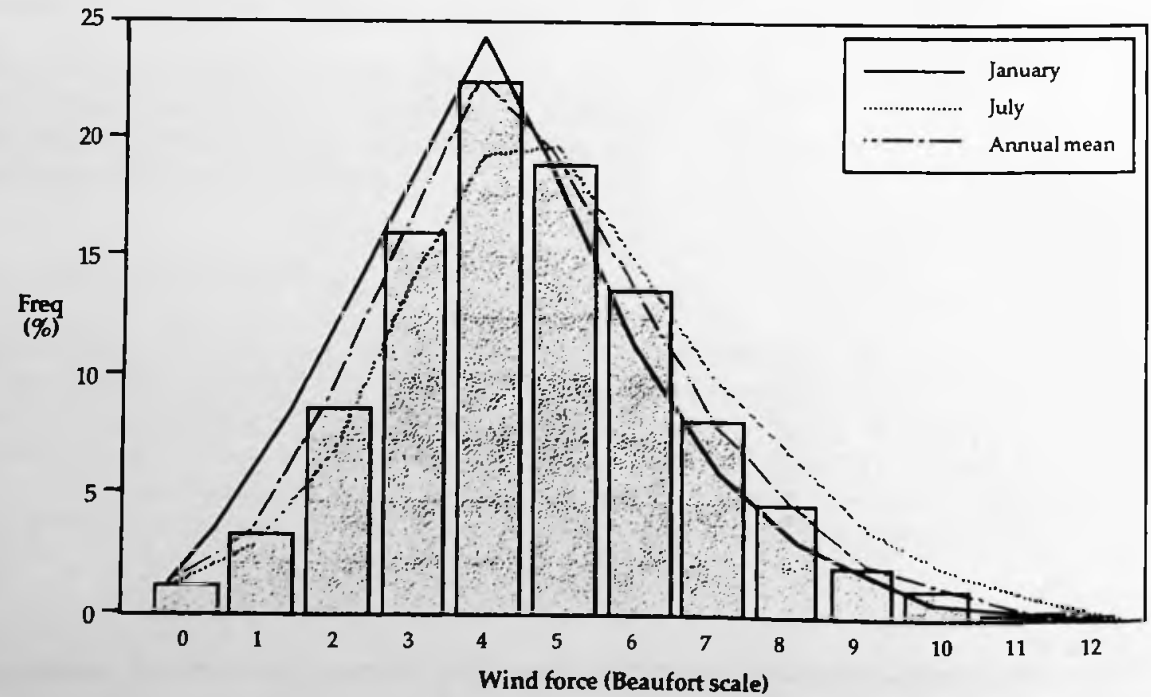
Wind Beaufort Force	m/s	Month												Annual Mean
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
0	0-0.5	1.7	1.4	1.1	1.3	0.9	0.9	1.2	0.9	1.1	1.0	1.6	1.3	1.2
1	0.5-1.5	4.2	3.3	3.2	3.0	2.9	3.5	2.7	2.8	3.2	3.3	3.9	4.0	3.3
2	2-3	11.2	10.2	8.5	9.0	6.3	7.9	6.3	7.1	8.8	8.9	9.1	10.4	8.6
3	3.5-5	18.3	18.8	16.6	15.9	13.6	14.8	13.4	13.1	14.6	17.0	18.7	18.1	16.0
4	5.5-8	24.1	23.1	23.0	23.2	22.7	22.0	19.2	20.4	20.0	22.5	23.3	24.6	22.3
5	8.5-10.5	18.2	19.2	19.7	18.2	17.8	17.7	19.5	19.4	19.5	19.4	19.3	18.9	18.9
6	11-13.5	11.2	12.3	13.4	12.9	15.7	14.1	14.8	15.5	14.6	13.8	12.4	12.3	13.6
7	14-16.5	5.9	7.0	7.9	7.9	9.9	9.7	9.8	9.2	8.3	7.5	6.1	5.8	8.0
8	17-20	3.1	2.9	3.8	4.4	6.1	5.7	6.7	5.9	5.4	4.2	3.4	3.5	4.6
9	20.5-23.5	1.3	1.3	1.7	2.1	2.4	1.9	3.6	2.8	2.6	1.5	1.0	1.0	2.0
10	24-27.5	0.4	0.5	0.9	1.4	1.4	1.3	1.9	2.1	1.3	0.9	0.7	0.2	1.1
11	28-31.5	0.3	0.0	0.2	0.6	0.4	0.3	0.9	0.5	0.5	0.1	0.2	0.0	0.3
12	32-35.5	-	0.0	-	0.0	-	0.2	0.1	0.2	0.2	-	0.0	-	0.1

Notes

- 1 Figures denote percentages of total observations in each month.
- 2 Period of Data : 1854 to 1995. Total number of observations: 40,760.
- 3 - indicates zero frequency whilst 0.0 indicates less than 0.05%.

Figure B.2 summarises the annual frequency of occurrence of wind speed for the observation area, over the period described.

Figure B.2 **Wind speeds around the Falkland Islands 1854 - 1995 (Meteorological Office, 1996)**

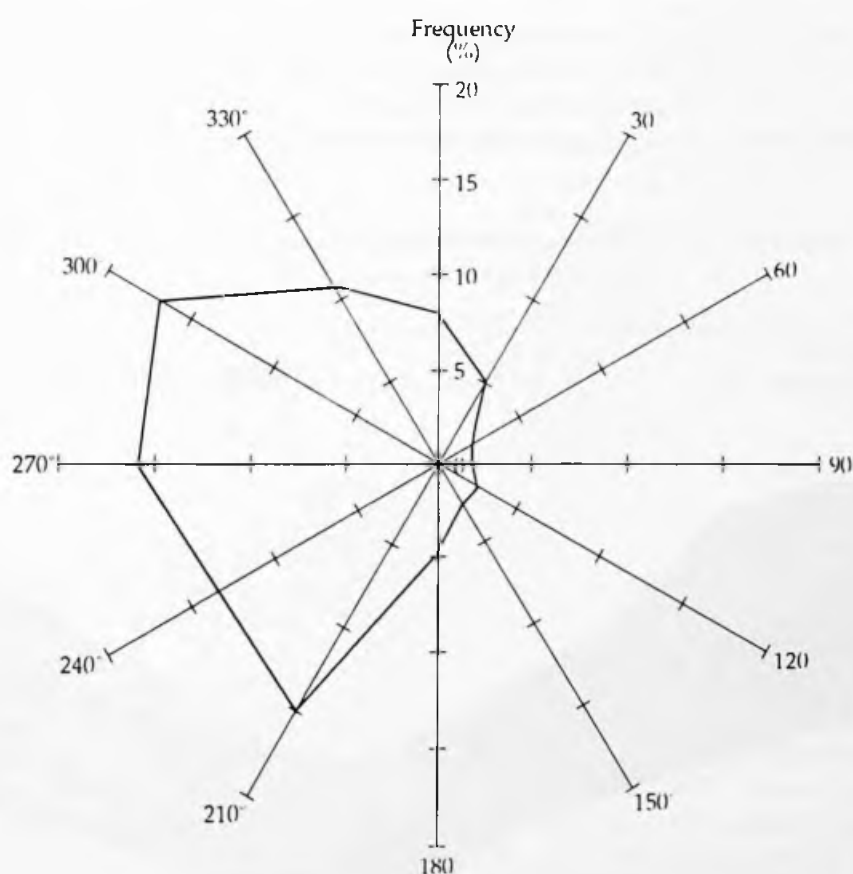


The numerous depressions, ridges and troughs that affect the area produce variable wind directions over the open ocean. The Meteorological Office records show that westerlies (196° - 345°) predominate, representing 71% of observations with little seasonal variation. Figure B.3 shows the annual wind rose for the study area.

Brief unpredictable and violent squalls may occur in the study area at any time, producing gusts in excess of 50 m/s. In general, such squalls are more frequent south of 50°S, especially in inshore waters which are influenced by coastal topography or strong winds over the adjacent sea area.

Inshore, there is no significant seasonal variation in wind direction. The mean wind speed at Port Stanley (west coast of East Falkland) is 16 knots, long periods of calm or no winds are infrequent. Gales occur, on average 4-5 days per month.

Figure B.3 Prevailing wind direction around the Falklands Islands (Meteorological Office, 1996)



B.2.3 Precipitation

Precipitation levels are recorded monthly at several coastal stations in the Falklands. Rainfall can be expected throughout the year in the area, with the greatest levels occurring during the winter and early spring months. Port Stanley (East Falkland) and Port Howard (West Falkland) are two of the wetter places in the islands. Stanley typically experiences 150 days of precipitation annually and an average rainfall of 630 to 650 mm (Hydrographer of the Navy, 1993). Annual precipitation levels at Port Howard average 650 mm (Strange, 1992). To the west precipitation levels are generally lower and West Point Island (to the north west of West Falkland) experiences an average annual rainfall of 431 mm (Strange, 1992).

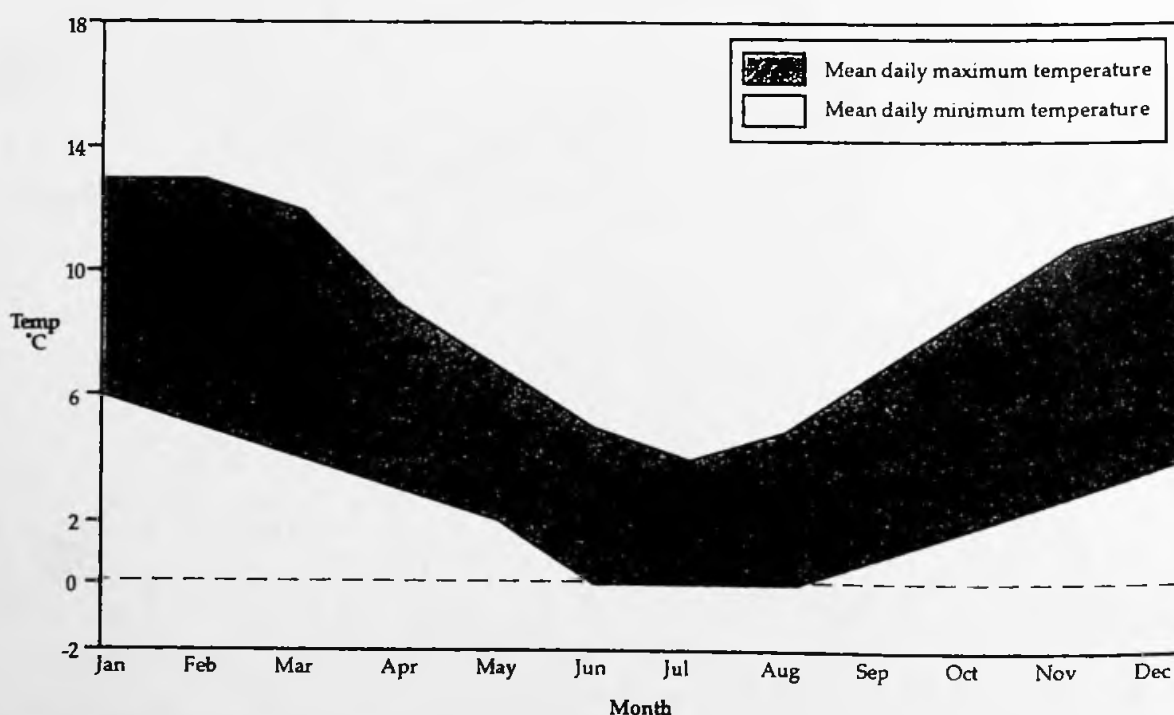
Precipitation levels generally decrease away from the coast to approximately 150 mm in the north, where the seasonal variation is small. Snow fall in the study area commonly occurs from June to October when most of the precipitation over this period falls in the form of snow. The most frequent snowfalls are usually experienced during August when they occur (on average) 11 days out of the month (Hydrographer of the Navy, 1993).

B.2.4 Air temperature

The Falklands climate has a narrow temperature variation range. Onshore air temperature values at Stanley Harbour, taken from 18 to 66 years of observations, are shown in Figure B.4. The mean daily maximum air temperature varies between 4 °C to 13 °C, from July (winter) to January and February (summer). June, July and August are the coldest months with mean daily minimum temperatures of 0 °C, increasing to 6 °C in January (Hydrographer of the Navy, 1993).

Temperatures over the open sea are less variable than over the land and are influenced by low sea temperatures and wind chill. The coldest period of the year is from June to September, although temperatures can vary significantly from one day to another. This is particularly true during the winter when the frequent frontal depressions can create rapid airstream changes.

Figure B.4 Average temperatures at Port Stanley, over the last 60 years
(Hydrographer of the Navy, 1993)



B.2.5 Humidity

Humidity over the sea remains relatively constant as it is closely related to air temperature. Small diurnal variations are observed with highest and lowest values occurring around dawn and in the early afternoon respectively. Seasonal variations are also observed with maximum values in winter. The mean annual relative humidity over the sea is approximately 75% north of 54°S and west of 60°W (Hydrographer of the Navy, 1993).

B.2.6 Cloud, fog and visibility

Cloud cover is represented in units of oktas which correspond to $\frac{1}{8}$ of the open sky. Cloud cover over the open sea averages from 5 to 6 oktas. Over coastal areas the average amount of cloud cover is 6 oktas with minimum and maximum amounts around midnight and sunset respectively.

Fog cover over open sea areas is infrequent, averaging 2 to 5%. Visibility in the study area can also be reduced in periods of heavy cloud cover. During deep depressions the cloud base may fall to around 100 m or near sea level and visibility may be reduced to less than 3 km. In addition, rain squalls, drizzle and heavy snow may reduce the visibility further to less than 1 km. However, the fast moving weather systems in the Southern Hemisphere can produce rapid changes in visibility in the study area with the arrival of drier, colder air from higher latitudes.

B.3 Physical offshore characteristics

B.3.1 Bathymetry and topography

The Falkland Islands are located on an extension of the Continental Shelf of Argentina, known as the Falklands Plateau. The plateau is bounded to the north by the steep sloping Falklands Escarpment which leads down to the Argentine Basin, and to the south by a deep east-west trough, the Falklands Trough, which divides the plateau from the Burwood Bank.

The North Falklands Basin is located in a north-east gently sloping area, north of the Falkland Islands as shown in Figure 1.1. The area in which exploration drilling operations are to be conducted is situated at the edge of the Falklands continental shelf where water depths range from approximately 150 m to 500 m.

B.3.2 Geology and seabed sediments

The Falkland Islands are surrounded by four interconnected sedimentary basins of Mesozoic Cenozoic origin; the Falklands Plateau Basin to the east, the South Falklands Basin to the south, the Malvinas Basin to the west and the North Falklands Basin to the north (Ritchards *et al*, 1995).

Little data is available on the seabed sediments types of the continental shelf and slope areas. It is known that the Falklands embayment is included in the Argentine continental shelf which is characterised by a homogeneous layer of fine and medium sand. This constitutes the main component of the sediment and in some areas extends to a depth of 2 m (Bastida, Roux and Martinez, 1992). Other areas are known to have a high percentage of gravel containing small pebbles or bioclasts. Hard substrate areas are believed to be scarce, although it is recognised that these areas may be under represented in the sampling of Bastida *et al* (1992) because of the difficulty of sampling hard substrates.

Prior to the proposed drilling programme the four operators plan to undertake a seabed sampling survey. Results of the analysis of these samples will provide additional data on seabed sediment characteristics in northern licence Tranches.

B.3.3 Seismology

The Falkland Islands do not lie within a known seismic belt, it can therefore be assumed that the study area lies outwith any area of known regular seismic activity.

B.4 Oceanographic conditions

The operators have funded a survey which is presently underway to collect metocean data for the northern Tranches. Measurements of waves and currents are being made two sites, one in Tranche B (490 m water depth) and one in Tranche C (200 m water depth). In addition to wave current data temperature and conductivity profiles are being collected at selected sites and surfacing drifting buoys have been released. Only short term preliminary data is available at present. Further data will be made available in the final report due to be completed in June 1998. These data will be used to confirm the information presented in this Section.

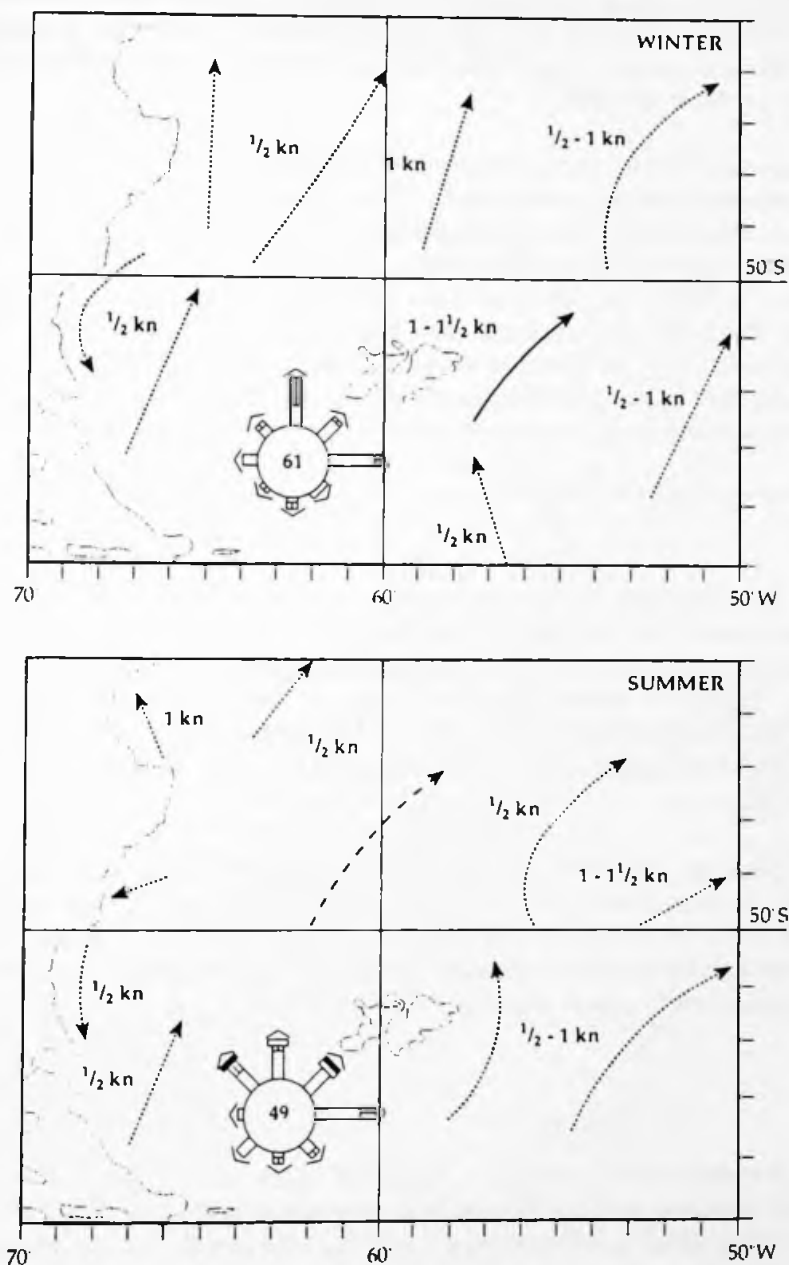
B.4.1 Currents and tides

The current regime in the study area is complex. This is the product of the west to east flow regime through the Southern Ocean, driven primarily by the Antarctic Circumpolar Current (ACC). The northern portion of the ACC is intensified as it flows around Cape Horn before deviating northwards towards Burwood Bank and the Falklands. The velocity of the flow at this point exceeds 60-70 cm/s (Zyranov and Severov, 1979). On meeting the Islands the current flow splits into two branches (east and west Falklands) which pass up either side of the land mass before reuniting in the waters to the north. The splitting of the current flow in this way forms an anticyclonic ring current around the Falkland Islands.

The average speeds of the diverging Falklands currents are less than 25 cm/s (0.5 knots) and 25-50 cm/s (0.5-1 knots) to the west and east respectively (Hydrographer of the Navy, 1993). From here the waters flow northwards to join the warm waters of the south flowing Brazil current, in a confluence known as the Subtropical front. As the currents converge they divert offshore at high current speeds (Rodhouse *et al* 1992).

The northern licence Tranches lie in the convergence zone of the Falklands currents, in the vicinity of an area of upwelling and high biological productivity on the continental shelf. It is expected that the general flow of the current in the study area is from south-north with a mean velocity of 0.5 knots, little seasonal variation and with a constancy of 50-75% (Figure B.5). A counter current in the area has been observed by Zyranov and Severov (1979), who report an E-W flow in winter of 20-30 cm/sec, and an ESE-WNW flow in summer of over 30 cm/sec.

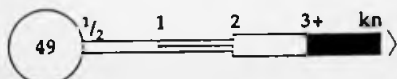
Figure B.5 Predominant currents and current distribution in the Falklands area
(Hydrographer of the Navy, 1993)



The length of each division indicates percentage frequency on the scale:

0 10 20 30 40 50%

Arrows indicate direction of set and are divided according to rate:



The figure within the circle gives the percentage of occasions with currents less than 1/2 knot

Average rate in knots is indicated in figures

Arrows indicate the predominant direction

The constancy of a current is indicated by the thickness of the arrow thus:

—————> High constancy > 75%

- - - - -> Moderate constancy 50% - 75%

.....> Low constancy < 50%

Proudman Oceanographic Institute have developed a current model for the Patagonian Shelf area. The data generated by this report indicates that in the area of the northern Tranches there is only evidence of a residual 0.1 m/s current flow off the edge of the continental shelf in the deeper Tranches. This flows in a northwest direction. In the shallower blocks residual current flow is negligible and water movement is dominated by tidal flows. This data provided by the model appears to confirm the present understanding of water flow in the offshore waters to the north of the Islands. At the time of writing this report metocean measurements are underway in the area of the Tranches to confirm the model predictions (results are likely to be available mid 1998).

In water depths of less than 200 m a considerable part of the water movement is tidal in nature, the proportion of which increases with decreasing depth. The tides around the islands are semi-diurnal with ranges from 0.3 to 3.5 m above chart datum (Hydrographer of the Navy, 1993). Tidal streams vary greatly in strength and direction in different parts of the islands. The main flood stream is NW going and divides off Lively Island (52°02'S, 58°30'W). One part flows WSW and W towards George Island and Cape Meredith (52°16'S, 60°38'W), then NW towards Cape Percival (51°50'S, 61°21'W). The other flows NE towards Cape Pembroke (51°41'S, 57°43'W), N towards Volunteer Point (51°31'S, 57°45'W), then flows WNW, WSW and finally SSW before rejoining the NW going current (Hydrographer of the Navy, 1993). Flood streams enter the Falkland Sound from the S and N.

B.4.2 Waves

The wind regime in the study area can generate rough sea conditions in any season with waves of variable direction and height. The frequency of rough seas is relatively constant throughout the year, although there is a small increase in overall wave heights during the winter or with the passage of east moving depressions. Figure B.6 shows the wave height for the study area, compiled from ships observations over the period 1949 to 1995, recorded by the Meteorological Office. As can be seen from the Figure, the most frequent wave height over the period was 0-0.5 m, and approximately 70% of all waves recorded were under 2.5 m.

Wind and wave statistics based on satellite data, provided by Satellite Observing Systems Ltd show that although there is little seasonal variation in wind speed over the year, there is a seasonal effect on wave height. Figure B.7 illustrates the chance of exceeding a 2.5 m significant wave height in each month of the year. The Figure shows that the months of January and February are the only two consecutive months where the chance of a wave height greater than 2.5 m is less than 30%.

B.4.3 Swell

The swell regime for the study area is shown in Figure B.8. Each swell rose shows the percentage of observations from each direction and the frequency of swell heights. The swell in July and January is from the southwest, to this are added components from the west and northwest during summer, and from the west and south during winter.

Figure B.6 Seasonal wave height frequency (Amerada Hess, 1996)

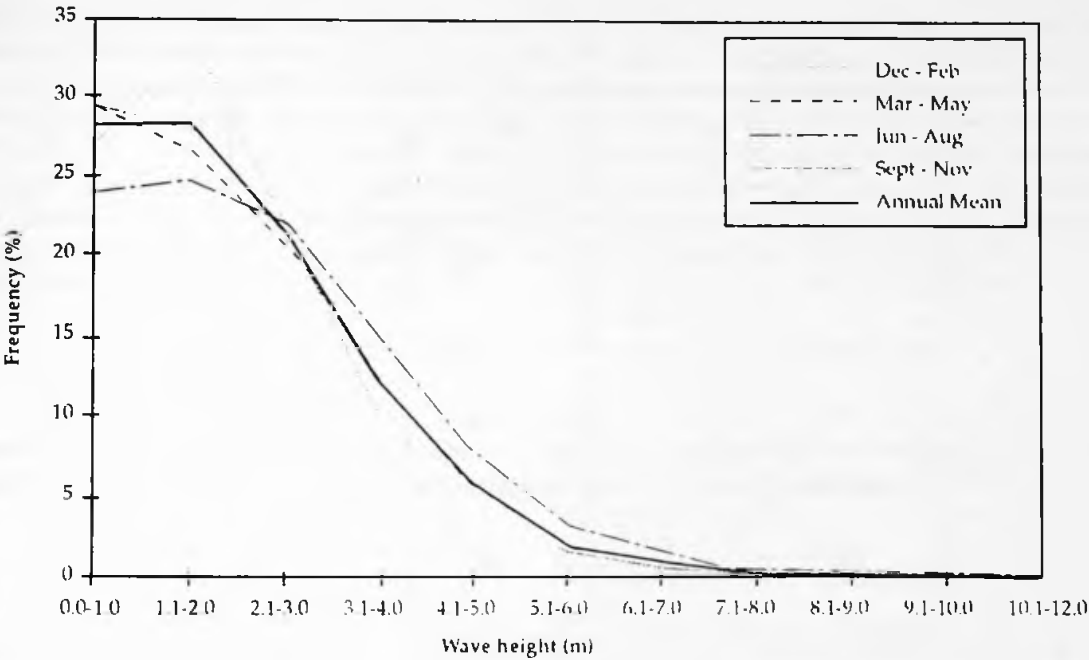


Figure B.7 Monthly exceedence of 2.5 m significant wave height (adapted from Shell, 1996)

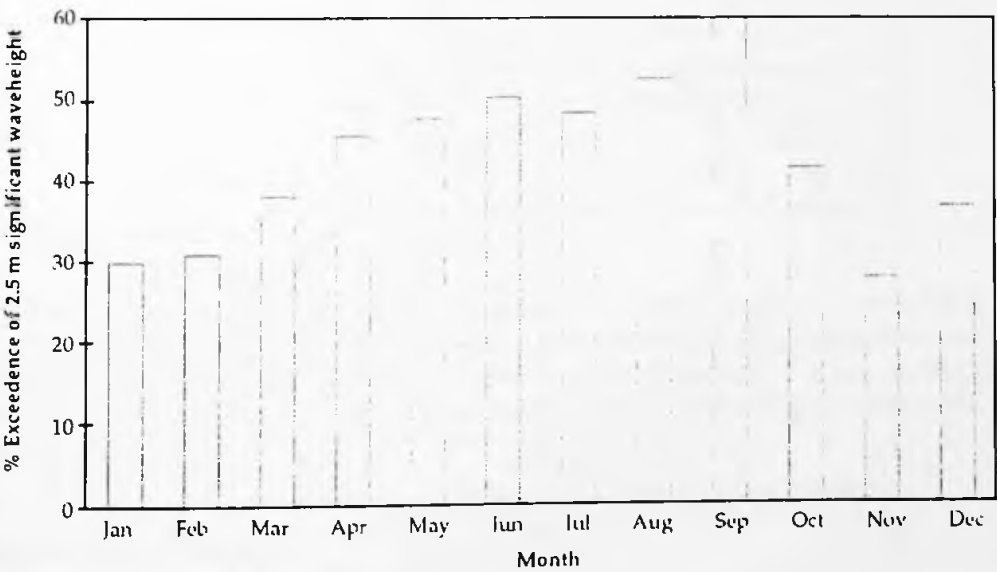
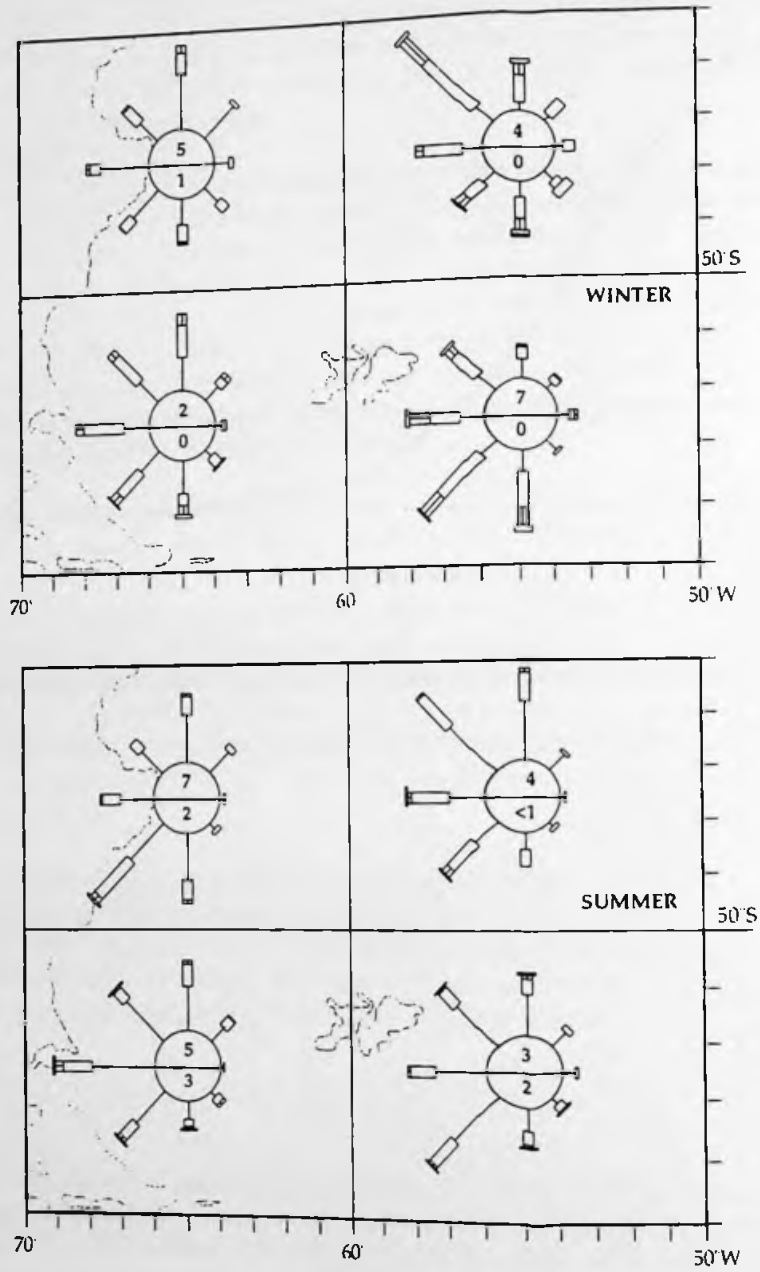
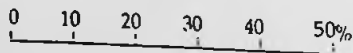


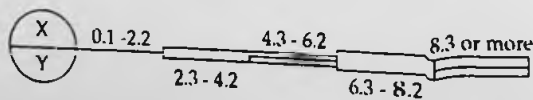
Figure B.8 Swell-roses for the Falkland Islands area (Hydrographer of the Navy, 1993)



The frequency of swell waves from each direction is given according to the scale:



This scale is further subdivided to indicate the frequency of swell waves of different heights (in metres) according to the legend:



The direction in which the swell waves travel is towards the centre of the circle. The upper figure in the circle gives the percentage of variable swells; the lower figure gives percentage of occasions with no swell.

B.4.4 Sea surface temperature

In general, sea surface temperatures in the northern Tranches are at their lowest in late August and early September when mean temperatures are approximately 4-5 °C. Temperatures increase during the summer to a maximum of 10 °C in February. Within these seasons, sea surface temperatures can vary from one period to another, although this variability tends to be less in winter than during the summer. In addition, the current regime (refer to Section B.4.1) influences the sea temperatures in the area, particularly in winter, with the result that from September to March the mean sea surface temperature is approximately 1 °C lower than the air temperature. During the summer the reverse is true and from May to August the mean sea surface temperature is approximately 1 °C higher than that of the air (Hydrographer of the Navy, 1993).

B.4.5 Salinity

The salinity of the open sea around the Falklands is slightly lower than the mean ocean salinity of 35‰, varying throughout the year between 33-34‰ (Hydrographer of the Navy, 1993).

B.4.6 Sea ice and icebergs

Sea ice is not encountered in the open sea of the northern Tranches. However, the Falkland Islands are situated within the northern limit of iceberg distribution (which extends to 40°S) and there is a risk in encountering icebergs in the area of proposed exploration drilling operations. The Islands lie outside the limit of icebergs with an average spacing of 45 km, which extends up to approximately 55°S. Most of the icebergs encountered in the open sea originate from the ice shelves of Antarctica. These become carried by the Southern Ocean Current in a general NE direction. Occasionally an iceberg has been carried by the Falklands current north towards the islands. Data sources on this subject are few although there have been reports in some years of icebergs 20 miles in length observed east of the Falkland Islands (Hydrographer of the Navy, 1993).

B.5 Biological characteristics

Specific research and data on the biological characteristics of the offshore Falkland Islands has tended to concentrate on the biology and lifecycles of the main commercial species. The following subsection provides a general description of the offshore biological environment in the study area, based on the information available at the time of writing this report. Where limitations of data exist, these are indicated in the text.

B.5.1 Plankton and marine algae

Planktonic organisms represent an important part of the marine ecosystem as they form the primary source of food for all higher levels of the marine food chain. The zone of upwelling on the continental shelf, in the vicinity of the northern Tranches, is a region of high biological productivity and of particular ecological interest for marine and coastal habitats.

Research on phytoplankton was carried out in a Discovery expedition which sampled a line of stations between the Falkland Islands and South America; reported in Discovery Report Vol XVI (Ingram Hendley, 1937; cited in Brown and Root, 1997). This expedition focused on diatom populations. At the nearest station to the Falkland Islands, approximately 2-4 km offshore, 10 species of diatom were recorded. South of 44°S there were relatively few species and a marked increase in diatoms, in comparison to the dominance of dinoflagellates, ciliates and crustaceans further north.

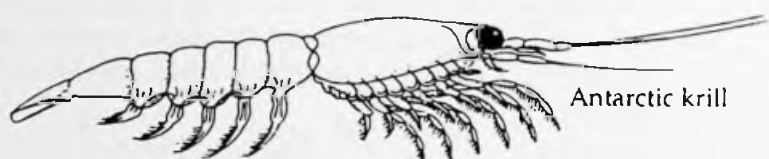
In offshore areas debris can be found on the sea surface, comprising primarily of rafts of floating kelp.

B.5.2 Zooplankton

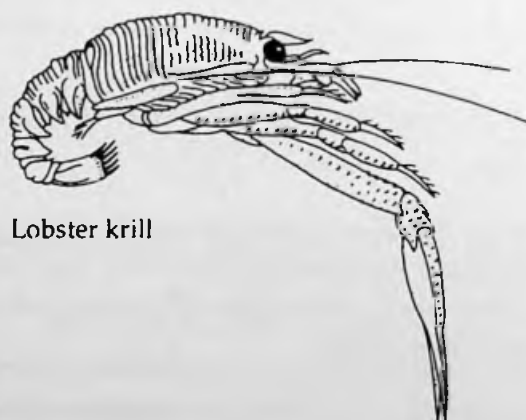
Recent surveys of zooplankton of the southwest Atlantic Ocean have shown that the lowest zooplankton concentrations are found in the shelf seas surrounding the Falkland Islands (Rodhouse *et al*, 1992).

The key component of the Falklands offshore ecosystem is krill, pink-red pelagic crustaceans similar to shrimp. Within the Falklands ecosystem Antarctic krill (*Euphausia superba*) has become replaced by lobster krill (*Munida* spp). This latter species fills the same ecological niche as the Antarctic species and provides the main food source for the cetaceans, fur seals, penguins and many seabirds in the Falklands. For example, the king cormorant has been found to feed extensively on lobster krill, especially prior to hatching (Thompson, 1989). Lobster krill also represent an important food source for many of the commercial fisheries species, including squid.

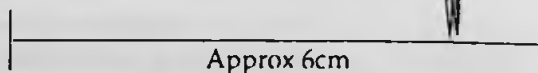
Little is known about the distribution of krill populations. Krill are influenced by water circulation which influences their position and also affects nutrient supply and primary production. Hence large concentrations of krill may be found in zones of upwelling, regions of high biological productivity. Lobster krill are present in the waters surrounding the Falklands Islands for most months of the year. Although there is a noticeable increase in the populations of krill in the latter half of summer and in autumn when large swarms in the surface waters can form a reddish tint to the sea. From late March/April many of the beaches become covered with stranded krill and the sediment becomes stained with a pinky residue (Strange, 1992).



Antarctic krill



Lobster krill



Approx 6cm

(Strange, 1992)

B.5.3 Benthic macrofauna

The benthic macrofauna are animals that live on or within the seabed. They are normally separated from the smaller meiofauna by the definition that they are retained on a 0.5 mm (or sometimes a 1 mm) mesh. Where soft sediments occur, as in offshore sandy areas around the Falklands, they are principally infaunal, ie they live within the sediment, either burrowing through it or forming tubes within it. There are indications that in some areas north of the Falkland Islands, coarser gravelly sediments also support a diverse epifauna (animals living on the surface of the seabed).

The infauna is diverse and dominated numerically by polychaete worms, and also includes significant proportions of molluscs and crustaceans. The epifauna includes echinoderms (brittle stars, starfish and sea urchins), bryozoans, corals, sponges, ascidians and crabs. Examination of a photograph of a trawl sample (Figure 4.9b) obtained during the FFS *Walther Herwig* cruise of 1978 from approximately the eastern boundary of Blocks B and D showed it to be dominated by numerous tall sea pens and various echinoderms. Community composition and structure at individual locations is likely to be influenced mainly by depth and sediment type.

An analysis of macrofaunal samples obtained from 75 stations during the period 1978-1979 was used to describe the main assemblages found throughout the Argentine continental shelf, including the seas around the Falkland Islands (Bastida *et al*, 1992). Although fifteen animal phyla were identified over the survey area, analysis of community structure was based only on the molluscs, bryozoans and echinoderms, which were each present in most samples. Polychaetes were noted as being 'relatively abundant', but were not included due to insufficient taxonomic knowledge. Experience from similar sediments in other shelf areas suggests that polychaetes may make up 50% or more of the macrofauna. Two of the sampling stations are of direct relevance to the present study area, lying to the west of Tranche F in 178 and 188 m water depth. In addition, two stations lie between the northern Tranches and the coast of the Falkland Islands, at depths of 152 and 154 m. The results of a cluster analysis divided the Argentinean continental shelf into three areas (Figure B.9a). The species assemblages at the four stations close to the Falkland Islands showed consistency with others (area C) occupying a large area influenced by the cold and productive waters of the Falkland Current in the deeper waters (generally >100 m) of the continental shelf. A total of 152 species were found in this area, although this only represents a part of the fauna, as discussed above. Over 16% of the species found were exclusive to this deep-water area, which was richer in terms of number of species than the shallower areas of the shelf.

Figure B.9a Faunal groupings defined by cluster analysis of stations
(Source: Bastida et al, 1992)

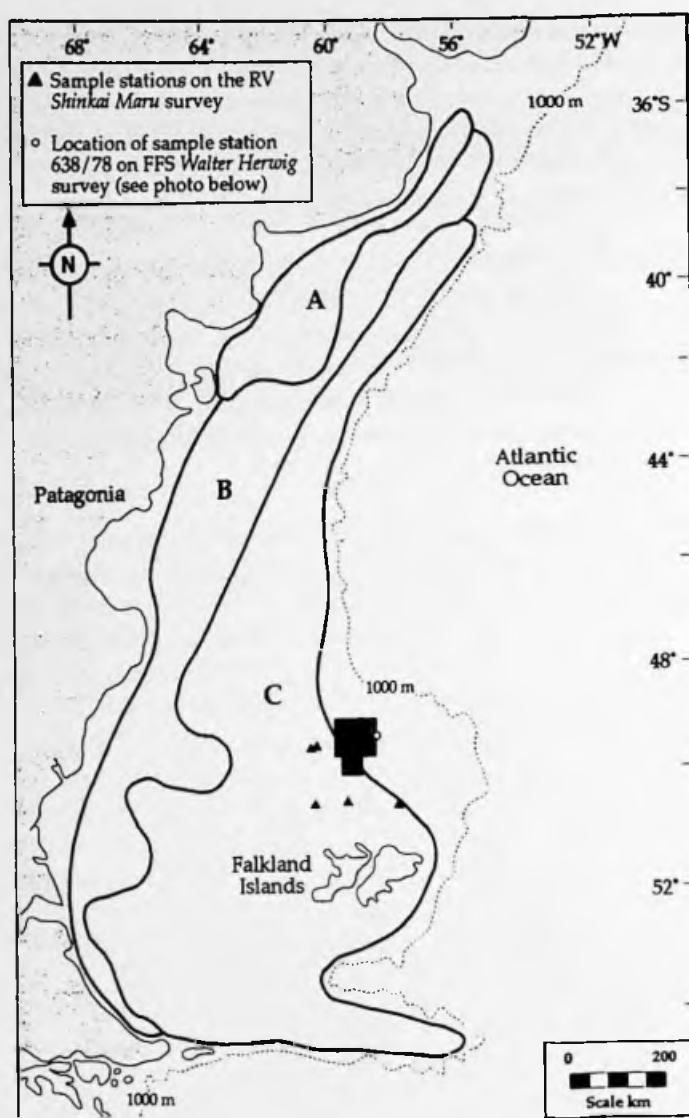
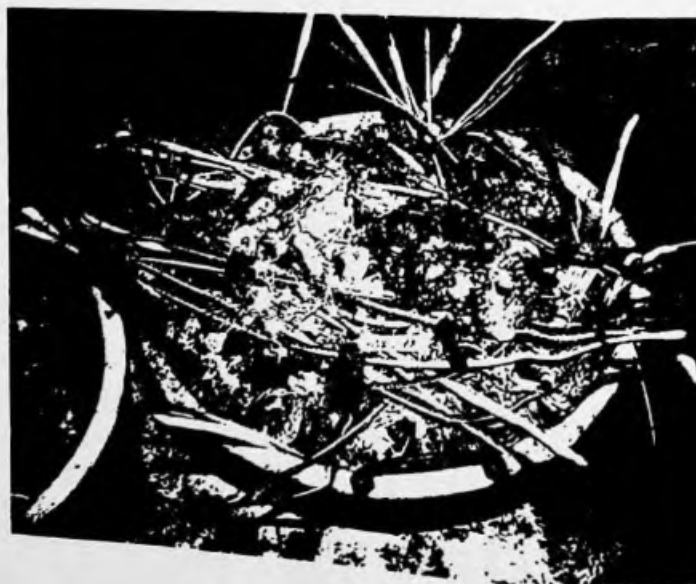


Figure B.9b Epifauna recovered from sample station 638/78 (FFS
Walter Herwig survey) (Photo by Dieter Walossek)



Qualitative data on larger epifauna are available from six stations sampled in the area of the shelf break (203-232 m) southeast of Tranche F, sampled by Rockhopper trawl during a research cruise conducted in November 1994 by the Falkland Islands Fisheries Department. These suggest a degree of spatial heterogeneity of sediment and community type in this area. Two of the stations yielded catches of the scallop *Chlamys patagonia*, associated with soft seabeds, while another was characterised by the presence of sea urchins and large sponges, indicating harder (rockier) ground (Conor Nolan, pers comm). Other invertebrate species caught included the crab *Peltarian spinulosum* and prawn *Thynops birsteini*.

Intensive sampling of the benthos all over the Argentine continental shelf, from Brazil down to the Falklands and from coastal areas down to the beginning of the continental slope, was carried out by benthic trawl during cruises of the German FFS *Walther Herwig* conducted in 1966, 1968, 1971 and 1978. The animal material collected is housed at the Hamburg Zoological Museum, and has given rise to numerous publications on different animal groups encountered, including ascidians, corals, polychaetes and molluscs. 'Antarctic' fauna, including the area up to and around the Falkland Islands, has been studied based on collections taken by cruises of the USNS *Eltanin* (1962-66). The work confirmed a high diversity and abundance of polychaetes at all depths, and indicated that they are important in turning over the sediments and in supporting larger animals which are bottom-feeders (Hartman, 1967). Several new genera and species were found only in the Falkland Islands, including the scaleworm *Dilepidonotus falklandicus* and orbiniid polychaete *Falklandiella annulata* (both found at depths of between 646 and 845 m), although it is not known to what extent these species may occur further north on the Argentinean shelf. These depths were also characterised by large numbers of the quill worm *Hyalinoecia tubicola*. Abyssal depths (>2,000 m) around the Falklands exhibited a fauna similar to that found in areas further south.

In order to increase the knowledge on the benthic habitats in the vicinity of the Tranches north of the Islands the operators have committed to undertake a joint industry seabed sampling survey around their proposed well locations prior to drilling operations. The samples collected during the survey will be analysed for benthic species in addition to other sediment characteristics.

B.5.4 Fish stocks

The majority of data on fish stocks in Falklands waters have come from fish catch statistics or relate to those species of commercial value.

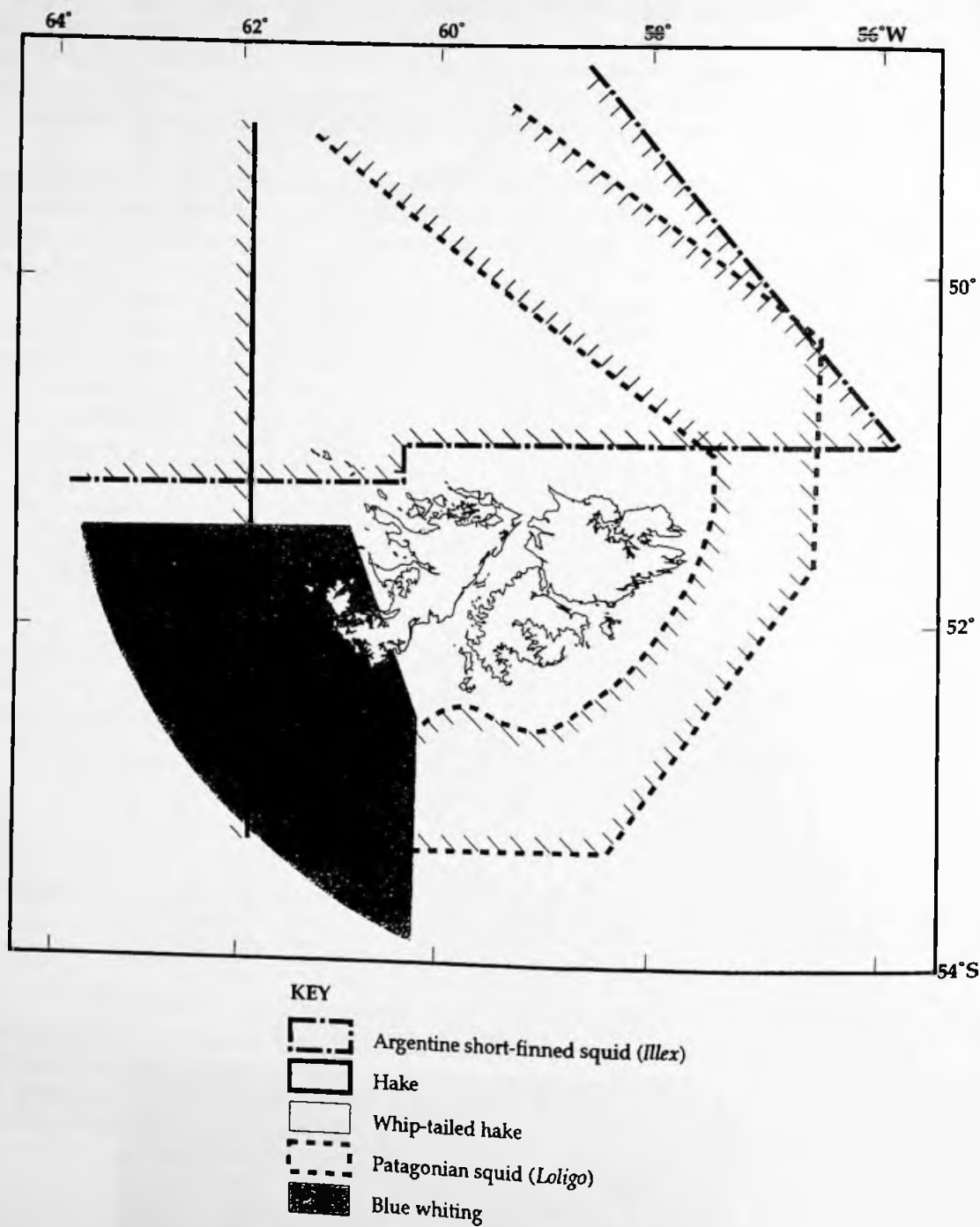
Demersal species

Demersal fish stocks in the offshore Falklands and study area are comprised of the common hake (*Merluccius hubbsi*), patagonian hake (*Merluccius polylepis australis*), hoki or whiptail hake (*Macruronus magellanicus*), southern-blue whiting or southern poutassou (*Micromesistius australis*), kingclip (*Genypterus blacodes*), skate and ray species, Antarctic cod (*Notothenia* spp) and red cod or salilota (*Salilota australis*). Figure B.10 shows the distribution of the main fish species off the Falkland Islands.

Hake

The patagonian hake and the common hake are similar species and often regarded together in catch statistics. The common hake is distributed mainly in the offshore waters to the north of the Falklands as opposed to the Patagonian hake, which is found to the south of the islands. The hoki or whiptail hake population is also concentrated in the open sea to the north of the Falkland Islands. Hake undertake diurnal feeding migrations and are found near the seabed during the day and towards the surface at night. Spawning of the common hake and Patagonian hake is thought to take place from June/August and September/October respectively. Spawning grounds and nursery areas of the species have not been identified, although it is believed that they lie outside the Falkland Islands Interim Conservation and Management Zone (FICZ) and that recruitment within Falklands waters is based upon migration.

Figure B.10 Zones of main fish and squid species found off the Falkland Islands (Strange, 1992)



Blue whiting

Southern blue whiting are a food source for the Patagonian hake and as such the two species show a similar distribution. Like hake, whiting undergo a diurnal migration where they ascend away from the seabed during the night. Southern blue whiting are found extensively around the Falkland Islands from approximately 45°S to 55°S and it is estimated that as much of 90% of the stock is within the FICZ (Grzebielec and Trella, 1994). The fish feed extensively on krill and small crustaceans but also feed on copepods, amphipods, octopus and small fish.

The southern blue whiting of the Falkland-Patagonian region are characterised by the fact that the females are larger than the males and grow more rapidly to reach sexual maturity at a larger size (Lisovenko, Barabanov and Yefremenko, 1980). The species migrate from deeper to shallower waters to spawn in the winter to spring period, from August to September. In recent years it has been observed that the greatest concentration of young fish have been found from August to October in the region southeast of the Falkland Islands. This suggests that the spawning and nursery areas are located to the southeast of the Falklands outwith the present study area (Lisovenko, Barabanov and Yefremenko, 1980). After spawning the fish migrate to deeper water, dispersing south and west over the Patagonian shelf.

Cod

Antarctic cod are one of the most common fish in Antarctic and subantarctic waters, and 16 species have been recorded in Falklands waters. Of these the dominant species are *Notothenia ramsayi* (no common name) and yellow belly (*Notothenia macrocephala*). These species are common in nearshore waters in summer, but migrate to deeper waters during the winter.

Pelagic species

Little data is available on pelagic fish stocks offshore the Falkland Islands.

The Falkland herring (*Sprattus fuegensis*) is known to be present, although there are no biomass estimates available for the population of either of these species. It is also believed that small numbers of tuna (*Thunnus* spp) may pass through Falklands waters. Little is known about the movement of this species although the stranding of individuals suggests that relatively large populations are present and may travel along migratory routes close to the islands.

Important fish stocks can be present in the northern Tranches, and that at times these stocks can include commercially important species. Fishing effort in the study area of the northern Tranches is discussed in Section B.9.1.

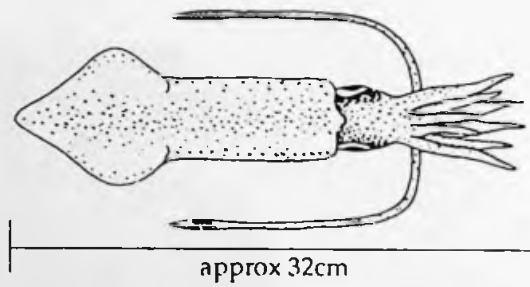
B.5.5 Squid

Three main species of squid are found in Falklands waters; the Patagonian or common squid (*Loligo gahi*), Argentine short-finned squid (*Illex argentinus*) and the Short fin, Sevenstar flying or redsquid (*Martialia hyadesi*). Generally cephalopods are short lived with a life span of approximately one year and a monocyclic sexual system. This means that if breeding is synchronous, the generations may not overlap and no spawning stock of animals is carried over from one year to the next. In this case annual recruitment contributes almost the entire stock of squid, the abundance of which may vary significantly from year to year (Pierce and Guerra, 1994).

Patagonian squid (*Loligo*)

Patagonian squid are common in waters off the east coast of the Falklands and throughout the study area, to depths of about 400 m (Strange, 1992). Studies on the food type of the Patagonian squid has shown that they feed primarily on one species of crustacean, belonging to the genus *Euphasia* (Guerra, Castro and Nixon, 1990). The squid collect in very large numbers and are one of the smallest squid species, reaching a maximum size of 32 cm. The maximum life span of this species is a little over one year for males and approximately one year for females (Hatfield, 1990).

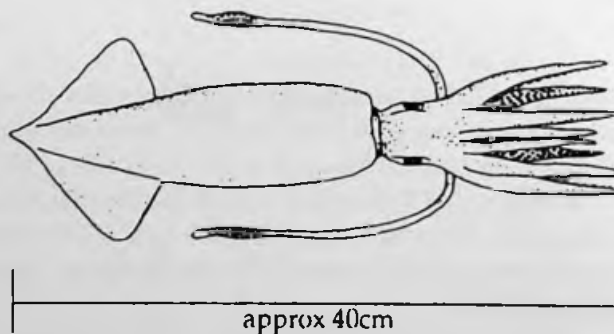
There are two main populations of Patagonian squid, distinguished by their spawning period. One population spawns around March/April (autumn) and the other in September/October (spring). Of the two populations the spring spawning group is the larger. There is evidence to suggest that the species spawns in shallow waters where the female squid produce large amounts of gelatinous spawn on the sea bottom, after which both adults die. Once hatched the next generation migrate offshore in schools, where they feed grow and mature before returning to the shallow spawning grounds to complete the life cycle (Hatfield, 1996).



(Strange, 1992)

Argentine short-finned squid (*Illex*)

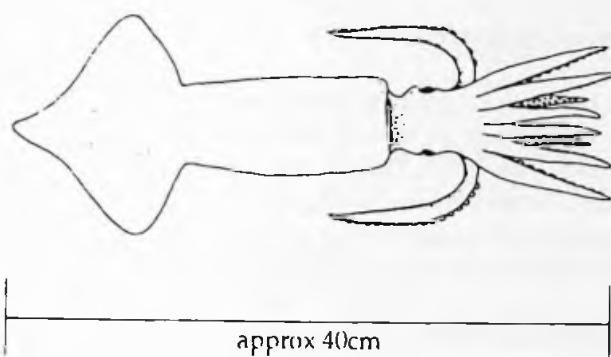
The Argentine short-finned squid are active predators feeding on krill, fish and other squid. Like the Southern blue whiting their distribution is closely connected to that of the hake, their main predator. The squid spawn in the winter months in grounds to the north of the Patagonian shelf. The juveniles develop in the Falklands current or Brazil current and feed over the shelf area. In late summer the squid migrate south to the northern Falkland waters, against the flow of the Falkland current. In the summer/early winter the squid return north to spawn in May after which they die at around one year old.



(Strange, 1992)

Short-fin squid

The short-fin squid species may also be found in Falklands waters in the study area. The population is believed to be particularly numerous near South Georgia (south of 50°S) and in waters south of Tierra del Fuego (55°S) (Strange, 1992). The species is of a similar size to *Illex* with a mantle length of approximately 40 cm. Little is known about the life cycle of the species.



(Strange, 1992)

B.5.6 Shellfish

Little data exists on the distribution and abundance of shellfish species of the Falkland Islands. Species within the shallow inshore waters of the islands include the softshell red crab (*Paralomis granulosa*) and the king crab (*Lithodes antarcticus*). Red crab inhabit relatively shallow water ranging from 10-40 m depth. The species prefers sheltered environments and occurs over a wide variety of sediments from hard mud to stones and mussel beds, although it generally avoids soft mud and rocky substrates (Hoggarth, 1993 cited in Brown and Root, 1997).

The greatest concentrations of red crab are found in kelp beds along the southeast coast of the Falkland Islands on Lafonia. The species are believed to move from the shallow water environment to deeper waters in spring to moult and then mate. The eggs of the red crab are thought to hatch between August and October in the summer (Hoggarth, 1993 cited in Brown and Root, 1997).

B.5.7 Marine mammals

The waters of the Falkland Islands host a wide variety of marine mammals which belong to two main groups, cetaceans (whales, dolphins and porpoises) and pinnipeds (seals). The cetaceans are comprised of seven species or subspecies of the sub-order Mysticeti (whalebone whales) and 16 species of the sub-order Odontoceti (toothed whales, dolphins and porpoises) which are listed in Table B2.

There are no complete studies or data available which detail the offshore abundance or distribution of cetaceans in the South Atlantic. The most comprehensive accounts of whales and dolphin movements have been compiled from ships sightings, strandings and commercial whaling records.

It is probable that small cetaceans (such as dolphins and porpoises) may be found all around the Falklands as they feed upon squid and fish. Baleen whales (Mysticeti) feed on small shoaling fish or swarms of krill and may be found where high concentrations of lobster krill are located, such as the continental shelf edge including the area of the northern licence Tranches. Large toothed whales, such as the sperm whale feed on large squid and are likely to frequent deeper water off the continental shelf.

- The distribution of some species may be seasonal and dependant upon the movement of their prey or migration patterns. For example, pods of killer whales have been observed to follow the breeding stages of seal colonies. It is also known that humpback whales (a large baleen whale species) frequent the waters of the Falklands as they migrate to and from their calving grounds off Brazil and Africa in spring and autumn.

In view of the absence of any detailed data and the location of the northern Tranches the operators plan to undertake a seabird and cetacean survey covering the area licensed.

B.5.8 Offshore concentrations of seabirds

The Falkland Islands have a rich seabird avifauna comprising 22 species (excluding ducks and waders but including gulls and terns) which have an affinity with the Subantarctic and adjacent cold temperate regions (Croxall, McInnes and Prince, 1984). There is however, virtually no data detailing the distribution or behaviour of seabird species in the offshore waters of the Falkland Islands. Many of the data sources are concerned with the location and status of onshore breeding locations within the Islands with little information available on the species once they have left the inshore sites.

In order to increase the understanding of the offshore distribution of seabird species, the Falkland Islands Exploration and Production Environmental Forum is considering an offshore seabird and cetacean survey.

In the absence of any such data at the present time Section B.6.2 of this report describes coastal sites of importance for the main bird species, the status and significance of these birds and provides general details of the species which may be encountered in the offshore study area.

B.6 Coastal and inshore characteristics

Coastal and inshore areas of the Falkland Islands will not be subject to impact from routine exploration drilling activities. The only potential impact would be in the unlikely event of a large oil spill.

B.6.1 Nearshore and coastal habitats

The Falkland Islands are situated in the South Atlantic, between 51°00'S - 53°00'S and 57°00'W - 62°00'W approximately 300 miles (483 km) from the South American mainland. The archipelago comprises two main Islands (East and West Falkland) and over 700 smaller islands, with a total area of approximately 4,700 square miles (12,173 km²) (FIG, 1995). An environmental baseline survey of coastal and shallow marine habitats of the Falkland Islands was undertaken during 1995 and 1996. The following sub-sections details the main environmental features of the coastal and nearshore habitats.

Morphology and topography

The Falkland Islands are composed of Palaeozoic and Mesozoic sediments which have undergone considerable folding to produce a generally rugged and hilly landscape. The ridges of hills are bounded by generally low and rocky coasts. The coastline of the islands is deeply indented and has a number of submerged coastal valleys (rias) and inland waters which provide well sheltered natural harbours with good holding ground. The shoreline of West Falkland is bounded by steep cliffs to form a ridge which runs along the Falkland Sound.

Table B2 Cetaceans of the Falkland Islands

Sub-order	Mysticeti: Whalebone whales		Status	(1)
Family	Neobalaenidae: pygmy right whales pygmy right whale	<i>Caperea marginata</i>		K
Family	Balaenidae: right whales southern right whale	<i>Eubalaena australis</i>	breeding	V
Family	Balaenidae: rorquals blue whale fin whale sei whale minke whale humpback whale	<i>Balaenoptera musculus</i> <i>B. physalus</i> <i>B. borealis</i> <i>B. acutorostrata</i> <i>Megaptera novaeangliae</i>	 migrant migrant	 E V V K V
Sub-order	Ordontoceti: Toothed whales and dolphins			
Family	Physeteridae: sperm whales sperm whale	<i>Physeter catodon</i>	migrant	K
Family	Ziphiidae: beaked whales Arnoux's beaked whale southern bottlenosed whale Cuvier's beaked-whale Layard's strap-toothed whale Gray's beaked whale Hector's beaked whale	<i>Berardius arnuxi</i> <i>Hyperoodon planifrons</i> <i>Ziphius cavirostris</i> <i>Mesoplodon layardii</i> <i>M. grayi</i> <i>M. hectori</i>		K K K K K K
Family	Delphinidae: dolphins killer whale long-finned pilot whale dusky dolphin hourglass dolphin Peale's dolphin bottlenosed dolphin southern right whale dolphin Commerson's dolphin	<i>Orcinus orca</i> <i>Globicephala melas</i> <i>Lagenorhynchus obscurus</i> <i>L. cruciger</i> <i>L. australis</i> <i>Tursiops truncatus</i> <i>Lissodelphis peronii</i> <i>Cephalorhynchus commersonii</i>	breeding breeding breeding breeding	K K K K K K K K
Family	Phocoenidae: porpoises spectacled porpoise	<i>Phococena diopatra</i>		K

(1) IUCN Category.

E Endangered. Survival unlikely if casual factors continue.

V Vulnerable. Likely to become endangered if casual factors continue.

K Insufficiently known. Suspected to be rare, vulnerable or endangered.

Intertidal habitats

The intertidal habitats of the Falkland Islands range from rocky shorelines and boulder shores which are subjected to high energy waves, moderately exposed stoney shores, sandy and muddy shorelines characteristic of low energy environments. With the exception of seaweed flora, little information exists on the shallow marine environment of the Falkland Islands. To date there has not been a complete survey of the coastline around the islands, although Falklands Conservation have surveyed selected locations around the islands.

Exposed shores

The high energy, exposed nature of the rocky shores, boulder shores and steeply sloping cliff shorelines excludes many of the species which inhabit the lower energy environments. The substrate provides a secure attachment for species such as mussels and limpets and for marine algae. Boulder shores and rockpools provide shelter for and prevent desiccation of marine organisms at low tide, and thus foraging grounds for bird species. High energy environments do not provide suitable nesting sites for birds, except at upper shore levels or on steep cliffs where exposure is reduced.

On more sheltered coastlines stoney shorelines with an average diameter of between 2- 300 mm occur. The smaller stones are highly mobile and the shifting nature of the beach prevents many organisms or algae from securing a foothold as well as reducing the availability of shelter. The lower degree of exposure enables some bird species to nest on the upper shore, although the majority prefer more sheltered locations.

Sheltered shores

Low energy environments characterised by sandy and muddy shores can support a wide variety of marine organisms and provide rich feeding grounds and nesting areas for bird species. Sandy beaches are found along the northern and eastern coasts of East and West Falkland and are often backed by dune systems which form the transition into the terrestrial environment. Lakes and ponds are also often found inland of these beaches and there are numerous inland freshwater bodies, especially in poorly drained areas.

Nearshore vegetation

Marine algae

The sublittoral environment of the Falkland Islands is relatively rich in species and can be divided into three main zones, each supporting a number of different marine algae. The first of these, the offshore zone, extends from depths of 4-30 m (Strange, 1992). This zone supports two of the most common forms of macroalgae in the islands, the Tree Kelp (*Lessonia flavicans*) and the Giant Kelp or Basket Kelp (*Macrocystis pyrifera*). The Giant Kelp is the most widespread and most common species of marine algae in the Falkland Islands. It forms a wide belt of growth in the offshore zone and in some regions may extend up to 0.6 miles (1 km) or more (Strange, 1992). The plant attaches itself to boulders and rocky substrates by holdfasts and has small gas filled bladders in the long fronds that maintain buoyancy. These fronds may grow to over 60 m in length and can act as a buffer for the shore by dissipating wave and current energy (Strange, 1992). The kelp forms a very important habitat and nursery area for marine species and a feeding and foraging area for a variety of birds and mammals, including penguin and seal species (refer to Sections B.6.7 and B.6.8).

Tree Kelp is an abundant kelp found on most open coasts. The algae is represented in the Falkland Islands by three species; *L. flavicans*, *L. frutescens* and *L. nigrescens*. The distribution of these species is not known, although it is believed that *L. flavicans* is the most common (Strange, 1992). In general *L. flavicans* is found in deeper water and is the only species that is not visible from the shore. Mature plants may reach several metres in height with a large trunk-like stem. Beds of Tree Kelp are often composed of dense masses of stems and leaves which form a fringe zone between the low water mark and the zone occupied by Giant Kelp. Like the Giant Kelp, Tree Kelp provides a valuable habitat for marine life.

The fringe zone extends from the extreme low water mark to offshore waters about 3-4 m deep. Two large forms of seaweed grow within this zone, *Lessonia* and *Durvillaea* spp. The seaweed growing on the upper reaches of the fringe zone is frequently exposed at low tide.

The intertidal zone extends from the fringe zone and consists of the middle shore between average high and low water levels. This area supports some of the smaller algal species which are exposed during each tidal cycle (Strange, 1992). This zone also supports other seaweed species such as *Lridaea* spp, a brown-black algae which forms dense patches or beds on stoney substrates and *Ulva* spp, a green algae commonly known as sea lettuce. These species provide a valuable food source for grazing bird species such as Kelp Geese and occasionally Upland Geese.

Coastal vegetation

The flora of the Falkland Islands is diverse, comprising 92 introduced species and 164 flowering plants and vascular flora known to be native to the islands, 12 of which are endemic (WCMC, 1994). The following subsections describe the main coastal vegetation types of the Islands.

Tussock grass

Tussock grass (*Poa flabellata*) is the most important vegetation type in the littoral zone, that is the area extending from the high water mark of normal tides, inland. Much of this area is influenced by the sea and is subject to sea spray, occasional flooding and storm action. Tussock grass is of considerable ecological importance in the islands. The vegetation is crucial to the breeding activities of many of the seabird species and forms a valuable habitat for many others, as well as for some seal species and invertebrate fauna (Croxall, McInnes and Prince 1984).

Originally all coasts of the Falkland Islands had an extensive belt of tussock grass standing 3-4 m high (Croxall, McInnes and Prince, 1984). However, the introduction of species such as rabbits, cattle, sheep, feral goats and pigs to the main islands has resulted in the large scale destruction of this habitat. Today tussock grass is typical of the smaller, offshore islands. The plant is generally restricted to areas below 200 m elevation and within 300 m of the coast (Croxall, McInnes and Prince, 1984). Strange, 1992 estimates that of an original area of tussock grass believed to be 54,788 acres (22,181 ha) prior to settlement of the islands, only 10,272 acres (4,159 ha) remains. This represents a loss of over 80% of this type of habitat.

Two main plants may be found growing in association with tussock grass, sword grass or cornflag (*Carex trifida*) and wild celery (*apium australe*). Sword grass is usually confined to the outer perimeter of tussock grass, growing to a height of between 0.5-1 m (Strange, 1992). The abundance of sword grass in the Falklands has been reduced to its present rare status, probably through the introduction of livestock and is only found on some of the outer tussock islands. Wild celery is a perennial herb which prefers damp coastal regions and commonly grows with tussock grass. Within the shelter of tussock the herb may reach heights of up to 1 m. In exposed situations it is generally grows to only 10-30 cm high (Strange, 1992).

Tussock heath formation

This plant community is formed where open or sparse tussock grass is interrupted by plants of oceanic heath formation and is typical of the smaller offshore islands. These communities generally lack dwarf shrubs, ferns and White Grass which may be found in some oceanic heath formations. The plants that may be present within tussock heath formation include species such as native woodrush (*Luzula alopecurus*), yellow daisy (*Senecio littoralis*) and creeping pratia (*Pratia repens*) which may be dominant or co-dominant. Less commonly, Mountain Blue Grass (*Poa alopecurus*), Blue couch-grass (*Agropyron magellanicum*), Marsh Daisy (*Aster vahlia*) and Wild Strawberry (*Rubus geoides*) may also be found depending upon environmental conditions.

Oceanic heath

Oceanic heath is the dominant vegetation type in the Falklands and most of the islands are covered by some plant communities from this formation. The heath provides shelter for a variety of flowering plants, invertebrate species and inland birds and may colonise areas where tussock grass has been destroyed. The majority of the plants integrate and produce a complex variety of facies however, the communities can be generally divided into two types depending upon the dominant vegetation; dwarf shrub heath and grass heath.

Dwarf shrub heath appears as irregular patches of dark brown vegetation, generally formed by Diddle-dee or Red Crowberry vegetation (*Empetrum rubrum*) on well-drained, drier areas such as hard peat. Diddle-dee is commonly associated with other shrubs such as Mountain berry (*Pernettya pumila*), Christmas bush (*Baccharis magellanica*), dark green mats of *Astelia* and ferns (*Blechnum* sp.).

Grass heath is dominated by rough grasses such as the light yellow White Grass. White grass is the most common and widespread of the vegetation types below 100 m forming dense meadows on level and undulating land.

B.6.2 Coastal concentrations of seabirds

In general, seabirds are more abundant on West Falkland than on East Falkland, particularly if the southern island of Beauchene is excluded. The large number of small, undisturbed islands in the area host important populations of Black-browed albatross, thin-billed prion and most other Procellariiformes. Petrels, such as White-chinned petrel, great shearwater and Grey-backed storm petrel, as well as gull and tern species are confined to or more abundant on East Falkland, many with important breeding sites to the east or north-east of the Islands. This may be due to the greater extent of flat coastal land which is preferred by the species (Croxall, McInnes and Prince, 1984).

Shags, Gentoo penguins and Magellanic penguins feed predominantly inshore and are fairly widely and evenly distributed along the coast. Most of the remaining breeding species of the islands, with the exception of Southern Giant petrels and Falkland Skuas which are linked to seal and penguin colonies, are highly colonial and relatively pelagic away from the coast (Croxall, McInnes and Prince, 1984). The abundance of these species along the west coast of West Falkland may be linked to the distribution of suitable feeding grounds and the productive marine shelf communities of the Falkland Islands and South America. These shelf communities are located within 100 km of New Island and approximately 50 km north of Steeple Jason Island (Croxall, McInnes and Prince, 1984).

In summary, the most important breeding sites of the seabird species are shown in Figure B.12. Of the sites illustrated, many are important for one or two breeding species. The sites of Kidney Island, New Island and the Jason Islands group are of importance for many species and thus represent the most important sites for breeding seabirds in the Falkland Islands.

A summary of the main characteristics of the main species is provided below.

As discussed in Section B.5.8 of this report the likely bird species to be present offshore the Falkland Islands can be indicated by examining existing data on the known coastal concentrations of seabirds. The main breeding sites are illustrated in Figures B.11 and B.12.

Penguins

Of the seabirds found in the Falkland Islands, the particular group of interest are the penguins. Sixteen species of penguin are found in the Southern Hemisphere, occurring mainly between 45°S and 60°S. Of these species five breed on the Falkland Islands; the King penguin (*Aptenodytes patagonicus*), Rockhopper penguin (*Eudyptes chrysocome*), Gentoo penguin (*Phygoscelis papua*), Magellanic penguin (*Spheniscus magellanicus*) and Macaroni penguin (*Eudyptes chrysolophus*).

Monitoring data collected by Falklands Conservation had suggested a decline in the number of breeding populations of Gentoo and Rockhopper penguins. In response to this a complete survey was conducted to record the size and location of rockhopper, king and gentoo penguin populations over the summer of 1995/96 (Bingham, 1996a). The aim of the census was to determine the overall status of the Falkland populations for the species and to record the current size and location of each of the individual breeding colonies. The results of the survey are referred to under the following descriptions of the individual species.

Rockhopper penguin

The Falklands rockhopper penguin is one of three recognised sub-species of rockhopper found in sub-Antarctic islands. They are the most common of the Falklands penguins, breeding at 35 sites around the islands, concentrating mainly on rocky cliffs with deep water approaches, on the west coast of the archipelago (Strange, 1992).

Rockhopper penguins are highly pelagic species which leave coastal breeding sites and migrate offshore during the non-breeding season. The birds are opportunistic feeders and consume varying proportions of crustacean, squid and some fish. Feeding is concentrated where these species are abundant. Rockhopper penguins may therefore be encountered in the area of proposed exploration drilling operations, particularly around the shelf edge.

Male rockhopper penguins return to breeding sites in early October and are followed by the females approximately 10 days later. During this time colonies are very large and can contain many thousands of breeding pairs. The nests are usually a depression between rocks or tussac and are occasionally lined with grass, mud or peat. Egg laying begins in the first week of November, although variations do exist between colonies on the southeast of the islands (Beauchene Island) and those on the west (Steeple Jason Island). The chicks moult during February and leave the colonies by late February or early March. The adults temporarily move offshore to feed for a couple of weeks before returning to the sites to moult. After the annual moult the adults return to sea around mid April. Figure B.13 shows the chronology of rockhopper activities during the year.

The 1995/96 survey of rockhopper penguins over the 36 breeding sites in the Falkland Islands showed the present population to be around 300,000 pairs, over half of the global population and therefore the most important site in the world for this sub-species. Of the population, 21,000 pairs were recorded on East Falkland, 11,000 pairs on West Falkland and 265,000 pairs on the outer islands (Bingham, 1996a). The most important breeding sites within the islands are found at Steeple Jason, Beauchene Island and Grand Jason as the three sites support 38%, 25% and 11% of the total Falkland population, respectively (Bingham, 1996a). The locations of these breeding colonies are shown in Figure B.14.

Figure B.11 Wildlife reserves and important breeding sites for Falklands seabirds and seals
(adapted from Croxall, McInnes and Prince, 1984 and Strange, 1992)

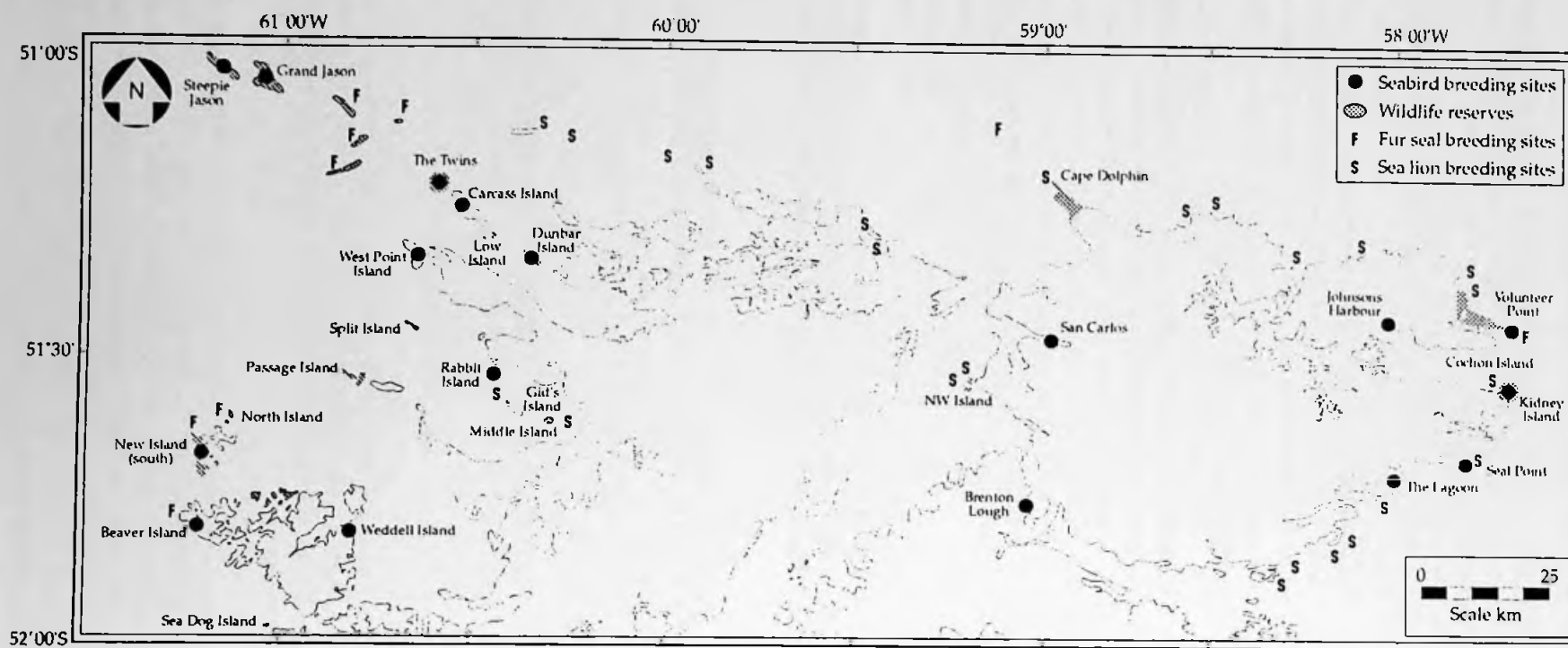


Figure B.12 Breeding sites of seabirds in the Falkland Islands (adapted from Croxall, McInnes and Prince, 1984 and Strange, 1992)

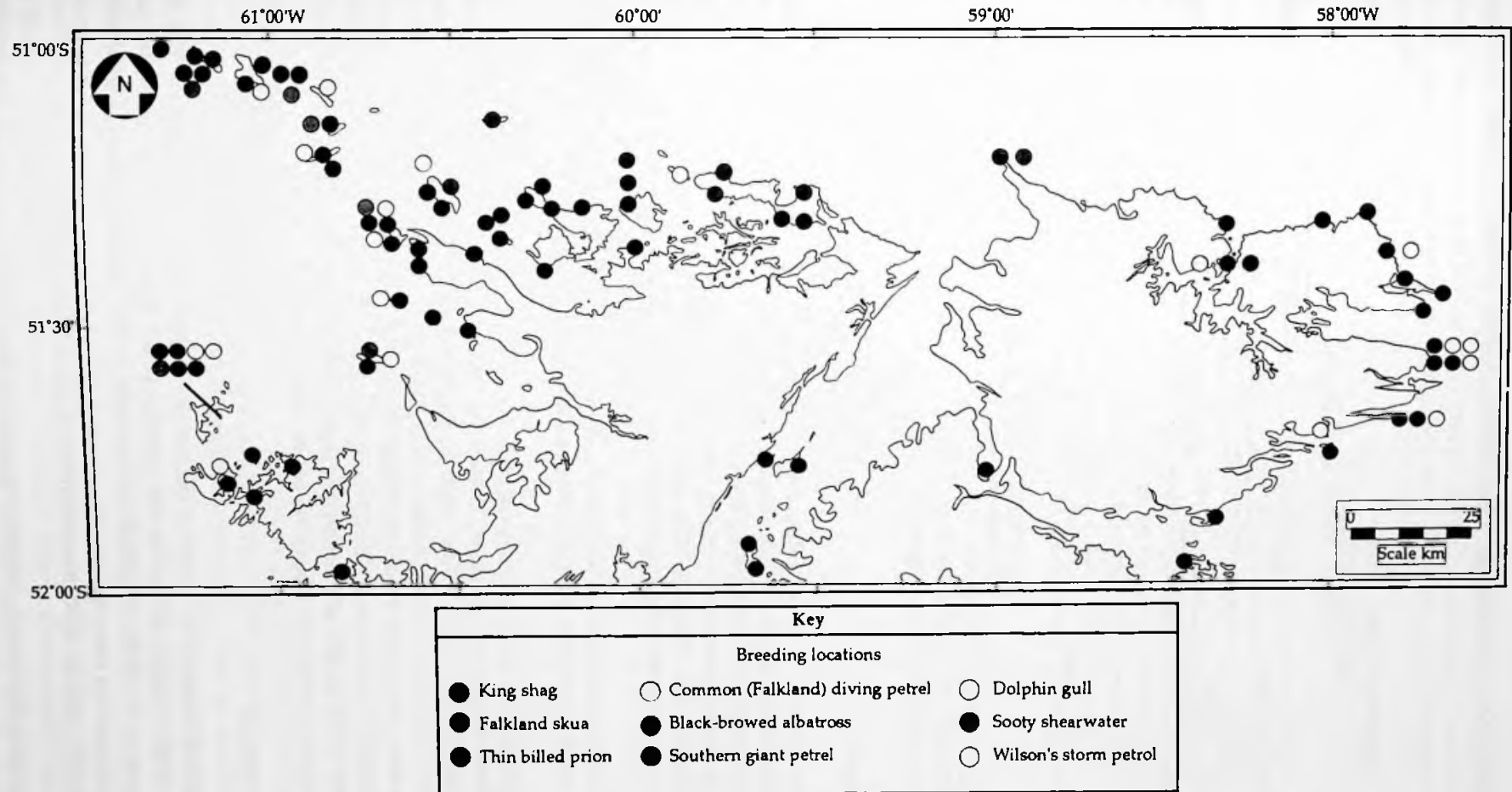
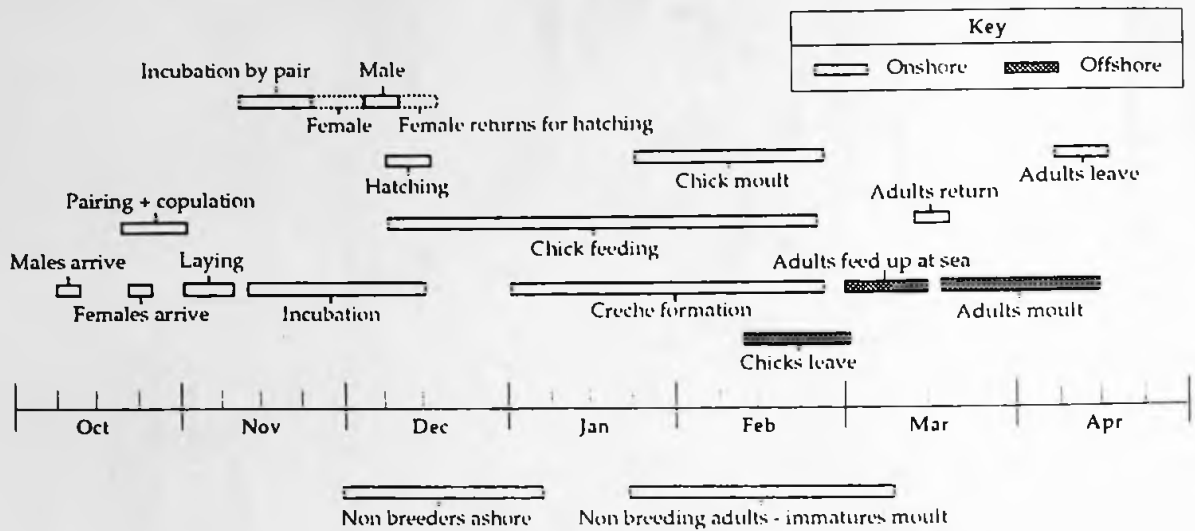


Figure B.13 Chronology of Rockhopper Penguin activities (Adapted from Strange, 1992)



Gentoo penguin

The gentoo penguin is fairly widely distributed in the Falkland Islands and is scattered around the archipelago. Breeding colonies are compact consisting of 300-500 pairs, although in places the colonies may collectively form concentrations of several thousand birds (Strange, 1992). The majority of breeding sites are situated on low coastal plains, fairly close to sandy or shingle beaches which they use to gain access to the open sea. Breeding takes place between September and January. By late January the young undergo a moult into their adult plumage and begin to enter the sea in late February/early March.

Gentoo penguins are opportunistic feeders and take equal proportions of fish, krill and squid. The adults remain around the colonies throughout the year and conduct feeding trips on a daily basis.

The Falkland Islands are of international importance for this species as the most important out of 12 major breeding sites for gentoos (Bingham, 1996b). The 1995/96 population of the Falkland Islands was about 65,000 breeding pairs (22% of the world's population) comprised of populations ranging from 7 to 5,100 pairs (Bingham, 1996a). Gentoo colonies are widespread throughout the islands. The most important sites were at Bull Point (East Falkland), Albemarle and Carcass Bay (West Falkland) and on the islands of New, Steeple Jason, Grand Jason, Saunders and Speedwell, as shown in Figure B.14. The distribution of the gentoo population was 16,000 pairs on East Falkland, 24,000 pairs on West Falkland and 25,000 pairs on the outer islands (Bingham, 1996a).

Magellanic penguin

The Magellanic penguin is numerous around the coast of the Falkland Islands. The species nests in burrows which it excavates behind the coastline in any soil type. On occasions the penguin utilises natural cracks and hollows in the rocks and the base of cliffs. Breeding takes place September to January. Following this adults leave the colonies to feed at sea before returning to their nests to moult in March. They vacate the nests in April, from when their whereabouts is largely unknown.

Magellanic penguins are opportunistic feeders and take varying proportions of fish, squid and lobster krill. They may therefore be encountered in the productive waters of the offshore Tranches.

The Falkland Islands is believed to hold an important proportion of the world population of Magellanic penguin, although not as important as the sites of southern Chile and Argentina (Croxall, McInnes and Prince, 1982). It is however known that large populations exist on the north and northeast coast of East Falkland (Strange, 1992).

King penguin

The Falkland Islands represents the northern extremity in the global range of the king penguin. The king penguin is the largest and most highly coloured of the Falkland breeding species. The species prefer low coastal plain sites close to sheltered sandy beaches. They do not make a nest but lay one egg, which they hold on their feet for the entire incubation period of about 55 days. The chicks overwinter at the breeding colony and are reared over 11-12 months. As the complete breeding cycle takes around 14 months, a pair will only breed twice every three years. This breeding cycle results in individual birds breeding out of phase with their predecessor, producing large chicks and eggs in the same colony at the same time.

The feeding behaviour and diet of the King penguins is not known. It is believed that they feed mainly on small fish and take little squid and have a wide range at sea.

The population study of 1995/96 recorded a population of approximately 400 breeding pairs. The population is of local importance and represents only 0.1% of the world's population. The only breeding site on the island was found at Volunteer Point (Figure B.14), although individuals were found nesting singly amongst gentoo penguins at other locations.

Macaroni penguin

The macaroni penguin is the rarest of the Falkland Island breeding penguins but of only local importance as the species breeds extensively at other sites outside of the islands. It is thought that less than 300 pairs occur in the archipelago and only 20 pairs of macaroni penguins have been recorded in the Falkland Islands, mainly as single pairs amongst larger numbers of rockhopper penguins (Strange, 1992). Large numbers of macaroni penguins breed in the south of the south Atlantic, although little is known about the breeding, feeding grounds and migratory movements of the species. The diet of the species consists of krill in the breeding season.

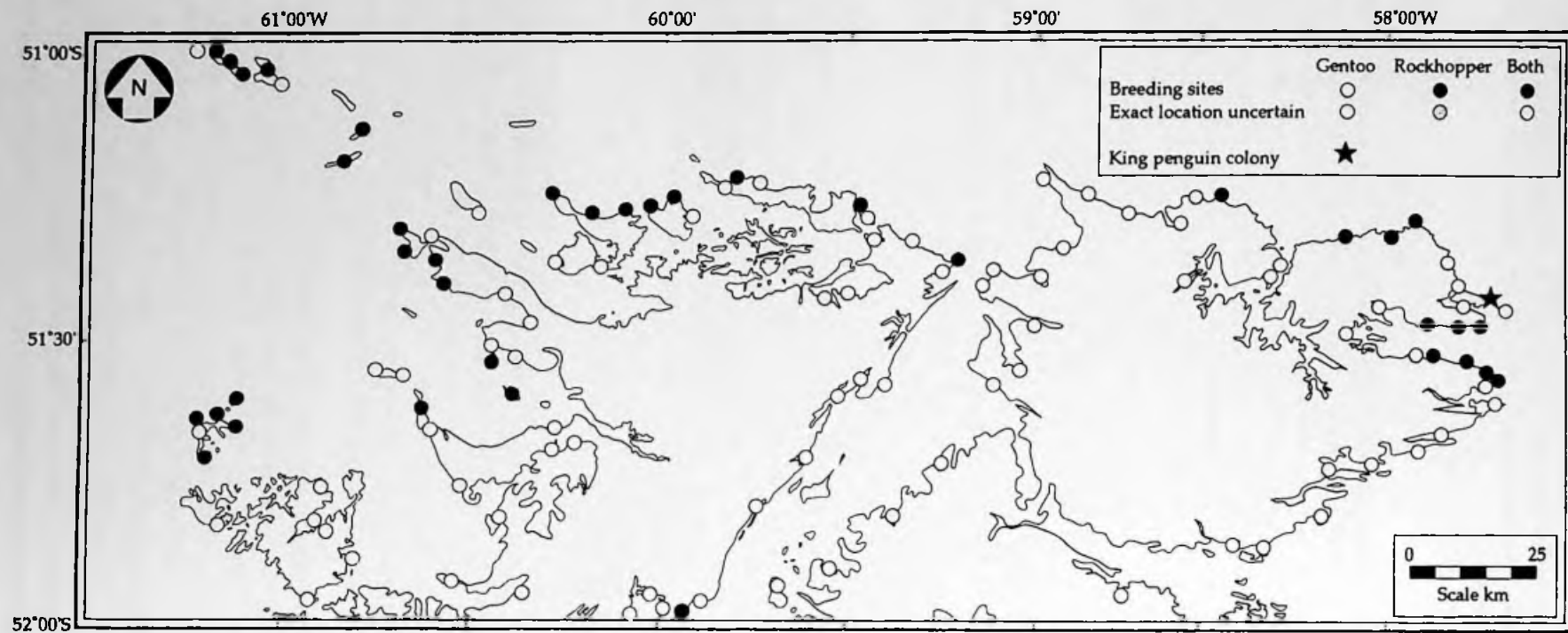
Albatross

There are nine species of albatross in the southern ocean, seven of which have been recorded at the Falkland Islands. The wandering albatross (*Diomedea exulans*) and the royal albatross (*Diomedea epomophora*) are very large birds which are regular offshore visitors and may be encountered in the area of proposed exploration drilling operations. The yellow-nosed albatross (*Diomedea chlororhynchos*), sooty albatross (*Phoebastria fusca*) and light-mantled sooty albatross (*Phoebastria palpebrata*) are vagrant offshore birds and are not expected to be found in the northern licence Tranches in any significant numbers.

The black-browed albatross (*Diomedea melanophrys*) is the only species of albatross that is resident in the Falkland Islands and is regarded as the most common and widespread of all the albatross species. Black-browed albatross breed at approximately 12 sites around the Falklands, often in association with rockhopper penguins. Particularly large colonies are found at the Jason Islands and Beauchene Island. The Falklands are of international importance for the species and have an estimated population of around 55,000 breeding pairs, approximately 85% of the world population (Bingham, 1996b).

Black-browed albatross return to the same nesting site each September to breed. The chicks are abandoned by the adults as they near fledgling and leave the nests in early April to search for food. The birds are scavengers and take a variety of food from the sea surface, notably lobster krill and squid.

Figure B.14 Breeding sites of Gentoo penguins, Rockhopper penguins and King penguins (adapted from Bingham 1996a; Croxall, McInnes and Prince, 1984 and Strange, 1992)



Procellariidae

The family Procellariidae include the prions, petrels, fulmars and shearwaters. Of the 15 species found around the Falklands, 6 breed on the islands. The status and significance of these are considered below.

Great shearwater (*Puffinus gravis*) breed at Kidney Island. The population at this site is small and is the only one confirmed outside the main population at Tristan da Cunha. The species return to breeding grounds in September. The young hatch in late December and depart in late April (Strange, 1992).

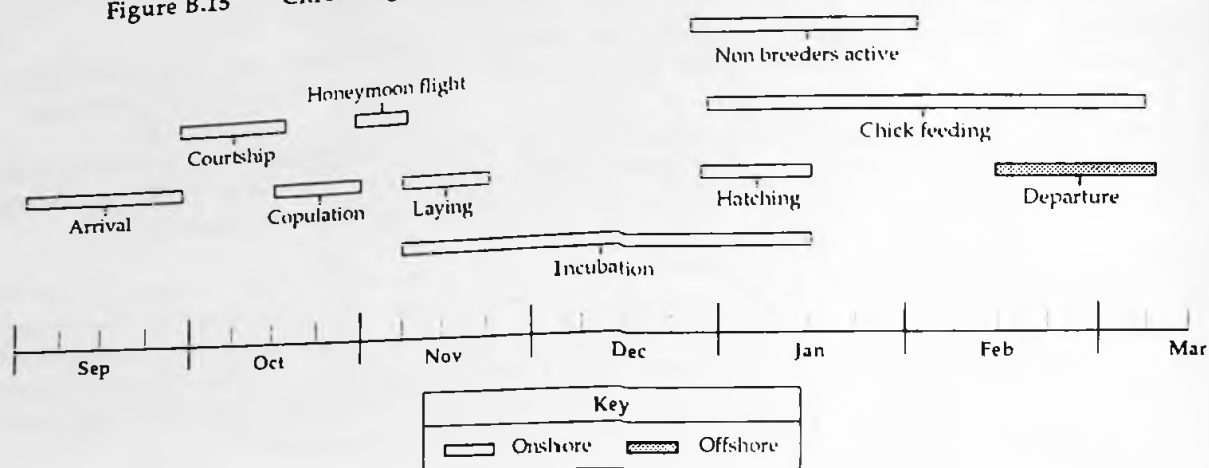
Sooty shearwater (*Puffinus griseus*) are common in Falkland waters, although few breeding sites have been identified within the islands. The main population within the Falkland Islands breeds at Kidney Island. Smaller populations of the species are found on the northeast coast of East Falkland, New Island and on Beauchene and Sea lion islands to the south of East Falkland. The species return to breeding sites in late September and the eggs hatch in mid-January (Strange, 1992). The majority of the adult birds leave the breeding sites by the end of March, followed by the young in mid/late April.

White chinned petrel (*Procellaria aequinoctialis*) breed at two sites in the Falkland Islands, Kidney Island to the east of East Falkland and New Island, west of West Falkland. The populations at these sites are relatively small, consisting of only a few hundred pairs in total (Strange, 1992). White chinned petrels return to breeding sites in mid October and egg laying commences late November, with hatching beginning in mid- January. Adult birds are most commonly observed at the breeding sites at night, but may also be seen returning during the day, particularly late in the breeding season. The young remain in the burrows for over 100 days and depart after the adults in late April/early May.

Southern Giant petrel (*Macronectes giganteus*) breed in small and locally distributed populations. Breeding begins when the birds return to former sites in September (Figure B.12). The birds lay a single egg in open nesting sites from mid October to early November. The incubation period of the species is around 58-60 days and the young fledge in late March (Strange, 1992). The current population of Southern Giant petrel is estimated at 3,200 pairs (Croxall, McInnes and Prince, 1984).

Four species of prion are found in the Falkland Islands, two of these, **thin-billed** (or slender-billed) **prion** (*Pachyptila belcheri*) and **fairy prion** (*Pachyptila turtur*) are breeding species. The thin-billed prion are the most common form of petrel in the Falkland Islands and are very abundant at New Island with populations nearly all confined to West Falkland and the extreme southwest of East Falkland. No reliable current population estimates are available, but it is likely that the population reaches one million pairs (Croxall, McInnes and Prince, 1984). It is generally accepted that the Falkland Islands are the main global site for this species. The chronology of thin-billed prion activities are shown in Figure B.15. The breeding cycle of the thin-billed prion begins in early September when the birds return to their breeding grounds. The species nest in underground areas varying from 1.5-230 m above sea level (Strange, 1992). Mating takes place in mid-October, egg laying begins in early November and the main hatching of the species takes place between late December and mid January (Strange, 1992). The young birds fledge and leave the colonies by early March.

Figure B.15 Chronology of thin billed prion activities (Adapted from Strange, 1992)



The only known breeding site for fairy prion in the Falkland Islands is Beauchene Island, to the extreme south of East Falkland, where the population is estimated at a few thousand pairs (Croxall, McInnes and Prince, 1984). As the species prefer boulder habitats it is possible that they breed elsewhere on the Falkland Islands however, alternative sites have not been investigated.

Hydrobatidae

The family Hydrobatidae comprise the storm petrels. Of the species breeding in the Falkland Islands, the population of **Grey-backed storm petrel** (*Garrodia nereis*) is believed to be an important one (Croxall, McInnes and Prince, 1984). The species nest in relatively exposed sites and is believed to be numerous at Kidney Island, where it forms shallow nesting burrows in tussock grass. Little is known of the species breeding biology, although it is known that the birds return to their nesting sites in October, begin egg laying in mid December and the newlyborn chicks leave in late March (Strange, 1992).

Wilson's storm petrel (*Oceanites oceanicus*) breed at several sites in the Falkland Islands in a number of different habitats ranging from rocky substrate to tussock grass. The main population is found at Beauchene Island with smaller populations on Grand Jason. The adults return to breeding grounds in early November, begin egg-laying from mid December until early January and the young fledge between mid-February until March (Strange, 1992).

Black bellied storm petrel (*Fregetta tropica*) are believed to breed at a number of offshore tussock islands around the Falkland Islands. Little is known about the breeding behaviour of the species beyond the fact that a single egg is laid that hatches in the second week of January (Strange, 1992).

Other seabirds species

Falkland skua (*Catharacta (skua) antarctica*) were originally regarded as endemic before a small population was discovered in southern Argentina. The Falkland Islands hold the majority of the world population of the species and are therefore of international importance. The current population of the species is estimated at 3,000-5,000 pairs (Croxall, McInnes and Prince, 1984). The species are widely distributed through the islands.

Common (Falkland) diving petrel (*Pelecanoides urinatrix berard*) is an endemic species to the Falkland Islands. The birds nest in burrows in a variety of habitats from low lying grassland areas, clay slopes and tussock grass but prefer sites close to the ground. The species is widely distributed on offshore islands with extensive populations found on Easterly Island, Sea Lion Island, Beauchene Island, Bird Island, Flat Jason, Elephant Jason and Steeple Jason Islands. Common diving petrels return to their breeding sites in early September to lay from October to November and the young fledge from mid-February (Strange, 1992).

King shag (*Phalacrocorax atriceps albiventer*) and **rock shag** (*Phalacrocorax magellanicus*) are common in the Falkland Islands, particularly in East Falkland. The total population of the species is significant but small in relation to the populations throughout southern Argentina and Chile (Croxall, McInnes and Prince, 1984).

Gull species which breed in the Falkland Islands comprise **Dolphin gull** (*Larus scoresbii*), **Kelp gull** (*Larus dominicanus*) and **Brown-hooded gull** (*Larus maculipennis*). The majority of these species are widespread throughout the southern hemisphere with the exception of Dolphin gull. The Falklands population of Dolphin gull is of important as the species is restricted in Southern Chile and Argentina.

B.6.3 Shore birds

Several of the birds that frequent the shore of the Falkland Islands are afforded protection through their international status, as discussed in the relevant sub-sections. The international conservation treaties of relevance to the species of the Islands are:

- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES regulates trade in wild animals and plants which are listed in three appendices. Species listed under Appendix I are currently threatened with extinction (peregrine falcon). Those listed under Appendix II are considered at risk and may become listed under Appendix I unless trade is controlled. Appendix II species are to be protected by the national legislation of the Contracting Parties (coscoroba swan, blacked-necked swan, red-backed buzzard, crested caracara, snowy sheathbill, short-eared owl and barn owl).
- The Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention). The Bonn Convention aims to protect migratory species by listing endangered and species at risk under two appendices. The species listed under Appendix I (ruddy-headed goose) are in danger of extinction throughout all, or a part of their range. Those under Appendix II are at risk and require international agreement to improve their conservation status (coscoroba swan, blacked-necked swan, Falkland flightless steamer duck, yellow billed pintail, red-backed buzzard, striated caracara, crested caracara, peregrine falcon, common snipe, white-rumped sandpiper, sanderling, whimbrel). Within the Falkland Islands the Bonn Convention only applies to those species listed in Appendix I, however it is important to note the recognised status of the species outside the Islands.

Anatidae

The Anatidae includes swans, geese and ducks and represents the most numerous family of birds in the Falkland Islands, with 12 species breeding in the islands.

Cinnamon Teal (*Anas cyanoptera*) is a rare species in the Falkland Islands with an estimated population of 12-22 pairs and little is known about the ecology, distribution or population of the species (Woods, 1997).

Black-necked swan (*Cygnus melancoryphus*) is an uncommon Falkland species with an estimated population of 300-600 pairs (Woods, 1997). The species is protected under Appendix II of the Bonn and CITES and Conventions. The birds are mainly restricted to the south of the islands on freshwater ponds outwith the present study area, but may gather on tidal estuaries and in sheltered creeks in winter. In the

north the species has been found breeding in large numbers in Pebble Island, Cape Dolphin and to a lesser extent at Keppel Island, Port Egmont and MacBride Head (Woods, 1997). The Black-necked swan breeds from early August to mid-September and nests in solitary pairs close to water. The present population of the Falklands represents a small fraction of the world's population.

The **Falkland Flightless Steamer Duck** (*Tachyeres brachypterus*) is a protected species under Appendix II of the Bonn Convention. The Falklands are of international importance as the species is endemic to the Islands. The species is common and widespread throughout the Islands and may be found in the shelter of kelp beds and up to 5 km (3 miles) from the shore, where it forages and dives for food. The species is not capable of sustained flight but is capable of rapid movement across the water by paddle-like wingbeats. The birds are very defensive in the breeding season and begin egg-laying in mid-September to mid-October. The birds nest near the shoreline in the cover of heath, brown rush, fern, grassland, and tussock. The young are independent within 15-16 weeks (Strange, 1992). The natural rate of mortality of newly hatched ducklings is high, probably due to predation by kelp gulls and Falkland skuas. The present population of the Falkland Islands is estimated at between 9,000-16,000 pairs (Woods, 1997).

Flying steamer duck (*Tachyeres patachonicus*) are very similar in appearance to the flightless species but are capable of laboured flight over relatively short distances. The species inhabit coastal and inland waters and generally move to freshwater ponds in the breeding season. The birds are widespread throughout the Islands but occur in small numbers, with less than 10 birds being observed at each site (Woods, 1997). The birds nest from September/October and lays from 5-8 eggs at sites similar to the flightless species, including Carcass Island, Keppel Island, Pebble Island and Volunteer Point. Population estimates indicate that the Flying steamer duck is one of the least common water fowl with only 200-400 pairs inhabiting the Falklands (Woods, 1997).

Yellow-billed pintail or Brown pintail (*Anas georgica spinicauda*) are uncommon in the islands and generally recorded as single pairs. The species is predominantly a freshwater bird and a protected species, listed in Appendix II of the Bonn Convention but may be found in kelp beds in sheltered coastal waters in winter. Important breeding sites on the north coast of the Islands include Pebble Island, Cape Dolphin and to a lesser degree Port Egmont, Carcass Island and Volunteer Point. The present population is estimated at less than 1,000 pairs (Woods, 1997).

The **Ruddy-headed Goose** (*Chloephaga rubidiceps*) is a fairly common resident in coastal areas of the islands. The species is very similar to the upland goose and has a very similar breeding cycle. As the species is listed under Appendix I of the Bonn Convention and the Falkland Islands holds the majority of the world population, the islands are therefore of international importance of this species. The Ruddy-headed Goose breeds throughout the Falkland Islands, often close to the shore in tussock grass, long grass or old Magellanic Penguin burrows. The birds lay 5-8 eggs in early October, 2-3 weeks before the Upland Goose. There are currently around 14,000-27,000 pairs of Ruddy-headed Geese in the Falklands (Woods, 1997).

The **Upland Goose** (*Chloephaga picta leucoptera*) is regarded as being restricted to the Falkland Islands. The species is widely distributed with the largest populations found on extensive greens in coastal and freshwater pond areas. The birds lay from early September through to October. Incubation lasts 30 days and the goslings are usually fully feathered and ready to fly 9-10 weeks after hatching. In December the birds gather in large numbers by ponds and beaches to moult. Surveys have estimated the current population of the Upland Goose to be approximately 46,000-85,000 pairs (Woods, 1997).

Chiloe Wigeon (*Anas sibilatrix*) is an uncommon species in the Falkland Islands, with a population of between 500-900 pairs, but is widely distributed on the coastal waters and larger freshwater ponds and lakes, particularly on south East Falkland. The birds feed amongst kelp patches and tidal estuaries, freshwater ponds and rivers where there is aquatic vegetation. The species breed in September when pairs may double brood. Up to eight eggs may be laid in a well hidden nest of grass construction, some distance from the water.

The **Silver Teal or Versicolor Teal** (*Anas versicolor fretensis*) is not widespread but is common within areas of West and East Falkland where it inhabits weedy ponds. The species feeds by dabbling in shallows or foraging on aquatic vegetation and animal life as it swims. Little is known about the breeding cycle of the species. The present population of the species is estimated as consisting of 800-1,500 pairs (Woods, 1997).

The **Kelp Goose** (*Chloephaga hybrida malvinarum*) is a common species (10,000-18,000 pairs) with a wide distribution (Woods, 1997). The species is found on most coastlines where it can graze at low tide on sea lettuce, brown seaweeds and grass. The species nest predominantly near the shore, preferring tussock fringes for nest cover and may migrate to offshore tussock islands to breed. Breeding occurs with egg laying in the third week of October/early November and incubation lasts 30 days. The young birds are capable of flight after approximately ten weeks (Strange, 1992).

Patagonian Crested Duck or Grey Duck (*Lophonetta specularioides*) is a common species in the Falkland Islands and has a wide distribution along the coast. The species is particularly abundant in sheltered coves and creeks characterised by tidal reaches and shallows, and on nearshore freshwater ponds where it forages and dabbles on a wide range of marine life. The breeding season of the species is very extended, laying eggs in early August through to April with pairs commonly having two broods. The birds may nest close to the shoreline but often inland and make their nests well hidden in vegetation, sometimes with two males attending one female. The current population of the Islands is estimated at around 7,000-12,000 pairs (Woods, 1997).

Yellow billed teal or Speckled teal (*Anas flavirostris*) occupies a wide variety of habitats and is common throughout the Falkland Islands in freshwater and marine environments. The species is often found in sheltered coastal areas during the winter. Pairs of the species commonly breed on small streams, coastal ponds and on small stands of water in dense tussock grass cover. The birds begin nesting and egg-laying in August and often rear two broods. The species feeds on a variety of aquatic fauna and flora obtained by straining the water surface and diving. The Falkland Islands holds approximately 6,000-11,000 pairs of the species, a small fraction of the world's population (Woods, 1997).

Falconiformes

Five species breed within the islands as summarised below.

Striated caracara (*Phalacrocorax australis*) is a rare species which is protected under Appendix II of the Bonn and CITES Conventions. The total Falkland population numbers between 500-900 breeding pairs with birds found on a small number offshore tussock islands off West Falkland, such as the Jason Island Group, New Island and to the south on Beuchene Island. The juvenile and immature birds tend to leave the breeding areas in March and often concentrate in large groups in search of food, giving the impression that the species is common. The species feeds on a variety of food including young penguin chicks, small petrels, eggs, insect life and carrion. Survival of the species over the critical winter period is heavily dependant upon the excreta of Gentoo penguin and Fur Seal.

Crested caracara (*Polyborus p. plancus*) are fairly well distributed over the main islands of the Falklands but are not common with only 400-800 breeding pairs (Woods, 1997). The species is protected under Appendix II of the Bonn Convention and is classed as near-threatened by the International Union for the Conservation of Nature (IUCN). The species nest on rocky outcrops, usually preferring high peaks. The birds lay eggs in late September/October in large nests which they use from year to year. Nests are added to at the beginning of each season and may reach large proportions. The Crested Caracara is an opportunistic scavenger and predator, feeding on a variety of animal life, marine organisms, dead birds and sheep and has historically been regarded as a pest.

Red Backed buzzard (*Buteo polyosoma*) are widely distributed over West and East Falkland and on most larger offshore islands. The birds are a listed species under Appendix II of the CITES and Bonn Conventions. The species use the same breeding sites year after year and nest on high rocky outcrops or coastal cliffs. Breeding begins in early October and both the male and female incubate. The young leave

the nest by late December/early January after a period of 45-50 days (Strange, 1992). The birds feed on a variety of prey including rats and mice as well as small and occasionally larger birds. The current Falklands breeding population of this species is estimated at between 500-1,000 birds (Woods, 1997).

Cassin's or Peregrine Falcon (*Falco peregrinus cassini*) is widespread along the north and south of the Falklands but uncommon over the Islands as a whole. The present population is estimated at 500-900 breeding birds (Woods, 1997). The species is protected under Appendix I of CITES and Appendix II of the Bonn Convention. The birds prefer coastal areas and nest on inaccessible coastal cliffs in scrapes and hollows. Egg laying begins in early to mid October and incubation lasts for 30-31 days. The young usually make a first flight in January (Strange, 1992). The species feed on a variety of prey from small mammals and passerines to upland geese. Where prey such as prion is abundant the distribution of feeding birds is high. For example, on New Island where there is a large population of Thin-billed Prion, six breeding birds have been recorded (Strange, 1992). Elsewhere individual birds have been sighted feeding up to 35 miles offshore (Brown and Root, 1997).

Turkey vulture (*Cathartes aura falklandica*) is restricted to the Falklands and is the largest and most common bird of prey in the islands, with an estimated population of 1,900-3,600 breeding pairs (Woods, 1997). The birds begin breeding in September when they commonly nest on tussock grass and in coastal caves. The young normally fledge during January. The birds are important carrion eaters feeding on seal excreta, placenta and dead animal carcasses and have increased in abundance since the development of the sheep industry in the islands.

B.6.4 Pinnipeds

Pinnipeds in the Falklands are comprised of two species of sea lion and three species of seal. These can be divided into two main groups, the Otarioidea (sea lions, fur seals and walruses) and the Phocoidea ('true' seals such as elephant seals). Otarioidea have external ears, scrota testes and can turn their hind flippers forward to assist movement on land in a rudimentary four-footed method. Phocoidea have no external ear appendages, internal testes and depend on their body muscles for locomotion on land, moving in a rippling form or loping movement. The most complete survey on pinnipeds to date was conducted by the Sea Mammal Research Unit in 1995 on southern sea lions (*Otario flavescens*) in the Falkland Islands.

Southern Elephant seal

Southern Elephant seals (*Mirounga Leonina*) breed mainly in South Georgia and approximately 15% of the population hauls out on the Falkland Islands after the breeding season is completed. Southern elephant seals breed at several small sites around the Falkland Islands, mainly in the northwest, north, east and southeast on sand or shingle beaches. The main breeding colony for the species is found at Sea Lion Island, south of East Falkland and breeding occurs from early September to early October. Colony sizes range from 200-300 animals, comprising a total breeding population of under 4,000 animals (Bingham, 1996b).

No mass migration of elephant seals has been witnessed, although it is possible that the animals may be encountered in the offshore area. It is known that during the winter months of April to June most adults stay at sea to feed largely on squid and fish (Strange, 1992). In support of this, the anatomy of the seal indicates that they can dive to great depths to feed and are not restricted to shallow coastal waters.

Southern sea lion

The southern sea lion is found all around the coasts of South America as far north as Brazil. The Falkland Islands holds approximately 5% of the estimated world population of the species (Bingham, 1996b). The current Falklands population is estimated at 5,534 individuals (Thompson and Duck, 1995). This represents a decline of over 97% in the species over the last 60 years when compared to previous counts.

Southern sea lions breed in small colonies at approximately 60 sites around the Falkland Islands coastline (Strange 1992). The majority of breeding sites occur on offshore tussock islands, northwest of the Falkland mainland, as shown in Figure B.12. Breeding of the southern sea lion takes place in December. After mating the females go to sea to feed up, returning every few days to suckle the pups. The pups gather into pods towards the end of January but may remain dependant upon the cows for up to 12 months. Southern sea lions are shallow benthic feeders which prefer to forage in kelp forests, feeding mainly on squid and octopus, with some lobster krill and fish. Sea lions have been observed feeding in kelp very close to the shore in water depths of only 2.5 m deep (Thomson and Duck, 1995).

Fur seal

The Falkland Islands (or South American) fur seal (*Arctocephalus australis*), like the southern sea lion, prefers rocky coastal sites with steep or shelving rock faces, deep water approaches and access to offshore reefs or kelp beds (Strange, 1992). The animals breed at 15 known sites in the Falklands Islands where they congregates in large numbers to pup, mate and suckle their young. The current population of South American Fur Seal in the Falklands Islands is estimated at over 10,000 adults (Bingham, 1996b). Breeding takes place November to January. After the first departure of the cows the pups begin to wander outside the territories and by mid-January have formed into pods. Older bulls reappear at the coastal sites in March to moult.

Unlike some species of fur seal the animals do not migrate but move to winter hauling out grounds. During this movement pups and cows may travel out to sea for periods of time where they feed on lobster krill, squid and fish.

Leopard seal

The leopard seal (*Hydrurga leptonyx*) is in general a solitary animal. The distribution of the species is usually on the outer edges of the pack ice, although they are known to range widely to most Subantarctic islands, including the Falklands.

Weddel seal

The Weddel seal (*Lephtonychotes weddelli*) is considered an occasional visitor to the Falkland Islands. Regardless of this, it is unlikely that the species will be encountered in the study area as its normal distribution extends from the South Orkneys, where it is common to the northern limit at South Georgia.

B.6.5 Ecologically sensitive areas

The Falkland Islands are rich in biodiversity and known to be internationally important for some of their bird and marine mammal populations. Current legislation makes provision for the designation of Nature Reserves and Sanctuaries within the Falkland Islands on Government land and privately owned land (subject to the owners consent). There are currently 19 Nature Reserves in the Falkland Islands covering 1,460 hectares, all designated on offshore Crown land. A further three Sanctuaries have been officially designated on Crown land and seven on privately owned land. No mainland areas or privately owned land has been given official Nature Reserve status.

In addition to official designations, 27 offshore islands have been declared as private nature reserves (unofficial) by their owners. These private nature reserves have been designated at the request of their owners and thus do not necessarily indicate a high conservation value. The location of the official designations and declarations within the study area are shown in Figure B.12. The size and status of these reserves are provided in Table B.3 below.

Table B.3 Protected areas in the study area of the Falkland Islands (adapted from WCMC, 1994)

Designation and site name	Year designated	IUCN category	Location	Area (ha)
Nature reserve				
Elephant Jason	1973	I	51°09'S 60°51'W	260
Flat Jason	1966	I	51°06'S 60°53'W	375
Gids Island	1966	IV	51°39'S 60°18'W	30
Jason East Cay	1973	I	51°00'S 61°18'W	20
Jason West Cay	1973	I	50°58'S 61°25'W	22
Kidney Island	1964	I	51°38'S 57°45'W	32
North Fur	1973	I	51°08'S 60°44'W	75
Sea Dog and Arch Islands	1978	I	52°00'S 61°06'W	30
Seal Rocks	1973	I	51°07'S 60°48'W	22
South Fur	1973	I	51°15'S 60°51'W	25
South Jason	1973	I	51°12'S 60°52'W	375
The Fridays	1973	I	51°03'S 60°58'W	21
Sanctuary				
Cape Dolphin	1969	IV	51°15'S 58°57'W	891
Dunbar Island	-	-	51°23'S 60°21'W	225
Low Island	1965	IV	51°19'S 60°27'W	75
Middle Island	1966	IV	51°38'S 60°20'W	155
Stanley Common & Cape Pembroke Peninsula	1973	IV	51°43'S 57°49'W	2,770
The Twins	1965	IV	51°15'S 60°38'W	23
Volunteer and Cow Bay	1969	IV	51°29'S 57°50'W	4,340

Protected Areas Management Categories (IUCN Global Management Category)

- I - Strict Nature Reserve/Scientific Reserve
- II - National Park
- III - Natural Monument/Landmark
- IV - Managed Nature Reserve/Wildlife Sanctuary
- V - Protected Landscapes and Seascapes
- VI - Resource Reserve
- VII - Natural Biotic Area/Anthropological Reserve
- VIII - Multiple use Management Area/Managed Resource Area.

B.7 Socio-economic conditions

B.7.1 Fishing activity

The Southwest Atlantic represents one of the richest fishery resources in the world. Large-scale commercial fishing of these resources began in the early 1970s. Concern about the level of uncontrolled fishing and the failure of countries to co-operate on conservation led to the introduction of the 150 nautical mile Falkland Islands Interim Conservation and Management Zone (FICZ), in October 1986 (FIG, 1989). Continued concern about the level of fishing effort and the conservation of the fish stocks led to the declaration of the Falkland Islands Outer Conservation Zone (FOCZ) on 26 December 1990 which extends to 200 nautical miles, measured from coastal baselines (FIG, 1997).

The offshore fishery of the Falklands represents the islands most important economic sector as shown in Figure B.16a. The grounds support a mixed fishery of commercial importance including squid, hake, hoki, blue whiting, cod, herring, kingclip, toothfish, skates and rays. The composition of the islands fishery in terms of fish catch by weight is shown in Figure B.16a.

Figure B.16a Revenue by sector 1994 - 1995

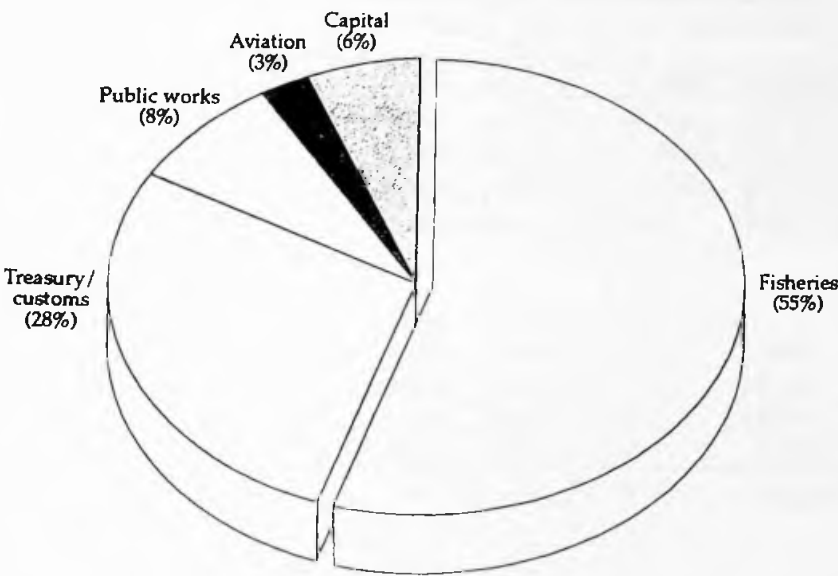
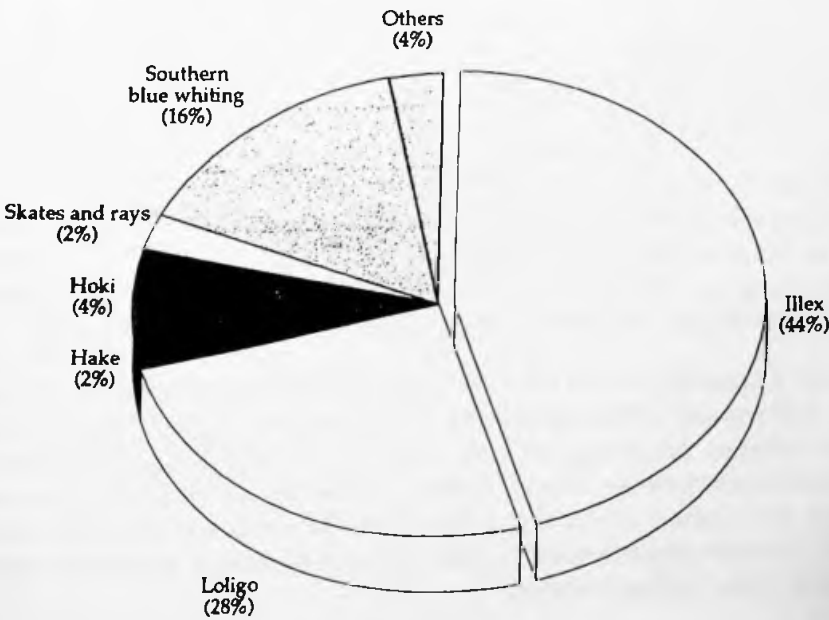


Figure B.16b Fish catch by weight 1990 - 1996



The fish resources of the Falkland Islands are regulated by effort controls whereby vessels are issued licences to fish within the FICZ for a fixed period. Catch data is collected on a daily basis to ensure the accurate and continuous monitoring of the state of the stocks. As can be seen from Figure B.16b, the squid resources of the continental shelf are the main resource of the Falkland Islands and they support a major international fishery. Over the 10 year history of implementation of controlled fisheries in the Falkland Islands (1987-1997) £245 million has been collected in licence revenue (FIG, 1997). Table B.4 shows the annual license revenue to the Falkland Islands for the period 1989 to 1996.

Table B.4 Annual revenue (Pounds sterling) by licence type in the Falkland Islands (FIG, 1997)

Licence	1989	1990	1991	1992	1993	1994	1995	1996
A	537775	485949	300154	191586	119854	125624	61008	63211
B	22723027	20698011	20961399	20865023	14301237	17440342	10867548	12176224
C	4028578	5077665	3286308	2904346	3558704	3305953	34735336	3915269
E	3000	1000		12308	12303	163607	196725	118971
F							74214	117243
R						140664	431363	446767
W			113412	169895	206682	413290	500679	842504
X	377917	613764	572085	959803	1466992	2046655	2173149	2297557
Y	939594	291531	285700	187767	199798	180825	164690	174748
Z	391332	774666	841843	1222974	1207635	1335812	1920068	1586520
Total	29001223	27942586	26360901	26513702	21073205	25152772	19862980	21739014

Note: For licence type see Table B.5.

Table B.5 Licence types, target species and periods of application 1989-1996

	Licence	Target species	Period of application
First season (01 January to 30 June)			
	A	Unrestricted finfish	1989-1996
	B	Illex squid	1989-1992
		Illex + Martialia squid	1993-1996
	C	Patagonian squid	1989-1996
	F	Skates and rays	1995-1996
	W	Restricted finfish*	1994-1996
Second season (01 July to 31 December)			
	R	Skate and rays	1994-1996
	X	All species	1989-1990
		Patagonian squid	1991-1996
	Y	Unrestricted finfish	1989-1996
	Z	Restricted finfish*	1989-1996

* Restricted finfish - main target species, southern blue whiting, hoki and hakes.

Fisheries statistics (as mentioned earlier) are collected by FIG Fisheries Department on a daily basis. In February 1997 this Department published fisheries statistics in the second of what is intended to be a series of statistical bulletins describing the performance of the Falkland Islands Fishery. The data presented in this bulletin concentrates on catch statistics, presenting data in terms of total catch by vessel type, month/season and country of origin of fishing fleet. This data together with fishing effort data (obtained from FIG Fisheries Department) has been analysed in order to provide an assessment of the offshore fishery, north of the Falkland Islands.

The data are organised in grid squares as shown in Figure B.17 (data presented for this study concentrates on the offshore area to the north of the Islands). Total trawling and jigging fishing effort for the area north of the Islands is illustrated in Figures B.18-B.22. These figures show that the most heavily fished area is that along the edge of the continental shelf, which is consistently fished for > 1,500 hours per year. Although in 1994 some areas were fished > 6,000 hours (see Figure B.18).

In general since the introduction of controlled fisheries in Falkland waters in 1986 the overall pattern of activity within the fishery has remained broadly similar. The squid species *Illex argentinus* has continued to be fished primarily by far eastern jiggers whereas the smaller inshore squid species *Loligo gahi* and finfish species, particularly, hake have been the target of the European bottom trawling fleet. The only major change has been in the blue whiting fishery which has seen the predominantly Polish fleet of the late 1980's and early 1990's be replaced by larger factory ships from Japan and Chile. In the area north of the Islands jigging takes place only during the first licence season (01 January to 30 June), as shown in Figures B.22 and B.23. Trawling takes place along the edge of the continental shelf all year, but effort is greatest in the second season (01 July to 31 December), and highest in the months July, August and September, as shown in Figures B.24-B.27. Each of the fisheries of commercial importance are discussed in more detail in the following sections.

Squid fishery

The squid fishery within the FICZ of the Patagonian shelf is regulated by seasons which are species dependant. Squid are fished for by a number of methods; jigging, trawling (single, pair, demersal and midwater), gill netting and seine netting. Of these methods, jigging is the most important in the Falklands, accounting for 40% of the worlds cephalopod catches and 95% of Japanese squid catches (Pierra and Guerra, 1994).

Argentine short-finned squid (Illex argentinus)

The fishing season for *Illex* extends from March to June, with peak catches occurring in April and May (Bisbal, 1993). The main fishing countries operating in the area are Poland, Japan, Taiwan and Korea. The main catch areas for the species are to the north and northwest of the Falkland Islands, within the study area from January to June. Low catches of *Illex* took place in the study area during the second season (July to December) in 1994 and 1995. No catches of the species were made over this period in 1996.

Squid jiggers are mostly used when fishing for *Illex argentinus*. The jigs consist of small grapnels with one or two barbless hooks. These are attached to lines and deployed using automatic winches. Commonly the jiggers are used in conjunction with bright lights which attract the pelagic cephalopods. When the squid are seen on the echosounder to gather under the ship, the jigging machines are switched on. The winches drop the weighted lines to the preset depth and wind them back, in a jerking motion. The winches pull the squid aboard which are then flicked down a chute to the processing deck. A typical squid jigger can catch about 80 tonnes on a good day and can hold about 300 tonnes of catch before it needs to unload (Patterson, 1987). Jigging vessels vary in size from 300-1,500 Gross Registered Tonnes (GRT) as well as in the number of jigging machines they carry and the number of lines each machine operates (1-2 each). A typical Far Eastern jigger is around 900 GRT with a crew of 25 and operates 90 jigging lines (FIG, 1989).

Figure B.17 Total fishing effort for the study area in 1991

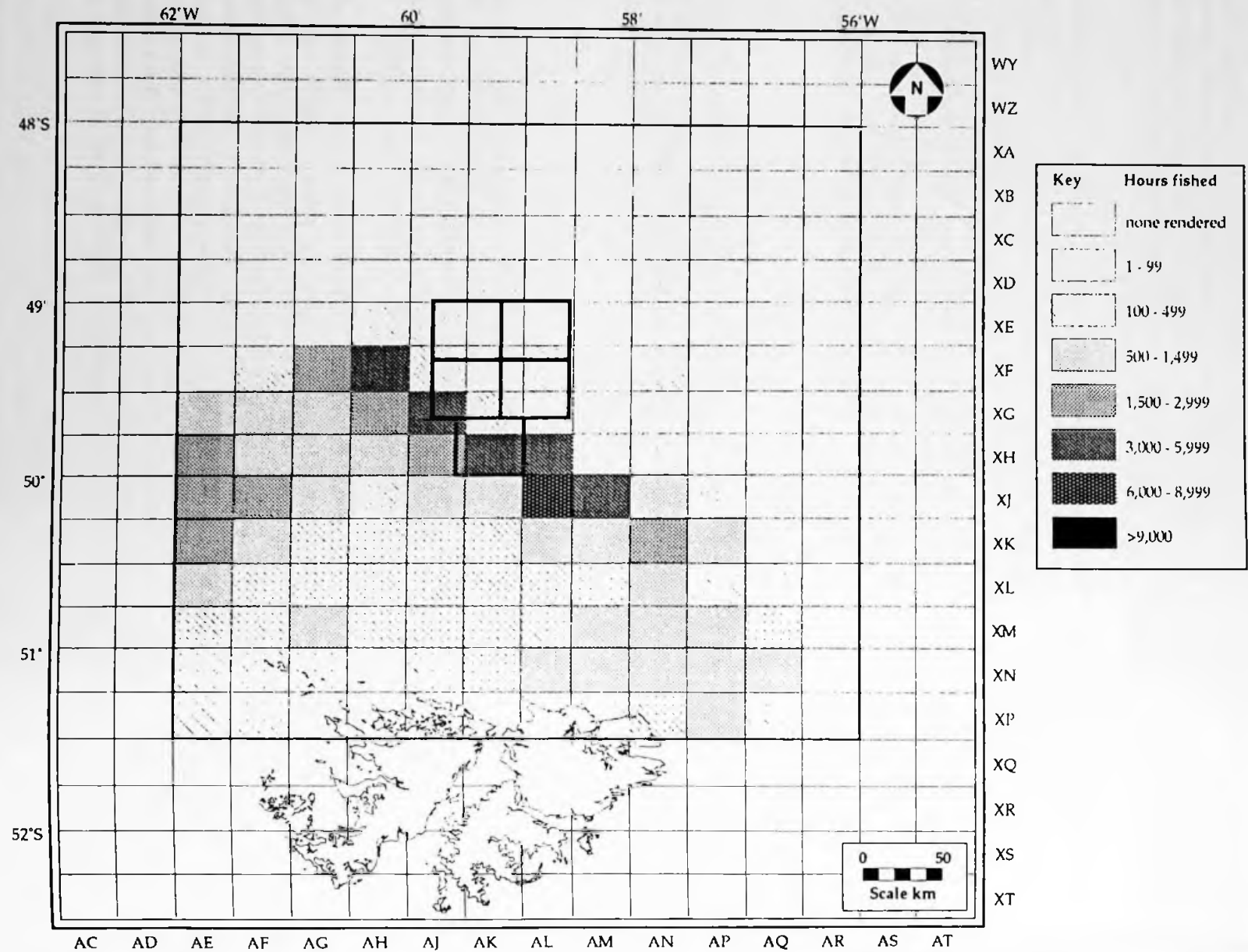


Figure B.18 Total fishing effort for the study area in 1992

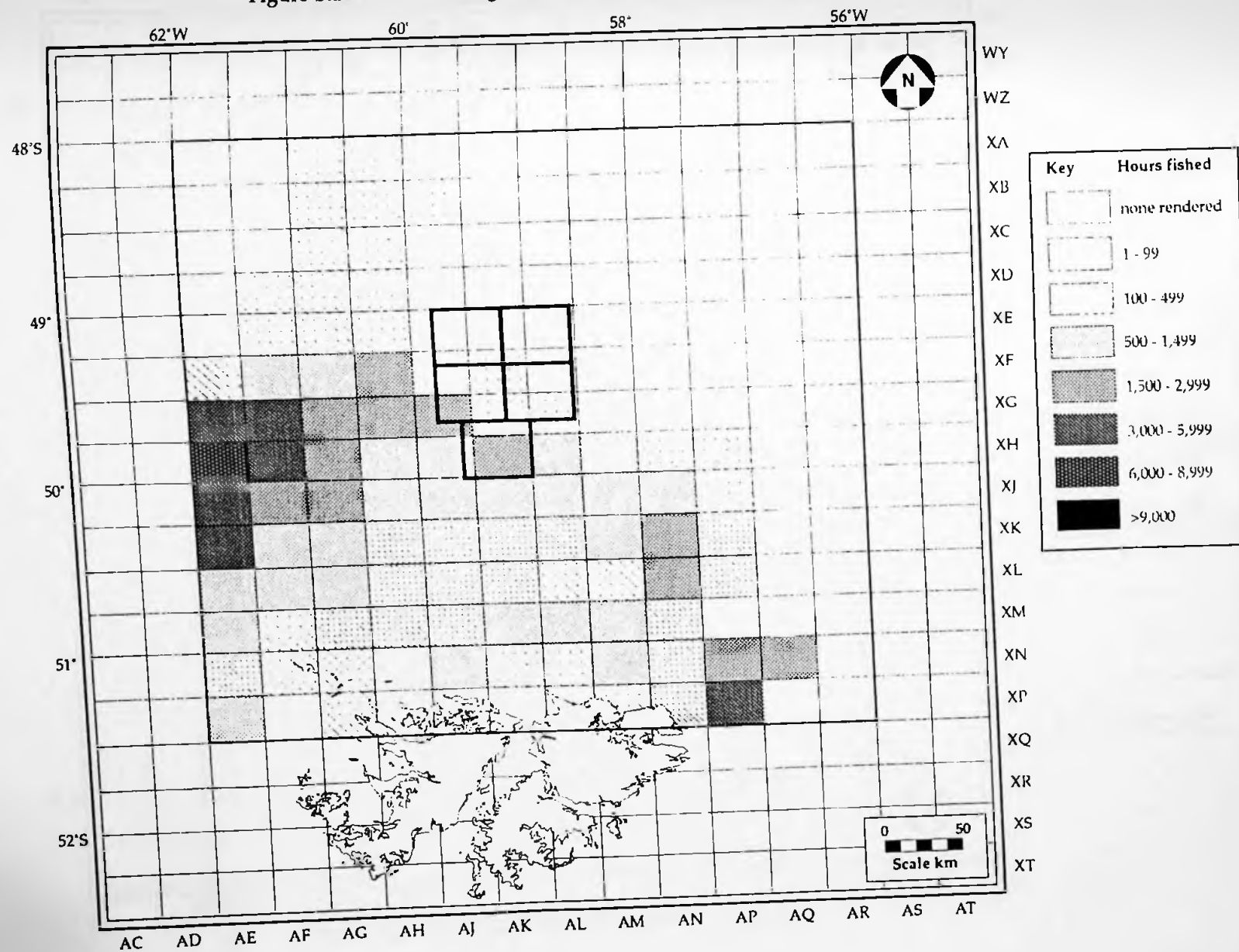


Figure B.19 Total fishing effort for the study area in 1993

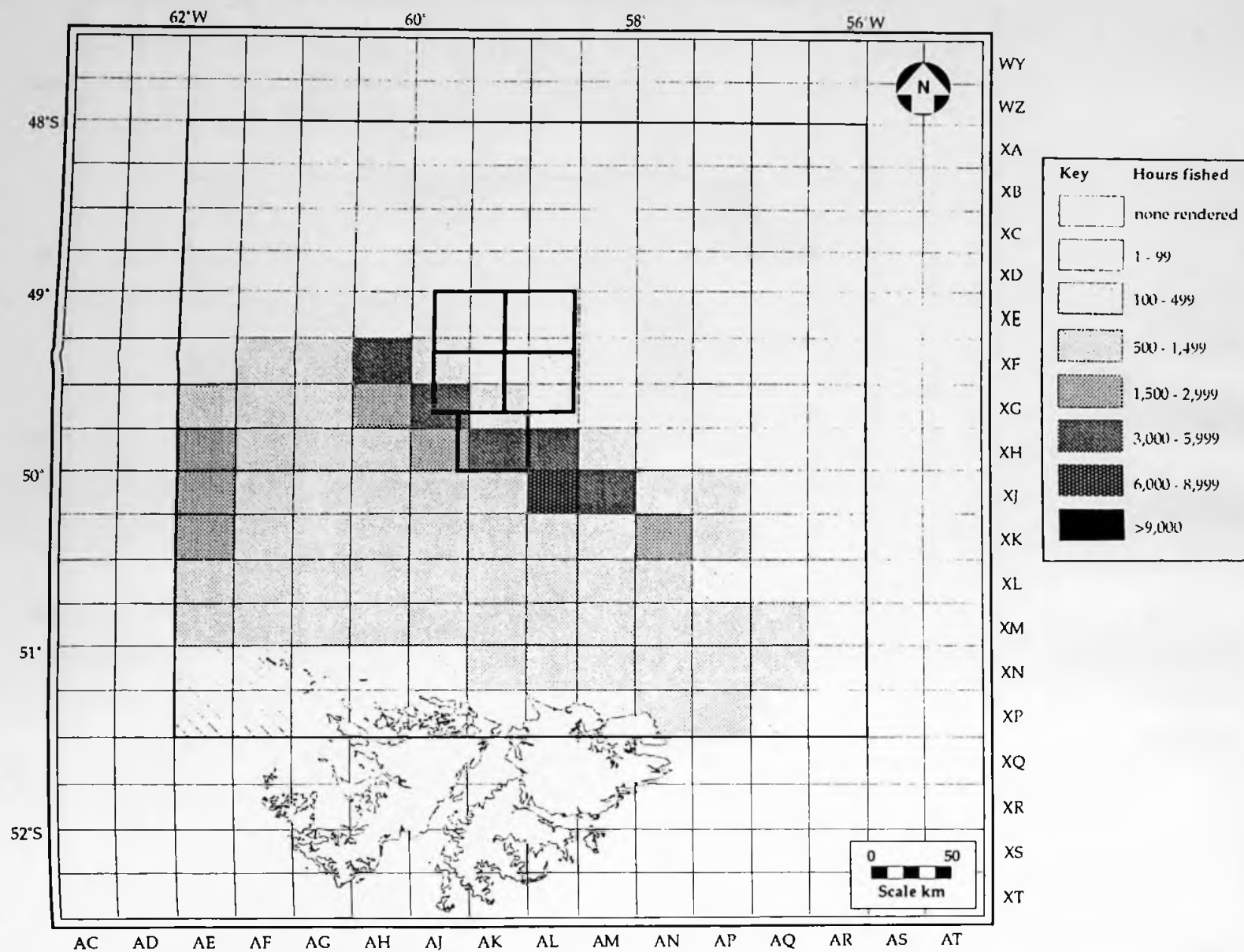


Figure B.20 Total fishing effort for the study area in 1994

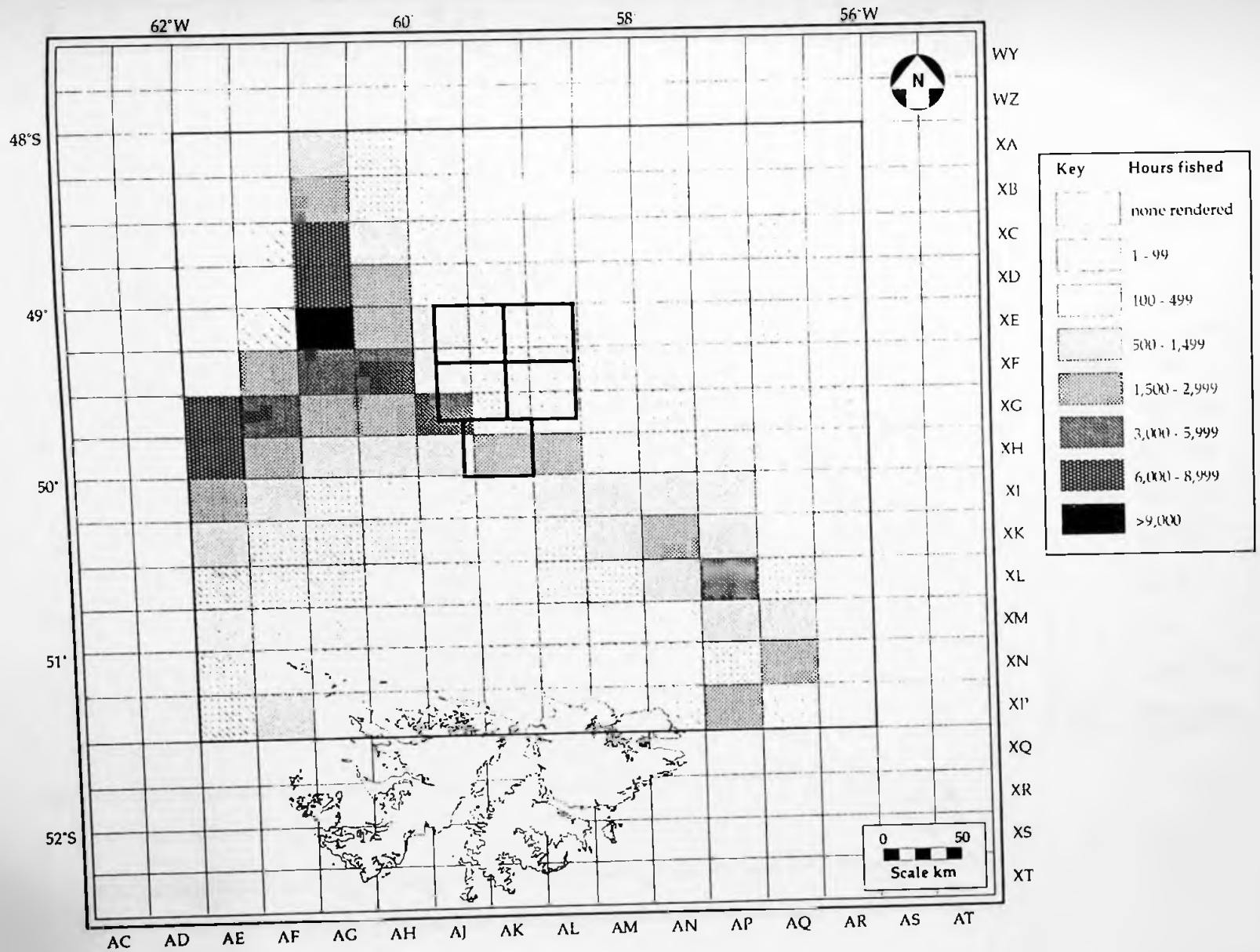


Figure B.21 Total fishing effort for the study area in 1995

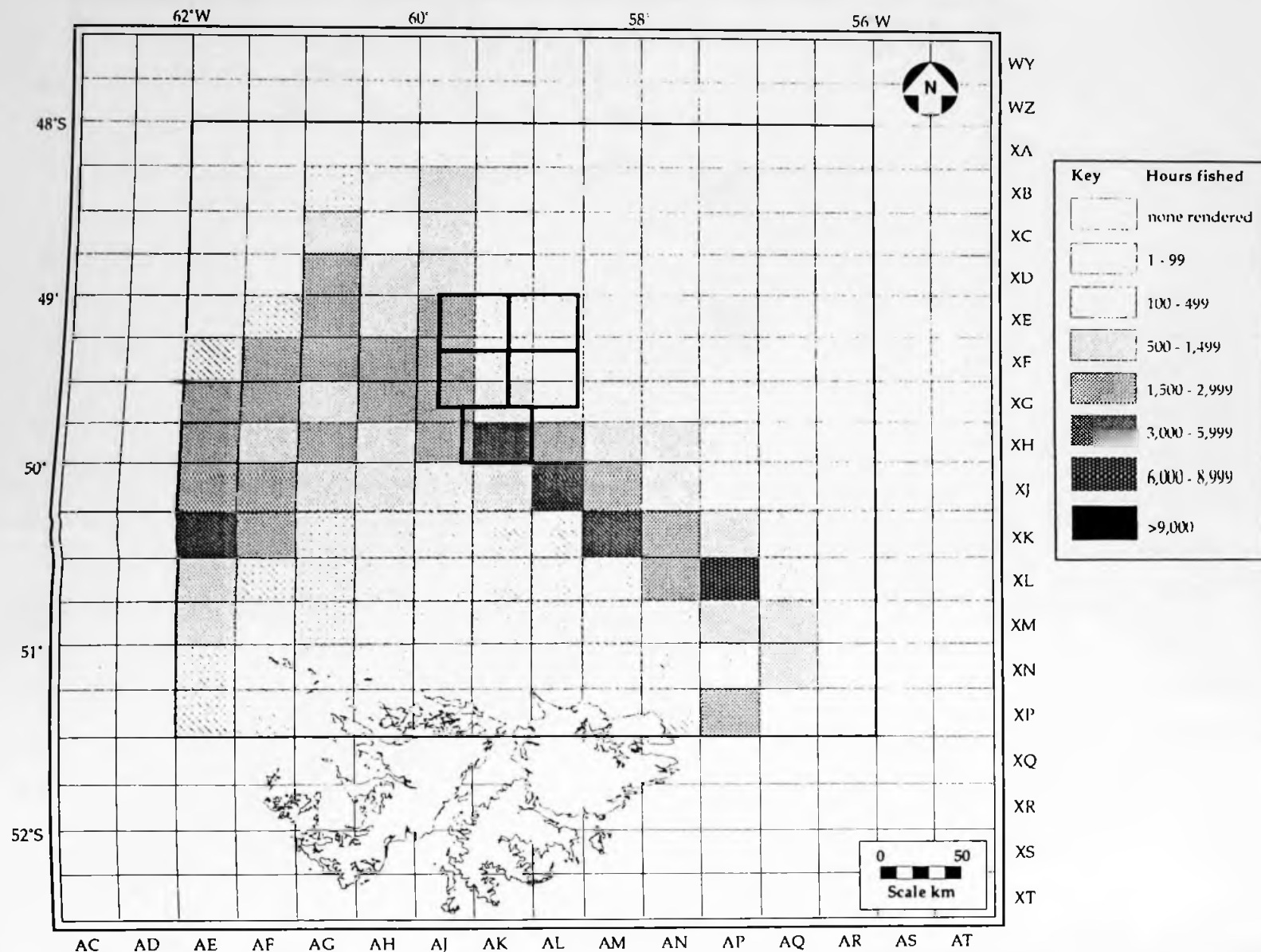


Figure B.22 Total jigging effort for the study area from 1st January - 30th March 1995

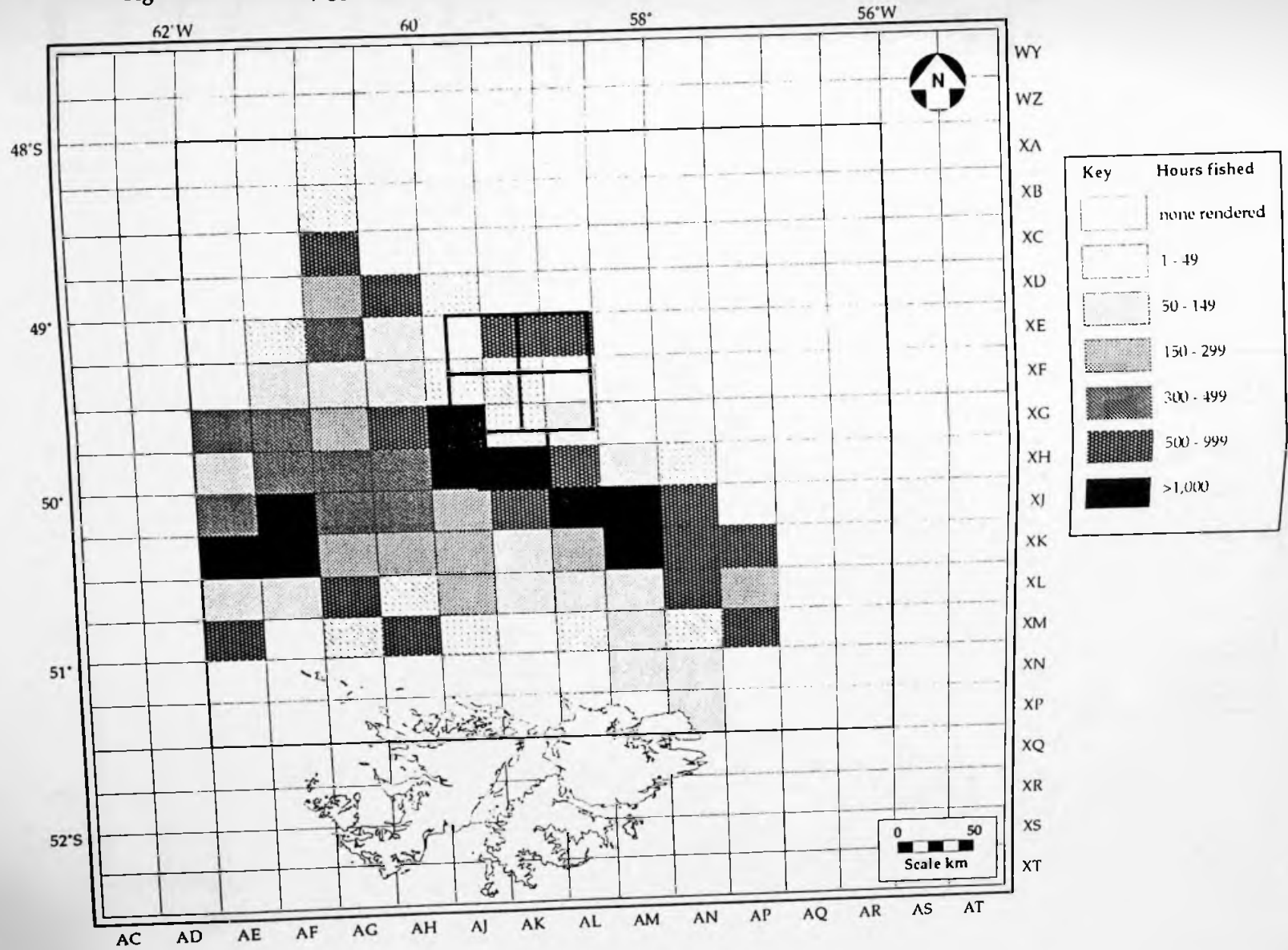


Figure B.23 Total jigging effort for the study area from 1st April - 31st June 1995

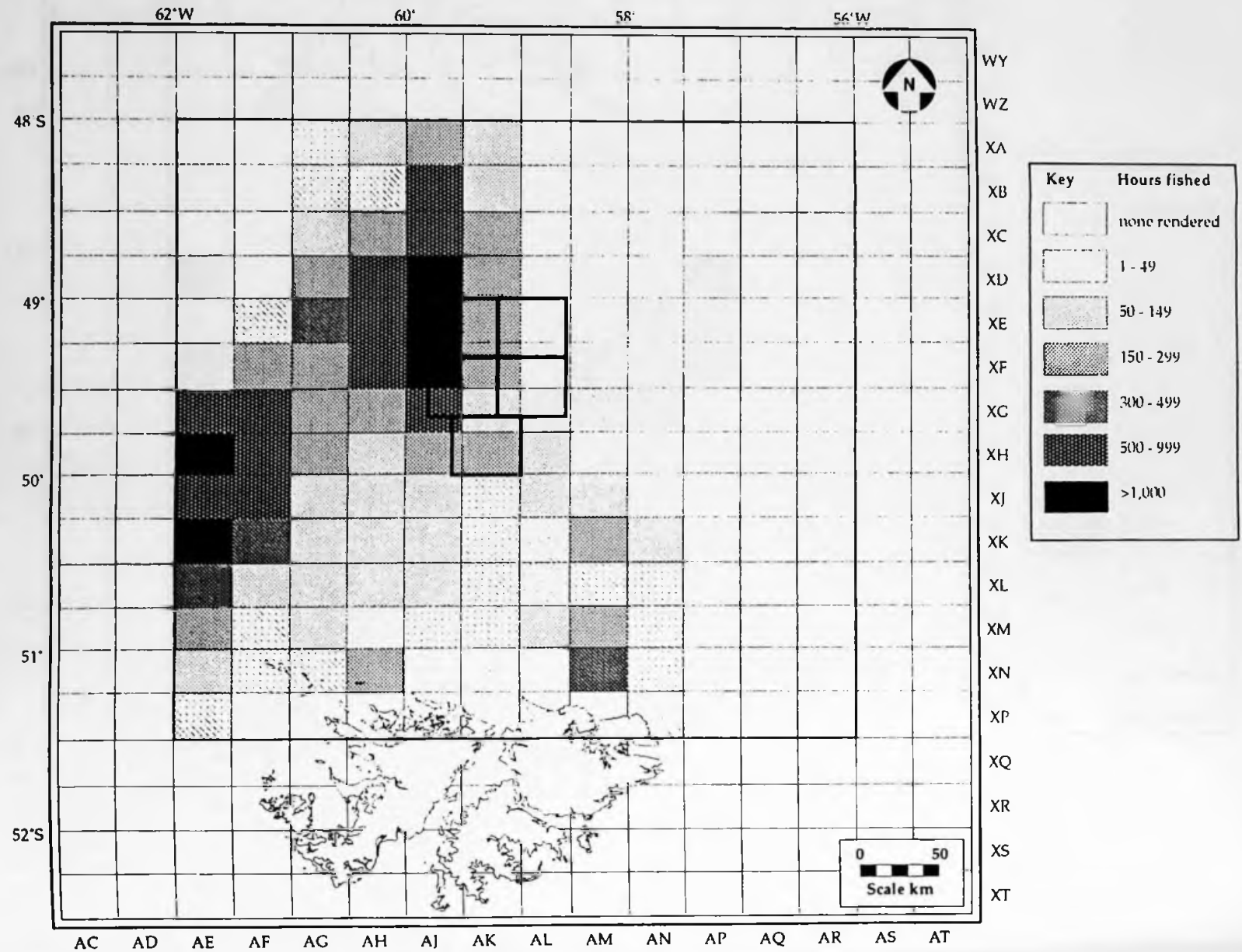


Figure B.24 Total trawling effort for the study area from 1st January - 30th March 1995

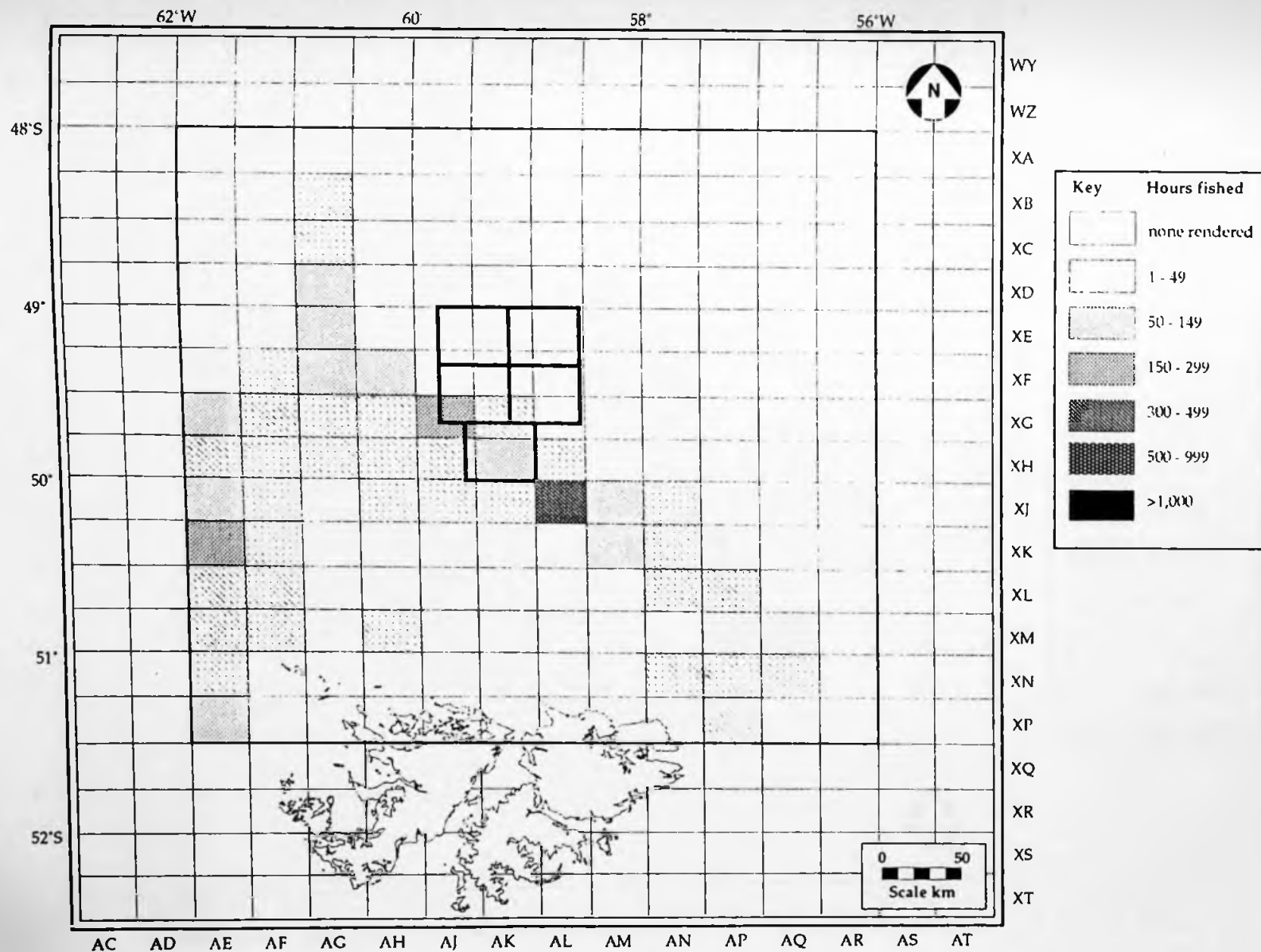


Figure B.25 Total trawling effort for the study area from 1st April - 31st June 1995

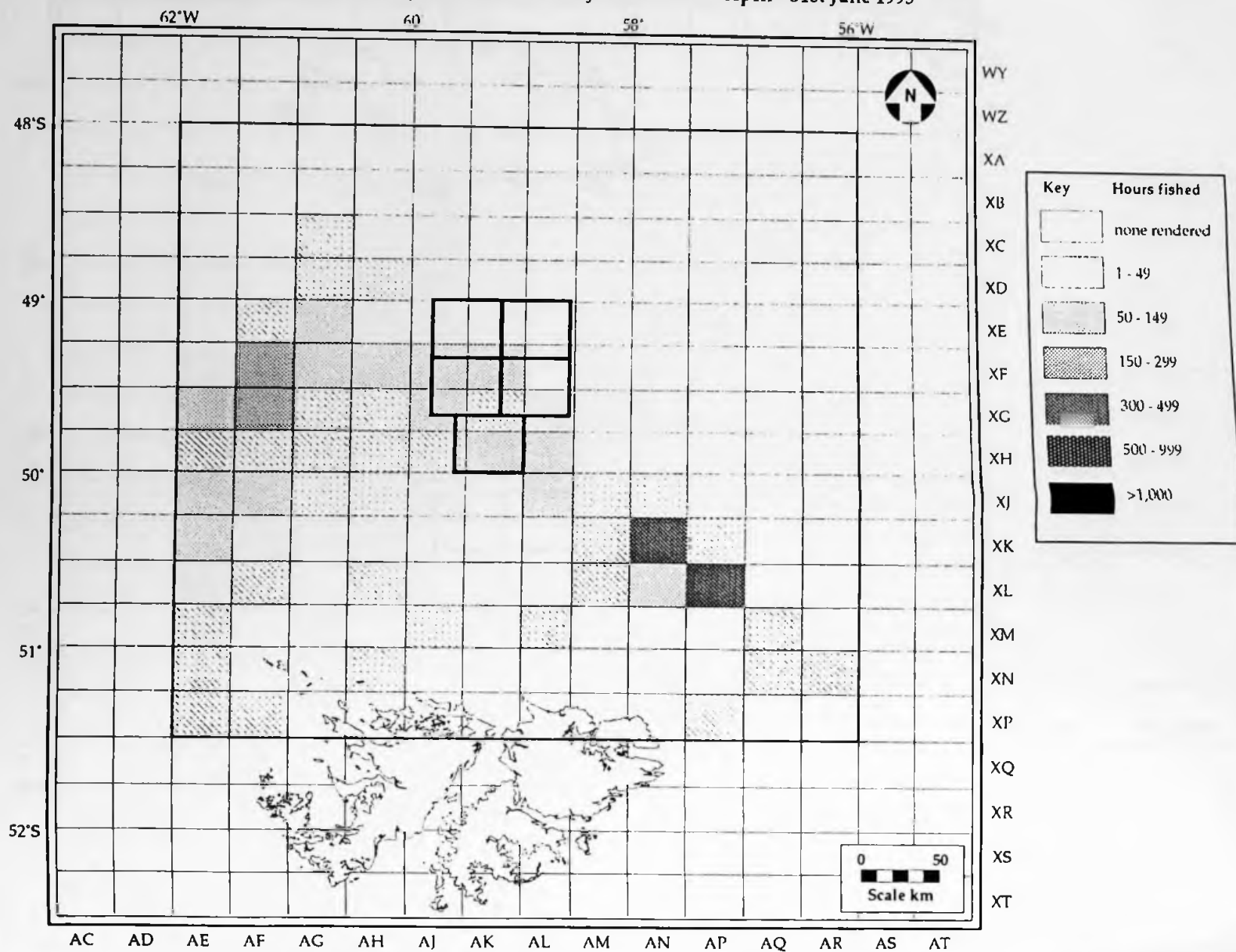


Figure B.26 Total trawling effort for the study area from 1st July - 30th September 1995

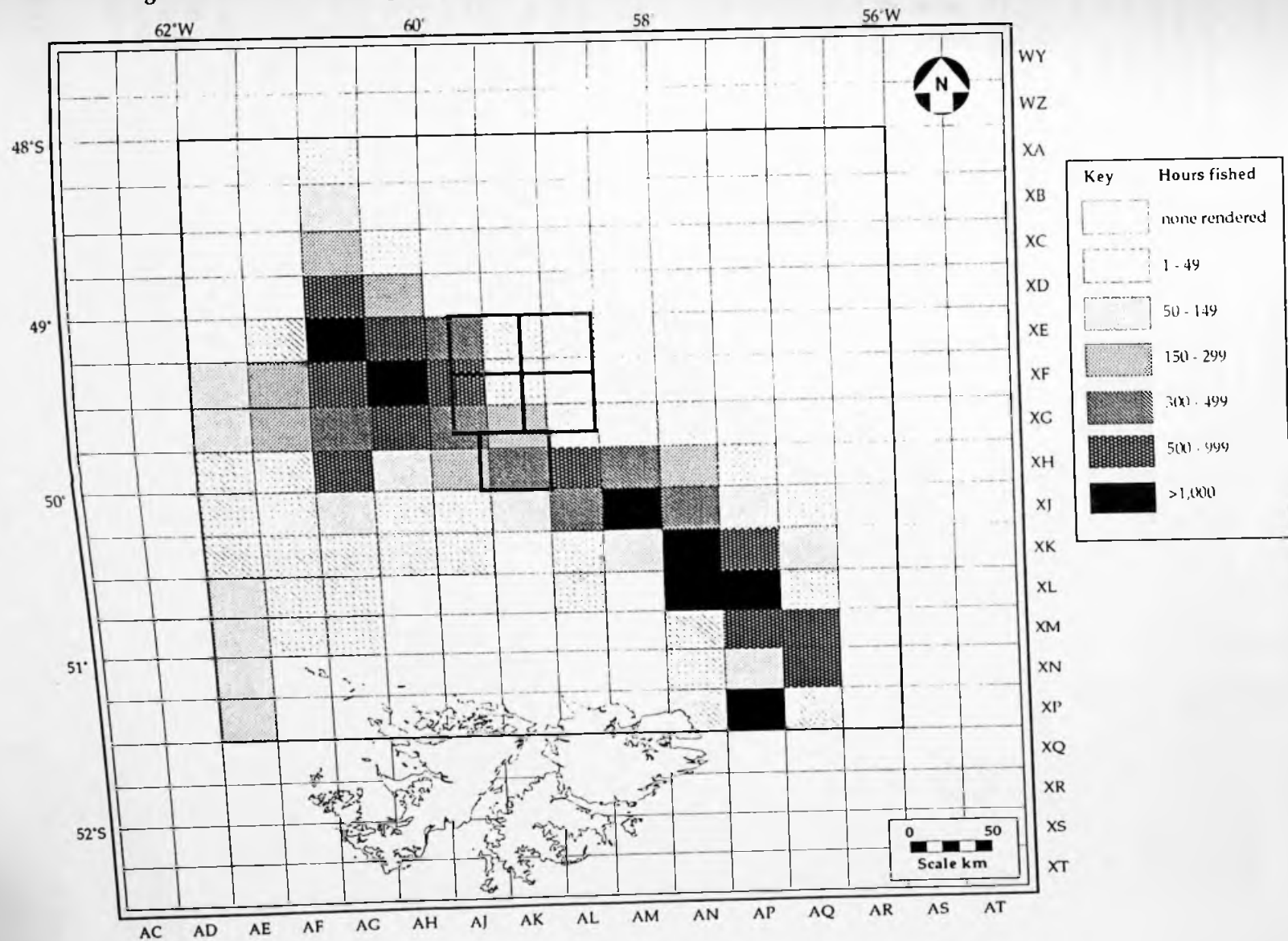
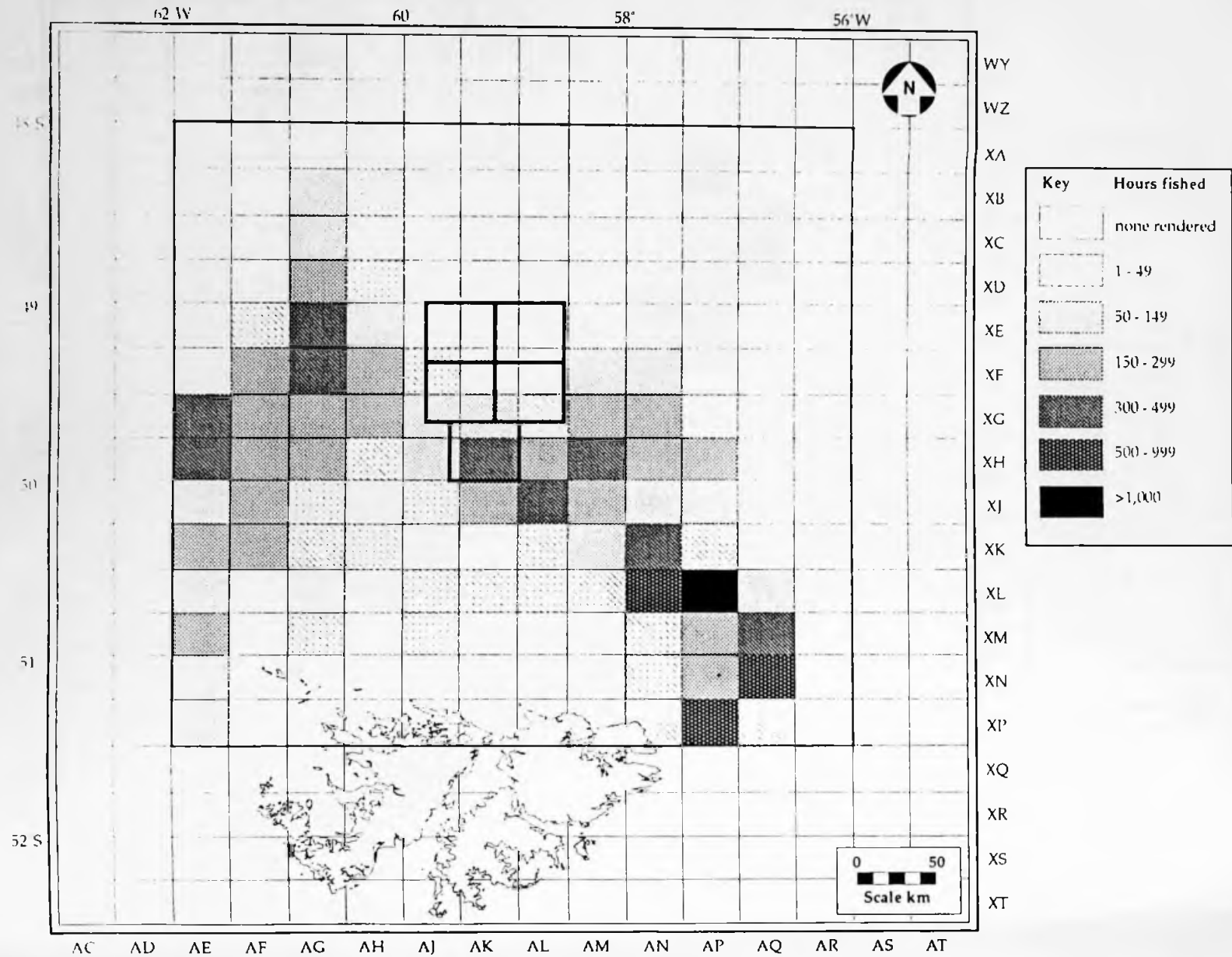


Figure B.27 Total trawling effort for the study area from 1st October - 31st December 1995



Patagonian squid (Loligo gali)

There are two fishing periods for *Loligo* extending from February to May and from August to October. The squid are fished for by trawlers from Poland, Spain, the UK and other EC countries which operate to the east and south of the islands (outwith the area of the northern Tranche). A typical European trawler is approximately 1,500 GRT with a crew of 35, and is capable of catching 40-60 tonnes of squid per day (FIG, 1989). There are also a few combination jigging and trawling vessels operating in the fishery and their fishing method is determined by the prevailing conditions. From February to May fishing takes place at the south of the Falklands, moving to the north/northeast from August to October. Catches are made in the study area during this latter period (July to December), although these areas do not represent the main fishing grounds over the year.

Finfish fisheries

Within the study area Tranches A and C represent the most important finfish fishing grounds constituting a main fishing area for hoki and a secondary area for red cod, skate and rays. Catches of kingclip, toothfish, and hake are recorded in the study area throughout the year, although these catches are of a low order (less than 50 tonnes) and represent the lowest finfish catches. Catches of blue whiting have also been recorded in these areas and are greatest during the second season (July to December) in the east of the study area. The main fishing area for the species is to the southwest of the Falkland Islands where the catch rates are high from August to October.

B.7.2 Shipping

The small community of the Falkland Islands is served by two shipping agents Jeppesen Heaton Ltd (formerly Falklands Islands Company) and Hogg Robinson Shipping Services Ltd (HR Shipping Services Ltd). Within the Islands, a local coaster maintains an irregular service between Stanley and other settlements (Hydrographer of the Navy, 1993). Jeppesen Heaton Ltd operate one ship, approximately 3,000 dwt purely for civilian use. This service operates four times a year out of London (Abernethy, 1997).

HR Shipping Services Ltd operate 4 different vessels of 4-5,000 dwt, several larger container vessels and a 10-12,000 dwt hold ship (Abernethy, 1997). These vessels carry both military and civilian freight to the islands and operate 12-13 journeys between the UK and the Falkland Islands each year, equating to approximately one ship per month (Meyer, 1996). With the exception of the 10-12,000 dwt hold ship, all vessels depart from Gravesend and dock at the Ascension Islands (four weeks later) before departing for Port Stanley. The hold ship journeys to the Falkland Islands via South American ports.

In view of the frequency of services and the routes operated by the shipping companies, it is unlikely that these vessels will be encountered in the northern licence Tranches under routine operating conditions. It is generally accepted that vessels do not approach the Falkland Islands via the waters of the license Tranches in preference to routes along coast of South America and to the east of East Falkland (Abernethy, 1997).

B.7.3 Pipelines and cables

There are no pipelines or cables in the vicinity of the northern Tranches or the wider study area to the north of the Falkland Islands.

B.7.4 Wrecks/archaeological interests

There are numerous wrecks in the waters of the Falklands, three of these are located in and around the offshore study area. These wrecks are of unknown identity and have not been awarded special designations (eg war grave status) or restrictions. The Hydrographic Office identification number, co-ordinates and depths of the wrecks are given below.

- Wreck No 129700356, location 49°55'06"S 58°02'30"W, depth 300 m;
- Wreck No 140502865, location 50°17'12"S 60°11'00"W, depth 160 m;
- Wreck No 140503079, location 50°57'18"S 58°52'18"W, depth 140 m.

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Appendix D Sources for information on benthic fauna of the Argentine continental shelf

Only one published paper (Bastida *et al.*, 1992) was found that attempted an overall characterisation of the benthic communities of the Argentine continental shelf, including the present study area, based on dredgings carried out by the RV *Shinkai Maru*. A single large (mean of 50 dm³) sample of sediment was obtained at each station using a Picard dredge and passed through a 1 mm mesh. After publication of that work, Argentinean benthic studies have continued at the Universidad Nacional de Mar del Plata, but in more restricted areas and concentrated in the coastal zone around Buenos Aires (Bastida, pers comm, 1997). Most of these studies are unpublished to date. The Mar del Plata University has designed, in collaboration with universities in Brazil and Uruguay, a project which aims to study the benthos of the coast and continental shelf. The geographic distributions of the bryozoans sampled during the *Shinkai Maru* cruise were described by Lopez Gappa & Lichtstein (1988). A review of macrobenthic research carried out by Argentinean researchers prior to 1992 along the whole of their coastline and in the Argentinean claim in the Antarctic is provided by Bremec (1992). All of the work was based outwith the present area of interest.

Historically the benthos around the Falkland Islands has been sampled by the RV *Challenger* and *Discovery* expeditions. The United States Antarctic Research Programme since 1948 has involved sampling cruises by the USNS *Eltanin*. The animals collected are the subject of ongoing taxonomic research in the United States and several publications, for example Hartman (1967), Blake (1984). Other major surveys include the Anton Bruun collections around South America from the early 1960's, and surveys conducted by the German FFS *Walther Herwig* between 1966 and 1978 all over the Argentinean shelf from Brazil down to the Falklands and from coastal areas down to the continental slope. Benthic animals were collected by trawls, and the material deposited at the Hamburg Zoological Museum. Professor Dieter Walossek, Leader of the Section for Biosystematic Documentation at the University of Ulm, Germany, provided information about the *Walther Herwig* surveys and also supplied photographs of the trawled samples. Although all of the above-mentioned surveys yielded specimens for taxonomic study, they do not provide quantitative data on species distributions or community structure.

Information on the fauna of the Antarctic including the Falkland Islands is also to be found in Knox & Lowry (1977), Knox (1977) and Knox (1994).

Dr Jose Orensanz, Associate Research Scientist at the School of Fisheries, University of Washington, maintains a comprehensive electronic biogeographical catalogue of benthic invertebrates from the southwest Atlantic which includes entries for approximately 3,000 species.

Much of the information gathered on benthic surveys for this present report was obtained in response to a general request in ANNELIDA, an electronic newsletter. ERT acknowledges the many individuals worldwide who passed on information that contributed to the wider picture. Information on the work conducted in this area by South American institutions was provided by Dr Ricardo Bastida, Universidad Nacional de Mar del Plata, Argentina and Dr Claudia Bremec, INIDEP, Mar del Plata. Searches for relevant publications records were also conducted using a variety of computerised databases.

Data on larger epibenthos obtained by Rockhopper trawl during a research cruise conducted in November 1994 by the Falkland Islands Fisheries Department was provided by Dr Conor P Nolan, Senior Fisheries Scientist.

An inshore marine survey (from the intertidal zone down to 30 m depth), was conducted in 1996 at 14 sites representative of the Islands' coastal zones (Brown and Root, 1997).

Valuable insights into the benthic communities of the Falkland Islands can be obtained from abstracts of papers presented at IBMANT'97, a workshop on marine biological research in waters around South America and Antarctica. Most of the results presented derived from the *Victor Henson* surveys of the Magellan Straights (southern Chile) conducted during October-November 1994, but the workshop revealed interesting similarities between the marine invertebrate communities of the Falkland Islands and of the southern Pacific coast of Chile (Bingham, 1997).

During the course of this study enquiries were made to the British Antarctic Survey (Dr Andrew Clarke), the British Museum of Natural History (BMNH; Dr David George) and the British Geological Survey (Dr Nigel Fannin). None of these institutions holds survey data for the study area, although some animal specimens collected from the Falklands are likely to be held by the BMNH.

Gaps in offshore benthic data for the Falklands and need for baseline surveys

The description of the benthic communities of the Argentine continental shelf published in 1992 by Bastida *et al* remains a key work for the Southwestern Atlantic, but work in this area is far from complete and many areas are still completely unknown (Bastida, pers comm, 1997). Although the above-mentioned FFS *Walther Herwig* and USNS *Eltanin* and other surveys yielded specimens for taxonomic study, they do not provide the kind of quantitative data necessary for baseline descriptions or monitoring use.

A general lack of knowledge of the type and distribution of offshore benthic communities around the Falkland Islands prevents a detailed description of such communities in the vicinity of the northern Tranches. There are no relevant data on abundance, diversity or biomass levels. The information available indicates a patchy occurrence of hard sediment. Specific baseline sampling will be of benefit to the understanding of the benthic fauna at the proposed drilling locations. The operators have committed to conduct such a survey prior to the commencement of drilling activities, and the survey design should be adapted as information on sediments in the region becomes available. Sampling will allow characterisation of the key physical, chemical and biological parameters of the seabed in and around the Tranches. This characterisation will provide a basis for the design of, and comparison with, future monitoring surveys conducted in respect of specific industrial activities, and will support the overall environmental management of the licence areas. Understanding of the seabed sediments, their chemical composition and faunal communities is of particular importance due to their readily quantifiable nature and because any effects from oil development activities are most likely to be detected at the seabed.

The benthic fauna of this area is not particularly well known, and adequate local identification guides are not available. It is likely that species will be sampled that are new to science. However, a substantial amount of taxonomic work has been carried out and is in progress on species from around the Falklands and other subantarctic areas, and it will be possible for experienced workers to characterise the fauna and monitor impacts of disturbance.

List of taxonomic literature of relevance to the study area

The following list is not intended to be exhaustive, but contains key works of which we are aware.

Hartman O (1967) Polychaetous annelids collected by the USNS *Eltanin* and Staten Island cruises, chiefly from Antarctic seas. *Allan Hancock Monographs in Marine Biology*, No 2. The Allan Hancock Foundation, University of Southern California, Los Angeles, California. 387 pp.

Notes: Contains descriptions and drawings of many deep-water species from the Falkland Islands, including new genera and species described from there.

Blake J A (1984) Polychaeta Oweniidae from Antarctic seas collected by The United States Antarctic Research Programme. *Proceedings of the First International Polychaete Conference, Sydney*. Ed. P A Hutchings, Linnean Society of New South Wales, 112-117.

Brown B (1991). Maldanidae (Polychaeta) from the seas of Antarctica. In Petersen, M E, and Kirkegaard, J B (Eds), Proceedings of the 2nd International Polychaete Conference, Copenhagen, 1986, *Ophelia Supplement*, 5, p690.

Appendix E Oil spill response strategy recommendations

Oil Spill Response Strategy for Falkland Islands Exploration Blocks

Introduction

The decision on oil spill response actions that may be utilized in the event of spillage from exploration activities will ultimately depend on a number of factors:

- Type and quantity of oil spilled.
- Pertaining wind and currents (slick trajectory).
- Resources under threat.
- Equipment and trained personnel availability.
- Logistical support availability.
- Political pressures.
- Media pressures.

Good contingency planning practice demands that credible analyses of spill scenarios are undertaken. Such analyses should attempt to encompass the above factors and, where possible, influence the level of response preparedness.

The following outlines various spill response options which the exploration companies considered and the justification for their proposals. The basis of these proposals is the computer simulation model Oil Spill Information System (OSIS) and the particular challenges and constraints faced in the Falkland Islands.

Expectations, Awareness and the Political Climate

Virtually all the organizations with potential input to an oil spill response were consulted during an information gathering visit to the Islands. This round of meetings allows an assessment of current expectations to be made. These may be summarized as:

- A genuine and universal desire to assist in the contingency planning process.
- Existing awareness of the serious constraints to spill response posed within the Falklands.
- Willingness to listen to explanations of these serious constraints where appropriate.
- Widespread belief that the northerly licensed areas pose a less serious risk than potential licensing in the Special Area of Co-operation to the south-west. This is based on local knowledge of the prevailing wind and currents coupled with the perception by a number of organizations that shoreline oiling is the worst environmental impact of a spill. There are also some politically sensitive sites in the south-west (e.g. New Island). The 'shoreline oiling impact' was put in context by Falkland Conservation, who pointed out the lack of knowledge of open sea vulnerabilities (notably seabird distributions).
- General understanding that the highest current and future oil spill risk is associated with shipping operations and particularly bunkering within Berkeley Sound.
- A concern was voiced by some that environmental groups outside the Falklands may utilize the forthcoming exploration activities as a means to further wider agendas. This was not seen as a positive factor, but was interpreted as a driver to ensure all possible spill response options should be realistically considered.
- No expectations of industry maintaining a response base in the Falklands to cover the spill risk from forthcoming exploration drilling was apparent.

Strategy Options

Leave alone

For spills of light oils and small spills of other oil types, a monitor and evaluate response is justified. This is because the oil will dissipate quickly without serious environmental consequences. This strategy requires aerial surveillance capability to allow any slick to be tracked and its dissipation thus confirmed.

Dispersants

These are specifically formulated and licensed products designed to greatly facilitate the formation of dispersed oil droplets in upper surface waters. Dispersants contain surfactant chemicals that reduce the surface tension at the oil-water interface and allow the formation of tiny oil droplets, when some wave energy is present.

The droplets redistribute the oil into the surface water (usually the top few meters), where dilution and biodegradation can occur. Whilst the successful use of dispersants does lead to a transient increase in oil concentrations in the surface waters, there should be no significant increase in the acute toxicity of the oil-dispersant mix compared to the oil alone.

Application of dispersant on to oil at sea can be either from vessels and aircraft.

Contain & Recover

Containment and recovery involves corralling the oil within a floating barrier (boom) and recovering that oil using various devices (skimmers). Vessels are required to carry and deploy the equipment and successful operations generate a need for temporary oil storage and ultimately disposal.

Protection

The use of booms in coastal and shoreline areas as a means to protect sensitive resources can be an effective strategy. This is particular true if the resource is relatively sheltered, away from strong currents and does not require long lengths of booms (i.e. many 100s of metres).

Good planning is required for the effective use of protection measures. This includes the identification and prioritization of protectable areas and the development of equipment and personnel requirements and procedures.

Shoreline Clean-up

Removal of oil from beaches can bring environmental, aesthetic and PR benefits. It can also be hazardous, invasive and require significant logistics and management. Many areas in the Falklands are remote and inaccessible and leaving stranded oil to degrade naturally may be a viable response for many shorelines.

The labour intensive nature of many shoreline clean-up techniques and the generation of waste oil, debris, beach and other materials would present serious logistical and operational challenges.

Response Constraints

The constraints to effective response in the Falklands must be fully understood, as these dictate the response recommendations. The following lists and expands upon the main constraints. Each of these constraints alone could prevent certain response options; in combination they present formidable challenges.

- Spilled Oil Behaviour* The tendency of most oils to spread rapidly and fragment can lead to large areas of open sea containing thin, floating oil slicks. The 'oil encounter rate' of any countermeasures (e.g. the mouth of a collection boom or the spray pattern from a dispersant application system) may become relatively slow.
- Formation of water-in-oil emulsions, with associated increase in viscosity, progressively renders an oil untreatable by dispersants and increasingly difficult to recover and pump if contained in a boom.
- Climate* Meteorological records indicate that the Falkland Islands are subject to relative high winds and associated sea states. The mean wind speed at Stanley exceeds 15 knots and prolonged calm periods are rare. On average more than 4 gales a month can be expected. This type of climate severely limits the successful operation of booms to contain oil and allow its collection. Whilst containment may appear desirable, winds above around Beaufort Force 5 (18 knots) lead to such operations becoming ineffectual and potentially dangerous for vessel crews.
- Tidal and residual currents also limit the ability of booms to function properly. Any boom perpendicular to a current above about 0.7 knots will begin to fail to contain oil. The Falkland archipelago has a number of sea areas where tidal currents greatly exceed 0.7 knots (though these are away from the licensed areas).
- Equipment* Booms can only be handled at sea up to certain lengths. Manoeuvrability is very difficult with lengths above 500 m, even with ideally suited vessels. This maximum length still provides a poor encounter rate as the entrance to a containment formation will be around 150 m and the deployment cannot exceed a relative speed of 0.7 knots.
- If oil has been successfully contained, all skimmers have a limited range of oil viscosity capability. Large quantities of water may also be collected along with the oil, generating potential storage problems.
- Suitable vessels for boom and skimmer deployment offshore are not readily available in the Falklands. Recovered oil storage vessels are also not likely to be available.
- Remoteness* The geographic location of the Islands may be described as internationally remote. The nearest viable seaports and airports are Punta Arenas (Chile) and Montevideo (Uruguay), the former being closest at 480 miles.
- In the national context a large proportion of the Archipelago's coast is also remote. The main island group is approximately 160 miles (250 km) east-west by 95 miles (150 km) north-south. There are:
- over 400 islands, many of which are heavily indented. The Islands coastline is many hundreds of miles long;
 - few habitations, amounting to isolated stations (farms) and settlements;
 - minimal roads or tracks (a road construction programme is underway, but this will still leave many coastal areas inaccessible);

- limited harbours; and
- few airfields or suitable landing areas.

The inaccessibility of much of the coastline is a crucial factor in planning safe and feasible response strategies.

Personnel

The total resident population of the Islands is approximately 2,000. It should be appreciated that this limits the availability of personnel who may be called upon to assist with a spill response effort.

OSIS Modelling

A number of fate and trajectory runs were undertaken, utilizing a section of Proudman Oceanographic Laboratory's Patagonian Shelf current model configured for OSIS. The model utilized a tidal component plus a uniform contribution from the Falkland Current. These runs focused on the following parameters:

- Two **release sites**, representing sites in the north and south of the licensed sea areas. The precise locations of the release sites are as follows:
Northern location: 49°20' S, 59°12' W (central point of Tranches A-D)
Southern location: 50°00' S, 59°18' W (central along southern boundary of Tranche F).
- Four **oil types**, representing the four oil groups (1 to 4) identified on the basis of specific gravity (group 1 being a light, non-persistent oil progressing to group 4, being a very heavy persistent oil). The oil types used and their characteristics when fresh are shown in Table 1.

Group	Oil type	S.G.	Pour point (°C)	Viscosity @ 15°C (cSt)	Asphaltene (%)
1	Kerosene	<0.8	low	2	0
2	Argyll	0.83	9	11	0.95
3	Forties	0.85	0	8	0.24
4	Gamba	>0.95	30	high	0.05

Table 1 Oil types and characteristics used for OSIS runs

The spill scenario was based on an on-going release of 1,000 m³ per hour for 12 hours (i.e. low risk of occurrence).

- Initially runs used a constant **wind speed and direction** based on monthly historical meteorological information, obtained from The Meteorological Office. This provided a framework for prediction of the oils' weathering, but was not realistic for trajectory (generally winds do not blow continuously from a given direction for long periods). Likely trajectory (specifically the threat of oil beaching) was estimated through reference to historical wind persistence data.

Modelling Results: Weathering

All Group 1 (Kerosene) computer runs indicated total dissipation of the floating slick within 12 hours of release cessation. The processes of evaporation and natural dispersion were jointly responsible for the oil's dissipation.

Of the runs of Groups 2, 3 & 4 oil types there was a prediction of dissipation at sea within a time frame ranging from about 7 to 11 days.

The model predicted rapid emulsification of the group 2, 3 & 4 oils under each monthly weather scenario. This process is a key factor retarding the dissipation of the oil. It also indicates a relatively short 'window of opportunity' for use of chemical dispersants (see later *strategy recommendations* discussions).

Although the characteristics of any oil that may be found in the exploration process remain unknown, it is a fact the many oils do form water-in-oil emulsions. The process is facilitated by the sea states associated with the relatively high wind strengths found in the Falklands.

Modelling Results: Trajectory

The approximate earliest beaching time for the persistent oils (2, 3 and 4) was obtained from OSIS, under four wind speeds (5, 10, 20 and 30 knots). This information has been factored against likelihood of wind persisting from a direction that would lead to beaching. The direction criterion was based on the wind blowing towards land from the southerly release point. Table 2 presents this information.

Duration of spell (hours)	Wind speed (direction criterion 315° - 075° [NW to ENE])			
	>5 knots	>10 knots	>20 knots	>30 knots
6 or more	118.9	109.1	54.5	9.1
12 or more	72.9	58.3	18.7	1.1
18 or more	42.8	28.5	6.3	0.3
24 or more	23.8	15.2	2.5	0.0
36 or more	7.8	4.1	0.7	0.0
48 or more	2.8	0.9	0.2	0.0
60 or more	1.8	0.6	0.1	0.0
72 or more	0.7	0.3	0.0	0.0
84 or more	0.3	0.1	0.0	0.0
96 or more	0.1	0.1	0.0	0.0
108 or more	0.1	0.1	0.0	0.0
120 or more	0.1	0.1	0.0	0.0
132 or more	0.1	0.1	0.0	0.0
144 or more	0.1	0.0	0.0	0.0

Table 2 Wind persistence, Mount Pleasant (7/1985 to 12/1996)

Entries in the table indicate the average number of 'spells' per year.

Shaded cells are possible beaching scenarios from southerly release point (i.e. the nearest to land).

Data interpretation

Table 2 provides an indication of average wind spell frequencies (i.e. wind persistence):

Example: There are on average 4.1 occasions per year when the wind blows between NW and ENE at greater than 10 knots for 36 hours or more.

This wind spells data may be compared against likely beaching times under varying wind speeds. This is shown on Table 2 by the shaded cells.

Reference to the spells data from which the figures in Table 2 are derived indicates that over the 11.5 year recording period there are two occasions that would lead to beaching, of (a) 48 hours and (b) 132 hours duration. Case (a) requires the full 48 hours whilst case (b) requires 96 hours to bring the oil ashore.

Therefore a random oil spill from the southerly release point would have a beaching probability of approximately 1 in 2,700 [37 out of 100,740 hours].

This low risk should be further taken in the context of a statistical likelihood of blow-out of approximately 1 in 4,800 per well month

Strategy Recommendations

The various strategy options listed previously have been put in context by the serious constraints identified. Realistic recommendations follow in this section.

Tier 1 Capability

Leave alone

Aerial surveillance capability is likely to be available from the Falkland Islands Government Air Service (FIGAS) Islander aircraft. Two such aircraft are equipped for flying over sea for extended periods and possess the range to cover the oil exploration licensed acreage. These aircraft should be able to confirm the dissipation of either small or light oil spills.

Dispersants

The successful application of dispersants relies on the oil remaining treatable. Above certain viscosity limits, the dispersant become ineffective, as the surfactant cannot penetrate to the oil-water interface. Increase in viscosity is caused primarily by emulsification and evaporation.

The 'window of opportunity' for dispersant use is unlikely to exceed two days. This would be under favourable circumstances, with an oil type that does not readily emulsify. However an on-going oil release would allow on-going dispersant use, with continuous fresh oil present. It is recommended that 'tier 1' capability is maintained to provide a first strike dispersant response. Recommended application mode is from a standby vessel.

A typical offshore boat spraying operation could apply around 18m³ of concentrate dispersant per 10 hour day (treating approximately 360m³ of oil). Storage capacity for dispersant on a vessel may be limiting, but the drilling rig should be able to provide additional storage. The correct use of dispersant requires training of operators, availability of application guidelines and aerial support for accurate targeting and assessing effectiveness.

It is recommended that 3 days spraying capability is the tier 1 resource, amounting to 54m³ of concentrate dispersant. After this period it is expected that OSRL would supply back-up dispersant resources. It is recommended that two days supply (36m³) of the dispersant is any of the UK-licensed concentrates, which are likely to be effective on fresh oil. It is suggested that the third day's supply be the specific product Corexit 9500 (or any forthcoming equivalent), as this dispersant extends the viscosity range of successful operation.

Guidelines have been proposed to FIG regarding areas where dispersant may be used. The National Plan will include such guidelines and it is not expected that use offshore will be prohibited.

Tier 2 Capability

National Stockpile

It is expected that FIG will have a relatively small equipment stockpile (inshore boom, sorbent materials & personal protective equipment) and personnel trained in its use operational during the first half of 1998. This could prove effective in mounting a response to relatively small spills associated with fuel transfers and supply in Stanley Harbour / Berkeley Sound.

Tier 3 Capability

OSRL

The mobilization time for personnel and equipment from Southampton could be the order of 40 hours. Support envisaged includes a variety of specialized equipment to assist offshore and nearshore strategies, with staff to provide technical advice and extra personnel if a sustained response over a number of days is required.

On-going dispersant application could be supported by OSRL. A feasible supply route would allow the provision of 30m³ concentrate from the UK within 40 hours to maintain boat spraying operations. If further on-going application is needed the ADDSPack aerial system may be mobilized to the Islands.

Oil Spill Response Limited



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Charging Orders Bill 1997;

Control of Drinking by Juveniles (Amendment) Bill 1997;

Damages Bill 1997;

Offshore Minerals (Amendment) Bill 1997.

CORRIGENDUM

Falkland Islands Gazette Supplement No 25 published 31 October 1997 contained the Drug Trafficking and Other Offences (External Confiscation Orders & External Forfeiture Orders) Order 1997 published as S. R. & O. No. 16 of 1997 which should have read S. R. & O. No. 17 of 1997.

PROCLAMATION

CUSTOMS

Firearms and Ammunition (Export Prohibition)(Revocation) Proclamation 1997

(Proclamation No. 5 of 1997)

WHEREAS section 6 of the Firearms and Ammunition Ordinance 1987 is in the following terms—

6(1) No person shall export any firearm or ammunition from the Colony unless he holds a firearms and ammunition export licence authorising such exportation.

(2) A firearms and ammunition export licence may be obtained on application to the Officer in Charge of Police and on payment of the prescribed fee and shall be in the prescribed form or, if no form is prescribed, in such form as the Officer in Charge of Police may consider appropriate.

(3) Every holder of such licence shall endorse thereon the description and identifying marks of all firearms and the description of all ammunition exported thereunder, and shall return the licence to the Officer in Charge of Police within fourteen days from exporting all the firearms and ammunition authorised to be exported.

AND WHEREAS the Proclamation of the then Governor dated 22nd day of July 1969 (Proclamation Number 2 of 1969) made under section 35 of the Customs Ordinance (Cap 16) which prohibits the exportation of any firearms or ammunition unless authorised in writing under the hand of the Colonial Secretary is inconsistent with the provisions of section 6 of the Firearms and Ammunition Ordinance 1987 and for that reason that Proclamation ought to be revoked

NOW THEREFORE, I, RICHARD PETER RALPH, Companion of the Most Distinguished Order of St Michael and St George, Commander of the Royal Victorian Order, **GOVERNOR** of the Falkland Islands

IN EXERCISE of my powers under section 35 of the Customs Ordinance and of all other powers enabling me in that behalf to hereby, **PROCLAIM** that Proclamation Number 2 of 1969 is hereby revoked

GIVEN under my hand and the Public Seal of the Falkland Islands at Government House, Stanley, Falkland Islands, this 6th day of November in the year of Our Lord One thousand Nine Hundred and Ninety-Seven

R. P. Ralph
Governor

SUBSIDIARY LEGISLATION

ROAD TRAFFIC

Road Traffic (Amendment) Ordinance 1996 (Rectification) Order 1997

S. R. & O. No. 18 of 1997

Made: 5th November 1997
Published: 24th November 1997
Coming into force: on publication

IN EXERCISE of my powers under section 101(1) of the Interpretation and General Clauses Ordinance 1977(a), and of all other powers enabling me in that behalf, I make the following Order—

Citation and commencement

1. This Order may be cited as the Road Traffic (Amendment) Ordinance 1996 (Rectification) Order 1997 and shall come into force on its publication in the *Gazette*.

Rectification of Road Traffic (Amendment) Ordinance 1996

2. Section 2 of the Road Traffic (Amendment) Ordinance 1996(b) is rectified by replacing the words "section 9(1)(a)" appearing therein with the words "section 9N(1)(a)".

Made this 5th day of November 1997

D G Lang
Attorney General

(a) No 14 of 1977

(b) No 23 of 1996

Charging Orders Bill 1997

(No: of 1997)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title and commencement
2. Interpretation
3. Charging orders
4. Property which may be charged
5. Provisions supplementing sections 3 and 4
6. Stop orders and notices

Schedule

CHARGING ORDERS BILL 1997

(No. of 1997)

A BILL

for

AN ORDINANCE

(assented to: 1997)

(commencement: in accordance with section 1)

(published: 1997)

To make provision for imposing charges to secure payment of money due under judgments or orders of court and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands as follows—

Short title and commencement

Preliminary

1. This Ordinance may be cited as the Charging Orders Ordinance 1997 and shall come into force on such date as is notified by the Governor by notice published in the Gazette.

Interpretation (1979 c.53 s.6)

2.(1) In this Ordinance—

“charging order” means as order made under section 3(1) of this Ordinance;

“debt” and “debtor” have the meaning given by section 3(1) of this Ordinance;

“dividend” includes any distribution in respect of a security;

“maintenance order” has the same meaning as it has under section 2(a) of the Attachment of Earnings Act 1971;

“stock” includes shares, debentures and any securities of the body concerned whether or not constituting a charge on the assets of that body.

(2) For the purposes of section 3 of this Ordinance, references to a judgment or order of the Supreme Court, shall be taken to include references to a judgment, order, decree or award (however called) of any court or arbitrator (including any foreign court or arbitrator) which is or has become enforceable as if it were a judgment or order of the Supreme Court or the Magistrate's Court.

Charging orders (1979 c.53 s.1)

3.(1) Where, under a judgment or order of the Supreme Court or the Magistrate's Court, a person (the “debtor”) is required to pay a sum of money to another person (the “creditor”) then, for the purpose of enforcing that judgment or order, the appropriate court may make an order in accordance with the provisions of this Ordinance imposing on any such property of the debtor as may be specified in the order a charge for securing the payment of any money due or to become due under the judgment or order.

(2) The appropriate court is—

(a) in a case where the property to be charged is fund in court, the court in which that fund is lodged;

(b) in a case where paragraph (a) above does not apply and the order to be enforced is a maintenance order of the Supreme Court, the Supreme Court or the Magistrate's Court;

(c) in a case where neither paragraph (a) nor paragraph (b) above applies and the judgment or order to be enforced is a judgment or order of the Supreme Court for a sum exceeding jurisdiction of the Magistrate's Court, the Supreme Court or the Magistrate's Court; and

(d) in any other case, the Magistrate's Court.

(3) An order under subsection (1) above is referred to in this Ordinance as a “charging order”.

(4) Where a person applies to the Supreme Court for a charging order to enforce more than one judgment or order, that court shall be the appropriate court in relation to the application if it would be the appropriate court, apart from this subsection, on an application relating to one or more of the judgments or orders concerned.

(5) In deciding whether to make a charging order the court shall consider all the circumstances of the case and, in particular, any evidence before it as to—

- (a) the personal circumstances of the debtor, and
- (b) whether any other creditor of the debtor would be likely to be unduly prejudiced by the making of the order.

Property which may be charged (1979 c.53 s.2)

4.(1) Subject to subsection (3) of this section, a charge may be imposed by a charging order only on—

- (a) any interest held by the debtor beneficially—
 - (i) in any asset of a kind mentioned in subsection (2) of this section, or
 - (ii) under any trust; or
- (b) any interest held by a person as trustee of a trust ("the trust"), if the interest is in such an asset or is an interest under another trust and—
 - (i) the judgment or order in respect of which a charge is to be imposed was made against that person as trustee of the trust, or
 - (ii) the whole beneficial interest under the trust is held by the debtor unencumbered and for his own benefit, or
 - (iii) in a case where there are two or more debtors all of whom are liable to the creditor for the same debt, they together hold the whole beneficial interest under the trust unencumbered and for their own benefit.

(2) The assets referred to in subsection (1) of this section, are—

- (a) land,
- (b) securities of any of the following kinds—
 - (i) stock of any body incorporated within the Falkland Islands;
 - (ii) stock of any body incorporated outside the Falkland Islands or of any state or territory outside the Falkland Islands, being stock registered in a register kept at any place within the Falkland Islands,
- (c) funds in court.

(3) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in paragraph (b) or (c) of subsection (2) of this section, the court making the order may provide for the charge to extend to any interest or dividend payable in respect of the asset.

Provisions supplementing sections 3 and 4 (1979 c.53 s.3)

5.(1) A charging order may be made either absolutely or subject to conditions as to notifying the debtor or as to the time when the charge is to become enforceable, or as to other matters.

(2) The Land Charges Ordinance 1996 shall apply in relation to charging orders as it applies in relation to other orders or writs issued or made for the purpose of enforcing judgments.

(3) Subject to the provisions of this Ordinance, 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 debtor by writing under his hand.

(4) The court by which a charging order was made may at any time, on the application of the debtor or of any person interested in any property to which the order relates, make an order discharging or varying the charging order.

(5) Where a charging order has been protected by an entry registered under the Land Charges Ordinance 1996, an order under subsection (4) of this section discharging the charging order may direct that the entry be cancelled.

(6) The Governor may by Order amend section 4(2) of this Ordinance by adding to, or removing from, the kinds of asset for the time being referred to there, any asset of a kind which in his opinion ought to be so added or removed.

Stop orders and notices (1979 c.53 s.4)

6.(1) In this section—

“stop order” means an order of the court prohibiting the taking, in respect of any of the securities specified in the order, of any of the steps mentioned in subsection (5) of this section;

“stop notice” means a notice requiring any person or body on whom it is duly served to refrain from the taking, in respect of any of the securities specified in the notice of any of the steps mentioned in subsection (5) of this section, without first notifying the person by whom or on whose behalf, the notice was served;

“prescribed securities” means securities (including funds in court) of a kind prescribed by rules of court.

(2) The power to make rules of court under section 69 of the Administration of Justice Ordinance shall include power by any such rules—

(a) to make provision for the court to make a stop order on the application of any person claiming to be entitled to an arrest in prescribed securities;

(b) to make provision for the service of a stop notice by any person claiming to be entitled to an interest in prescribed securities;

(c) to include such incidental, supplemental and consequential provisions as may be considered necessary or expedient, and to make different provision in relation to different cases or classes of case.

(3) The steps mentioned in subsection (1) are—

(a) the registration of any transfer of securities;

(b) in the case of funds in court, the transfer, sale, delivery out, payment or other dealing with the funds, or of the income thereon; and

(c) the making of any payment by way of dividend, interest or otherwise in respect of the securities.

OBJECTS AND REASONS

To make provision for securing payment of judgments or orders of courts by the making of charging orders on the property of persons from whom the payment is due.

Control of Drinking by Juveniles (Amendment) Bill 1997

(No: of 1997)

ARRANGEMENT OF PROVISIONS

Clause

1. **Short title**
2. **Amendment of the Control of Drinking by Juveniles Ordinance 1993**

CONTROL OF DRINKING BY JUVENILES (AMENDMENT) BILL 1997

(No. _____ of 1997)

A BILL.

for

AN ORDINANCE

(assented to: 1997)

(commencement: upon publication in the Gazette)

(published: 1997)

To amend the Control of Drinking by Juveniles Ordinance 1993

BE IT ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Control of Drinking by Juveniles (Amendment) Ordinance 1997.

Amendment of the Control of Drinking by Juveniles Ordinance 1993

2. Section 5 of the Control of Drinking by Juveniles Ordinance 1993 is amended by inserting the following subsections immediately after subsection (2) of that section—

“(3) Except as provided by subsection (4), it is unlawful for a juvenile to consume intoxicating liquor in a private place (that is to say, in any place or premises not within the definition of “public place” in section 2).

(4) Subsection (3) does not apply—

(a) so as to prohibit the consumption of alcohol by a juvenile in premises licensed under the Licensing Ordinance 1994 in circumstances in which such consumption is not prohibited by any provision of that Ordinance;

(b) so as to prohibit the consumption of alcohol by a juvenile in the premises in which he usually lives;

(c) so as to prohibit the consumption of alcohol by a juvenile with the consent of his parent or guardian (but a juvenile does not consume alcohol with the consent of his parent or guardian if he contravenes any condition or limitation subject to which that consent was given); or

(d) where subsection (2) applies.

(5) A juvenile who contravenes subsection (3) commits an offence and is liable on conviction of that offence to a fine not exceeding £250.

(6) If a juvenile charged with an offence under subsection (5) claims the benefit of the defence afforded by paragraph (c) of subsection (4), it is for him to prove that he consumed the alcohol in question with the consent of his parent or guardian.

(7) A person who is the occupier of, or appears for the time being to have control of, any private place or private premises commits an offence if he is present while any alcohol is consumed there by any juvenile in contravention of subsection (3), but it is a defence for him to prove that he did not know and had no reasonable means of knowing of that consumption or, if he did know of it, that he had taken all reasonable steps to prevent it taking place. A person convicted of an offence under this subsection is liable to a fine not exceeding £1000 or to imprisonment for a term not exceeding six months.

Damages Bill 1997

(No: of 1997)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title and commencement
2. Adoption of the Damages Act 1996 (1996 c.48)

Schedule

DAMAGES 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 adopt the Damages Act 1996 as law of the Falkland Islands

BE IT ENACTED by the Legislature of the Falkland Islands as follows—

Short title and commencement

1. This Ordinance may be cited as the Damages Ordinance 1997 and shall come into force one month after it is first published in the *Gazette*.

Adoption of the Damages Act 1996 (1996 c. 48)

2. The Damages Act 1996 applies in the Falkland Islands with the exceptions and subject to the modifications specified in the Schedule to this Ordinance and in accordance with the other provisions of that Schedule.

SCHEDULE

Application of Damages Act 1996

Excepted provisions

Sections 1(5), 3(7), 4, 5, 6 and 8(2) and (3) do not apply in the Falkland Islands

Modifications

Sections 1(1) to (4) apply in relation to and in courts in the Falkland Islands as if they were courts in England and accordingly without the modifications which would otherwise have effect under the provisions of section 76 of the Interpretation and General Clauses Ordinance 1977.

DAMAGES BILL 1997

EXPLANATORY MEMORANDUM

Introductory

This Bill would, if enacted, adopt a number of the provisions of the Damages Act 1996 of the United Kingdom ("the 1996 Act"). The 1996 Act gives effect to the principal recommendations of the English Law Commission in its Report *Structured Settlements and Interim and Provisional Damages* (1994). Structured settlements in cases of serious personal injuries have enabled damages to be paid by means of a series of tax free payments instead of at least part of the traditional lump sum. Sections 1 and 3 of the 1996 Act do not, however, directly involve structured payments.

Explanation of the Bill and of the Applied Provisions of the Damages Act 1996

Clauses 1 and 2 of the Bill would apply the provisions of the Damages Act 1996 with the exceptions and subject to the modifications set out in the Schedule to the Bill. The application of those provisions would come into force one month after publication of the Ordinance resulting from the passing of the Bill by the Legislative Council.

Section 1 of the 1996 Act

Section 1 of the 1996 Act provides that in determining the return to be expected from the investment of a sum awarded as damages for future pecuniary loss in an action for personal injury the court shall, subject to an in accordance with Rules of Court made for the purposes of the section, take into account such rate of return (if any) as may from time to time be prescribed by an Order made by the Lord Chancellor. The court is not, however, prevented from taking into account a different rate of return if any party to the proceedings shows that it is more appropriate in the case in question.

The multiplier used in the conventional assessment of damages has been based upon the plaintive receiving a real rate of return upon damages of between 4% and 5% a year. This presumption which has been in use for over 25 years justifies damages being discounted to allow for the fact that the plaintiff obtains his money before he would have done so had the accident not occurred. In this way the damages are reduced to take account of their "accelerated receipt". In recent years the extent of the discount has been criticised by lawyers acting for plaintiffs who have argued that a 4% to 5% real rate of return on investment of damages is unrealistic: plaintiffs have been unable to obtain such a figure - at least without subjecting their damages to the risks involved in the financial markets. They have therefore been under-compensated.

Section 2 of the 1996 Act

Section 2 of the 1996 Act provides that a court awarding damages in an action for personal injury may, with the consent of the parties, make an order under which the damages are wholly or partly to take the form of periodical payments. "Damages" include interim payments which the court orders the defendant to make to the plaintiff.

Under section 32A of the Supreme Court Act 1981 which has effect in the Falkland Islands by virtue of the provisions of the Administration of Justice Ordinance, the Supreme Court has jurisdiction to make an award of "provisional damages". These are awarded where there is a recognised risk that the plaintiff may develop a further disease or suffer a particular deterioration and are awarded where the plaintiff accepts damages assessed on the basis that nothing is to be awarded for the risk unless it occurs, when full account may be taken of the effect of the deterioration in the plaintiff's condition. The Law Commission recommended clarification of the law so as to provide for the situation where the plaintiff dies of his injuries after receiving a provisional award. Section 3 of the 1996 Act ensures that the plaintiff's dependants will not be precluded from claiming for loss of dependency and that any award made after death will not result in the same pecuniary losses being taken into account more than once in assessing the damages payable.

Offshore Minerals (Amendment) Bill 1997

(No: of 1997)

ARRANGEMENT OF PROVISIONS

Clause

1. **Short title**
2. **The principal Ordinance**
3. **Amendment of the principal Ordinance**

OFFSHORE MINERALS (AMENDMENT) BILL 1997

(No: of 1997)

A BILL

for

AN ORDINANCE

(assented to: 1997)
(commencement: on publication)
(published: 1997)

To amend the Offshore Minerals Ordinance 1994 so as to make further provision in relation to the application of provisions of the Health and Safety at Work etc. Act 1974

BE IT ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Offshore Minerals (Amendment) Ordinance 1997.

The principal Ordinance

2. In this Ordinance, “the principal Ordinance” means the Offshore Minerals Ordinance 1994.

Amendment of the principal Ordinance

3.—(1) Section 2(1) of the principal Ordinance is amended—

(a) by replacing the definition of “designated area” with the following—

“ “designated area” means—

(a) any area which is within the definition of designated area in Proclamation No 1 of 1991; and

(b) any area to which Proclamation No 1 of 1997 relates”;

(b) by replacing the definition of “offshore installation” appearing therein with the following definition—

“ “offshore installation” has the meaning given by section 36(5)(a)”;

and

(c) by replacing the definition of “relevant offshore activity” appearing therein with the following definition—

“ “relevant offshore activity” means an activity mentioned in sub-paragraphs (i) to (iv) of paragraph (a) of section 36(5);”.

(2) Section 36 of the principal Ordinance is amended—

(a) by inserting the following paragraphs after paragraph (b) of subsection (4)—

“(ba) any pipe-line works;

(bb) the following activities in connection with pipe-line works—

(i) the loading, unloading, fuelling or provisioning of a vessel;

(ii) the loading, unloading, fuelling, repair and maintenance of an aircraft on a vessel,

being in either case a vessel which is engaged in pipe-line works;”

(b) by inserting the following paragraphs after paragraph (c) of subsection (4)—

“(d) any offshore installation and any activity on it;

(e) any activity, including diving operations, in connection with an offshore installation, or any activity which is immediately preparatory thereto, whether carried on from the installation itself, on or from a vessel or in any other manner, other than—

(i) transporting, towing or navigating the installation; and

(ii) any activity on or from a vessel being used as a stand-by vessel;

(f) diving operations involving the survey and preparation of the sea-bed for an offshore installation;

(g) any of the following activities within the territorial sea of the Falkland Islands—

(i) the construction, reconstruction, alteration, repair, maintenance, cleaning, demolition and dismantling of any building or other structure not being a vessel, or any preparation for any such activity;

(ii) the loading, unloading, fuelling or provisioning of a vessel;

(iii) diving operations;

(iv) the maintaining on station of a vessel which would be an offshore installation were it not a structure to which sub-paragraph (iv) of paragraph (a) of subsection (5) applies,

but nothing in this paragraph shall enable the Governor to make any Order applying to any vessel which is registered outside the Falkland Islands and is on passage through the territorial sea; and

(h) a well and any activity connected with it, and any activity immediately preparatory to any such activity (and for the purposes of this paragraph “activity” and “activity immediately preparatory to any such activity” both include keeping a vessel on station for the purpose of working on a well but do not otherwise include navigation or an activity connected with navigation).”;

(c) by replacing subsection (5) with the following—

“(5) For the purposes of subsection (4) and this subsection—

(a) “offshore installation” means a structure which is not within the definition of “excepted structure” contained in paragraph (b) of this subsection and which is, or is to be, or has been, used while standing or stationed in water, or on the foreshore or other land intermittently covered by water—

(i) for the exploitation, or exploration with a view to exploitation, of mineral resources by means of a well;

(ii) for the storage of gas in or under the shore or bed of any water or the recovery of gas so stored;

(iii) for the conveyance of things by means of a pipe; or

(iv) mainly for the provision of accommodation for persons who work on or from a structure falling within any of the provisions of this paragraph and which is not an excepted structure;

(b) "excepted structure" means a structure which is any of the following—

(i) a structure which is connected with dry land by a permanent structure providing access at all times and for all purposes;

(ii) a well;

(iii) a structure which has ceased to be used for any of the purposes specified in sub-paragraph (ii) of paragraph (a) of this subsection and has since been used for a purpose not so specified;

(iv) a mobile structure which has been taken out of use and is not for the time being intended to be used for any of the purposes specified in sub-paragraph (ii) of paragraph (a) of this subsection; and

(v) any part of a pipe-line;

(c) "pipe-line" means a pipe or system of pipes for the conveyance of any thing, together with—

(i) any apparatus for inducing or facilitating the flow of anything through, or through a part of, the pipe or system;

(ii) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system;

(iii) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system;

(iv) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in the preceding sub-paragraphs of this paragraph;

(v) apparatus for the transmission of information for the operation of the pipe or system;

(vi) apparatus for the cathodic protection of the pipe or system; and

(vii) a structure used or to be used solely for the support of a part of the pipe or system,

but does not include a pipe-line of which no initial or terminal point is situated in the Falkland Islands or within the territorial sea or a designated area;

(d) "pipe-line works" means—

(i) assembling or placing a pipe-line or length of pipe-line including the provision of internal or external protection for it;

(ii) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipeline or length of pipe-line;

(iii) changing the position of or dismantling or removing a pipe-line or a length of pipe-line;

(iv) opening the bed of the sea for the purposes of the works mentioned in sub-paragraphs (i) to (iii) of this definition, and tunnelling or boring for those purposes;

(v) any activities incidental to the activities described in sub-paragraphs (i) to (iv) of this definition;

(vi) diving operations in connection with any of the works mentioned in sub-paragraphs (i) to (v) of this definition or for the purpose of determining whether a place is suitable as part of the site of a proposed pipe-line and the carrying out of surveying operations for settling the route of a proposed pipe-line;

(e) "gas" means any gas derived from natural strata (including gas originating outside the Falkland Islands and the controlled waters), but does not include such gas in the course of supply (whether by pipes or otherwise) by a public utility or in containers in which it is intended to be supplied to members of the public or other retail consumers."; and

(f) by the addition thereto of the following subsection—

"(6) An Order under any preceding provision of this section may—

(a) contain such transitional provisions and savings as appear to the Governor, acting with the consent of the Secretary of State, to be necessary or expedient;

(b) so far as is necessary or expedient to give further or better effect to the provisions of the Order, apply the provisions of Part I of the Health and Safety at Work etc. Act 1974 or any regulations made under section 15(1) of that Act, with such modifications and exceptions as may be stated in the Order, in and to the Falkland Islands."



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 8

1st December 1997

No. 28

The following are published in this Supplement -

Mount Pleasant and Mare Harbour (Designation and Speed Limits) Order 1997, (S.R. & O. No. 20 of 1997);

The Income Tax (Annual Values) Rules 1997, (S.R. & O. No. 21 of 1997);

The Taxes (Falkland Islands Pensions Scheme) Bill 1997;

Drug Trafficking Offences Bill 1997;

Mining (Amendment) Bill 1997;

Education (Amendment) Bill 1997.

SUBSIDIARY LEGISLATION

ROAD TRAFFIC

Mount Pleasant and Mare Harbour (Designation and Speed Limits) Order 1997

S. R. & O. No. 20 of 1997

Made: 25 November 1997

Published: 1 December 1997

Coming into force: on publication in the Gazette

IN EXERCISE of my powers under section 9N of the Road Traffic Ordinance(a) and of all other powers enabling me in that behalf, I make the following Order—

Citation and commencement

1. This Order may be cited as the Mount Pleasant and Mare Harbour (Designation and Speed Limits) Order 1997 and shall come into force upon its publication in the Gazette.

Interpretation

2.—(1) In this Order—

“the Mare Harbour Road” means the road from the Guardroom at the entrance to Mount Pleasant Airport to the entrance gate to the Naval Port at Mare Harbour;

“the Ring Road” means that road at Mount Pleasant Airport known as the Mount Pleasant Ring Road from the point where it passes the Medical Centre to its junction with the road known as The Fisheries adjacent to Champina Pond;

“roads within Mount Pleasant Complex” means all roads which are both—

(a) constructed on land comprised in a lease dated 29 April 1988 made between the Governor, acting in the name and on behalf of Her Majesty and the Secretary of State for Defence; and

(b) on the Darwin side of the Guardroom entrance to Mount Pleasant Airport

but excluding the Ring Road;

(2) The carpark to the south of the air terminal at Mount Pleasant Airport is for the purposes of this Order a road within the Mount Pleasant Complex.

Speed limits

3.—(1) All roads within Mount Pleasant Complex are restricted roads subject to a prescribed maximum speed limit of 30 miles per hour except that the car park referred to in section 2(2) is a restricted road subject to a prescribed maximum speed limit of 15 miles per hour.

(2) The Ring Road is a restricted road subject to a prescribed maximum speed limit of 40 miles per hour.

(3) The Mare Harbour Road is a restricted road subject to a prescribed maximum speed limit of 40 miles per hour.

(4) All roads within the Naval Port at Mare Harbour are restricted roads with a prescribed maximum speed limit of 30 miles per hour.

Revocation

4. The Mount Pleasant and Mare Harbour (Designation and Speed Limits) Order 1989 is revoked.

Made this 25th day of November 1997

R P Ralph
Governor

EXPLANATORY NOTE *(not forming part of the above Order)*

The principal effect of this Order is to increase the prescribed maximum speed limit on the Ring Road at Mount Pleasant Airport from the point at which it passes the Medical Centre to the junction known as the Fisheries to 40 miles per hour.

SUBSIDIARY LEGISLATION

INCOME TAX

The Income Tax (Annual Values) Rules 1997

S. R. & O. No. 21 of 1997

Made: 26 November 1997

Published: 1 December 1997

Coming into force: in accordance with rule 1

IN EXERCISE of my powers under section 204 of the Taxes Ordinance 1997(a) and of all other powers enabling me in that behalf, I make the following Rules—

Citation and commencement

1. These Rules may be cited as the Income Tax (Annual Values) Rules 1997 and shall have effect with respect to income tax chargeable for the year of assessment commencing on 1st January 1998 and for subsequent years of assessment.

Application and interpretation

2.—(1) These Rules do not apply in relation to any person who is employed in agriculture or horticulture, but otherwise apply in relation to all employees.

(2) For the purposes of paragraph (1) above—

“agriculture” means arable farming, dairy farming and livestock breeding and keeping, the use of land as grazing land and meadow land, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes; and

“horticulture” means the production of horticultural produce for sale, and “horticultural produce” means fruit, flowers, vegetables and herbs, trees and shrubs, other than trees grown for the purpose of afforestation, and seeds for the reproduction of any such produce.

Annual values for prescribed benefits

3.—(1) For the purpose of section 8(1)(c) of the Taxes Ordinance 1997—

(a) the benefits prescribed are those set out in the second column of Table A below where provided on shore in the Falkland Islands and received by a person falling

within the corresponding entry in the first column of Table A in respect of his employment, and

(b) the annual value of any such benefit shall be the corresponding value in the third column of Table A—

(i) increased in accordance with paragraph (2) below in cases where that paragraph applies; and

(ii) decreased in accordance with Rule 5 in cases where that Rule applies.

TABLE A

Board and Accommodation

RECIPIENT	BENEFIT	ANNUAL VALUE
A domestic servant	Board and accommodation	£900.00
Any other person	Accommodation	£900.00
	Food or meals	£1000.00
	Heating	£450.00
	Lighting	£180.00

(2) In any case where a prescribed benefit is received by a person and also by the spouse or child of that person by reason of his employment, the annual value for that benefit shall be increased—

(a) in respect of the spouse, by an amount equal to 20 per cent. of the amount specified in Table A as the annual value of that benefit, and

(b) in respect of each child, by an amount equal to 10 per cent. of that amount.

Annual values for dwelling houses

4.—(1) For the purpose of section 8(1)(d) of the Taxes Ordinance 1997, the prescribed annual value of a dwelling house provided to or for the benefit of a person by reason of his employment shall be calculated from Table B below, read with paragraph (2) below, decreased in accordance with Rule 5 in any case where that Rule applies.

(2) The annual value shown in the third column of Table B is the value for each room in a house and accordingly in relation to any particular house is to be multiplied by the number of rooms in the house, but for the purposes of the Table—

(a) the maximum number of rooms which may be taken into account in calculating the annual value of any house is 7; and

(b) garages, outbuildings, porches, bathrooms, lavatories, larders, halls and passages shall be disregarded.

TABLE B

Dwelling Houses

RECIPIENT	DESCRIPTION OF DWELLING HOUSE	ANNUAL VALUE PER ROOM
Any employee	A dwelling house which is substantially furnished	£300.00
Any employee	A dwelling house which is not substantially furnished	£230.00

Reduction of annual values in certain cases

5.—(1) Where a person is in receipt of a prescribed benefit or a dwelling house is provided to him or for his benefit for part only of a year, the annual value of the benefit or house found in accordance with Rule 3 or 4 shall be reduced by a corresponding proportion.

(2) The annual value of a prescribed benefit or dwelling house shall be reduced by an amount equivalent to any amount which the employee pays in respect of the benefit or house (but shall not be reduced below zero to produce a loss).

(3) The Commissioner may determine that the annual value of a prescribed benefit or a dwelling house shall be reduced to a figure specified in the determination in any case where he considers such a reduction to be just and equitable.

Revocation of earlier Rules

6. The Income Tax (Annual Values) Rules 1994 are revoked but without prejudice to their application in relation to income tax for any year of assessment ending before 1st January 1998.

Made this 26th day of November 1997

R P Ralph
Governor

The Taxes (Falkland Islands Pensions Scheme) Bill 1997

(No: of 1997)

ARRANGEMENT OF PROVISIONS

Clause

1. **Short title and commencement**
2. **Amendments to the Taxes Ordinance 1997**

THE TAXES (FALKLAND ISLANDS PENSIONS SCHEME) 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 make provision with respect to the taxation of sums paid into or out of the Falkland Islands Pensions Scheme, and for connected matters.

BE IT ENACTED by the Legislature of the Falkland Islands as follows—

Short title and commencement

1.—(1) This Ordinance may be cited as the Taxes (Falkland Islands Pensions Scheme) Ordinance 1997.

(2) This Ordinance shall come into force on 1st January 1998.

Amendments to the Taxes Ordinance 1997

2.—(1) In section 64 (“Approved schemes” and other definitions)—

(a) after the definition of “member” there shall be inserted—

“ “the Falkland Islands Pensions Scheme” means the Falkland Islands Pensions Scheme established in accordance with the Falkland Islands Pensions Scheme Ordinance 1997;”.

(b) at the end of each of the definitions of "personal pensions scheme" and "retirement benefit scheme" there shall be added "but does not include the Falkland Islands Pensions Scheme".

(2) In section 65 (Meaning of "relevant earnings") after subsection (3) there shall be inserted—

"(3A) In relation to any contribution made to the Falkland Islands Pensions Scheme by a member of that Scheme, "relevant earnings" means—

(a) any earned income (including any amount which is deemed to be earned income) of that member 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 member or his 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 section 65(4)(b) after "contribution" there shall be inserted "to the Falkland Islands Pensions Scheme or".

(4) The following section shall be inserted in Part III of the Taxes Ordinance 1997 after section 65—

"Application of Part III to the Falkland Islands Pensions Scheme

65A.—(1) Section 67, 70, 73, 74 and 77 shall apply in relation to the Falkland Islands Pensions Scheme as they apply in relation to an approved retirement benefits scheme, subject to the following provisions of this section.

(2) In the application of any provision of this Part to the Falkland Islands Pensions Scheme by virtue of subsection (1)—

(a) any reference to an employee shall be construed as a reference to any member of the Scheme, whether or not an employee, and

(b) any reference to the administrator of a retirement benefits scheme shall be construed as a reference to the Pensions Board established under the Falkland Islands Pensions Ordinance 1997."

Drug Trafficking Offences Bill 1997

(No: of 1997)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title and commencement
2. Interpretation
3. Meaning of “drug trafficking” and “drug trafficking offence”
4. Confiscation orders
5. Postponed determinations
6. Assessing the proceeds of drug trafficking
7. Amount to be recovered under confiscation order
8. Meaning of “amount that might be realised” and “realisable property”
9. Value of property etc
10. Gifts caught by this Ordinance
11. Application of procedure for enforcing fines
12. Interest on sums unpaid under confiscation orders
13. Statements relating to drug trafficking

14. Provision of information by defendant
15. Reconsideration of case where court has not proceeded under section 4
16. Re-assessment of whether defendant has benefited from drug trafficking
17. Revised assessment of proceeds of drug trafficking
18. Increase in realisable property
19. Inadequacy of realisable property
20. Compensation
21. Powers of Supreme Court where defendant has absconded or died
22. Effect of conviction where Supreme Court has acted under section 21
23. Variation of confiscation orders made by virtue of section 21
24. Compensation etc where absconder is acquitted
25. Power to discharge confiscation order and order compensation where absconder returns
26. Provisions supplementary to sections 23, 24 and 25
27. Cases in which restraint orders and charging orders may be made
28. Restraint orders
29. Charging orders in respect of land, securities etc
30. Charging orders: supplementary provisions
31. Realisation of property
32. Application of proceeds of realisation and other sums
33. Exercise by Supreme Court, Magistrate's Court or receiver of powers for the realisation of property
34. Bankruptcy of defendant etc
35. Winding up of company holding realisable property
36. Insolvency officers dealing with property subject to restraint order
37. Receivers: supplementary provisions

38. Enforcement of external confiscation orders
39. Registration of external confiscation orders
40. Interpretation of Part II
41. Seizure and detention
42. Forfeiture
43. Appeal against forfeiture order made by a Magistrate's Court
44. Rules of court
45. Receipts
46. Interpretation of Part III
47. Concealing or transferring proceeds of drug trafficking
48. Assisting another person to retain the benefit of drug trafficking
49. Acquisition, possession or use of proceeds of drug trafficking
50. Failure to disclose knowledge or suspicion of money laundering
51. Tipping-off
52. Penalties
53. Order to make material available
54. Authority for search
55. Provisions supplementary to sections 53 and 54
56. Offence of prejudicing investigation
57. Disclosure of information held by the Falkland Islands Government
58. Consequential amendments and modifications of other Acts
59. Transitional provisions and savings
60. Repeals etc

Schedule 1

Schedule 2

DRUG TRAFFICKING OFFENCES BILL 1997

(No. _____ of 1997)

A BILL

for

AN ORDINANCE

(assented to: 1997)
(commencement: in accordance with section 1)
(published: 1997)

To consolidate, with amendments, the Drug Trafficking Ordinance 1989 and certain provisions of the Criminal Justice (Amendment) Ordinance 1991 relating to drug trafficking.

BE IT ENACTED by the Legislature of the Falkland Islands as follows—

PART I

INTRODUCTORY

Short title, citation, commencement and general interpretation

Short title and commencement

1. This Ordinance may be cited as the Drug Trafficking Offences Ordinance 1997 and shall come into force on the first day of the second month next following its publication in the *Gazette*.

Interpretation

2.—(1) In this Ordinance “property” includes money and all other property, real or personal, including things in action and other intangible or incorporeal property.

(2) This Ordinance applies to property whether it is situated in the Falkland Islands or elsewhere.

(3) In this Ordinance "interest", in relation to property, includes right.

(4) In this Ordinance—

(a) references to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator; and

(b) 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.

(5) For the purposes of this Ordinance—

(a) property is held by any person if he holds any interest in it; and

(b) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(6) In this Ordinance—

"defendant" means a person against whom proceedings have been instituted (within the meaning given in section 40(2) of this Ordinance) for a drug trafficking offence (whether or not he has been convicted);

"modifications" includes additions, alterations and omissions;

"the 1989 Ordinance" means the Criminal Justice Ordinance 1989.

(7) In this Ordinance references to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection.

(8) Subject to section 59(2) and (6) of this Ordinance—

(a) any reference in this Ordinance to an offence includes a reference to an offence committed before the commencement of this Ordinance; and

(b) any reference in this Ordinance to "drug trafficking" includes a reference to drug trafficking carried out before the commencement of this Ordinance.

(9) In this Ordinance the expressions listed below are defined by, or otherwise fall to be construed in accordance with, the provisions of this Ordinance indicated below—

amount that might be realised
amount to be recovered
benefited from drug trafficking

section 8(1)
section 7(1)
section 4(3)

charging order	section 29(2)
conclusion of an application	
—under section 13, 14 or 19	section 40(4)
—under section 15 or 16	section 40(5)
conclusion of proceedings for a drug trafficking offence	section 40(3)
confiscation order	section 4(8)
police officer	section 2(6)
defendant	section 2(6)
drug trafficking	
—generally	section 3(1) and (2)
drug trafficking offence	section 3(3)
gift caught by this Ordinance	section 10(1)
“held”, in relation to property	section 2(5)(a)
institution of proceedings for an offence	section 40(2)
“interest”, in relation to property	section 2(3)
making a gift	section 10(2)
modifications	section 2(6)
the 1989 Ordinance	section 2(6)
proceeds of drug trafficking	
—generally	section 6(1)(a)
property	section 2(1)
realisable property	section 8(2)
restraint order	section 28(1)
“satisfied”, in relation to a confiscation order	section 40(6) and (7)
“subject to appeal”, in relation to an order	section 40(8)
“transferred” in relation to property	section 2(5)(b)
value of gift, payment or reward	section 9(2)
value of proceeds of drug trafficking	section 8(1)(b)
value of property	section 11(1)
	section 9(1)

PART II

CONFISCATION ORDERS

Introductory

Meaning of “drug trafficking” and “drug trafficking offence”

3.—(1) In this Ordinance “drug trafficking” means, subject to subsection (2), doing or being concerned in any of the following, whether in the Falkland Islands or elsewhere—

- (a) producing or supplying a controlled drug where the production or supply contravenes section 4 of Misuse of Drugs Ordinance 1987 or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes section 5 of that Ordinance or a corresponding law;

(c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 3(1) of that Ordinance or a corresponding law;

(d) manufacturing or supplying a scheduled substance within the meaning of section -- of the Criminal Justice (Amendment) Ordinance 1991 where the manufacture or supply is an offence under that section or would be such an offence if it took place in the Falkland Islands;

(e) using any ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under section -- of that Ordinance;

(f) conduct which is an offence under section -- of this Ordinance or which would be such an offence if it took place in the Falkland Islands;

(g) acquiring, having possession of or using property in circumstances which amount to the commission of an offence under section 50 of this Ordinance or which would amount to such an offence if it took place in the Falkland Islands.

(2) "Drug trafficking" also includes a person doing the following, whether in the Falkland Islands or elsewhere, that is to say, entering into or being otherwise concerned in an arrangement whereby—

(a) the retention or control by or on behalf of another person of the other person's proceeds of drug trafficking is facilitated; or

(b) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person's disposal or are used for the other person's benefit to acquire property by way of investment.

(3) In this Ordinance "drug trafficking offence" means any of the following—

(a) an offence under section 4 or 5 of the Misuse of Drugs Ordinance 1987 (production, supply and possession for supply of controlled drugs);

(b) an offence under section 18 of that Ordinance (assisting in or inducing commission outside the Falkland Islands of offence punishable under a corresponding law);

(c) an offence under the Customs Ordinance in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Ordinance 1987;

(d) an offence under section 13 of the Criminal Justice (Amendment) Ordinance 1991 (manufacture or supply of substance specified in Schedule 2 to that Ordinance);

(e) an offence under section 19 of that Ordinance (using ship for illicit traffic in controlled drugs);

(f) an offence under section 48, 49 or 50 of this Ordinance;

(g) an offence under section 1 of the Criminal Law Act 1977, in its application to the Falkland Islands, of conspiracy to commit any of the offences in paragraphs (a) to (f) above;

(h) an offence under section 1 of the Criminal Attempts Act 1981, in its application to the Falkland Islands, of attempting to commit any of those offences; and

(i) an offence of inciting another person to commit any of those offences, whether under section 17 of the Misuse of Drugs Ordinance 1987 or at common law;

and includes aiding, abetting, counselling or procuring the commission of any of the offences in paragraphs (a) to (f) above.

(4) In this section "corresponding law" has the same meaning as in the Misuse of Drugs Ordinance 1987.

Confiscation orders

Confiscation orders

4.—(1) Where a defendant appears before a court to be sentenced in respect of one or more drug trafficking offences (and has not previously been sentenced or otherwise dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned), then—

(a) if the prosecutor asks the court to proceed under this section, or

(b) if the court considers that, even though the prosecutor has not asked it to do so, it is appropriate for it to proceed under this section,

it shall act as follows.

(2) The court shall first determine whether the defendant has benefited from drug trafficking.

(3) For the purposes of this Ordinance, a person has benefited from drug trafficking if he has at any time (whether before or after the commencement of this Ordinance) received any payment or other reward in connection with drug trafficking carried on by him or another person.

(4) If the court determines that the defendant has so benefited, the court shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 7 of this Ordinance the amount to be recovered in his case by virtue of this section.

(5) The court shall then, in respect of the offence or offences concerned—

(a) order the defendant to pay that amount;

(b) take account of the order before—

(i) imposing any fine on him;

(ii) making any order involving any payment by him; or

(iii) making any order under section 24 of the Misuse of Drugs Ordinance 1987 (forfeiture orders) or section 67 of the 1989 Ordinance (deprivation orders); and

(c) subject to paragraph (b) of this subsection, leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of an order under this section restrict a court from dealing with an offender in any way the court considers appropriate in respect of a drug trafficking offence.

(7) The standard of proof required to determine any question arising under this Ordinance as to—

(a) whether a person has benefited from drug trafficking, or

(b) the amount to be recovered in his case by virtue of this section,

shall be that applicable in civil proceedings.

(8) In this Ordinance “confiscation order” means an order under this section and includes, in particular, such an order made by virtue of section 15, 16 or 21 of this Ordinance.

Postponed determinations

5.—(1) Where a court is acting under section 4 of this Ordinance but considers that it requires further information before—

(a) determining whether the defendant has benefited from drug trafficking, or

(b) determining the amount to be recovered in his case by virtue of that section,

it may, for the purpose of enabling that information to be obtained, postpone making the determination for such period as it may specify.

(2) More than one postponement may be made under subsection (1) 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) which—

(a) by itself, or

(b) where there have been one or more previous postponements under subsection (1) or (4), when taken together with the earlier specified period or periods,

exceeds six months beginning with the date of conviction.

(4) Where the defendant appeals against his conviction, the court may, on that account—

(a) postpone making either or both of the determinations mentioned in subsection (1) 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) 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) shall not exceed the period ending 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), it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the relevant offence or any of the relevant offences.

(8) Where the court has so proceeded, section 4 of this Ordinance shall have effect as if—

(a) in subsection (4), the words “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted; and

(b) in subsection (5)(c), after “determining” there were inserted “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 relevant offence or any of the relevant offences 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 mentioned in section 4(5)(b)(ii) or (iii) of this Ordinance.

(10) Where the court has sentenced the defendant under subsection (7) during the specified period it may, after the end of that period, vary the sentence by imposing a fine or making any such order as is mentioned in section 4(5)(b)(ii) or (iii) of this Ordinance, so long as it does so within any period prescribed by any law applying to the court in question as the time allowed for varying a sentence but beginning with the end of the specified period.

(11) In this section—

“the date of conviction” means—

(a) the date on which the defendant was convicted; or

(b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions; and

“the relevant offence” means the drug trafficking offence in respect of which the defendant appears (as mentioned in section 4(1) of this Ordinance) before the court.

Assessing the proceeds of drug trafficking

6.—(1) For the purposes of this Ordinance—

(a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Ordinance) in connection with drug trafficking carried on by him or another person are his proceeds of drug trafficking; and

(b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(2) Subject to subsections (4) and (5), the court shall, for the purpose—

(a) of determining whether the defendant has benefited from drug trafficking, and

(b) if he has, of assessing the value of his proceeds of drug trafficking,

make the required assumptions.

(3) The required assumptions are—

(a) that any property appearing to the court—

(i) to have been held by the defendant at any time since his conviction, or

(ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,

was received by him, at the earliest time at which he appears to the court to have held it, as a payment or reward in connection with drug trafficking carried on by him;

(b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him; and

(c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.

(4) The court shall not make any required assumption in relation to any particular property or expenditure if—

(a) that assumption is shown to be incorrect in the defendant's case; or

(b) the court is satisfied that there would be a serious risk of injustice in the defendant's case if the assumption were to be made;

and where, by virtue of this subsection, the court does not make one or more of the required assumptions, it shall state its reasons.

(5) Subsection (2) above does not apply if the only drug trafficking offence in respect of which the defendant appears before the court to be sentenced is an offence under section 48, 49 or 50 of this Ordinance.

(6) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the court shall leave out of account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

(7) References in subsection (6) to a confiscation order include reference to a confiscation order within the meaning of the Drug Trafficking Offences Ordinance 1989.

Amount to be recovered under confiscation order

7.—(1) Subject to subsection (3) of this section, the amount to be recovered in the defendant's case under the confiscation order shall be the amount the court assesses to be the value of the defendant's proceeds of drug trafficking.

(2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by reason of the acceptance of an allegation made in a statement given under section 13 of this Ordinance or made in the giving of information under section 14 of this Ordinance, or otherwise) the court may issue a certificate giving the court's opinion as to the matters concerned, and shall do so if satisfied as mentioned in subsection (3) below.

(3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of his proceeds of drug trafficking, the amount to be recovered in the defendant's case under the confiscation order shall be—

(a) the amount appearing to the court to be the amount that might be so realised; or

(b) a nominal amount, where it appears to the court (on the information available to it at the time) that the amount that might be so realised is nil.

Meaning of "amount that might be realised" and "realisable property"

8.—(1) For the purposes of this Ordinance the amount that might be realised at the time a confiscation order is made against the defendant is—

(a) the total of the values at that time of all the realisable property held by the defendant, less

(b) where there are obligations having priority at that time, the total amount payable in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Ordinance.

(2) In this Ordinance "realisable property" means, subject to subsection (3)—

(a) any property held by the defendant; and

(b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance.

(3) Property is not realisable property if there is in force in respect of it an order under any of the following enactments, namely—

(a) section 24 of the Misuse of Drugs Ordinance 1987 (forfeiture orders);

(b) section 67 of the 1989 Ordinance;

(4) For the purposes of subsection (1), an obligation has priority at any time if it is an obligation of the defendant—

(a) to pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or the order was made before the confiscation order; or

(b) to pay any sum which would be included among the preferential debts (for the purposes of Part II of the Bankruptcy Act 1914 or in the case of a company, the Companies Act 1948 in its application to the Falkland Islands) in the defendant's bankruptcy commencing on the date of the confiscation order for winding up under an order of the court made on that date.

Value of property etc

9.—(1) Subject to the following provisions of this section and to section 10 of this Ordinance, for the purposes of this Ordinance the value of property (other than cash) in relation to any person holding the property is the market value of the property, except that, where any other person holds an interest in the property, the value is—

(a) the market value of the first-mentioned person's beneficial interest in the property, less

(b) the amount required to discharge any encumbrance (other than a charging order) on that interest.

(2) Subject to section 10(2) of this Ordinance, references in this Ordinance to the value at any time (referred to in subsection (3) of this section as "the material time") of a gift caught by this Ordinance or of any payment or reward are references to—

(a) the value of the gift, payment or reward to the recipient when he received it, adjusted to take account of subsequent changes in the value of money, or

(b) where subsection (3) applies, the value there mentioned,

whichever is the greater.

(3) Subject to section 10(2) of this Ordinance, if at the material time the recipient holds—

(a) the property which he received (not being cash), or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (2)(b) is the value to him at the material time of the property mentioned in paragraph (a) of this subsection or, as the case may be, of the property mentioned in paragraph (b) of this subsection so far as it so represents the property which he received, but disregarding in either case any charging order.

(4) References in this section to a charging order include a reference to a charging order within the meaning of the Drug Trafficking Offences Ordinance 1989.

Gifts caught by this Ordinance

10.—(1) A gift (including a gift made before the commencement of this Ordinance) is caught by this Ordinance if—

(a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him; or

(b) it was made by the defendant at any time and was a gift of property—

(i) received by the defendant in connection with drug trafficking carried on by him or another person; or

(ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(2) For the purposes of this Ordinance—

(a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and

(b) in those circumstances, the provisions of subsection (1) and of section 9 of this Ordinance shall apply as if the defendant has made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

Application of procedure for enforcing fines

11.—(1) Where the court orders the defendant to pay any amount under section 4 of this Ordinance, sections 42(1) to (6) of the 1989 Ordinance (powers of courts in relation to fines) shall have effect as if that amount were a fine imposed on him by the Supreme Court.

(2) Where—

(a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under section 4 of this Ordinance in respect of an offence or offences, and

(b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence or offences,

the term of imprisonment or of detention under section 28 of the 1989 Ordinance (detention of persons aged 18 to 20 for default) to be served in default of payment of

the amount shall not begin to run until after the term mentioned in paragraph (b) of this subsection.

(3) The reference in subsection (2) to the term of custody which the defendant is liable to serve in respect of the offence or offences is a reference to the term of imprisonment, detention in a young offender institution, or detention which he is liable to serve in respect of the offence or offences; and for the purposes of this subsection—

(a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and

(b) there shall be disregarded—

(i) any sentence suspended under section 33(1) of the 1989 Ordinance (power to suspend sentence of imprisonment) which has not taken effect at the time the warrant is issued;

(ii) in the case of a sentence of imprisonment passed with an order under section 33(7) of the 1989 Ordinance (sentences of imprisonment partly served and partly suspended) any part of the sentence which the defendant has not at that time been required to serve in prison; and

(iii) any term of imprisonment or detention fixed under section -- of the 1989 Ordinance (termed to be served in default of payment of fine etc) for which a warrant of commitment has not been issued at that time.

(4) In the application of Part III of the Magistrate's Courts Act 1980 in its application to the Falkland Islands to amounts payable under confiscation orders—

(a) such an amount is not a sum adjudged to be paid by a conviction for the purposes of section 81 (enforcement of fines imposed on young offenders), or a fine for the purposes of section 85 (remission of fines), of that Act; and

(b) in section 87 of that Act (enforcement by Supreme Court or Magistrate's Court), subsection (3) shall be omitted.

(5) Where the defendant serves a term 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.

(6) This section applies in relation to confiscation orders made by—

(a) the Supreme Court, or

(b) the Court of Appeal on appeal from that division,

as it applies in relation to confiscation orders made by the Summary Court or the Magistrate's Court, and the last reference in subsection (1) of this section to the court shall be construed accordingly.

Interest on sums unpaid under confiscation orders

12.—(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 section -- of the 1989 Ordinance) that person shall be liable to pay interest on that sum for the period for which it remains unpaid; and 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) A court may, on the application of the prosecutor, increase the term of imprisonment or detention fixed in respect of the confiscation order under subsection (2) of section 42 of the 1989 Ordinance (as it has effect by virtue of section 11 of this Ordinance) if the effect of subsection (1) of this section is to increase the maximum period applicable in relation to the order under subsection (4) of that section.

(3) The rate of interest under subsection (1) shall be the same rate as that specified in section 17 of the Judgments Act 1838 in its application to the Falkland Islands (interest on civil judgment debts).

Statements etc in connection with confiscation orders

Statements relating to drug trafficking

13.—(1) Where the prosecutor asks the court to proceed under section 4 of this Ordinance he shall give the court, within such period as it may direct, a statement of matters which he considers relevant in connection with—

- (a) determining whether the defendant has benefited from drug trafficking; or
- (b) assessing the value of his proceeds of drug trafficking.

(2) In this section such a statement is referred to as a "prosecutor's statement".

(3) Where the court proceeds under section 4 of this Ordinance without the prosecutor having asked it to do so, it may require him to give it a prosecutor's statement, within such period as it may direct.

(4) Where the prosecutor has given a prosecutor's statement—

- (a) he may at any time give the court a further such statement; and
- (b) the court may at any time require him to give it a further such statement, within such period as it may direct.

(5) Where any prosecutor's statement has been given and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant—

(a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and

(b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely.

(6) Where the court has given a direction under this section it may at any time vary it by giving a further direction.

(7) Where the defendant accepts to any extent any allegation in any prosecutor's statement, the court may, for the purposes of—

(a) determining whether the defendant has benefited from drug trafficking, or

(b) assessing the value of his proceeds of drug trafficking,

treat his acceptance as conclusive of the matters to which it relates.

(8) If the defendant fails in any respect to comply with a requirement under subsection (5) he may be treated for the purposes of this section as accepting every allegation in the prosecutor's statement in question apart from—

(a) any allegation in respect of which he has complied with the requirement; and

(b) any allegation that he has benefited from drug trafficking or that any payment or other reward received by him in connection with drug trafficking carried on by him or another person.

(9) Where—

(a) there is given to a court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made, and

(b) the prosecutor accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.

(10) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in such manner as may be prescribed by rules of court or as the court may direct.

(11) No acceptance by the defendant under this section that any payment or other reward was received by him in connection with drug trafficking carried on by him or another person shall be admissible in evidence in any proceedings for an offence.

Provision of information by defendant

14.—(1) This section applies where—

- (a) the prosecutor has asked the court to proceed under section 4 of this Ordinance; or
 - (b) no such request has been made but the court is nevertheless proceeding, or considering whether to proceed, under section 4.
- (2) For the purpose of obtaining information to assist it in carrying out its functions, 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 to the court 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).
- (5) If the defendant fails, without reasonable excuse, to comply with any 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 in giving to the court information required by an order under this section, the court may treat that acceptance as conclusive of 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.

Further proceedings in connection with confiscation orders

Reconsideration of case where court has not proceeded under section 4

15.—(1) This section applies where the defendant has appeared before a court to be sentenced in respect of one or more drug trafficking offences but the court has not proceeded under section 4 of this Ordinance.

(2) If the prosecutor has evidence—

- (a) which was not available to him when the defendant appeared to be sentenced (and accordingly was not considered by the court), but
- (b) which the prosecutor believes would have led the court to determine that the defendant had benefited from drug trafficking if—

(i) the prosecutor had asked the court to proceed under section 4 of this Ordinance, and

(ii) the evidence had been considered by the court,

he may apply to the court before which the defendant appeared to be sentenced for it to consider the evidence.

(3) The court shall proceed under section 4 of this Ordinance if, having considered the evidence, it is satisfied that it is appropriate to do so.

(4) In considering whether it is appropriate to proceed under that section, the court shall have regard to all the circumstances of the case.

(5) Where, having decided to proceed under that section, the court proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.

(6) In considering the circumstances of any case the court shall have regard, in particular, to the amount of any fine or fines imposed on the defendant in respect of the offence or offences in question.

(7) Where the court is proceeding under section 4 of this Ordinance by virtue of this section, subsection (4) of that section shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned" were omitted.

(8) The court may take into account any payment or other reward received by the defendant on or after the date of conviction, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another person on or before that date.

(9) In considering under this section any evidence which relates to any payment or reward to which subsection (8) applies, the court shall not make the assumptions which would otherwise be required by section 4 of this Ordinance.

(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) Sections 13 and 14 of this Ordinance shall apply where the prosecutor makes an application under this section as they apply where the prosecutor asks the court to proceed under section 4 of this Ordinance.

(12) In this section "the date of conviction" means—

(a) the date on which the defendant was convicted; or

(b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.

Re-assessment of whether defendant has benefited from drug trafficking

16.—(1) This section applies where the court has made a determination under section 4(2) of this Ordinance (“the section 4(2) determination”) that the defendant has not benefited from drug trafficking.

(2) If the prosecutor has evidence—

(a) which was not considered by the court in making the section 4(2) determination, but

(b) which the prosecutor believes would have led the court to determine that the defendant had benefited from drug trafficking if it had been considered by the court,

he may apply to the court for it to consider that evidence.

(3) If, having considered the evidence, the court is satisfied that it would have determined that the defendant had benefited from drug trafficking if that evidence had been available to it, the court—

(a) shall make—

(i) a fresh determination under subsection (2) of section 4 of this Ordinance; and

(ii) a determination under subsection (4) of that section of the amount to be recovered by virtue of that section; and

(b) may make an order under that section.

(4) Where the court is proceeding under section 4 of this Ordinance by virtue of this section, subsection (4) of that section shall have effect as if the words “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted.

(5) The court may take into account any payment or other reward received by the defendant on or after the date of the section 4(2) determination, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another person on or before that date.

(6) In considering under this section any evidence which relates to any payment or reward to which subsection (5) above applies, the court shall not make the assumptions which would otherwise be required by section 6 of this Ordinance.

(7) 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; and in this subsection "the date of conviction" has the same meaning as in section 15 of this Ordinance.

(8) Sections 13 and 14 of this Ordinance shall apply where the prosecutor makes an application under this section as they apply where the prosecutor asks the court to proceed under section 4 of this Ordinance.

Revised assessment of proceeds of drug trafficking

17.—(1) This section applies where the court has made a determination under subsection (4) of section 4 of this Ordinance of the amount to be recovered in a particular case by virtue of that section ("the current section 4(4) determination").

(2) Where the prosecutor is of the opinion that the real value of the defendant's proceeds of drug trafficking was greater than their assessed value, the prosecutor may apply to the court for the evidence on which the prosecutor has formed his opinion to be considered by the court.

(3) Sections 13 and 14 of this Ordinance shall apply where the prosecutor makes such an application as they apply where the prosecutor asks the court to proceed under section 4 of this Ordinance, but subject (in the case of section 13) to subsection (9)(a) of this section.

(4) If, having considered the evidence, the court is satisfied that the real value of the defendant's proceeds of drug trafficking is greater than their assessed value (whether because the real value at the time of the current section 4(4) determination was higher than was thought or because the value of the proceeds in question has subsequently increased), the court shall make a fresh determination under subsection (4) of section 4 of this Ordinance of the amount to be recovered by virtue of that section.

(5) In subsections (2) and (4) of this section—

"assessed value" means the value of the defendant's proceeds of drug trafficking as assessed by the court in accordance with section 7(1) of this Ordinance; and

"real value" means the value of the defendant's proceeds of drug trafficking which took place—

(a) in the period by reference to which the current section 4(4) determination was made; or

(b) in any earlier period.

(6) Where the court is proceeding under section 4 of this Ordinance by virtue of this section, subsection (4) of that section shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned" were omitted.

(7) Any determination under section 4(4) of this Ordinance by virtue of this section shall be by reference to the amount that might be realised at the time when the determination is made.

(8) In the case of any determination under section 4(4) of this Ordinance by virtue of this section, section 6(6) of this Ordinance shall not apply in relation to any of the defendant's proceeds of drug trafficking taken into account in respect of the current section 4(4) determination.

(9) In relation to any such determination by virtue of this section—

(a) sections 7(2), 8(4) and 13(9)(a) of this Ordinance shall have effect as if for "confiscation order" there were substituted "determination";

(b) section 7(3) shall have effect as if for "confiscation order is made" there were substituted "determination is made"; and

(c) section 8(1) of this Ordinance shall have effect as if for "confiscation order is made against the defendant" there were substituted "of the determination".

(10) The court may take into account any payment or other reward received by the defendant on or after the date of the current section 4(4) determination, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another person on or before that date.

(11) In considering under this section any evidence which relates to any payment or reward to which subsection (10) applies, the court shall not make the assumptions which would otherwise be required by section 6 of this Ordinance.

(12) If, as a result of making the fresh determination required by subsection (4), the amount to be recovered exceeds the amount set by the current section 4(4) determination, the court may substitute for the amount to be recovered under the confiscation order which was made by reference to the current section 4(4) determination such greater amount as it thinks just in all the circumstances of the case.

(13) Where the court varies a confiscation order under subsection (12) above it shall substitute for the term of imprisonment or of detention fixed under section 42(1) to (6) as applied by section 53 of the 1989 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 11 of this Ordinance) in respect of the greater amount substituted under subsection (12).

(14) Subsection (13) shall apply only if the effect of the substitution is to increase the maximum period applicable in relation to the order under section 42(1) to (6) of the 1989 Ordinance.

(15) 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; and in

this subsection "the date of conviction" has the same meaning as in section 15 of this Ordinance.

Increase in realisable property

18.—(1) This section applies where, by virtue of section 7(3) of this Ordinance, the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of drug trafficking.

(2) If, on an application made in accordance with subsection (3), the Supreme Court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased) the Supreme Court shall issue a certificate to that effect, giving the court's reasons.

(3) An application under subsection (2) may be made either by the prosecutor or by a receiver appointed in relation to the realisable property of the person in question under section 28 or 31 of this Ordinance or in pursuance of a charging order.

(4) Where a certificate has been issued under subsection (2) the prosecutor may apply to the court for an increase in the amount to be recovered under the confiscation order; and on that application the court may—

(a) substitute for that amount such amount (not exceeding the amount assessed as the value referred to in subsection (1)) as appears to the court to be appropriate having regard to the amount now shown to be realisable; and

(b) increase the term of imprisonment or detention fixed in respect of the confiscation order under subsection (2) of section 42 of the 1989 Ordinance (as it has effect by virtue of section 11 of this Ordinance) if the effect of the substitution is to increase the maximum period applicable in relation to the order under subsection (4) of that section.

Inadequacy of realisable property

19.—(1) If, on an application made in respect of a confiscation order by—

(a) the defendant, or

(b) a receiver appointed under section 28 or 31 of this Ordinance or in pursuance of a charging order,

the Supreme Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, the court shall issue a certificate to that effect, giving the court's reasons.

(2) For the purposes of subsection (1)—

- (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the court shall take into account the extent to which any property held by him may be distributed among creditors; and
 - (b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Ordinance from any risk of realisation under this Ordinance.
- (3) Where a certificate has been issued under subsection (1), the person who applied for it may apply to the court for the amount to be recovered under the confiscation order to be reduced.
- (4) The court shall, on an application under subsection (3)—
- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
 - (b) substitute for the term of imprisonment or of detention fixed under subsection (2) of section 42 of the 1989 Ordinance in respect of the amount to be recovered under the order a shorter term determined in accordance with that section (as it has effect by virtue of section 11 of this Ordinance) in respect of the lesser amount.
- (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.

Compensation

20.—(1) If proceedings are instituted against a person for any drug trafficking offence or offences and either—

- (a) the proceedings do not result in his conviction for any drug trafficking offence, or
- (b) he is convicted of one or more drug trafficking offences but—
 - (i) the conviction or convictions concerned are quashed, or
 - (ii) he is pardoned by the Governor in exercise of his powers under the Constitution in respect of the conviction or convictions concerned,

the Supreme Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The Supreme Court shall not order compensation to be paid in any case unless the court is satisfied—

(a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned, being a person mentioned in subsection (5) of this section; and

(b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of a court under sections 28 to 31 of this Ordinance.

(3) The Supreme Court shall not order compensation to be paid in any case where it appears to the court that the proceedings would have been instituted or continued even if the serious default had not occurred.

(4) The amount of compensation to be paid under this section shall be such as the Supreme Court thinks just in all the circumstances of the case.

(5) Compensation payable under this section shall be charged upon the Consolidated Fund and shall be paid thereout.

Confiscation orders where defendant has absconded or died

Powers of Supreme Court where defendant has absconded or died

21.—(1) Subsection (2) of this section applies where a person has been convicted of one or more drug trafficking offences.

(2) If the prosecutor asks it to proceed under this section, the Supreme Court may exercise the powers of a lower court under this Ordinance to make a confiscation order against the defendant if satisfied that the defendant has died or absconded.

(3) Subsection (4) of this section applies where proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded.

(4) If the prosecutor asks it to proceed under this section, the Supreme Court may exercise the powers of the lower court to make a confiscation order against the defendant if satisfied that the defendant has absconded.

(5) The power conferred by subsection (4) may not be exercised at any time before the end of the period of two years beginning with the date which is, in the opinion of the court, the date on which the defendant absconded.

(6) In any proceedings on an application under this section—

(a) section 6(2) of this Ordinance shall not apply;

(b) section 13 of this Ordinance shall apply as it applies where the prosecutor asks the court to proceed under section 4 of this Ordinance, but with the omission of subsections (5), (7) and (8);

(c) the court shall not make a confiscation order against a person who has absconded unless it is satisfied that the prosecutor has taken reasonable steps to contact him; and

(d) any person appearing to the court to be likely to be affected by the making of a confiscation order by the court shall be entitled to appear before the court and make representations.

(7) Subject to subsection (8) below, section 11 of this Ordinance applies in relation to confiscation orders made by the Supreme Court by virtue of this section as it applies in relation to confiscation orders made by the lower court and for that purpose references to the lower court in the provisions of the 1989 Ordinance referred to in subsection (1) of that section shall be construed as references to the Supreme Court.

(8) Where the Supreme Court makes a confiscation order by virtue of this section in relation to a defendant who has died, section 11(1) of this Ordinance shall be read as referring only to section 42(1) of the 1989 Ordinance.

(9) Where the Supreme Court—

(a) has been asked to proceed under this section in relation to a defendant who has absconded, but

(b) has decided not to make a confiscation order against him,

section 16 of this Ordinance shall not apply at any time while he remains an absconder.

(10) Where a confiscation order has been made in relation to any defendant by virtue of this section, section 17 of this Ordinance shall not apply at any time while he is an absconder.

Effect of conviction where Supreme Court has acted under section 21

22.—(1) Where, in the case of any defendant, the Supreme Court has made a confiscation order by virtue of section 21 of this Ordinance, the Magistrate's Court or Summary Court (as the case may be) shall, in respect of the offence or, as the case may be, any of the offences concerned—

(a) take account of the order before—

(i) imposing any fine on the defendant;

(ii) making any order involving any payment by him; or

(iii) making any order under section 24 of the Misuse of Drugs Ordinance 1987 (forfeiture orders) or section 67 of the 1989 Ordinance (deprivation orders); and

(b) subject to paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(2) Where the Supreme Court has made a confiscation order by virtue of section 21 of this Ordinance and the defendant subsequently appears before the Magistrate's Court or the Summary Court to be sentenced in respect of one or more of the offences concerned, section 4(1) of this Ordinance shall not apply so far as his appearance is in respect of that offence or those offences.

Variation of confiscation orders made by virtue of section 21

23.—(1) This section applies where—

(a) the Supreme Court has made a confiscation order by virtue of section 21(4) of this Ordinance, and

(b) the defendant has ceased to be an absconder.

(2) If the defendant alleges that—

(a) the value of his proceeds of drug trafficking in the period by reference to which the determination in question was made (the "original value"), or

(b) the amount that might have been realised at the time the confiscation order was made,

was less than the amount ordered to be paid under the confiscation order, he may apply to the Supreme Court for it to consider his evidence.

(3) If, having considered that evidence, the court is satisfied that the defendant's allegation is correct, it—

(a) shall make a fresh determination under subsection (4) of section 4 of this Ordinance; and

(b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.

(4) In the case of any determination under section 4 of this Ordinance by virtue of this section, section 6(6) of this Ordinance shall not apply in relation to any of the defendant's proceeds of drug trafficking taken into account in determining the original value.

(5) Where the court varies a confiscation order under this section—

(a) it shall substitute for the term of imprisonment or of detention fixed under section 42(2) of the 1989 Ordinance in respect of the amount to be recovered under the order a shorter term determined in accordance with that section (as it has effect by virtue of section 21 of this Ordinance) in respect of the lesser amount; and

(b) on the application of a person who held property which was realisable property, it may order compensation to be paid to the applicant in accordance with section 26 of this Ordinance if—

(i) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order; and

(ii) having regard to all the circumstances of the case, the court considers it to be appropriate.

(6) 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 on which the confiscation order was made.

Compensation etc where absconder is acquitted

24.—(1) This section applies where—

(a) the Supreme Court has made a confiscation order by virtue of section 21(4) of this Ordinance, and

(b) the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts.

(2) The court by which the defendant is acquitted shall cancel the confiscation order.

(3) The Supreme Court may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant in accordance with section 26 of this Ordinance if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

Power to discharge confiscation order and order compensation where absconder returns

25.—(1) This section applies where—

(a) the Supreme Court has made a confiscation order by virtue of section 21(4) of this Ordinance in relation to an absconder;

(b) the defendant has ceased to be an absconder; and

(c) section 24 of this Ordinance does not apply.

(2) The Supreme Court may, on the application of the defendant, cancel the confiscation order if it is satisfied that—

(a) there has been undue delay in continuing the proceedings in respect of which the power under section 21(4) of this Ordinance was exercised; or

(b) the prosecutor does not intend to proceed with the prosecution.

(3) Where the Supreme Court cancels a confiscation order under this section it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant in accordance with section 26 of this Ordinance if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

Provisions supplementary to sections 23, 24 and 25

26.—(1) Where the Supreme Court orders compensation to be paid under section 23, 24 or 25 of this Ordinance, the amount of that compensation shall be such as the court considers just in all the circumstances of the case.

(2) Rules of court may make provision—

(a) for the giving of notice of any application under sections 23, 24 or 25 of this Ordinance; and

(b) for any person appearing to the court to be likely to be affected by any exercise of its powers under any of those sections to be given an opportunity to make representations to the court.

(3) Any payment of compensation under any of those sections shall be made by the Financial Secretary out of the Consolidated Fund.

(4) Where the court cancels a confiscation order under section 24 or 25 of this Ordinance it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

Restraint orders and charging orders

Cases in which restraint orders and charging orders may be made

27.—(1) The powers conferred on the Supreme Court by sections 28(1) and 29(1) of this Ordinance are exercisable where—

(a) proceedings have been instituted in the Falkland Islands against the defendant for a drug trafficking offence or an application has been made by the prosecutor in respect of the defendant under section 15, 16, 17, 18 or 21 of this Ordinance;

(b) the proceedings have not, or the application has not, been concluded; and

(c) the court is satisfied that there is reasonable cause to believe—

(i) in the case of an application under section 17 or 18 of this Ordinance, that the court will be satisfied as mentioned in section 17(4) or, as the case may be, 18(2) of this Ordinance; or

(ii) in any other case, that the defendant has benefited from drug trafficking.

(2) 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; or

(b) that the prosecutor does not intend to proceed.

(3) The powers mentioned in subsection (1) are also exercisable where—

(a) the court is satisfied that, whether by the laying of an information or otherwise, a person is to be charged with a drug trafficking offence or that an application of a kind mentioned in subsection (1)(a) is to be made in respect of the defendant; and

(b) the court is also satisfied as mentioned in subsection (1)(c).

(4) For the purposes of sections 28 and 29 of this Ordinance, at any time when those powers are exercisable before proceedings have been instituted—

(a) references in this Ordinance to the defendant shall be construed as references to the person referred to in subsection (3)(a) of this section;

(b) references in this Ordinance to the prosecutor shall be construed as references to the person who the Supreme Court is satisfied is to have the conduct of the proposed proceedings; and

(c) references in this Ordinance to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (3)(a) for a drug trafficking offence.

(5) Where the court has made an order under section 28(1) or 29(1) of this Ordinance by virtue of subsection (3), the court shall discharge the order if proceedings in respect of the offence are not instituted, whether by the laying of an information or otherwise, or (as the case may be) if the application is not made, within such time as the court considers reasonable.

Restraint orders

28.—(1) The Supreme Court may by order (in this Ordinance referred to as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply—

(a) to all realisable property held by a specified person, whether the property is described in the order or not; and

(b) to realisable property held by a specified person, being property transferred to him after the making of the order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 29 of this Ordinance or section 12 of the Drug Trafficking Offences Ordinance 1989.

(4) A restraint order—

(a) may be made only on an application by the prosecutor;

(b) may be made on an ex parte application to a judge in chambers; and

(c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order—

(a) may be discharged or varied in relation to any property; and

(b) shall be discharged on the conclusion of the proceedings or of the application in question.

(6) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(7) Where the Supreme Court has made a restraint order, the Supreme Court or the Magistrate's Court—

(a) may at any time appoint a receiver—

(i) to take possession of any realisable property, and

(ii) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the court; and

(b) may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(8) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of that expression)—

(a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and

(b) removing the property from the Falkland Islands.

(9) Where a restraint order has been made a police officer may seize any realisable property for the purpose of preventing its removal from the Falkland Islands.

(10) Property seized under subsection (9) shall be dealt with in accordance with the directions of the court which made the order.

(11) The Land Charges Ordinance 1996 shall apply—

(a) in relation to restraint orders, as it applies in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and

(b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.

Charging orders in respect of land, securities etc

29.—(1) The Supreme Court may make a charging order on realisable property for securing the payment to the Crown—

(a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and

(b) where a confiscation order has been made, of an amount not exceeding the amount payable under the confiscation order.

(2) For the purposes of this Ordinance a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.

(3) A charging order—

(a) may be made only on an application by the prosecutor;

(b) may be made on an ex parte application to a judge in chambers;

(c) shall provide for notice to be given to persons affected by the order; and

(d) may be made subject to such conditions as the court thinks fit including, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.

(4) Subject to subsection (6), a charge may be imposed by a charging order only on—

(a) any interest in realisable property which is an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance and is an interest—

(i) in any asset of a kind mentioned in subsection (5) below; or

(ii) under any trust; or

(b) any interest in realisable property held by a person as trustee of a trust ("the relevant trust") if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the relevant trust.

(5) The assets referred to in subsection (4) are—

(a) land in the Falkland Islands; or

(b) securities of any of the following kinds—

(i) government stock;

(ii) stock of any body incorporated within the Falkland Islands;

(iii) stock of any body incorporated outside the Falkland Islands or any country or territory outside the Falkland Islands, being stock registered in a register kept at any place within the Falkland Islands;

(iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within the Falkland Islands.

(6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5)(b), the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

(7) In relation to a charging order, the court—

(a) may make an order discharging or varying it; and

(b) shall make an order discharging it—

(i) on the conclusion of the proceedings or of the application in question; or

(ii) on payment into court of the amount payment of which is secured by the charge.

(8) An application for the discharge or variation of a charging order may be made by any person affected by it.

Charging orders: supplementary provisions

30.—(1) The Land Charges Ordinance 1996 shall apply in relation to charging orders as it applies in relation to orders or writs made or issued 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 31 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 29(7) of this Ordinance discharging the charging order may direct that the entry be cancelled.

(5) The Governor may by order made by statutory instrument amend section 29 of this Ordinance by adding to or removing from the kinds of asset for the time being referred to there any asset of a kind which in his opinion ought to be so added or removed.

Realisation of property

31.—(1) Where a confiscation order—

(a) has been made under this Ordinance,

(b) is not satisfied, and

(c) is not subject to appeal,

the Supreme Court or the Magistrate's Court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6) of this section.

(2) The court may appoint a receiver in respect of realisable property.

(3) The court may empower a receiver appointed under subsection (2), under section 28 of this Ordinance or in pursuance of a charging order—

(a) to enforce any charge imposed under section 29 of this Ordinance on realisable property or on interest or dividends payable in respect of such property; and

(b) in relation to any realisable property other than property for the time being subject to a charge under section 29 of this Ordinance, to take possession of the property subject to such conditions or exceptions as may be specified by the court.

(4) The court may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The court may empower any such receiver to realise any realisable property in such manner as the court may direct.

(6) The court may—

(a) order any person holding an interest in realisable property to make to the receiver such payment as it may direct in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Ordinance; and

(b) on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsection (4) to (6) do not apply to property for the time being subject to a charge under section 29 of this Ordinance or section 12 of the Drug Trafficking Offences Ordinance 1989.

(8) The court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

Application of proceeds of realisation and other sums

32.—(1) The following sums in the hands of the receiver appointed under section 28 or 31 of this Ordinance or in pursuance of a charging order, that is—

(a) the proceeds of the enforcement of any charge imposed under section 29 of this Ordinance,

(b) the proceeds of realisation, other than by the enforcement of such a charge, of any property under section 28 or 31 of this Ordinance, and

(c) any other sums, being property held by the defendant,

shall be applied, subject to subsection (2), on the defendant's behalf towards the satisfaction of the confiscation order.

(2) Before any such sums are so applied they shall be applied—

(a) first, in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 36(3) of this Ordinance; and

(b) second, in making such payments (if any) as the Supreme Court or the Magistrate's Court may direct.

(3) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver as is mentioned in subsection (1), the receiver shall distribute those sums—

(a) among such of those who held property which has been realised under this Ordinance, and

(b) in such proportions,

as the Supreme Court or the Magistrate's Court may direct after giving a reasonable opportunity for such persons to make representations to the court.

(4) The receipt of any sum by the clerk of the court on account of an amount payable under a confiscation order shall reduce the amount so payable, but the clerk shall apply the money received for the purposes specified in this section and in the order so specified.

(5) The clerk of the court shall first pay any expenses incurred by a person acting as a trustee in bankruptcy or liquidator and payable under section 36(3) of this Ordinance but not already paid under subsection (2) of this section.

(6) If the money was paid to the clerk of the court by a receiver appointed under section 28 or 31 of this Ordinance or in pursuance of a charging order the clerk of the court shall next pay the receiver's remuneration and expenses.

(7) After making—

(a) any payment required by subsection (5), and

(b) in a case to which subsection (6) applies, any payment required by that subsection,

the clerk of the court shall reimburse any amount paid under section 37(2) of this Ordinance.

(8) Any balance in the hands of the clerk of the court after he had made all payments required by the preceding provisions of this section shall be treated as if it were a fine imposed by a court.

Exercise of powers for the realisation of property

Exercise by Supreme Court, Magistrate's Court or receiver of powers for the realisation of property

33.—(1) The following provisions apply to the powers conferred—

(a) on the Supreme Court or the Magistrate's Court by sections 28 to 32 of this Ordinance; or

(b) on a receiver appointed under section 28 or 31 of this Ordinance or in pursuance of a charging order.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case, the value for the time being of realisable property held by any person, by means of the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) In exercising the powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

(6) An order may be made or other action taken in respect of debt owed by the Crown.

Bankruptcy of defendant etc

34.—(1) Where a person who holds realisable property is adjudged bankrupt—

(a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and

(b) any proceeds of property realised by virtue of section 28(7) or 31(5) or (6) of this Ordinance for the time being in the hands of a receiver appointed under section 28 or 31 of this Ordinance,

is excluded from the bankrupt's estate for the purposes of the Bankruptcy Act 1914 ("the 1914 Act").

(2) Where a person has been adjudged bankrupt, the powers conferred on the Supreme Court and the Magistrate's Court by sections 28 to 32 of this Ordinance or on a receiver so appointed shall not be exercised in relation to—

(a) property for the time being comprised in the bankrupt's estate for the purposes of the 1914 Act; and

(b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 26(2) of that Act;

but nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(3) Subsection (2) above does not affect the enforcement of a charging order—

(a) made before the order adjudging the person bankrupt; or

(b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(4) Where, in the case of a debtor, an interim receiver stands appointed under section 8 of the 1914 Act and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.

(5) Where a person adjudged bankrupt and has directly or indirectly made a gift caught by this Ordinance—

(a) no order shall be made under section 42 to 44 of the 1914 Act (avoidance of certain transactions), in respect of the making of the gift, at any time when—

(i) proceedings for a drug trafficking offence have been instituted against him and have not been concluded;

(ii) an application has been made in respect of the defendant under section 15, 16, 17, 18 or 21 of this Ordinance and has not been concluded; or

(iii) property of the person to whom the gift was made is subject to a restraint order or charging order; and

(b) any order made under section 42 to 44 of the 1914 Act after the conclusion of the proceedings or of the application shall take into account any realisation under this Ordinance of property held by the person to whom the gift was made.

Winding up of company holding realisable property

35.—(1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up of the company, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—

(a) property for the time being subject to a restraint order made before the relevant time; and

(b) any proceeds of property realised by virtue of section 28(7) or 31(5) or (6) of this Ordinance for the time being in the hands of a receiver appointed under section 28 or 31 of this Ordinance.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Supreme Court or the Magistrate's Court by sections 28 to 32 of this Ordinance or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property;

but nothing in the Companies Act 1948 in its application to the Falkland Islands shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(3) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(4) In this section—

“company” means any company which may be wound up under the Companies Act 1948 in its application to the Falkland Islands; and

“the relevant time” means—

(a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;

(b) where—

(i) such an order has been made, but

(ii) before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company,

the time of the passing of the resolution; and

(c) in any other case where such an order has been made, the time of the making of the order.

Protection for insolvency officers etc

Insolvency officers dealing with property subject to restraint order

36.—(1) Without prejudice to the generality of any enactment contained in the Bankruptcy Act 1914 or in any other written law, where—

(a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order, and

(b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting.

(2) A person acting as an insolvency practitioner shall, in the circumstances mentioned in subsection (1)(a) and (b) of this section, have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(3) Where a person acting as a bankrupt's receiver or trustee or as the liquidator of a company—

(a) incurs expenses in respect of such property as is mentioned in paragraph (a) of subsection (1) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order, or

(b) incurs expenses other than expenses in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

that person shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under subsection(2)) to payment of those expenses under section 32(2) or (5) of this Ordinance.

Receivers: supplementary provisions

37.—(1) Where a receiver appointed under section 28 or 31 of this Ordinance or in pursuance of a charging order—

(a) takes any action in relation to property which is not realisable property, being action which he would be entitled to take if it were such property, and

(b) believes, and has reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 32(6) of this Ordinance, be paid by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

Enforcement of external confiscation orders

38.—(1) The Governor may by Order—

(a) direct in relation to a country or territory outside the Falkland Islands designated by the Order (a “designated country”) that, subject to such modifications as may be specified, the relevant provisions of this Ordinance shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;

(b) make—

(i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order,

(ii) such provision as to evidence or proof of any matter for the purposes of this section and section 39 of this Ordinance, and

(iii) such incidental, consequential and transitional provision,

as appears to the Governor to be expedient; and

(c) (without prejudice to the generality of this subsection) direct that, in such circumstances as may be specified, proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.

(2) In this section “external confiscation order” means an order made by a court in a designated country for the purpose of recovering, or recovering the value of, payments or other rewards received in connection with drug trafficking.

(3) An Order under this section may make different provision for different cases or classes of case.

(4) The power to make an Order under this section includes power to modify the relevant provisions of this Ordinance in such a way as to confer power on a person to exercise a discretion.

(5) For the purposes of this section, “the relevant provisions of this Ordinance” are this Part, except sections 12 and 18, and Part V.

Registration of external confiscation orders

39.—(1) On an application made by or on behalf of the Government of a designated country, the Supreme Court may register an external confiscation order made there if—

(a) it is satisfied that at the time of registration the order is in force and not subject to appeal;

(b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and

(c) it is of the opinion that enforcing the order in the Falkland Islands would not be contrary to the interests of justice.

(2) In subsection (1) of this section “appeal” includes—

(a) any proceedings by way of discharging or setting aside a judgment; and

(b) an application for a new trial or a stay of execution.

(3) The Supreme Court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it.

(4) In this section “designated country” and “external confiscation order” have the same meaning as in section 38 of this Ordinance.

Interpretation

Interpretation of Part II

40.—(1) This section shall have effect for the interpretation of this Part.

(2) Proceedings for an offence are instituted—

(a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrate's Courts Act 1980 in its application to the Falkland Islands (issue of summons to, or warrant for arrest of, accused) in respect of the offence; or

(b) when a person is charged with the offence after being taken into custody without a warrant;

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.

- (3) Proceedings for a drug trafficking offence are concluded—
- (a) when the defendant is acquitted on all counts;
 - (b) if he is convicted on one or more counts, but the court decides not to make a confiscation order against him, when it makes that decision; or
 - (c) if a confiscation order is made against him in those proceedings, when the order is satisfied.
- (4) An application under section 15, 16 or 21 of this Ordinance is concluded—
- (a) if the court decides not to make a confiscation order against the defendant, when it makes that decision; or
 - (b) if a confiscation order is made against him as a result of that application, when the order is satisfied.
- (5) An application under section 17 or 18 of this Ordinance is concluded—
- (a) if the court decides not to vary the confiscation order in question, when it makes that decision; or
 - (b) if the court varies the confiscation order as a result of the application, when the order is satisfied.
- (6) A confiscation order is satisfied when no amount is due under it.
- (7) For the purposes of this section as it applies to section 34 of this Ordinance, a confiscation order is also 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.
- (8) 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 varied or set aside.

PART III

DRUG TRAFFICKING MONEY IMPORTED OR EXPORTED IN CASH

Seizure and detention

41.—(1) A customs officer or police officer may seize and, in accordance with this section, detain any cash which is being imported into or exported from the Falkland Islands if—

- (a) its amount is not less than the prescribed sum; and

(b) he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of drug trafficking, or is intended by any person for use in drug trafficking.

(2) Cash seized by virtue of this section shall not be detained for more than 48 hours unless its continued detention is authorised by an order made by a justice of the peace; and no such order shall be made unless the justice is satisfied—

(a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and

(b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Falkland Islands or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(3) Any order under subsection (2) shall authorise the continued detention of the cash to which it relates for such period, not exceeding three months beginning with the date of the order, as may be specified in the order; and a court of summary jurisdiction, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorise the further detention of the cash but so that—

(a) no period of detention specified in such an order shall exceed three months beginning with the date of the order; and

(b) the total period of detention shall not exceed two years from the date of the order under subsection (2).

(4) Any order under subsection (2) shall provide for notice to be given to persons affected by the order.

(5) Any application for an order under subsection (2) or (3) shall be made by or on behalf of the Attorney General or by a police officer if made to a justice or to a court of summary jurisdiction.

(6) At any time while cash is detained by virtue of the preceding provisions of this section—

(a) a court of summary jurisdiction may direct its release if satisfied—

(i) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer any, such grounds for its detention as are mentioned in subsection (2); or

(ii) on an application made by any other person, that detention of the cash is not for that or any other reason justified; and

(b) a customs officer or police officer, may release the cash if satisfied that its detention is no longer justified, but shall first notify the justice or court of summary jurisdiction under whose order it is being detained.

(7) If at a time when any cash is being detained by virtue of the preceding provisions of this section—

(a) an application for its forfeiture is made under section 42 of this Ordinance; or

(b) proceedings are instituted (whether in the Falkland Islands or elsewhere) against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

(8) Cash seized under this section and detained for more than 48 hours shall, unless required as evidence of an offence, be held in an interest bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

Forfeiture

42.—(1) A court of summary jurisdiction may order the forfeiture of any cash which has been seized under section 41 of this Ordinance if satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of drug trafficking, or is intended by any person for use in drug trafficking.

(2) Any application for an order under this section shall be made by or on behalf of the Attorney General or by a police officer.

(3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings; and an order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

Appeal against forfeiture order made by a magistrate's court

43.—(1) This section applies where an order for the forfeiture of cash ("the forfeiture order") is made under section 42 of this Ordinance by a court of summary jurisdiction.

(2) Any party to the proceedings in which the forfeiture order is made (other than the applicant for the order) may, before the end of the period of 30 days beginning with the date on which it is made, appeal to the Supreme Court.

(3) An appeal under this section shall be by way of a rehearing.

(4) On an application made by the appellant to a court of summary jurisdiction at any time, that court may order the release of so much of the cash to which the forfeiture

order relates as it considers appropriate to enable him to meet his legal expenses in connection with the appeal.

(5) The court hearing an appeal under this section may make such order as it considers appropriate.

(6) If it upholds the appeal, the court may order the release of the cash, or (as the case may be) the remaining cash, together with any accrued interest.

(7) Subsection (3) of section 42 of this Ordinance applies in relation to a rehearing on an appeal under this section as it applies to proceedings under that section.

Rules of court

44.—(1) Provision may be made by rules of court with respect to applications or appeals to any court under this Part, for the giving of notice of such applications or appeals to persons affected, for the joinder, of such persons as parties and generally with respect to the procedure under those sections before any court.

(2) Subsection (1) is without prejudice to the generality of any existing power to make rules.

Receipts

45. Any money representing cash forfeited under this Part or accrued interest thereon shall be paid into the Consolidated Fund.

Interpretation of Part III

46.—(1) In this Part—

“cash” includes coins and notes in any currency; and

“exported” in relation to any cash, includes its being brought to any place in the Falkland Islands for the purpose of being exported.

(2) In section 41 of this Ordinance “the prescribed sum” means such sum in sterling as may for the time being be prescribed for the purposes of that section by an order made by the Governor and in determining under that section whether an amount of currency other than sterling is not less than the prescribed sum that amount shall be converted at the prevailing rate of exchange.

PART IV

OFFENCES IN CONNECTION WITH PROCEEDS OF DRUG TRAFFICKING

Concealing or transferring proceeds of drug trafficking

47.—(1) A person is guilty of an offence if he—

(a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of drug trafficking, or

(b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in his case of a confiscation order.

(2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he—

(a) conceals or disguises that property, or

(b) converts or transfers that property or removes it from the jurisdiction, for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.

(3) In subsection (1)(a) and (2)(a) the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

Assisting another person to retain the benefit of drug trafficking

48.—(1) Subject to subsection (3), a person commits an offence if he enters into or is otherwise concerned in an arrangement whereby—

(a) the retention or control by or on behalf of another person (call him "A") of A's proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise), or

(b) A's proceeds of drug trafficking—

(i) are used to secure that funds are placed at A's disposal, or

(ii) are used for A's benefit to acquire property by way of investment,

and he knows or suspects that A is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking.

(2) In this section, references to any person's proceeds of drug trafficking include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of drug trafficking.

(3) Where a person discloses to a police officer a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking, or discloses to a police officer any matter on which such a suspicion or belief is based—

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and

(b) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if—

(i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer; or

(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

(4) In proceedings against a person for an offence under this section, it is a defence to prove—

(a) that he did not know or suspect that the arrangement related to any person's proceeds of drug trafficking;

(b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1)(b); or

(c) that—

(i) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement, but

(ii) there is reasonable excuse for his failure to make any such disclosure in the manner mentioned in paragraph (b)(i) or (ii) of that subsection.

(5) In the case of a person who was in employment at the time in question, subsections (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

Acquisition, possession or use of proceeds of drug trafficking

49.—(1) A person commits an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he acquires or uses that property or has possession of it.

(2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.

(3) For the purposes of subsection (2)—

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him in drug trafficking shall not be treated as consideration for the purposes of subsection (2).

(5) Where a person discloses to a police officer a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, or discloses to a police officer any matter on which such suspicion or belief is based—

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and

(b) if he does any act in relation to the property in contravention of subsection (1), he does not commit an offence under this section if—

(i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer; or

(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

(6) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.

(7) In proceedings against a person for an offence under this section, it is a defence to prove that—

(a) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (5), but

(b) there is reasonable excuse for his failure to make any such disclosure in the manner mentioned in paragraph (b)(i) or (ii) of that subsection.

(8) In the case of a person who was in employment at the time in question, subsections (5) and (7) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

(9) No police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Ordinance or of any other enactment relating to drug trafficking or the proceeds of drug trafficking.

Failure to disclose knowledge or suspicion of money laundering

50.—(1) A person is guilty of an offence if—

- (a) he knows or suspects that another person is engaged in drug money laundering,
- (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment, and
- (c) he does not disclose the information or other matter to a police officer as soon as is reasonably practicable after it comes to his attention.

(2) Subsection (1) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.

(3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.

(4) Where a person discloses to a police officer—

- (a) his suspicion or belief that another person is engaged in drug money laundering, or
- (b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) Without prejudice to subsection (3) or (4), in the case of a person who was in employment at the time in question, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.

(6) A disclosure to which subsection (5) applies shall not be treated as a breach of any restriction imposed by statute or otherwise.

(7) In this section “drug money laundering” means doing any act—

- (a) which constitutes an offence under section 47, 48 or 49 of this Ordinance; or
- (b) in the case of an act done otherwise than in the Falkland Islands, which would constitute such an offence if done in the Falkland Islands;

and for the purposes of this subsection, having possession of any property shall be taken to be doing an act in relation to it.

(8) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him—

(a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;

(b) by, or by a representative of, a person seeking legal advice from the adviser; or

(c) by any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(9) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

Tipping-off

51.—(1) A person commits an offence if—

(a) he knows or suspects 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 drug money laundering, and

(b) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.

(2) A person is guilty of an offence if—

(a) he knows or suspects that a disclosure has been made to a police officer under section 48, 49 or 50 of this Ordinance ("the disclosure"), and

(b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

(3) A person is guilty of an offence if—

(a) he knows or suspects that a disclosure of a kind mentioned in section 48(5), 49(8) or 50(5) of this Ordinance ("the disclosure") has been made, and

(b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

(4) Nothing in subsections (1) to (3) makes it an offence for a professional legal adviser to disclose any information or other matter—

(a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or

(b) to any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(5) Subsection (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(6) In proceedings against a person for an offence under subsection (1), (2) or (3), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.

(7) No police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Ordinance or of any other enactment relating to drug trafficking or the proceeds of drug trafficking.

(8) In this section “drug money laundering” has the same meaning as in section 50 of this Ordinance.

Penalties

52.—(1) A person guilty of an offence under section 47, 48 or 49 of this Ordinance shall be liable on conviction to imprisonment for a term not exceeding fourteen years or to a fine not exceeding the maximum of level 10 on the standard scale.

(2) A person guilty of an offence under section 50 or 51 of this Ordinance shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding the maximum of level 8 on the standard scale.

PART V

MISCELLANEOUS AND SUPPLEMENTAL

Investigations into drug trafficking

Order to make material available

53.—(1) The Attorney General or a person authorised by him may, for the purpose of an investigation into drug trafficking, apply to the Senior Magistrate for an order under subsection (2) 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) 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 57(11) of this Ordinance.

(3) The period to be specified in an order under subsection (2) 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 (2) are—

(a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;

(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 purpose of which the application is made; and

(ii) does not consist of or include items subject to legal privilege or excluded material; and

(c) that 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) in relation to material on any premises he may, on the application of a police officer, 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 obtain access to the material.

(6) An application under subsection (1) or (5) 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) relates consists of information contained in a computer—

(a) an order under subsection (2)(a) 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) 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)—

(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; and

(c) may be made in relation to material in the possession of the Crown.

Authority for search

54.—(1) The Attorney General or a person authorised by him may, for the purpose of an investigation into drug trafficking, apply to the Senior Magistrate for a warrant under this section in relation to specified premises.

(2) On such 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 made under section 53 of this Ordinance in relation to material on the premises has not been complied with;

(b) that the conditions in subsection (3) are fulfilled; or

(c) that the conditions in subsection (4) are fulfilled.

(3) The conditions referred to in subsection (2)(b) are—

(a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;

(b) that the conditions in subsection (4)(b) and (c) of section 53 of this Ordinance 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 purpose 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 carried on or has benefited from drug trafficking;

(b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised; and

(c) that—

(i) 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 purpose of which the application is made might be seriously prejudiced unless a police officer arriving at the premises 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 together with other material) to the investigation for the purpose of which the warrant was issued.

Provisions supplementary to sections 53 and 54

55.—(1) For the purposes of sections 126 and 127 of the 1989 Ordinance (access to, and copying and retention of, seized material)—

(a) an investigation into drug trafficking shall be treated as if it were an investigation of or in connection with an offence; and

(b) material produced in pursuance of an order under section 53(2)(a) of this Ordinance shall be treated as if it were material seized by a police officer.

(2) In sections 53 and 54 of this Ordinance "excluded material", "items subject to legal privilege" and "premises" have the same meaning as in the 1989 Ordinance.

Offence of prejudicing investigation

56.—(1) Where, in relation to an investigation into drug trafficking—

(a) an order under section 53 of this Ordinance has been made or has been applied for and has not been refused, or

(b) a warrant under section 54 of this Ordinance has been issued,

a person commits an offence if, knowing or suspecting that the investigation is taking place, he makes any disclosure which is likely to prejudice the investigation.

(2) In proceedings against a person for an offence under this section, it is a defence to prove—

(a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or

(b) that he had lawful authority or reasonable excuse for making the disclosure.

(3) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter—

(a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or

(b) to any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(4) Subsection (3) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(5) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £50,000 or to both.

Disclosure of information held by the Falkland Islands Government

57.—(1) Subject to subsection (4) of this section; the Supreme Court may on an application by or on behalf of the Attorney order any material mentioned in subsection

(3) which is in the possession of the Falkland Islands Government (that is to say Her Majesty's Government in right of the Falkland Islands) 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 28(1) and 29(1) of this Ordinance are exercisable by virtue of subsection (1) of section 27 of this Ordinance; or

(b) those powers are exercisable by virtue of subsection (3) of that section and the court has made a restraint or charging order which has not been discharged;

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b) above, subsection (4) of section 27 of this Ordinance shall apply for the purposes of this section as it applies for the purposes of sections 28 and 29 of this Ordinance.

(3) The material referred to in subsection (1) is any material which—

(a) has been submitted to an officer of an authorised government department by the defendant or by a person who has at any time held property which was realisable property;

(b) has been made by an officer of an authorised government department in relation to the defendant or such a person; or

(c) is correspondence which passed between an officer of an authorised government department 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 in the possession of the department concerned.

(4) An order under subsection (1) 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 on the court by sections 28 to 31 of this Ordinance or on a receiver appointed under section 28 or 31 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) or any part of such material; but the court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the court.

(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 under any provision of this Ordinance, apart from section 18, of the receiver or any court in the exercise of its criminal jurisdiction.

(7) The court may be order authorise the disclosure to a person mentioned in subsection (8) of any material produced under subsection (1) or 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 drug trafficking.

(8) The persons referred to in subsection (7) are—

(a) any member of a police force;

(b) the Attorney General and any public officer in respect of whom he is the head of department; and

(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 purposes of functions relating to drug trafficking.

(10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(11) An order under subsection (1) and, in the case of material possessed as mentioned in subsection (1) of this section, an order under section 53(2) of this Ordinance 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 such an order is served—

(a) shall take all reasonable steps to bring it to the attention of the officer concerned; and

(b) if the order is not brought to that officer's attention within the period referred to in subsection (1), shall report the reasons for the failure to the court;

and it shall also be the duty of any other officer serving under the same head of department in receipt of the order to take such steps as are mentioned in paragraph (a) of this subsection.

Consequential amendments

Consequential amendments and modification of other Acts

58. In section 71(2)(a) of the 1989 Ordinance (failure to pay fines etc not to prevent person becoming rehabilitated) the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order.

Transitional provisions and savings

59.—(1) The transitional provisions and savings set out in Schedule 1 to this Ordinance shall have effect.

(2) Part II and section 57 of this Ordinance shall not apply—

(a) in relation to any proceedings for, or in respect of, an offence if the person accused (or, as the case may be, convicted) of that offence was charged with the offence (whether by the laying of an information or otherwise) before the date on which this Ordinance comes into force, or

(b) in relation to any proceedings not within paragraph (a) instituted before that date,

and references in this subsection to proceedings include a reference to any order made by a court in the proceedings.

(3) Accordingly the relevant enactments and any instrument made under any of those enactments shall continue to apply in relation to any proceedings within subsection (2)(a) or (b) of this section (and, in particular, relation to any confiscation order, within the meaning of the Drug Trafficking Offences Ordinance 1989, made in any such proceedings) as if this Ordinance had not been passed.

(4) In subsection (3) “the relevant enactments” are—

(a) the enactments reproduced in Part II and section 57 of this Ordinance,

(b) any other enactment reproduced by this Ordinance, so far as applicable in relation to any of the enactments reproduced in that Part or that section, and

(c) any enactment amended by this Ordinance,

but do not include any enactment which immediately before the date on which this Ordinance comes into force, had not come into force.

(5) Subsection (2) above is without prejudice to section 6(7), 9(4), 28(3) or 31(7) of this Ordinance.

(6) Nothing in section 21(3) or (4) of this Ordinance shall apply to any proceedings—

(a) for an offence committed before the commencement of this Ordinance; or

(b) for one or more offences, any one of which was so committed.

Repeals etc

60. The enactments mentioned in Schedule 2 to this Ordinance are repealed to the extent specified in the third column of that Schedule.

SCHEDULES

SCHEDULE 1

TRANSITIONAL PROVISIONS ETC *General transitional provisions and savings*

1. Anything done or having effect as if done (including the making of subsidiary legislation) under or for the purposes of any provision repealed or revoked by this Ordinance has effect as if done under or for the purposes of any corresponding provision of this Ordinance.
2. Any reference (express or implied) in this Ordinance or any other enactment, or in any instrument or document, to a provision of this Ordinance is (so far as the context permits) to be read as being or (according to the context) including in relation to times, circumstances and purposes before the commencement of this Ordinance a reference to the corresponding provision repealed or revoked by this Ordinance.
3. Any reference (express or implied) in any enactment, or in any instrument or document, to a provision repealed or revoked by this Ordinance is (so far as the context permits) to be read as being or (according to the context) including in relation to times, circumstances and purposes after the commencement of this Ordinance a reference to the corresponding provision of this Ordinance.
4. Paragraphs 1 to 3 are subject to section 59(2) to (6) of this Ordinance.

Provision in relation to Part III of this Ordinance

5. Nothing in section 43 of this Ordinance shall apply to an order made before the coming into force of this Ordinance under section 25 of the Criminal Justice (Amendment) Ordinance 1991.

SCHEDULE 2

Section 60

REPEALS

Chapter	Short Title	Extent of Repeal
1984 c.60 No. 20 of 1989	The Drug Trafficking Offences Ordinance 1989	Section 116(2)(aa). The whole Ordinance, except sections 31(3) and 32. Section 45(3) and (7) In Schedule 17, paragraphs 71 and 72.
No. 20 of 1991	The Criminal Justice (Amendment) Ordinance 1991	Section 15 In section 16, in subsection (1), the words "under section 42(1) of the Criminal Justice Ordinance 1989." Section 17. Sections 24 to 27. Section 28(2).

OBJECTS AND REASONS

Please refer to long title.

Mining (Amendment) Bill 1997

(No: of 1997)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title
2. Amendment of the Mining Ordinance (Cap. 48)

Schedule

MINING (AMENDMENT) BILL 1997

(No. of 1997)

A BILL

for

AN ORDINANCE

(assented to: 1997)

(commencement: on publication)

(published: 1997)

To amend the Mining Ordinance.

BE IT ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Mining (Amendment) Ordinance 1997.

Amendment of the Mining Ordinance (Cap.48)

2. The Mining Ordinance is amended in the manner specified in the Schedule to this Ordinance.

SCHEDULE

Amendment of the Mining Ordinance

1. In the subsequent paragraphs of this Schedule, "the Ordinance" means the Mining Ordinance.

2. "Colonial Secretary" wherever it appears in the Ordinance is replaced by the words "Chief Executive".

3. Section 2 of the Ordinance is replaced by the following section—

"In this Ordinance, "mineral" means any substance including peat, other than water, and whether that substance is in solid, liquid or gaseous form, formed by or subject to geological process."

4. Section 5(2) is repealed and the following sections are inserted immediately following section 5—

"Restriction on assignment etc

5A.(1) A person to whom a licence or lease has been granted under section 5 shall not, except with the consent in writing of the Governor and in accordance with the conditions (if any) of the consent do anything whereby, under the law (including the rules of equity) of the Falkland Islands or of any other place, any right granted by the licence or lease or derived from a right so granted becomes exercisable by or for the benefit of or in accordance with the directions of another person.

(2) Without prejudice to the generality of subsection (1), an agreement or arrangement of any kind between the licensee or lessee and any other person permitting the carrying out in the licensed area or any part thereof any operation which the licensee or lessee is permitted to carry out only by virtue of the licence or lease is to be treated as an assignment of the licence or lease.

(3) A lessee shall not enter into any agreement providing for a person other than the lessee to become entitled to, or to any proceeds of sale of, any mineral which, at the time when the agreement is made, has not but may be won and saved under the lease to the lessee unless the terms of the agreement have been approved in writing by the Governor either unconditionally or subject to conditions, but the preceding provisions of this paragraph do not apply to an agreement for the sale of any mineral or minerals under which the price is payable after the mineral or minerals has or have been won and saved.

(4) A lessee shall not, without the consent of the Governor, dispose of any mineral won and saved under the lease to the lessee in such a manner that the disposal, to the knowledge of the lessee or without the lessee knowing it, fulfills or enables another person to fulfill obligations which a person who controls the lessee, or a person who is controlled by a person who controls the lessee, is required to fulfill by an agreement of which the terms require approval by virtue of subsection (3); and subsections (2) and (4) and (6) of section 416 of the Income and Corporation Taxes Act 1988 of the United Kingdom shall apply for the purposes of determining whether for the purposes of this subsection a person has control of another person, with the following modifications—

(a) for the words "greater part" wherever they occur in the said subsection (2) there shall be substituted the words "one third or more"; and

(b) in the said subsection (6), for the word "may" there shall be substituted the word "shall", and the words "from such attribution" onwards shall be omitted and in the other provisions of that subsection any reference to the associate of a person shall be construed as including only a relative of his (as defined by section 417(4) of that Act), a partner of his and a trustee of a settlement (as defined by section 618(4) of that Act) of which he is a beneficiary.

(5) Where the lessee is two or more persons, then without prejudice to the preceding provisions of this section, none of those persons shall enter into an agreement with respect to the entitlement of any of them to—

(a) the benefit of any rights granted by the lease;

(b) any mineral or minerals won and saved under the lease; or

(c) any proceeds of sale of such mineral or minerals,

unless the terms of the agreement have been approved in writing by the Governor."

Grant of right to apply for a lease

5B.(1) The Governor may, with the approval of the Secretary of State, in consideration of works of prospecting undertaken by a licensee under a prospecting licence agree in that licence with the licensee that provided the licensee has performed and observed all his obligations under the prospecting licence the Governor will consider on its merits an application ("the application") by the licensee made at such time as is stipulated in the licence but not being after the expiry of the licence for the grant to the licensee of a lease to mine, take, win and carry away from a part or parts of the area comprised in the prospecting licence not exceeding in aggregate such percentage of the total area comprised in the prospecting licence as is stipulated therein.

(2) The Governor may in a prospecting licence further agree that he will not without the consent of the licensee within two years after the making of the application or such lesser period as is specified in the licence grant a mining lease to any other person of any area to which the application relates."

5. Section 6 of the Ordinance is amended—

(a) by replacing the words "magistrate of the district" in subsection (2) by the words "Senior Magistrate"; and

(b) by replacing the words "Judge" and all words appearing thereafter in subsection (3) with words with "Chief Justice from whom a further appeal on a point of law or of mixed fact and law shall lie to the Court of Appeal."

6. The words "fifty pounds (£50)" in section 13 of the Ordinance are replaced by the words "five thousand pounds".

Education (Amendment) (No 2) Bill 1997

(No: of 1997)

ARRANGEMENTS OF PROVISIONS**Clause**

1. Short title
2. Amendment of the Education Ordinance 1989

EDUCATION (AMENDMENT)(No 2) BILL 1997

(No: of 1997)

A BILL

for

AN ORDINANCE

<i>(assented to:</i>	<i>1997)</i>
<i>(commencement:</i>	<i>on publication)</i>
<i>(published:</i>	<i>1997)</i>

To amend the Education Ordinance 1989 so as to make different provision in relation to the composition of the Board of Education.

BE IT ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Education (Amendment) (No. 2) Ordinance 1997.

Amendment of the Education Ordinance 1989

2. The Education Ordinance 1989 is amended by replacing section 5(3) with the following—

“(3) Two of the members of the Board shall be appointed by the Governor from among the elected members of the Legislative Council and he shall appoint one of those two persons to be the Chairman of the Board.”.



THE FALKLAND ISLANDS GAZETTE Supplement

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The following is published in this Supplement -

Payment on Account of Tax (Employee's Deductions) Regulations 1997, (S.R. & O. No. 23 of 1997).

SUBSIDIARY LEGISLATION

INCOME TAX

Payment on Account of Tax (Employees' Deductions) Regulations 1997

S. R. & O. No. 23 of 1997

Made: 27 November 1997

Published: 4 December 1997

Coming into force: in accordance with regulation 1

IN EXERCISE of my powers under sections 84 and 91 of the Taxes Ordinance 1997(a) and of all other powers enabling me in that behalf, I make the following Regulations—

Citation and commencement

1. These Regulations may be cited as the Payments on Account of Tax (Employees' Deductions) Regulations 1997 and shall apply in relation to deductions required to be made, or deemed to have been made, under Part IV of the Taxes Ordinance 1997 after 1st January 1998.

Interpretation

2.—(1) In these Regulations—

“monthly paid employee” means an employee who is paid once every calendar month or at greater intervals;

“pay period”, in relation to any remuneration, means the period in respect of which the remuneration is payable;

“POAT deduction” means a deduction required to be made under Part IV of the Taxes Ordinance;

“the Taxes Ordinance” means the Taxes Ordinance 1997;

“tax tables” means the tables prepared by the Commissioner under regulation 4 below; and

“weekly paid employee” means an employee who is not a monthly paid employee.

(2) Any reference in these Regulations to “remuneration”, in relation to any person, does not include any pension or annuity, and shall be construed in accordance with regulation 10 in any case where that regulation applies, but subject to that, means the gross amount of that person’s earned income, before any deductions.

(3) Any reference in these Regulations to a section is a reference to that section of the Taxes Ordinance.

Application of Regulations

3.—(1) These Regulations shall apply for the determination of the amount of any POAT deduction.

(2) Nothing in these Regulations shall require or authorise any deduction to be made from the remuneration of any employee who—

(a) in the case of a weekly paid employee, has not worked at least 15 hours in the employment of one or more employers during the period in which the remuneration is paid (“the pay period”) if, and only if, that employee has not worked 84 hours in aggregate during that pay period and the three periods preceding that pay period;

(b) in the case of a monthly paid employee, has not worked at least 60 hours during the pay period in respect of which the remuneration is paid;

or, except in accordance with section 85(7), in respect of remuneration which is exempt from tax under section 13.

(3) In paragraph (2) above, “worked”, in relation to hours for which an employee is paid, means hours in respect of which he is for any reason paid, and whether or not he has actually rendered any services to the employer during those hours.

Tax tables

4.—(1) The Commissioner shall prepare tax tables for the purposes of these Regulations setting the amounts of the POAT deductions to be made from remuneration payable to employees to whom Regulations 6, 7 and 8 below apply.

(2) Tax tables prepared in accordance with this Regulation shall be made available free of charge to any employer who is required to make any POAT deduction.

Alternative formula

5.—(1) Subject to sub-paragraph (4) below, the formula set out in sub-paragraph (2) below may be used by an employer to determine the amount of any POAT deduction to be made from any payment of remuneration payable to an employee for any period, instead of the tables prepared under regulation 4 above, and in that sub-paragraph—

- (a) the remuneration in question is referred to as “the relevant remuneration”, and
- (b) the year in which the remuneration is payable is referred to as “the income year”.

(2) The formula which may be used instead of the tables is—

$$\frac{LJ + M(J - K)}{100D} = \text{the POAT deduction}$$

The key to this formula is as follows—

- M is the rate equal to the difference between the higher rate of income tax and the lower rate, rounded down to the nearest whole number.
- L is the lower rate of income tax.
- K is the maximum amount of income which is chargeable to income tax at the lower rate at the time the remuneration is payable.
- J
 - (a) if, at the time the relevant remuneration is payable, the employee concerned is entitled to an allowance under section 17(1), then J is equal to the amount by which F exceeds the aggregate of the amounts specified in sections 16(1) and 17(1) at that time;
 - (b) if paragraph (a) does not apply, J is equal to the amount by which F exceeds the amount specified in section 16(1) at the time the relevant remuneration is payable.
- F is equal to 85 per cent. of E.
- E is the product of C and D.
- D is the result of dividing the number of days in the income year by the number of days in the pay period, rounded down to the nearest whole number.
- C is the product of A and B.
- B is the result, expressed in pounds sterling, of dividing 300 by D, rounded down to the nearest £5.
- A is the result of dividing the relevant remuneration by B and rounding that figure down to the nearest whole number.

If the POAT deduction is a negative number, its amount shall be taken to be zero.

(3) The employer of an employee whose remuneration exceeds the highest figure in the tax tables shall use the formula in sub-paragraph (1) above to calculate the POAT deductions for that employee.

(4) This regulation has effect subject to regulations 10 and 11.

Deductions to be made from remuneration paid more frequently than weekly

6.—(1) This Regulation applies in relation to employees who are resident in the Falkland Islands and are paid more frequently than weekly, but does not apply in relation to remuneration as respects which deductions are made or are required to be made under Regulation 5.

(2) The applicable remuneration of an employee who is paid at intervals of less than a week is $\pounds \frac{R \times 36}{H}$ where—

H

R is the amount of remuneration paid to the employee in respect of each interval, and

H is the number of hours worked by the employee in respect of which that remuneration is paid (to the nearest whole number).

(3) The employer of an employee in relation to whom this regulation applies shall make a POAT deduction from each payment of remuneration made to the employee of an amount equal to $\pounds \frac{A \times H}{36}$ where—

A is the amount specified in the tax tables as the deductible amount in relation to an amount equal to the employee's applicable remuneration; and

H is the number of hours worked by the employee in respect of which that payment of remuneration is made (to the nearest whole number).

(4) This regulation has effect subject to regulations 10 and 11.

Deductions to be made from other remuneration paid more frequently than monthly

7.—(1) This Regulation applies in relation to employees who are resident in the Falkland Islands and are paid more frequently than monthly but not more frequently than weekly, but does not apply in relation to remuneration as respects which deductions are made or are required to be made under Regulation 5.

(2) The applicable remuneration of an employee who is paid more frequently than monthly (but not more frequently than weekly) is his actual remuneration for the pay period in question.

(3) The employer of an employee in relation to whom this Regulation applies shall make a POAT deduction from each payment of remuneration made to that employee equal to the amount specified in the tax tables as the deductible amount in relation to an amount equal to the employee's applicable remuneration.

- (4) This regulation has effect subject to regulations 10 and 11.

Deductions to be made from remuneration paid monthly or less frequently

8.—(1) This Regulation applies in relation to employees who are resident in the Falkland Islands and are paid monthly or at greater intervals, but does not apply in relation to remuneration as respects which deductions are made or are required to be made under Regulation 5.

(2) The applicable remuneration of a monthly paid employee is his actual remuneration for the pay period in question.

(3) The employer of an employee in relation to whom this Regulation applies shall make a POAT deduction from each payment of remuneration made to that employee equal to the amount specified in the tax tables as the deductible amount in relation to an amount equal to the employee's applicable remuneration.

- (4) This regulation has effect subject to regulations 10 and 11.

Non-resident employees

9.—(1) This Regulation applies in relation to employees who are not resident in the Falkland Islands.

(2) The employer of such an employee shall make a POAT deduction from each payment of remuneration made to the employee of an amount equal to 20 per cent. of the gross amount of the payment.

- (3) This regulation has effect subject to regulations 10 and 11.

'Free of tax' remuneration

10.—(1) This regulation applies in relation to remuneration which is payable wholly or partly net or free of income tax by virtue of any agreement or arrangement, whether the agreement or arrangement is in writing or oral and however it is expressed, and in this regulation the remuneration which is so payable is referred to as the "net remuneration".

(2) Where part only of a person's remuneration is payable net or free of income tax, the employer shall notify the Commissioner of that fact before the first day on which he is required to deliver a return to the Commissioner under regulation 12, below, and shall comply with any direction given to him by the Commissioner as to the calculation of the POAT deduction.

- (3) Subject to regulation 11, in any case where the remuneration is payable wholly net or free of tax, then—

(a) if N is equal to or exceeds Z—

$$\text{£}G = \left[\frac{Z - AL}{1 - L(1 - E)} \right] + [(N - Z) \frac{1}{1 - (L + M)(1 - E)}];$$

(b) if N is less than Z—

$$\text{£}G = \frac{N - AL}{1 - L(1 - E)}$$

G is then divided by D to determine the grossed up amount of any particular amount of remuneration payable at any time during the year in question.

(4) The key to subsection (3) is as follows—

$$Z = \left(\frac{K + A}{1 - E} \right) - (KL);$$

D is the result of dividing the number of days in the year in which the remuneration is payable by the number of days in the pay period, rounded down to the nearest whole number;

E is the rate of earned income relief under section 15(1);

N is the net remuneration, but subject to subsection (5) below;

M is the rate equal to the difference between the higher rate of income tax and the lower rate;

L is the lower rate of income tax;

K is the maximum amount of income which is chargeable to income tax at the lower rate at the time the remuneration is payable;

A (a) if, at the time the remuneration is payable, the employee concerned is entitled to an allowance under section 17(1), then A is equal to the aggregate of the amounts specified in sections 16(1) and 17(1) at that time;

(b) if paragraph (a) does not apply, A is equal to the amount specified in section 16(1) at the time the remuneration is payable.

(5) The net remuneration to be used in making the calculation under sub-paragraph (3) above of the gross amount of a person's remuneration shall be the aggregate amount of net remuneration payable to him in that year.

Employees with more than one employment

11. In any case where an employee is employed by more than one employer during a year and the periods of employment wholly or partly coincide, then—

(a) the employee shall notify the Commissioner of the names of the employers and the dates when the different employments began as soon as is reasonably practicable thereafter or after 1st January 1998 if they began before that date, and

(b) the employers concerned shall comply with any direction which the Commissioner may give as to the calculation of the POAT deduction to be made in respect of that employee for those pay periods.

Accounting for deductions

12.—(1) Every person required to deduct any sum in accordance with these Regulations or Part IV of the Taxes Ordinance shall on or before the 14th day of the calendar month following the month in which the deduction was required to be made ("the deduction month") cause to be delivered to the Commissioner—

(a) a return in the prescribed form containing all particulars required to be completed therein; and

(b) a remittance for the aggregate of all such deductions required to be made by him during the deduction month.

(2) The reference in paragraph (1)(b) above to deductions under these Regulations include any deductions required to be made by virtue of section 84 of the Taxes Ordinance.

(3) If the amount of the deduction referred to in paragraph (2) above exceeds the amount of the assessable income, the person required to make the deduction shall include an amount equal to the amount of the excess in the remittance delivered to the Commissioner in accordance with paragraph (1)(b) above.

(4) Without prejudice to section 25(2) of the Interpretation and General Clauses Ordinance 1977(a), paragraph (1) above applies in relation to amounts required to be deducted from payments before 1st January 1998 which have not been accounted for in accordance with the Deductions (Employees) Regulations 1987(b) as if they had been deducted in accordance with these Regulations and as if the deductions had been made on 1st January 1998.

(5) A person who fails to comply with paragraph (1) or (3) above shall be guilty of an offence and liable on conviction to a fine not exceeding level 7 on the standard scale or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

(a) No. 14 of 1977

(b) S.R. & O. No. 23 of 1987

Information and preservation of records

13.—(1) A person who employs any person in the Falkland Islands or in a designated area shall, within the time specified in paragraph (2) below, give notice to the Commissioner specifying—

- (a) the employer's name and his principal place of business in the Falkland Islands or if he has no place of business in the Falkland Islands, his principal place of business outside the Falkland Islands;
- (b) the employee's name and address;
- (c) the date on which the employment commenced;
- (d) the amount of remuneration payable on a monthly basis;
- (e) where appropriate, the date on which the employee arrived in the Falkland Islands or the designated area, and the date when he is expected to leave (if the date is unknown an indication of the month or months and year should be given if possible).

(2) For the purposes of paragraph (1) above the time within which the notice must be given to the Commissioner is—

(a) within 7 days of the commencement of the employee's employment with that person, or, if the employee began or begins to work as an employee of an employer in the Falkland Islands or a designated area after his employment with that employer has begun, within 7 days after he began or begins to work in the Falkland Islands or a designated area, or

(b) before 8th January 1998, if later.

(3) Paragraph (1) above shall not apply in any case where—

(a) the employee is employed by the employer immediately before and immediately after the coming into force of these Regulations, and

(b) the employer has made deductions from the employee's remuneration and accounted for them in accordance with the Deductions (Employees) Regulations 1987(a).

(4) A person who is required to make any deduction in pursuance of these Regulations or Part IV of the Taxes Ordinance shall make a written record of that deduction together with particulars of the employee in respect of whom it is made and shall keep that record for the period which expires at the end of the 6th year of assessment following the year in which the deduction was made.

(5) A person who fails to comply with paragraph (1) or (3) above shall be guilty of an offence and liable on conviction to a fine not exceeding level 7 on the standard scale or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

Made this 27th day of November 1997

R P Ralph
Governor



**THE
FALKLAND ISLANDS GAZETTE
Supplement**

PUBLISHED BY AUTHORITY

Vol. 8

5th December 1997

No. 30

The following is published in this Supplement -

Road Traffic (Provisional) Regulations Order 1986 (Amendment) Order 1997, (S.R. & O. No. 19 of 1997);

Income Tax (Apportionment of Deductions) Rules 1997, (S.R. & O. No. 22 of 1997).

SUBSIDIARY LEGISLATION

ROAD TRAFFIC

Road Traffic (Provisional) Regulations Order 1986 (Amendment) Order 1997

S. R. & O. No. 19 of 1997

Made: 24 November 1997
Published: 5 December 1997
Coming into force: 1 January 1998

IN EXERCISE of the powers conferred on me by section 18 of the Road Traffic Ordinance(a), 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 Road Traffic (Provsional) Regulations Order 1986 (Amendment) Order 1997 and shall come into force on 1st January 1998.

Interpretation

2. For the purposes of this Order the phrase "Principal Order" shall mean the Road Traffic (Provisional) Regulations Order 1986.

Amendment of Principal Order

3. The Principal Order is amended by replacing forms A, B, C and D1 set out in the Schedule to the Principal Order with the forms A, B, C and D1 set out in the Schedule to this Order.

Made this 24th day of November 1997

R P Ralph
Governor

SCHEDULE

Form A

ROYAL FALKLAND ISLANDS POLICE



APPLICATION TO REGISTER A MOTOR VEHICLE / CHANGE OF OWNERSHIP

INDEX No. (if already issued)	
MAKE:	MODEL:
TYPE:	COLOUR:
CHASSIS No:	ENGINE No:
ULW: KILOS	FUEL <input type="radio"/> DIESEL <input type="radio"/> PETROL
ENGINE CAPACITY: CC	SEATING CAPACITY:
OWNER'S SURNAME:	
OWNER'S FORENAMES:	
OWNER'S ADDRESS:	
REGISTERED KEEPER (if different from owner)	
KEEPER'S FORENAMES:	
KEEPER'S ADDRESS:	
NAME OF PREVIOUS OWNER:	
DATE OF ACQUISITION / IMPORTATION (Delete as appropriate)	

Date of Application

Signature of Applicant

Form B

MOTOR VEHICLE REGISTRATION CERTIFICATE No.

ISSUED ON:

INDEX No:	FIRST REGISTERED:	LICENSING CATEGORY 1 - Less than 500 kg 2 - More than 500 kg but less than 3400 kg <input type="checkbox"/> 3 - Agricultural Tractor 4 - More than 3400 kg 5 - Trailers drawn by vehs of more than 3400 kg For official use only
MAKE:	MODEL:	
TYPE:	COLOUR:	
CHASSIS No:	ENGINE No:	
ULW: KILOS	FUEL: <input type="radio"/> DIESEL <input type="radio"/> PETROL	
ENGINE CAPACITY: CC	SEATING CAPACITY:	
OWNER'S SURNAME:		
OWNER'S FORENAMES:		
OWNER'S ADDRESS:		
REGISTERED KEEPER:		
KEEPER'S FORENAMES:		
KEEPER'S ADDRESS:		

Authorising stamp

Signature of issuing officer

CHANGE OF OWNERSHIP

In the event of a change of ownership, you are required to complete the boxes below and return this certificate within 7 days of the transfer to the Licensing Bureau, Police Headquarters, Stanley

NAME OF NEW OWNER:	DATE OF TRANSFER:
ADDRESS OF NEW OWNER:	

Form C



DRIVING LICENCE APPLICATION

Licensing Bureau
Headquarters
Royal Falkland Islands Police
Stanley

GUIDANCE NOTES

1. This application form should be used regardless of the category of vehicle or the type of licence required. The table below lists the vehicle categories in use in the Falkland Islands.

VEHICLE CATEGORIES	
Category	Definition
A	Motor bicycle or scooter
B	Motor car or light goods vehicle not exceeding 3500 kg ulw
B1	Motor tricycle, invalid carriage or other vehicle not exceeding 500 kg ulw
C	Goods vehicle exceeding 7500 kg ulw
C1	Goods vehicle exceeding 3500 kg ulw but not exceeding 7500 kg ulw
D	Passenger carrying vehicle with seating for more than 16 passengers (not including the driver)
D1	Passenger carrying vehicle with seating for more than 8 but not more than 16 passengers (not including the driver)
E	Articulated vehicle where the tractor unit is in Category C or C1
F	Agricultural tractor
G	Plant

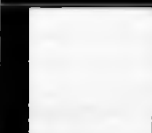
2. Your application may be in respect of any of the licence classes listed below.

LICENCE CLASSES	
Class	Definition
1	Provisional licence for vehicle categories A, B, B1 or F.
2	Provisional licence for vehicle categories C, C1, D or D1.
3	Provisional licence for vehicle categories E or G.
4	Updated licence, to add new vehicle categories to your licence or to remove out-of-date endorsements. This is the full licence which you will get on passing a driving test.
5	Renewed licence on the expiry of a time limited licence or after an earlier licence has been withdrawn for any reason.
6	Exchange licence to replace a foreign licence or one which is lost, damaged or obsolete.

3. The form should be completed by ticking the appropriate boxes. Please indicate only one class of licence, and ensure that you sign the declaration at the end of the form.

4. The completed form should be returned to the Licensing Bureau along with the fee and the other documents indicated at the relevant part of the form.

Form C

Personal ParticularsSurname Date of Birth Forenames (in full) Address **Type of Licence Required****Class 1**

I require a provisional licence for:

- ☐ Category A
☐ Category B
☐ Category B1
☐ Category F

I enclose:
The fee of £5

Note: No previous licence is required

Class 2

I require a provisional licence for:

- ☐ Category C
☐ Category C1
☐ Category D
☐ Category D1

I enclose:
My current licence
The fee of £5

Note: You must already possess a full licence in Category B

Class 3

I require a provisional licence for:

- ☐ Category E
☐ Category G

I enclose:
My current licence
The fee of £5

Note: You must already possess a licence in Category C or C1

Form C



I require an updated licence	
<input type="radio"/> On first passing a driving test <input type="radio"/> To add new categories to my licence <input type="radio"/> To remove out-of-date endorsements	I enclose: The relevant test pass certificates * My current licence The fee of £15 for a first licence or £5 in other cases (* where applicable)



I require a renewed licence	
<input type="radio"/> On the expiry of an earlier licence <input type="radio"/> After a licence has been withdrawn for medical reasons <input type="radio"/> After a period of disqualification	I enclose: My current licence * A medical certificate * The fee of £5 (* where applicable)



I require an exchange licence	
<input type="radio"/> To replace a foreign licence <input type="radio"/> To replace a licence which is <ul style="list-style-type: none"> <input type="radio"/> Lost or stolen <input type="radio"/> Destroyed <input type="radio"/> Defaced or damaged <input type="radio"/> An obsolete form of licence 	I enclose: My current licence * The fee of £5 (* where applicable)

Declaration

I declare that I am not suffering from any physical or mental disability which might prevent me from driving in a safe and proper manner.

Date of Application

Signature of Applicant

Form D1

FALKLAND ISLANDS

DRIVING LICENCE

LICENCE No:	DATE ISSUED:	
SURNAME:		
FORENAMES:		
ADDRESS:		

The holder is licensed to drive motor vehicles of the categories listed below.

Category		Description	Effective Dates	
			Provisional	Ordinary
<input type="checkbox"/> A		Motor bicycle or scooter		
<input type="checkbox"/> B		Motor car or light goods vehicle not exceeding 3500 kg		
<input type="checkbox"/> B1		Motor tricycle, invalid carriage or other vehicle not exceeding 500 kg		
<input type="checkbox"/> C		Goods vehicle exceeding 7500 kg		
<input type="checkbox"/> C1		Goods vehicle exceeding 3500 kg but not exceeding 7500 kg		
<input type="checkbox"/> D		Passenger carrying vehicle with seating for more than 16 passengers		
<input type="checkbox"/> D1		Passenger carrying vehicle with seating for more than 8 but less than 17 passengers		
<input type="checkbox"/> E		Articulated vehicle where the tractor unit is in Category C or C1		
<input type="checkbox"/> F		Agricultural tractor		
<input type="checkbox"/> G		Plant		
Endorsements			PSV Licence <input type="radio"/> YES <input type="radio"/> NO	
Date	Court	Offence	Expiry date	

Signature of Holder

Authorising stamp

Signature of issuing officer

Please notify the Licensing Bureau of any changes in your particulars by completing the boxes below and returning the licence to Police Headquarters, Stanley

I have changed my name to:

I have changed my address to:

EXPLANATORY NOTE
(not forming part of the above Order)

This Order has the effect of revising the forms of Vehicle Registration application, Vehicle Registration Certificate, Driving Licence application and Driving Licence set out in the Road Traffic (Provisional) Regulations Order 1986.

SUBSIDIARY LEGISLATION

INCOME TAX

Income Tax (Apportionment of Deductions) Rules 1997

S. R. & O. No. 22 of 1997

Made: 27 November 1997

Published: 5 December 1997

Coming into force: in accordance with rule 1

IN EXERCISE of my powers under section 204(1)(b) of the Taxes Ordinance 1997(a) and of all other powers enabling me in that behalf, I make the following Rules—

Citation and application

1.—(1) These Rules may be cited as the Income Tax (Apportionment of Deductions) Rules 1997.

(2) These Rules shall have effect with respect to income tax chargeable for the year of assessment commencing on 1st January 1998 and for subsequent years of assessment.

Meaning of “relevant deduction”

2. For the purposes of these Rules a “relevant deduction” means any deduction allowable under any provision of any Ordinance in calculating the chargeable income of an individual, except—

(a) a deduction of a sum which is not fixed either in that Ordinance or in another Ordinance or in subordinate legislation (disregarding any potential reduction of that fixed amount due to any insufficiency of income);

(b) a deduction in respect of any amount paid under the Retirement Pensions Ordinance 1996(b).

Apportionment of relevant deductions

3.—(1) In calculating a person’s chargeable income for a year of assessments as respects which a relevant deduction may be made, in any case where the conditions of entitlement to that deduction are not fulfilled as respects that person for the whole of the calendar year preceding the year of assessment in question, the relevant deduction shall be reduced to an amount equal to the fraction $\frac{A}{B}$ of the full amount of the relevant

B

(a) No. 14 of 1997

(b) No. 20 of 1996

deduction in question, where—

A is the number of days in the calendar year in question during which the conditions for the deduction in question were fulfilled with respect to that person, and

B is the number of days in that calendar year.

(2) A deduction to which an individual is entitled under section 18 of the Taxes Ordinance 1997 shall not be apportioned under paragraph (1) above by reason only that he reaches the age of 60 years during any year.

(3) This Rule does not apply in relation to any deduction under section 19 of that Ordinance.

(4) In calculating for a year of assessment the chargeable income of a person who dies in the course of the preceding year, any relevant deduction which may be made shall be reduced to an amount equal to the fraction $\frac{A}{B}$ of the full amount of the relevant deduction in question, where—

A is the number of days in the preceding year falling on or before the day on which he died, and

B is the number of days in that year.

(5) In relation to any relevant deduction as respects which, apart from this paragraph, paragraphs (1) and (4) would both apply for the calculation of a person's income for a year of assessment, paragraph (4) shall not apply but for the purposes of paragraph (1) a day falling after the day on which the person died shall be disregarded for the purposes of computing the number of days in A.

(6) In relation to any relevant deduction as respects which, apart from this paragraph, paragraph (1) and Rule 4 would both apply for the calculation of a person's income for a year of assessment, Rule 4 shall not apply but for the purposes of paragraph (1) a day during which the person is not resident in the Falkland Islands shall be disregarded for the purposes of computing the number of days in A.

Further apportionment of deductions for non-residents

4.—(1) Subject to Rule 3(6) above, in calculating a person's chargeable income for a year of assessment as respects which a relevant deduction may be made, in any case where that person is not resident in the Falkland Islands for the calendar year preceding the year of assessment in question, the relevant deduction shall be reduced to an amount equal to the fraction $\frac{A}{B}$ of the full amount of the relevant deduction in question, where—

A is the number of days in the calendar year in question during which that person is in the Falkland Islands or in a designated area, and

B is the number of day in that calendar year.

(2) Where A is zero, the relevant deduction shall be reduced to zero.

(3) This Rule does not apply for the calculation for any year of assessment of the chargeable income of a person who makes a claim under section 195(3) of the Taxes Ordinance 1997 for that year.

Revocation of earlier Rules

5. The Income Tax (Apportionment of Deductions) Rules 1991 are revoked but without prejudice to their application in relation to income tax for any year of assessment ending before 1st January 1998.

Made this 27th day of November 1997

R P Ralph
Governor

EXPLANATORY NOTE *(not forming part of the above Rules)*

These Rules provide for apportionment on a time basis where a "broken period" is involved of fixed-sum allowable deductions from income provided for by the Taxes Ordinance 1997.

Rule 1 sets out the short title to the Rules and provides that they shall come into force for years of assessment beginning on or after 1st January 1998. As income for a year of assessment is the income accruing in the preceding year, these Rules will apply in relation to income currently being earned.

Rule 2 defines "relevant deduction" as a deduction of a fixed amount other than a deduction in respect of contributions under the Retirement Pensions Ordinance 1996. Deductions within the definition include those under sections 16 to 18 of the 1997 Ordinance but those under Part III of that Ordinance (life assurance, pensions and annuities) are not included.

Rule 3 provides the general rule for the apportionment of relevant deductions. The apportionment under this Rule is calculated on the basis of the number of days in the year in which the tax-payer fulfils the conditions for eligibility for the deduction. For example, section 17(1) allows for a deduction in the case of a married man living with or maintaining his wife, but in the year in which the marriage takes place there will be

an apportionment. If the marriage took place on 1st June, the amount allowable under section 17(1) would be—

$$£(2450 \times 214) \div 365 = £1436.44$$

Paragraph (2) of Rule 3 excludes the age allowance under section 18 from apportionment except in relation to marriage.

Paragraph (3) prevents allowances under section 19 from being apportioned under these Rules as section 19 contains its own provisions for apportionment.

Paragraph (4) makes provision for the year in which a person entitled to an allowance dies. Under this paragraph the allowances will be apportioned in a similar way to the apportionments under paragraph (3), taking the days before the person's death as the days of entitlement.

Where a person dies in the year in which he becomes or ceases (otherwise than because of his death) to be entitled to an allowance, then *paragraph (5)* ensures that the calculations under this Rule will still produce the correct result.

For example, if a man married on 1st June and died on 1st October in the same year the allowance under section 17(1) would be—

$$£(2450 \times 122) \div 365 = £818.90$$

Paragraph (6) makes similar provision where a person is not resident in the Falkland Islands for the whole year so that Rule would apply. If Rule 4 and Rule 3(1) would both apply, then the computations will be carried out under Rule 3 on a similar basis to the computations in cases of death.

Rule 4 makes provision for the apportionment of allowances where a person is not resident in the Falkland Islands for the whole of the year. For example, on 1st November a man comes to live in Stanley with his wife to whom he has been married for some years. The allowance under section 17(1) would be—

$$£(2450 \times 61) \div 365 = £409.45$$

Paragraph (2) excludes cases where the tax for a non-resident is calculated under section 195(3) as that subsection makes its own provision for apportionment.



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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No. 31

The following are published in this Supplement -

Proclamation No. 6 of 1997;
Offshore Minerals (Amendment) Ordinance 1997;
Control of Drinking by Juveniles (Amendment) Ordinance 1997;
Falkland Islands Pensions Scheme Ordinance 1997;
Education (Amendment) (No. 2) Ordinance 1997;
Mining (Amendment) Ordinance 1997;
Taxes (Falkland Islands Pensions Scheme) Ordinance 1997;
Supplementary Appropriation (1997-1998) (No. 2) Ordinance 1997.

PROCLAMATION

CUSTOMS

Importation of Cattle, Sheep, Goats and Pigs Proclamation 1997

(Proclamation No. 6 of 1997)

WHEREAS it appears to me to be desirable to control the importation of cattle, sheep, goats and pigs into the Falkland Islands

AND WHEREAS section 35 of the Customs Ordinance 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 any such Proclamation may prohibit importation, carriage coastwise or exportation until the revocation thereof, or during such period as may be specified therein, and either absolutely prohibit importation, carriage coastwise or exportation, or may 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

NOW THEREFORE, I, Richard Peter Ralph, Companion of the Most Distinguished Order of St Michael and St George, Commander of the Royal Victorian Order, **GOVERNOR** of the Falkland Islands **IN EXERCISE** of my powers under section 35 of the Customs Ordinance prohibit the importation of cattle, sheep, goats and pigs into the Falkland Islands unless they are imported under and in accordance with a licence, and any conditions of a licence, granted by the Director of Agriculture or, on appeal to the Governor from the Director of Agriculture, by the Governor upon the advice of the Executive Council

GIVEN under my hand and the Public Seal of the Falkland Islands at Government House, Stanley, Falkland Islands, this 17th day of December in the year of Our Lord One thousand Nine Hundred and Ninety-Seven

R. P. Ralph
Governor

ELIZABETH II



Colony of the Falkland Islands

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

Offshore Minerals (Amendment) Ordinance 1997

(No: 16 of 1997)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. The principal Ordinance
3. Amendment of the principal Ordinance

ELIZABETH II



Colony of the Falkland Islands

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

OFFSHORE MINERALS (AMENDMENT) ORDINANCE 1997

(No: 16 of 1997)

AN ORDINANCE

(assented to: 16 December 1997)
(commencement: on publication)
(published: 24 December 1997)

To amend the Offshore Minerals Ordinance 1994 so as to make further provision in relation to the application of provisions of the Health and Safety at Work etc. Act 1974

ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Offshore Minerals (Amendment) Ordinance 1997.

The principal Ordinance

2. In this Ordinance, "the principal Ordinance" means the Offshore Minerals Ordinance 1994.

Amendment of the principal Ordinance

3.—(1) Section 2(1) of the principal Ordinance is amended—

(a) by replacing the definition of "designated area" with the following—

" "designated area" means—

(a) any area which is within the definition of designated area in Proclamation No 1 of 1991; and

(b) any area to which Proclamation No 1 of 1997 relates”;

(b) by replacing the definition of “offshore installation” appearing therein with the following definition—

“ “offshore installation” has the meaning given by section 36(5)(a)”;

and

(c) by replacing the definition of “relevant offshore activity” appearing therein with the following definition—

“ “relevant offshore activity” means an activity mentioned in sub-paragraphs (i) to (iv) of paragraph (a) of section 36(5);”.

(2) Section 36 of the principal Ordinance is amended—

(a) by inserting the following paragraphs after paragraph (b) of subsection (4)—

“(ba) any pipe-line works;

(bb) the following activities in connection with pipe-line works—

(i) the loading, unloading, fuelling or provisioning of a vessel;

(ii) the loading, unloading, fuelling, repair and maintenance of an aircraft on a vessel,

being in either case a vessel which is engaged in pipe-line works;”

(b) by inserting the following paragraphs after paragraph (c) of subsection (4)—

“(d) any offshore installation and any activity on it;

(e) any activity, including diving operations, in connection with an offshore installation, or any activity which is immediately preparatory thereto, whether carried on from the installation itself, on or from a vessel or in any other manner, other than—

(i) transporting, towing or navigating the installation; and

(ii) any activity on or from a vessel being used as a stand-by vessel;

(f) diving operations involving the survey and preparation of the sea-bed for an offshore installation;

(g) any of the following activities within the territorial sea of the Falkland Islands—

(i) the construction, reconstruction, alteration, repair, maintenance, cleaning, demolition and dismantling of any building or other structure not being a vessel, or any preparation for any such activity;

(ii) the loading, unloading, fuelling or provisioning of a vessel;

(iii) diving operations;

(iv) the maintaining on station of a vessel which would be an offshore installation were it not a structure to which sub-paragraph (iv) of paragraph (a) of subsection (5) applies,

but nothing in this paragraph shall enable the Governor to make any Order applying to any vessel which is registered outside the Falkland Islands and is on passage through the territorial sea; and

(h) a well and any activity connected with it, and any activity immediately preparatory to any such activity (and for the purposes of this paragraph "activity" and "activity immediately preparatory to any such activity" both include keeping a vessel on station for the purpose of working on a well but do not otherwise include navigation or an activity connected with navigation).";

(c) by replacing subsection (5) with the following—

"(5) For the purposes of subsection (4) and this subsection—

(a) "offshore installation" means a structure which is not within the definition of "excepted structure" contained in paragraph (b) of this subsection and which is, or is to be, or has been, used while standing or stationed in water, or on the foreshore or other land intermittently covered by water—

(i) for the exploitation, or exploration with a view to exploitation, of mineral resources by means of a well;

(ii) for the storage of gas in or under the shore or bed of any water or the recovery of gas so stored;

(iii) for the conveyance of things by means of a pipe; or

(iv) mainly for the provision of accommodation for persons who work on or from a structure falling within any of the provisions of this paragraph and which is not an excepted structure;

(b) "excepted structure" means a structure which is any of the following—

(i) a structure which is connected with dry land by a permanent structure providing access at all times and for all purposes;

(ii) a well;

(iii) a structure which has ceased to be used for any of the purposes specified in sub-paragraph (ii) of paragraph (a) of this subsection and has since been used for a purpose not so specified;

(iv) a mobile structure which has been taken out of use and is not for the time being intended to be used for any of the purposes specified in sub-paragraph (ii) of paragraph (a) of this subsection; and

(v) any part of a pipe-line;

(c) "pipe-line" means a pipe or system of pipes for the conveyance of any thing, together with—

(i) any apparatus for inducing or facilitating the flow of anything through, or through a part of, the pipe or system;

(ii) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system;

(iii) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system;

(iv) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in the preceding sub-paragraphs of this paragraph;

(v) apparatus for the transmission of information for the operation of the pipe or system;

(vi) apparatus for the cathodic protection of the pipe or system; and

(vii) a structure used or to be used solely for the support of a part of the pipe or system.

but does not include a pipe-line of which no initial or terminal point is situated in the Falkland Islands or within the territorial sea or a designated area;

(d) "pipe-line works" means—

(i) assembling or placing a pipe-line or length of pipe-line including the provision of internal or external protection for it;

(ii) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipeline or length of pipe-line;

(iii) changing the position of or dismantling or removing a pipe-line or a length of pipe-line;

(iv) opening the bed of the sea for the purposes of the works mentioned in sub-paragraphs (i) to (iii) of this definition, and tunnelling or boring for those purposes;

(v) any activities incidental to the activities described in sub-paragraphs (i) to (iv) of this definition;

(vi) diving operations in connection with any of the works mentioned in sub-paragraphs (i) to (v) of this definition or for the purpose of determining whether a place is suitable as part of the site of a proposed pipe-line and the carrying out of surveying operations for settling the route of a proposed pipe-line;

(e) "gas" means any gas derived from natural strata (including gas originating outside the Falkland Islands and the controlled waters), but does not include such gas in the course of supply (whether by pipes or otherwise) by a public utility or in containers in which it is intended to be supplied to members of the public or other retail consumers."; and

(f) by the addition thereto of the following subsection—

"(6) An Order under any preceding provision of this section may—

(a) contain such transitional provisions and savings as appear to the Governor, acting with the consent of the Secretary of State, to be necessary or expedient;

(b) so far as is necessary or expedient to give further or better effect to the provisions of the Order, apply the provisions of Part I of the Health and Safety at Work etc. Act 1974 or any regulations made under section 15(1) of that Act, with such modifications and exceptions as may be stated in the Order, in and to the Falkland Islands."

Passed by the Legislature of the Falkland Islands this 12th day of December 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.M.G., C.V.O.,
Governor.

Control of Drinking by Juveniles (Amendment) Ordinance 1997

(No: 17 of 1997)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. Amendment of the Control of Drinking by Juveniles Ordinance 1993



Colony of the Falkland Islands

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

CONTROL OF DRINKING BY JUVENILES (AMENDMENT) ORDINANCE 1997

(No. 17 of 1997)

AN ORDINANCE

(assented to: 16 December 1997)
(commencement: upon publication in the Gazette)
(published: 24 December 1997)

To amend the Control of Drinking by Juveniles Ordinance 1993

ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Control of Drinking by Juveniles (Amendment) Ordinance 1997.

Amendment of the Control of Drinking by Juveniles Ordinance 1993

2. Section 5 of the Control of Drinking by Juveniles Ordinance 1993 is amended by inserting the following subsections immediately after subsection (2) of that section—

“(3) Except as provided by subsection (4), it is unlawful for a juvenile to consume intoxicating liquor in a private place (that is to say, in any place or premises not within the definition of “public place” in section 2).

(4) Subsection (3) does not apply—

(a) so as to prohibit the consumption of alcohol by a juvenile in premises licensed under the Licensing Ordinance 1994 in circumstances in which such consumption is not prohibited by any provision of that Ordinance;

(b) so as to prohibit the consumption of alcohol by a juvenile in the premises in which he usually lives;

(c) so as to prohibit the consumption of alcohol by a juvenile with the consent of his parent or guardian (but a juvenile does not consume alcohol with the consent of his parent or guardian if he contravenes any condition or limitation subject to which that consent was given); or

(d) where subsection (2) applies.

(5) A juvenile who contravenes subsection (3) commits an offence and is liable on conviction of that offence to a fine not exceeding £250.

(6) If a juvenile charged with an offence under subsection (5) claims the benefit of the defence afforded by paragraph (c) of subsection (4), it is for him to prove that he consumed the alcohol in question with the consent of his parent or guardian.

(7) A person who is the occupier of, or appears for the time being to have control of, any private place or private premises commits an offence if he is present while any alcohol is consumed there by any juvenile in contravention of subsection (3), but it is a defence for him to prove that he did not know and had no reasonable means of knowing of that consumption or, if he did know of it, that he had taken all reasonable steps to prevent it taking place. A person convicted of an offence under this subsection is liable to a fine not exceeding £1000 or to imprisonment for a term not exceeding six months.

Passed by the Legislature of the Falkland Islands this 12th day of December 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.M.G., C.V.O.,
Governor.

Falkland Islands Pensions Scheme Ordinance 1997

(No: 18 of 1997)

ARRANGEMENT OF PROVISIONS

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ELIZABETH II



Colony of the Falkland Islands

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

FALKLAND ISLANDS PENSIONS SCHEME ORDINANCE 1997

(No. 18 of 1997)

AN ORDINANCE

(assented to: 16 December 1997)

(commencement: 1 January 1998)

(published: 24 December 1997)

To establish the Falkland Islands Pensions Scheme and to make provision for the payment of retirement pensions and other benefits to or in respect of members of the Scheme; and for connected matters.

ENACTED by the Legislature of the Falkland Islands as follows—

Chapter I
General Provisions

Short title and commencement

1.—(1) This Ordinance may be cited as the Falkland Islands Pensions Scheme Ordinance 1997.

(2) This Ordinance shall come into force on 1st January 1998.

Interpretation

2.—(1) In this Ordinance—

“accounting period”, in relation to the Scheme, has the meaning given by section 13;

“additional voluntary contribution” means any contribution made to the Scheme by a person within section 17(2)(a), (c) or (e) in respect of himself, other than a contribution which is made in accordance with the arrangement by virtue of which he is a member of the Scheme;

“the Board” means the Pensions Board constituted in accordance with section 5;

“an employee contribution” has the meaning given by section 20(1);

“financial year”, in relation to the Scheme, has the meaning given by section 13;

“fund manager” means the person appointed to be fund manager in accordance with section 11;

“member”, in relation to the Scheme, means a member of the Scheme within the meaning of section 17;

“member’s individual account” has the meaning given by section 24;

“normal retirement age” has the meaning given by section 3;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Governor;

“the Scheme” means the Falkland Islands Pensions Scheme established in accordance with this Ordinance;

“the Scheme Fund” means all the cash, investments and other assets of the Scheme;

“transfer value” shall be construed in accordance with section 23.

(2) For the purposes of this Ordinance—

(a) person is employed in government service if he is a public officer;

(b) any reference to an employee is to a person who—

(i) works under a contract of service, or

(ii) is employed in government service, or

(iii) is a director or other officer of an incorporated or unincorporated body;

and references to an employer shall be construed accordingly.

(3) In this Ordinance any reference to a self-employed person is to a person who works under a contract for services or who, not being an employee, otherwise works for gain or reward.

(4) In this Ordinance any reference to employment is a reference to employment as an employee or to employment as a self-employed person or, where the context permits, to both.

(5) Notices given for the purposes of this Ordinance shall be in writing and in the case of notices given to the Board shall be in such form (if any) as the Board may require.

Meaning of "normal retirement age"

3.—(1) Subject to the following provisions of this section, in this Ordinance "normal retirement age" means, in relation to any individual—

- (a) the age which he will have attained on the date he is required to retire by his terms of employment, disregarding any provision which may be made allowing him to retire before that date in any circumstance or allowing him to continue in work after that date in any circumstances; or
- (b) if, whether because he is unemployed or for any other reason, no provision is made for any date to be his normal retirement date, the date of his 60th birthday.

(2) A person's normal retirement date must fall on or after his 50th birthday and on or before his 64th birthday, and for the purposes of this Ordinance—

- (a) if the terms of a person's employment provide for him to retire earlier than the date of his 50th birthday, his normal retirement date shall be taken to be the date of his 50th birthday;
- (b) if the terms of a person's employment provide for him to retire after his 64th birthday, his normal retirement date shall be taken to be the date of his 64th birthday.

General purpose of Ordinance

4. This Ordinance establishes the Falkland Islands Pension Scheme to provide for the payment of retirement pensions and other benefits to or in respect of employees and self-employed persons who are (or were) members of the Scheme.

CHAPTER II THE PENSIONS BOARD

The Pensions Board

5.—(1) There shall be a Pensions Board ("the Board") the members of which shall be the Financial Secretary and at least 6 others, but not more than 8, appointed by the Governor in accordance with the following provisions of this section.

(2) Subject to sub-sections (3) and (4), the Governor shall appoint as members of the Board—

- (a) after consulting the Executive Council, one person who in the opinion of the Governor has appropriate knowledge and experience of investment matters;
- (b) after consulting employers or representatives of employers (other than the Falkland Islands Government), at least one but not more than 2 persons to represent the interests of those employers;
- (c) after consulting representatives of employees who are members of the Scheme, at least 2 but not more than 4 persons to represent the interests of those employees; and
- (d) after consulting the Executive Council, representatives of employers of persons who are or are eligible to be members of the Scheme (other than the Falkland Islands Government), representatives of employees who are or are eligible to be members of the Scheme and such other persons as appear to the Governor to be appropriate, one other person.

(3) The Governor shall not at any time appoint, under paragraph (c) of subsection (2), more than 3 persons as representatives of members of the Scheme who are employed in government service unless there are at that time 2 members of the Board appointed under paragraph (b) of that subsection.

(4) A person is disqualified from appointment under any provision of subsection (2) if—

- (a) he is an auditor of any employer whose employees are or are eligible to be members of the Scheme, or
- (b) he is or is an associate of the Scheme auditor or actuary or of any other professional adviser to the Board.

(5) A person is disqualified from appointment under paragraph (a) of subsection (2) if he has any interest in the assets of the Scheme otherwise than as a member of the Board.

(6) Any consultation for the purposes of this section shall be carried out in such manner as the Governor may determine.

(7) Schedule 1 shall have effect with respect to the Pensions Board.

Principal functions of the Board

6.—(1) The Board shall in accordance with the provisions of this Ordinance—

- (a) be responsible for the administration and management of the Scheme,
- (b) hold as legal owner all contributions, transfer payments, investments and other amounts paid to or accruing to the Scheme,
- (c) invest the contributions and other payments and income of the Scheme (subject to the retention in a bank account of such sums as the Board considers appropriate); and
- (d) ensure that benefits represented by accrued rights under the Scheme are provided to members and others.

(2) Schedule 2, which confers other functions on the Board, shall have effect.

Principles governing investment decisions for Scheme

7.— (1) The Board shall prepare, keep under review and revise from time to time a Statement of Principles in accordance with which investment decisions concerning the Scheme Fund shall be taken.

(2) The Statement of Principles shall set out the Board's policy—

- (a) for securing compliance with section 8;
- (b) concerning—
 - (i) the classes of investments which may be made by the Board;
 - (ii) the balance to be maintained between different classes of investments;
 - (iii) risk;
 - (iv) the expected return on investments;
 - (v) the realisation of investments; and
 - (vi) such other matters as may be prescribed by regulations made by the Governor.

(3) Before preparing or revising the Statement of Principles the Board shall—

- (a) obtain and consider the written advice on the proposed Statement or revision of a person (other than the fund manager appointed under section 11)—
 - (i) whom the Board reasonably believes to be qualified to provide such advice by his ability in and practical experience of financial matters and by his knowledge and experience of the management of the investments of occupational pension schemes, and
 - (ii) who is an authorised person or an exempted person, within the meaning of the Financial Services Act 1986; and

- (b) consult employers, employees and self-employed persons in the Falkland Islands or their representatives, and such other persons as the Board may consider appropriate.

(4) Any consultation for the purposes of this section shall be carried out in such manner as the Board may determine.

Rules of investment

8.—(1) The Board shall comply with the following rules in exercising any power of investment—

- (a) the Board may not invest in any security or other asset if the Governor acting in his discretion has notified the Board that in the opinion of the Governor any investment in that asset, or in a class of assets which includes that asset, would be contrary to the interests of the Falkland Islands,
- (b) regard must be had to the need for diversification of investments, in so far appropriate to the Scheme,
- (c) regard must be had to the suitability to the Scheme of investments of the description proposed and of the investment proposed as an investment of that description,
- (d) before making any investment other than an investment falling within Part I of the Trustee Investments Act 1961, the Board must be satisfied that the investment is satisfactory having regard to paragraphs (b) and (c) above and to the Statement of Principles,
- (e) consideration must be given to the determination of the length of time for which any investment should be retained and the intervals at which its retention should be reviewed, and proper advice on the question of its retention must be obtained and considered at those intervals and
- (f) the Statement of Principles must be complied with so far as is reasonably practicable.

Employer-related investments

9.—(1) The Governor may by regulations prohibit the acquisition by the Board of employer-related investments either wholly or subject to such restrictions or conditions as the Governor may consider appropriate.

(2) In this section “employer-related investments” means—

- (a) shares or securities issued by an employer, or by any person who is connected with or an associate of the employer,
- (b) land which is occupied or used by, or subject to a lease in favour of, an employer, or any such person,
- (c) property other than land which is used for the purposes of any business carried on by an employer, or any such person,
- (d) loans to an employer, or any such person, and
- (e) any other investment prescribed by regulations made under this section.

(3) In this section—

“employer” means any person who employs any person who is a member of the Scheme,

“loan” includes any sum due and payable by or on behalf of an employer to the trustees or manager of the Scheme in their capacity as such trustees or manager (other than a contribution to the Scheme payable by or in respect of any member of the Scheme) and

“shares or securities” means any asset, right or interest within paragraph 1, 2, 4 or 5 of Schedule 1 to the Financial Services Act 1986, and in subsection (1) above the references to a person being connected with another or being an associate of another shall be construed in accordance with section 208 and 211(2) of the Taxes Ordinance 1997 respectively.

Appointment of professional advisers

10.—(1) The Board shall appoint—

- (a) an auditor to the Scheme, and
- (b) an actuary to the Scheme,

on such terms and conditions as the Board may determine.

(2) The Board shall not appoint a person—

- (a) as auditor to the Scheme unless he holds an appropriate qualification for the purposes Part II of the Companies Act 1989 (qualifications for company auditors) or
- (b) as actuary to the Scheme unless he is either the Government Actuary or an individual who is a fellow of the Institute of Actuaries or the Faculty of Actuaries,

or in either case unless he meets such other requirements as to qualifications and experience as the Governor may by regulations prescribe.

Appointment of fund manager and delegation of investment powers

11.—(1) The Board shall appoint a fund manager to whom subsection (2) applies and shall delegate to that fund manager their functions relating to the acquisition and disposal of investments, including any discretionary powers.

(2) This subsection applies to a person if—

- (a) he is an authorised person or an exempted person, within the meaning of the Financial Services Act 1986, and
- (b) in the opinion of the Board he has appropriate knowledge and experience to enable him to carry out the functions of the fund manager in accordance with the contract and any relevant provisions of this Ordinance, and
- (c) the Governor has, after consultation with the Board, approved him for the purposes of this section, and
- (d) the Board have entered into a contract which complies with subsection (3) for the management of the fund by that person.

(3) A contract complies with this subsection if it does not exclude or restrict the liability of the fund manager for breach of an obligation under any rule of law to take or exercise skill in the performance of investment functions whether by—

- (a) making the liability or its enforcement subject to restrictive or onerous conditions, or
- (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or
- (c) excluding or restricting rules of evidence or procedure,

or otherwise.

The functions of the fund manager

12.—(1) The fund manager shall manage the investments of the Scheme in accordance with this Ordinance and any directions given by the Board.

(2) Any provision of this Ordinance which imposes any restriction or duty on the Board with respect to any function which has been delegated to the fund manager shall apply in relation to the fund manager as it applies to the Board.

The Scheme accounts

13.—(1) The Board shall ensure that true and fair accounts are kept of the Scheme Fund for each financial year of the Scheme, are audited by the Scheme auditor and are submitted to the Board before the end of June following that year; and the Governor may by regulations prescribe the contents of those accounts.

(2) For the purposes of this Ordinance—

- (a) a financial year of the Scheme shall be the period of 12 months beginning on 1st January in each year and the first financial year shall be deemed to have begun on 1st January 1997; and
- (b) an accounting period of the Scheme shall be a period for which accounts are kept in accordance with subsection (1).

(3) The Scheme auditor shall prepare and annex to the audited accounts such reports and other information as the Board may require and such other reports and information as may be prescribed.

(4) The Board shall, within 7 days of receipt of the accounts, deliver to the Governor a copy of the accounts, together with all notes, reports and other information accompanying or annexed to the accounts.

Expenses of the Scheme

14.—(1) The Governor may by regulations provide for the expenses of the Scheme, including indirect costs, to be met wholly or partly by any one or more of the following persons—

- (a) the employers who make contributions to the Scheme, including the Falkland Islands Government,
- (b) any employee who makes contributions to the Scheme but whose employer does not make such contributions in respect of that employee, or
- (c) any self-employed person who makes contributions to the Scheme, or
- (d) any other person who makes contributions to the Scheme.

(2) Regulations under subsection (1) may make different provision in relation to different kinds of expenses.

Whistle-blowing

15.—(1) If the Scheme auditor or actuary has reasonable cause to believe that—

- (a) any duty relevant to the administration of the scheme imposed by any enactment or rule of law on the Board, the fund manager, an employer, any professional adviser or any prescribed person acting in connection with the scheme has not been or is not being complied with, and
 - (b) the failure to comply is likely to be of material significance in the administration of the Scheme or of benefits to the members,
- he must immediately give a written report of the matter to the Governor.

(2) The Scheme auditor or actuary must, in any prescribed circumstances, immediately give a written report of any prescribed matter to the Governor.

(3) No duty to which the auditor or actuary is subject shall be regarded as contravened merely because of any information or opinion contained in a written report under this section.

(4) If any professional adviser (other than the auditor or actuary), any member of the Board or the fund manager or any person involved in the administration of the Scheme has reasonable cause to believe as mentioned in paragraphs (a) and (b) of subsection (1), he may give a report of the matter to the Governor.

(5) No duty to which any such adviser, trustee or manager or other person is subject shall be regarded as contravened merely because of any information or opinion contained in a report under this section; but this subsection does not apply to any information disclosed in such a report by the legal adviser to the scheme if he would be entitled to refuse to produce a document containing the information in any proceedings in any court on the grounds that it was the subject of legal professional privilege.

(6) If it appears to the Governor that the auditor or actuary has failed to comply with subsection (1) or (2), he may direct the Board to dismiss him from his post as the auditor or, as the case may be, the actuary; and the Board shall give immediate effect to any such direction.

Resolution of disputes

16.—(1) Without prejudice to paragraph 2 of Schedule 2, the Board shall secure that arrangements for the resolution of disagreements between employers and employees and any other prescribed persons about matters relating to the Scheme (other than such matters as may be prescribed) are made and implemented.

(2) The arrangements must—

- (a) provide for a person, on the application of a complainant of a prescribed description, to give a decision on such a disagreement, and
 - (b) require the Board or the fund manager on the application of such a complainant following a decision given in accordance with paragraph (a), to reconsider the matter in question and confirm the decision or give a new decision in its place.
- (3) Regulations may make provision about—
- (a) applications for decisions under such arrangements, and
 - (b) the procedure for reaching and giving such decisions, including the times by which applications are to be made and decisions given.
- (4) Applications and decisions under subsection (2) must be in writing.
- (5) Arrangements under subsection (1) must be in place and have effect not later than 1st July 1998.

CHAPTER III

THE FALKLAND ISLANDS PENSIONS SCHEME

Membership of the Scheme

17.—(1) Subject to the provisions of this Ordinance, a member of the Scheme is a person in respect of whom any contribution has been made to the Scheme.

(2) Subject to the provisions of this Ordinance, contributions may be made in respect of the following persons—

- (a) any person employed in government service not falling within paragraph (b);
- (b) any person employed in government service—
 - (i) whose place of work is outside the Falkland Islands, and
 - (ii) who was not engaged in the Falkland Islands, and
 - (iii) who has notified the Board that he wishes to make voluntary contributions on his own behalf;
- (c) any employee of a company registered in the Falkland Islands which has notified the Board that the employee is to be a member of the Scheme;
- (d) any other employee of a company registered in the Falkland Islands who has notified the Board that he wishes to make voluntary contributions on his own behalf;

- (e) any other employee whose place of work is in the Falkland Islands and whose employer has notified the Board that the employee is to be a member of the Scheme;
- (f) any employee who is not a member by virtue of any of paragraphs (a) to (e), and who has notified the Board that he wishes to make voluntary contributions on his own behalf;
- (g) any self-employed person who has notified the Board that he wishes to make voluntary contributions on his own behalf;
- (h) any other person habitually resident in the Falkland Islands who has notified the Board that he wishes to make voluntary contributions on his own behalf.

(3) A contribution may not be made in respect of any person for any period—

- (a) beginning before 1st January 1998 or
- (b) in the case of a contribution made in respect of any person within any provision of subsection (2) other than paragraph (a), beginning before the date on which the notice under the paragraph in question is served on the Board or
- (c) beginning on or after his 64th birthday.

(4) A contribution may not be made—

- (a) by or in respect of any person within subsection (2)(f) or (g) in respect of any period during which he does not have a place of employment in the Falkland Islands, or
- (b) by a person within subsection (2)(h) at any time when he has ceased to be habitually resident in the Falkland Islands,

unless a contribution has previously been made by or in respect of that person under that or any other provision of subsection (2).

(5) A contribution may not be made in respect of the employee of any person within subsection (2)(a), (c) or (e) at any time when his employment with that person, and any other employment as respects which contributions have been made in accordance with this Ordinance to the Scheme, does not exceed 3 months in aggregate (but without prejudice to the payment of contributions in respect of that 3 month period after it has elapsed).

(6) For the purposes of this section—

- (a) any reference to the Falkland Islands includes a reference to any designated area within the meaning of Proclamation No. of 1991;
- (b) temporary absences shall be disregarded in determining where any person has a place of work or is habitually resident.

(7) A member ceases to be a member of the Scheme—

- (a) when he ceases to have a individual account maintained in his name in accordance with section 24, whether because contributions have been returned to him in accordance with section 26 or because benefits have been provided to or in respect of him in accordance with Chapter IV, or
- (b) on his death (if earlier).

(8) Schedule 3, which contains provisions relating to persons employed in government service on 1st January 1997, shall have effect.

Contributions to the Scheme by the Financial Secretary

18.—(1) Any contribution, except any additional voluntary contribution, made in respect of any person employed in government service, other than a person within section 17(2)(b), shall be made by the Financial Secretary.

- (2) Any contribution made by the Financial Secretary in respect of any person—
 - (a) shall, subject to subsection (4), be made in respect of each month during which he is employed in government service, and
 - (b) shall, subject to paragraph 8 of Schedule 3, be paid to the Board monthly in arrears at the rate of 10 per cent. of the employee's relevant monthly earnings.

(3) Periods of employment as respects which contributions are required to be made in accordance with this section in respect of any person include periods when the employee is on paid leave, but do not include any of following periods unless and to the extent that the Financial Secretary considers it appropriate so to do in any particular case—

- (a) any period during which the employee is seconded to another employer, and
- (b) any period during which the employee is on a training or retraining course, whether in the Falkland Islands or elsewhere.

(4) For the purposes of subsection (2) "relevant earnings" means such sums as are paid at regular intervals by the employer to the employee by reference to a year, any fraction of a year or any other period of time by way of remuneration for services rendered to the employer by the employee but does not include any extra remuneration paid to the employee in respect of overtime worked, public holiday, weekend or night work or unsocial hours worked or any monetary allowances for clothing, tools and equipment or expenses incurred or to be incurred in the course of employment.

Notices under section 17(2)(c) or (e)

19.—(1) A notification to the Board by an employer for the purposes of section 17(2)(c) or (e) (“an employee notice”) need not extend to all the employees of that person except that an employer must extend such a notice to an employee of his if to do otherwise would amount to discrimination against that employee on grounds of sex.

(2) Before an employer gives an employee notice to the Board in respect of any employee, the employer shall give notice to the Board, in such form as the Board may require, stating—

- (a) whether contributions are to be made by the employer or by the employee or by both, and
- (b) the rate at which contributions are to be made.

(3) An employer may not give an employee notice to the Board in respect of any person unless the contract of employment under which he employs that person provides for that person to be a member of the Scheme and makes provision for the deduction and payment of contributions in compliance with this Ordinance and any regulations made under it.

Contributions under section 17(2)(c) or (e)

20.—(1) A contribution may be made in respect of an employee who falls within section 17(2)(c) or (e) either by his employer or by himself or by both; and any such contribution is referred to in this Ordinance as “an employee contribution”.

(2) An employee contribution shall be made on a regular basis and the amount of a regular contribution (payable by the employer or by the employee) for any period by or in respect of the employee shall be determined by the employer as a percentage of that employee’s earnings from his employment with that employer for that period.

(3) The frequency at which and method by which contributions are to be made shall be determined by the Board.

(4) An employee contribution made by the employee shall not exceed—

- (a) an amount equal to 5 per cent. of his earnings from the employment in question for that period, or
- (b) an amount equal to the amount of the contribution payable by his employer for that period (if any),

whichever is the less.

(5) For the purposes of this section any computation of the amount of a person's earnings for any period shall be based on the gross amount of his earnings for that period.

(6) The Board shall refuse to allow an employee to become a member of the Scheme by virtue of a notice given under section 17(2)(c) or (e) unless the terms of his contract of employment provide—

- (a) that the amount of any contribution payable by the employee expressed as a percentage of his gross earnings cannot be reduced to a lower percentage during the course of that employment unless there is a corresponding and compensating increase in the employer's contributions; and
- (b) that employee contributions payable by the employee or by the employer (or by both if that is provided for in the contract in the first instance) will continue to be made during the course of the contract.

(7) Regulations shall be made requiring the employer—

- (a) to make deductions from the employee's remuneration for periods as respects which any contribution which the employee is liable to make to the Scheme is payable, and
- (b) to account to the Board for those deductions.

(8) Regulations under subsection (7) may contain such supplementary provisions as appear to the Governor to be necessary or appropriate, including the imposition of criminal and civil penalties and the provision of remedies for recovery of sums which have not been accounted for in accordance with paragraph (b) of that subsection or for any other failure to comply with the regulations.

Contributions to the Scheme by other persons

21.—(1) This section applies in relation to any contribution, not being an additional voluntary contribution, made in respect of a person within any provision of section 17(2) other than paragraph (a), (c) or (e).

(2) Any contribution in respect of a person may only be made by that person.

(3) Any notice given by a person under any of paragraphs (b), (d) and (f) to (h) of section 17(2) shall be in such form and contain such information as the Board may require.

(4) Any contributions to which this section applies shall be made by such method as the Board may specify.

Additional voluntary contributions

22.—(1) An additional voluntary contribution may be made to the Scheme by any member of the Scheme within section 17(2)(a), (c) or (e) at any time otherwise than in accordance with section 18 or 20.

(2) An additional voluntary contribution may not be made unless the person proposing to make it has given notice to the Board of his intentions, which must include details of the amount and date of payment of the contribution, and the payment must be made in such way as the Board may specify.

(3) The Governor may by regulations make provision for the payment by employers of additional voluntary contributions on behalf of their employees, and such regulations—

- (a) may make provision for the deduction of sums from the employee's remuneration, and
- (b) may contain such supplementary provisions as appear to the Governor to be necessary or appropriate, including the imposition of criminal and civil penalties and the provision of remedies for recovery of sums which have not been accounted for in accordance with the regulations or for any other failure to comply with the regulations.

Transfer values

23.—(1) The Board shall accept sums representing transfer values of accrued units or rights of any kind in or under other pension schemes for employees and self-employed persons.

(2) Subject to and in accordance with regulations, the Board may at any time pay sums representing the accrued value of a person's individual member's account at that time to another scheme providing benefits corresponding to the benefits provided by the Falkland Islands Pension Scheme.

Members' individual accounts

24.—(1) The Board shall maintain in the name of each member an individual account showing the accumulated value of the member's share in the Scheme Fund (calculated in accordance with subsection (2)) and any other prescribed particulars.

(2) The member's individual account shall show during each accounting period of the Scheme the number of fund units purchased in that period by—

- (a) the contributions made in respect of the member in that period;

(b) any sums representing transfer values paid into the Scheme in that period in accordance with section 23 by any other person in respect of the member;

(c) such share of any income or other sums accruing to the Scheme in the immediately preceding accounting period of the Scheme as the Board shall have determined to be appropriate to be allocated for the benefit of the member;

and shall also show the aggregate number of fund units allocated to the member's individual account in earlier periods.

(3) The member's individual account shall also show the basis of his membership, and, if that has changed at any time, the current and earlier bases shall be shown.

Annual notification to members of value of individual accounts

25.—(1) As soon as is reasonably practicable after the end of each accounting period of the Scheme, and in any event within 3 months of its end, the Board shall send to each member a statement relating to his individual member's account showing, with respect to the period during which he has been a member of the Scheme (up to the end of that accounting period)—

(a) the aggregate amount of any employees' contributions made by the member;

(b) if he is or has been an employee, the aggregate amount of any employees' contributions made by his employer;

(c) the aggregate amount of any contributions made by the member in accordance with section 21;

(d) the aggregate amounts of any additional voluntary contributions made by the member;

(e) the aggregate amount of any transfer values paid into the fund for the benefit of the member;

(f) the aggregate amount of any sums allocated for that benefit of that member as mentioned in section 24(2)(c);

and such other information as may be prescribed.

(2) In relation to the first accounting period of the Scheme, subsection (1) above shall have effect with the omission of the words "and in any event within 3 months of its end".

Refund of contributions in certain cases

26.—(1) Subject to the following provisions of this section, the Board shall pay—

- (a) to a member of the Scheme within section 17(2)(a), (c) or (e) whose employment terminates before he has completed 2 years, an amount equal to the aggregate of the employee contributions and any other contributions which have been made in respect of the employee to the Scheme;
- (b) to a member within any of paragraphs (b), (d), (f), (g) and (h) of section 17(2) who has been a member for less than 2 years and notifies the Board that he is ceasing to make contributions to the Scheme with effect from the termination date, an amount equal to the contributions which have been made in respect of that person.

(2) In this section the "termination date" means—

- (a) in a case within subsection (1)(a), the date on which the employment in question ceases;
- (b) in any other case, such date as may be specified in the notice as the termination date, which must be a date not earlier than the date of the notice and not later than the expiry of the 2 year period referred to in subsection (1)(b).

(3) A payment under subsection (1) shall not be made to a person unless the Board is satisfied either that he has ceased to be resident or habitually resident in the Falkland Islands or that he intends to cease to be so resident within 6 months of the termination date.

(4) A payment under subsection (1) shall not be made to a person if, in a case within paragraph (a) of that subsection, if he is in employment again within 3 months of the termination date.

(5) A payment under subsection (1) shall not be made to a person if a transfer value has been paid into the Scheme in respect of that person.

(6) A payment under subsection (1) shall not be made in any case where an election has been made under section 29 that the benefits under that section shall be paid instead of a refund of contributions under this section.

(7) A person to whom contributions are refunded under subsection (1) above ceases to be a member of the Scheme with effect from the termination date.

(8) A payment under subsection (1) shall be made within 4 months of the termination date.

(9) The Board may refuse to make a payment under subsection (1) if they are not satisfied that the conditions for the payment are satisfied.

Chapter IV Benefits under the Scheme

General

General provisions as to benefits under the Scheme and interpretation of Chapter IV

27.—(1) Benefits shall be payable to or in respect of members of the Scheme in accordance with the provisions of this Chapter.

(2) In this Chapter—

“accrued value of his account”, in relation to any person at any time, means the value of that person’s individual member’s account at that time;

“approved pension provider” means a body authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on long term insurance business in the United Kingdom, and such other person as the Governor may specify in regulations for the purposes of this section; and

“qualifying annuity” has the meaning given by section 31.

Benefits which must be provided under the Scheme

28.—(1) Subject to the provisions of this Ordinance, a member of the Scheme on his retirement shall be entitled—

(a) if he so elects, to receive a sum of such amount as may be specified in the election, which may not exceed one-quarter of the accrued value of his account as at the date of his retirement, and

(b) to enter into a qualifying annuity contract with an approved pension provider for an annuity payable on his retirement in consideration of the payment of a sum equal to that value, or to the remainder if he elects to take part as a lump sum under paragraph (a).

(2) The member may choose any approved pension provider he wishes to provide the annuity but if he does not, the Board shall choose an approved pension provider for him.

(3) For the purposes of this section a person shall be deemed to have retired on the date he reaches normal retirement age unless the arrangements by virtue of which he is a member of the Scheme otherwise provide, but—

(a) he shall not be entitled to any of the benefits mentioned in subsection (1) before his 50th birthday;

(b) such benefits may not be paid in respect of any time falling before his 50th birthday;

(c) must come into payment on or before his 64th birthday.

(4) A member may elect to defer the payment of the lump sum or the purchase of the annuity, or both, for such period, ending on or before his 64th birthday, as he may specify in the election.

(5) An election under subsection (4) may be withdrawn, by notice to the Board, at any time before the date of deferment specified in the election; and any such election shall have effect on such date as may be specified in the notice, not being earlier than 3 months after the date the notice is given to the Board.

Optional benefits

29.—(1) Subject to the following provisions of this section, the employer of a member of the Scheme within section 17(2)(a), (c) or (e) or, in the case of any other member, the member of the Scheme may enter into arrangements with the Board for the payment of—

- (a) benefits to the member's spouse and dependants in the event of his death before retirement and before any benefit under section 28 becomes payable to him (irrespective of whether any benefit under paragraph (b) has been paid), and
- (b) additional benefits to the member in the case of his retirement on grounds of ill-health before he becomes entitled to any other benefit under this Ordinance.

(2) Benefits shall not be payable under subsection (1) to or in respect of any person within section 17(2)(a), (c) or (e), if at the time of his death or his becoming ill or disabled no contributions to the Scheme have been made by or in respect of him by virtue of section 17(5).

(3) Where benefits are payable under subsection (1) to or in respect of a person as respects whom a refund of contributions is also due in accordance with section 26, that person or, if he has died, his personal representatives shall elect whether the benefits under this section are to be paid or the contributions are to be refunded under section 26, and where an election is made that the contributions are to be refunded, benefits shall not be payable under this section. An election under this subsection shall be made by notice to the Board.

(4) Additional benefits shall not be payable under subsection (1)(b) to any member unless the Board is satisfied that the member has retired from work due to disablement or to a serious breakdown or deterioration in his health.

(5) Arrangements made in pursuance of subsection (1) in relation to any member for the payment of additional benefits under subsection (1)(b) may include provision for the cessation of payment of any annuity if the member's health is restored, but an annuity shall not cease to be payable under such provision except with the approval of the Board.

The discretionary trusts

30.—(1) Where, by reason of the death of a member of the Scheme, a sum of money is to be held and applied by the Board in accordance with this section, the following provisions shall apply.

(2) Subject to subsection (4), the Board shall hold the money as legal owner and shall have power to pay or apply the whole or any part of that sum to or for the benefit of all or any of the relatives and dependants, living or en ventre sa mere at the date of death of the deceased, or any other individual (not being a body corporate) whose name has been notified to the Board in writing by the deceased, in such shares and proportions as the Board shall in its absolute discretion decide, but in exercising its discretion under this subsection, the Board shall not be bound by any nomination or request of the deceased person.

(3) The Board shall have power, in connection with the application of any part of the money for the benefit of any one or more of the relatives and dependants of the deceased, to declare trusts and constitute separate trustees of any such trust and to provide for their remuneration.

(4) If the Board does not exercise its powers under subsections (2) and (3) above within 24 months of the death of the individual then—

(a) if at the end of that 24 month period there is no person entitled to the money as the heir or legatee of the individual or on his intestacy, the amount held by the Board under this section, together with any interest thereon, shall revert to the general capital of the Scheme Fund and be used for the purposes of the Scheme;

(b) if paragraph (a) does not apply, the Board shall hold the money on trust for the personal representatives of the deceased absolutely.

(5) In this section “relative” means, in relation to any deceased member—

(a) the person of the opposite sex who, at the time of the death is ordinarily living with that member as that member's partner, whether or not they are legally married, or

(b) any child or remoter issue (whether natural or adoptive) of such person and the widow or widower of any such child or remoter issue;

- (c) the father or mother (whether natural or adoptive) of that person and the widow or widower of such father or mother; and
- (d) the child or remoter issue (whether natural or adoptive), excluding the deceased person, and the widow or widower of any such child or remoter issue of the father or mother (whether natural or adoptive) of that person;

and for the purposes of this subsection "child" includes a child born outside a lawful marriage.

Qualifying annuities

31.—(1) An annuity contract is a qualifying annuity contract in relation to a member only if it complies with the following provisions of this section, disregarding subsection (3) or (4), or both, where they are inapplicable to that member.

(2) The annuity contract must provide for an annuity to be payable to the member for his life.

(3) The annuity contract must provide for a spouse's pension which must not be less than half the annuity payable to the member under the contract but which must not be greater than that annuity.

(4) The annuity contract must provide that—

- (a) in the event that the member dies leaving any dependants, and
- (b) either—

- (i) at the time of his death a spouse's pension is not payable to his spouse, or

- (ii) at any time during the period of the dependency, a spouse's pension ceases to be payable,

a dependant's pension will, either at his death or, as the case may be, at that later time, become payable to or in respect of each of the member's dependants.

(5) A dependant's pension must be payable at a rate equal to one-quarter of the member's pension, or if there are more than 2 dependants of the same member, such lower rate as will ensure that the aggregate amount of dependants' pensions payable at any time does not exceed one-half of the amount the member's pension would have been if it had been payable at that time.

(6) The annuity contract must provide for any annuity payable under the contract to be increased annually by at least 3 per cent.

(7) The annuity contract must provide that, in the event of the member's death before the fifth anniversary of the date on which the annuity became payable to him, an amount equal to the aggregate of the sums which would have been payable to him if he

had died on the day immediately following that anniversary shall be paid to the Board, who shall hold and apply the sum in accordance with section 30.

(8) The annuity contract must provide that any annuity payable under it shall not be capable of assignment or surrender.

(9) For the purposes of this section, a "spouse's pension" means an annuity payable to the spouse of a deceased person from the day immediately following that person's death until the spouse's death.

(10) For the purposes of this section, a "dependant's pension" means an annuity payable to a dependant of a deceased person in accordance with subsections (4) and (5) until the date on which the dependency ceases or, if earlier, the death of the dependant.

(11) For the purposes of this section, "spouse", in relation to any member, means a person of the opposite sex who, at the time of the retirement of that member or at the time the annuity is purchased if later, is the wife or husband of, and ordinarily living with, that member, or if there is no such person—

- (a) the person of the opposite sex who, at the time of the retirement of that member or at the time the annuity is purchased if later, is ordinarily living with that member as that member's partner, whether or not they are legally married, or
- (b) has, before the annuity is purchased, been nominated by the member to the Board as the person to be treated as his spouse for the purposes of the payment of benefits under the Scheme and that nomination has been accepted by the Board, or
- (c) if the Board has reasonable grounds for believing that any other person ought to be treated as the member's spouse, that other person.

If more than one person qualifies for a spouse's pension under paragraphs (a), (b) and (c), the Board shall have absolute discretion to determine which of them shall be entitled to the pension.

(12) In this section "dependant", in relation to any member, means a child of the member under the age of 18 years and any other person who in the opinion of the Board—

- (a) is unable by reason of any physical or mental disability or illness to maintain themselves to any extent, and
- (b) is to any extent financially dependent on the member at the time of the retirement of that member or at the time the annuity is purchased if later, and

- (c) may reasonably be regarded as being likely to remain so dependent for at least 5 years (assuming the member does not die during that time);

and in relation to a child of the member who does not fall within paragraph (a), the period of dependency ceases when he attains his 18th birthday.

Death before becoming entitled to pension, and severe illness at retirement

32.—(1) If a member of the Scheme dies while unemployed and before any benefit under section 28(1) has become payable to him, the Board shall hold and apply an amount equal to the accrued value of his account in accordance with section 30.

(2) In any case where—

- (a) at the time a member of the Scheme retires from his employment, the Board has reasonable grounds for believing that he is ill and is unlikely to live more than a few months, and

- (b) at that time, benefits under section 28(1) would, apart from this subsection, become payable to him,

the Board may, if it considers the circumstances of the particular case justify the exercise of its powers under this subsection, and with the agreement of the member, make arrangements for the application of an amount equal to or less than the accrued value of his account to be applied otherwise than in accordance with section 28(1).

(3) Where arrangements are made under subsection (2) as respects an amount less than the accrued value of his account, the remainder shall be applied without regard to that subsection.

Benefits for Government employees

Benefits payable on death

33.—(1) In the case of any member of the Scheme within section 17(2)(a) who dies while he is employed in government service (and before he has reached the age of 64 years) ("the deceased member"), an amount equal to the accrued value of his account as at the time of his death, less any additional voluntary contributions which he has made to the Scheme, shall be held by the Board and, subject to subsection (4), applied in accordance with section 30.

(2) If the accrued value of his account, less any such voluntary contributions, is less than the aggregate of—

- (a) a sum equal to twice the member's annual salary as at the time of his death, and

- (b) such amount as is necessary to enable the Board to arrange for the provision of—

(i) a spouse's pension (within the meaning of section 31(9) and (11)) equal to one-third of his annual salary as at that time, and

(ii) a dependant's pension equal to one-ninth of that salary for each of his dependants during the period from his death until the end of the period of dependency,

the Financial Secretary shall pay to the Board an amount equal to the amount of the shortfall.

In this subsection "dependant" has the meaning given by section 31(12).

(3) The Board shall transfer an amount equal to the aggregate of—

(a) the accrued value of his account, less any voluntary contributions, and

(b) any amount paid, in respect of that member, to the Board by the Financial Secretary accordance with subsection (2),

to a separate account which the Board shall apply in arranging for the provision of the pensions mentioned in subsection (2), and such sums as may remain after that provision has been made shall be held and applied in accordance with section 30.

(4) An amount equal to the aggregate of the additional voluntary contributions which the deceased member made to the Scheme shall be deemed to be a debt due to him immediately before his death and may accordingly to paid to his personal representatives by the Board.

Restrictions on assignment, forfeiture of pension etc.

Inalienability of pension

34.—(1) Subject to subsection (5), where a member is entitled, or has an accrued right to a pension under the Scheme—

(a) the entitlement or right cannot be assigned, commuted or surrendered,

(b) the entitlement or right cannot be charged or a lien exercised in respect of it, and

(c) no set-off can be exercised in respect of it,

and an agreement to effect any of those things shall be unenforceable.

(2) Where by virtue of this section a person's entitlement, or accrued right to a pension under the Scheme cannot, apart from subsection (5), be assigned, no order can be made by any court the effect of which would that he would be restrained from receiving that pension.

(3) Where a bankruptcy order is made against a person, any entitlement or right of his which by virtue of this section cannot, apart from subsection (5), be assigned is excluded from his estate for the purposes of the Bankruptcy Act 1914.

(4) Subsection (2) does not prevent the making of an attachment of earnings order under the Attachment of Earnings Act 1971.

(5) Subsection (1) does not apply to any of the following, or any agreement to effect any of the following—

- (a) an assignment in favour of the member's widow, widower or dependant;
- (b) a surrender, at the member's option for the purpose of—
 - (i) providing benefits for that person's widow, widower or dependant, or
 - (ii) acquiring entitlement to further benefits under the Scheme for the member,
- (c) a commutation—
 - (i) of the member's benefit on or after retirement or exceptional circumstances of serious ill health;
 - (ii) in prescribed circumstances, of any benefit for the member's widow widower or dependant, or
 - (iii) in other prescribed circumstances;
- (d) subject to subsection (6), a charge or lien on, or set-off against, the member's entitlement, or accrued right, to a pension (except to the extent that it includes transfer credits other than prescribed transfer credits) for the purpose of enabling the employer to obtain the discharge by him of some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by him;
- (e) subject to subsection (6), except in prescribed circumstances a charge or lien on, or set-off against, the member's entitlement, or, accrued right, to pension, for the purpose of discharging some monetary obligation due from the person in question to the scheme and—
 - (i) arising out of a criminal, negligent or fraudulent act or omission by him, or
 - (ii) in the case of a trust scheme of which the member is a trustee, arising out of a breach of trust by him.

(6) Where a charge, lien or set-off is exercisable by virtue of subsection (5)(d) or (e)—

- (a) its amount must not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the member's entitlement or accrued right, and
- (b) the member must be given a certificate showing the amount of the charge, lien or set-off and its effect on his benefits under the scheme,

and where there is a dispute as to its amount, the charge, lien or set-off must not be exercised unless the obligation in question has become enforceable under an order of a competent court or in consequence of an award of an arbitrator.

Forfeiture, etc

35.—(1) Subject to the provisions of this section and section 36, a member's entitlement, or accrued right, to a pension cannot be forfeited except by reference to—

- (a) a transaction or purported transaction which under section 34 is of no effect, or
- (b) the bankruptcy of the person entitled to the pension or whose right to it has accrued,

whether or not that event occurred before or after the pension became payable.

(2) Where such forfeiture as is mentioned in subsection (1)(a) or (b) occurs, any pension which was, or would but for the forfeiture have become, payable may, if the Board so determine, be paid to all or any of the following—

- (a) the member of the scheme to or in respect of whom the pension was, or would have become, payable.
- (b) the spouse, widow or widower of the member.
- (c) any dependant of the member, and
- (d) any other person falling within a prescribed class.

(3) Subsection (1) does not prevent forfeiture of a member's entitlement to a pension by reference to his having been convicted of one or more offences—

- (a) which are committed before the pension becomes payable, and
- (b) which are—
 - (i) offences of treason,
 - (ii) offences under the Official Secrets Acts 1911 to 1939 for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years,
 - (iii) any other offence prescribed by regulations.

(4) Subsection (1) does not prevent forfeiture by reference to a failure by any person to make a claim for pension—

- (a) where the forfeiture is in reliance on any enactment relating to the limitation of actions, or
- (b) where the claim is not made within six years of the date on which the pension becomes due.

(5) Subsection (1) does not prevent forfeiture in prescribed circumstances.

(6) In this section and section 36, references to forfeiture include any manner of deprivation or suspension.

Forfeiture by reference to obligation to employer

36.—(1) Subject to subsection (2), section 35(1) does not prevent forfeiture of a member's entitlement, or accrued right, to a pension under the Scheme by reference to his having incurred some monetary obligation due to his employer and arising out of a criminal, negligent or fraudulent act or omission by the person.

(2) A member's entitlement or accrued right to a pension may be forfeited by virtue of subsection (1) to the extent only that it does not exceed the amount of the monetary obligation in question, or (if less) the value (determined in such manner as may be prescribed) of the member's entitlement or accrued right to the pension.

(3) Such forfeiture as is mentioned in subsection (1) must not take effect where there is a dispute as to the amount of the monetary obligation in question, unless the obligation has become enforceable under an order of a competent court or in consequence of an award of an arbitrator.

(4) Where a member's entitlement or accrued right to a pension is forfeited by virtue of subsection (1), the member must be given a certificate showing the amount forfeited and the effect of the forfeiture on his benefits under the scheme.

(5) Where such forfeiture as is mentioned in subsection (1) occurs, an amount not exceeding the amount forfeited may, if the Board so determine, be paid to the employer.

CHAPTER V SUPPLEMENTARY PROVISIONS

Sex discrimination claims to Summary Court

37.—(1) An employee may present a complaint to the Summary Court that his or her employer has failed to comply with section 19(1), and on such a complaint—

- (a) it shall be for the employee to show that discrimination has taken place; and
- (b) it shall be for the employer to show the ground on which the discrimination took place;

and if the employee shows that discrimination has taken place it shall be assumed that it was on the grounds of sex in the absence of evidence to the contrary.

(2) The Summary Court shall not consider a complaint under this section unless it is presented within 3 months of the date on which the discrimination occurred

or within such further period as the Court considers reasonable in a case where it is satisfied that it was not reasonably practicable for the for the complaint to be presented within that 3 month period.

(3) Where the Court finds the complaint well-founded, it shall make a declaration that the complainant has been discriminated against on grounds of sex and shall award such sum (if any) to be paid by the employer to the Board of such amount as the Court considers necessary to make good to the complainant his or her loss of future pension entitlement.

Supplementary provisions relating to claims to Summary Court

38.—(1) In the following provisions of the Employment Protection Ordinance 1989 (“the 1989 Ordinance”)—

(a) section 105 (employee ordinarily working outside Falkland Islands),
and

(b) section 110 and Schedule 4 (death of employee or employer),
any reference to Part III of that Ordinance includes a reference to section 37 of and paragraphs 8, 9 and 10 of Schedule 1 to this Ordinance.

(2) Sections 114 and 115 of the 1989 Ordinance shall apply in relation to a complaint to the Summary Court under this Ordinance and to a decision or determination of that Court on such a complaint as they apply to a complaint under that Ordinance.

(3) Any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

(a) to exclude or limit the operation of any provision of section 37 of
and paragraphs 8, 9 and 10 of Schedule 1 to this Ordinance, or

(b) to preclude any person from presenting a complaint to the Summary
Court by virtue of any such provision.

Information and records required for purposes of Ordinance

39.—(1) The Governor may by regulations—

(a) require—

(i) employers whose employees are or are to be members of the
Scheme, and

(ii) members and past members of the Scheme,
to give prescribed information to the Board for the purposes of any
provision of this Ordinance;

(b) make provision as to the form and content of any election or
nomination which a person may make under this Ordinance;

- (c) require the Board or the fund manager, or both, to keep such records as may be prescribed.

(2) Regulations under this section may create criminal offences for breaches of the regulations punishable on conviction with a fine at level 7 on the standard scale or such lower fine as the regulations may specify.

Criminal offences

40. Any person who fails to comply with any requirement of this Ordinance commits an offence and shall be liable on conviction to a fine not exceeding level 7 on the statutory scale or to imprisonment for 2 years.

Offences by bodies corporate

41.—(1) Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as to a director of a body corporate.

Disapplication of existing legislation to members of Scheme

42. The provisions of the Pension Ordinance 1965 and the Pensions (Unestablished Locally Recruited Employees) Ordinance 1980 shall not apply in relation to any person who is a member of the Scheme.

Financial provisions

43. Expenditure incurred by the Financial Secretary in pursuance of this Ordinance or any regulations made under it shall be paid out of and charged upon the Consolidated Fund.

Section 5.

SCHEDULE 1
THE PENSIONS BOARD

PART I
GENERAL PROVISIONS

The constitution of the Board

1.—(1) The Pensions Board shall be a body corporate.

(2) The Pensions Board shall not be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown, and its property shall not be regarded as the property of the Crown.

Membership of the Board and Chairman

2.—(1) Subject to the provisions of this Ordinance, a person shall hold office as a member of the Board in accordance with the terms of his appointment.

(2) The members of the Board (other than the Financial Secretary) shall be appointed for a period of at least 1 year but not more than 3 years, but without prejudice to their re-appointment to the Board.

(3) The person appointed under section 5(2)(a) shall be the Chairman of the Board.

(4) A person may at any time resign office as chairman or other member of the Board by giving at least 3 months written notice of his resignation to the Governor, or such shorter period as the Governor may agree.

(5) The Governor may at any time remove the Chairman or any other member of the Board from his office as Chairman or member and shall immediately remove any member who is disqualified from being a member by virtue of paragraph 3.

(6) The Governor shall exercise his powers under sub-paragraph (5) by written notice which may have immediate effect.

(7) If the Chairman is removed or resigns his office of Chairman, his appointment as member of the Board shall also terminate on his removal or resignation, but, in the case of his resignation, without prejudice to his re-appointment to the Board by the Governor.

Disqualification from membership of Board

- 3.—(1) A person shall be disqualified from being a member of the Board if—
- (a) he has been convicted (whether in the Falkland Islands or elsewhere) of an offence involving dishonesty or deception, or
 - (b) he is an undischarged bankrupt, or
 - (c) he has made a composition contract or an arrangement with his creditors and has not been discharged in respect of it, or
 - (d) he is subject a disqualification order under the Company Directors Disqualification Act 1986 or to an order under section 429(2)(b) of the Insolvency Act 1986, or
 - (e) he is subject to an order under section 3 of the Pensions Act 1995 disqualifying him from being a trustee of any trust scheme, or
 - (f) he has been removed as a trustee by an order made by the High Court on the grounds of misconduct or mismanagement in the administration of the scheme for which he was responsible or to which he was party or which he had, by his conduct, contributed to or facilitated.

(2) Sub-paragraphs (1)(a) to (f) apply where the events in question occurred before as well as after, the commencement of this Ordinance.

(3) A person who acts as member of the Board while disqualified by virtue of paragraph (1) shall be guilty of an offence and liable to a fine not exceeding level 12 on the standard scale, or to imprisonment for 7 years.

Conflict of interest

4. A person shall not be disqualified from being a member of the Board by reason only that he is a member of the Scheme, and a person who is a member both of the Board and of the Scheme may exercise his functions as member of the Board as if he were not also a member of the Scheme, and retain any benefit which accrues to him as a result of the exercise of those functions.

Remuneration etc. of members of the Board

5. The Board may pay, or make provision for paying, to or in respect of the Chairman or any other member of the Board such salaries or other remuneration and such pensions, allowances, fees, expenses or gratuities (including payments in respect of loss of office or retirement) as the Board may with the approval of the Governor determine.

Staff—appointment, remuneration etc.

6.—(1) The Board shall appoint—

(a) subject to the approval of the Governor, a secretary to the Board,
and

(b) such other staff as may be necessary for the discharge of the
functions of the Board,

on such terms and conditions as the Board may determine.

(2) This paragraph is without prejudice to any other provision of this Ordinance as to the appointment of any person by the Board.

Proceedings of the Board

7.—(1) The quorum of the Board shall be 4, one of whom must be either the Financial Secretary or the member appointed under section 5(2)(d), one of whom must have been appointed under section 5(2)(b) and one of whom must have been appointed under section 5(2)(c).

(2) If the Chairman is absent from any meeting of the Board, the Financial Secretary shall chair that meeting, and if the Financial Secretary is also absent, the members present shall elect one of their number to take the chair for that meeting.

(3) Decisions at meetings of the Board shall be made by a simple majority of the members present at the meeting.

(4) Minutes of meetings of the Board shall be taken by the secretary to the Board and circulated to members.

(5) Subject to the preceding provisions of this paragraph, the Board shall determine its own procedure.

PART II

PROVISIONS RELATING TO EMPLOYEE MEMBERS

Time of for performance of duties and for training

8.—(1) The employer of a person who is a member of the Board shall permit that employee to take time off during his working hours for the purpose of—

(a) performing any of his duties as member of the Board, or

(b) undergoing training relevant to the performance of those duties.

(2) The amount of time off which an employee is to be permitted to take under this paragraph and the purposes for which, the occasions on which and any conditions

subject to which time off may be so taken are those that are reasonable in all the circumstances having regard in particular to—

- (a) how much time off is required for the performance of the duties of a member of the Board and the undergoing of relevant training, and how much time off is required for performing the particular duty or, as the case may be, for undergoing the particular training, and
- (b) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.

(3) An employee may present a complaint to the Summary Court that his employer has failed to permit him to take time off as required by this section; and section 36(1) of the Employment Protection Ordinance 1989 shall apply in relation to a complaint under this subsection as it applies in relation to a complaint under section 33 of that Ordinance.

(4) For the purposes of this section, the working hours of an employee are any time when in accordance with his contract of employment he is required to be at work.

Payment for time off

9.—(1) An employer who permits an employee to take time off under paragraph 8 must pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he must be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.

(4) The average hourly earnings mentioned in sub-paragraph (3) are those of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a Falkland Islands measure of average hourly earnings which is reasonable in the circumstances.

(5) A right to be paid an amount under this section does not affect any right of an employee in relation to remuneration under his contract of employment, but—

- (a) any contractual remuneration paid to an employee in respect of a period of time off to which this section applies shall go towards discharging any liability of the employer under this section in respect of that period, and

- (b) any payment under this paragraph in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

(6) An employee may present a complaint to the Summary Court that his employer has failed to pay him in accordance with this section; and section 36(1) and (3) of the Employment Protection Ordinance 1989 shall apply in relation to a complaint under this subsection as it applies in relation to a complaint under section 31 of that Ordinance.

Right not to suffer detriment or be unfairly dismissed

10.—(1) Subject to sub-paragraph (2), an employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a member of the Board, the employee performed (or proposed to perform) any functions as such member.

(2) Sub-paragraph (1) does not apply where the detriment in question amounts to dismissal, except where an employee is dismissed in circumstances in which, by virtue of section 106 of the Employment Protection Ordinance 1989 ("the 1989 Ordinance") section 52 of that Ordinance does not apply to the dismissal.

(3) An employee may present a complaint to the Summary Court that he has been subjected to a detriment in contravention of this paragraph, and on such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(4) The Summary Court shall not consider a complaint under this paragraph unless it is presented—

- (a) before the end of the period of 3 months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
- (b) within such further period as the court considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.

(5) For the purposes of sub-paragraph (4)—

- (a) where an act extends over a period, the "date of the act" means the last day of that period, and
- (b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected do the failed act if it was to be done.

(6) The dismissal of an employee by an employer shall be regarded for the purposes of Part VI of the 1989 Ordinance as unfair if the reason (or, if more than one, the principal reason) for it is that, being a member of the Board, the employee performed (or proposed to perform) any functions as such member.

(7) Where the reason or the principal reason for which an employee was selected for dismissal was that he was redundant, but it is shown—

- (a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and
- (b) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was that specified in sub-paragraph (6),

then, for the purposes of Part VI of the 1989 Ordinance, the dismissal shall be regarded as unfair.

(8) Section 52 of the 1989 Ordinance (right of employee not to be unfairly dismissed) applies to a dismissal regarded as unfair by virtue of sub-paragraph (6) or (7) regardless of the period for which the employee has been employed and of his age; and accordingly section 63(1) of that Ordinance (which provides a qualifying period and an upper age limit) does not apply to such a dismissal.

Section 6.

SCHEDULE 2 FUNCTIONS OF THE PENSIONS BOARD

Powers of investment

1.—(1) Subject to the provisions of this Ordinance—

- (a) the Board shall have power to invest any money received on account of the Scheme in any investment mentioned in Part I of the Trustee Investment Act 1961 or in any other investment, and shall also have power to sell, convert, vary or transpose any investments or assets, and
- (b) all investments and money for the time being standing to the account of the Scheme shall be held under the legal control of and by or in the name of the Board provided that such investments and

money may be placed by the Board in the name of or under the control of such body corporate as nominee for the Board as they shall from time to time select.

(2) Without prejudice to the generality of the foregoing provisions the Board may invest or apply sums—

- (a) in the purchase from any insurance company of any annuity or annuities for the life or lives of any person or persons or for any period or periods whether depending upon or calculated by reference to life or not;
- (b) in effecting and paying premiums in respect of any policy or policies of life insurance and
- (c) in the underwriting, sub-underwriting or guaranteeing the subscription of any funds, securities, bonds, debenture stocks or shares;
- (d) in the purchase of assets of a non-income producing nature with the particular power of entering into any transaction calculated in the opinion of the Board to offset or reduce a risk of loss to the Fund.

(3) Sub-paragraph (2)(d) authorises the Board to deal in foreign currencies (either at the official rate of exchange or any other rates), options, traded options and traded futures, whether for present or future settlement.

(4) The power to make investments for the purposes of the Scheme may not be restricted by reference to the consent of any employer (including the Falkland Islands Government), whether by the Statement of Principles or otherwise.

(5) The Board may, with the consent of the Governor, raise or borrow any money upon such terms as they think fit and may secure such money by charging all or any part of the Fund, and money so raised or borrowed shall be applied for all or any of the purposes of the Scheme whether in the purchase of any investment or otherwise.

Power to act on advice and determinations of questions of entitlement etc.

2.—(1) Subject to the provisions of this Ordinance, the Board shall have power—

- (a) to act on the advice or opinion (whether or not obtained by them) of the Scheme actuary or accountant or of any lawyer, broker, accountant, investment adviser, medical practitioner, surveyor or other suitably qualified person and, to the extent provided by paragraph 4, shall not be responsible for any loss occasioned by so acting, and

- (b) subject to section 16, to settle, compromise or submit to arbitration, any claim or matter relating to the Scheme.

(2) Subject to the provisions of this Ordinance, the Board shall have full power—

- (a) to determine whether or not any person is entitled from time to time to any benefit or payment in accordance with the Scheme and in deciding any question of fact they shall be at liberty to act upon such evidence or presumption as they shall in their discretion think sufficient (whether or not the evidence would be admissible in any legal proceedings or the presumption is a legal presumption), and
- (b) conclusively to determine all questions and matters of doubt arising on or in connection with the Scheme, whether relating to its construction or the benefits under it or otherwise.

(3) In order to maintain continuance of approval of the Scheme by the Board of Inland Revenue and its treatment as an exempt approved scheme under Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 and to comply with the preservation requirements of the Pensions Act 1995, the Board is empowered to give such undertakings to the Board of Inland Revenue and the Occupational Pensions Regulatory Authority in respect of the provisions of pensions and benefits under the Scheme as shall from time to time be required.

(4) The Board with the consent of the Governor shall have power to employ such agents as they think fit in the transaction of any business of the Scheme or the Fund including the payment of pensions and other benefits and any valid receipt therefor given to such shall be a good and sufficient discharge to the Board

(5) Except for any sum directed to be held and applied in accordance with section 30, where any period or time is specified by or under this Ordinance as the period within which or the date by which anything is to be done by or to or in respect of any person who is or is eligible to be a member, the Board may, on written application being made in that behalf, notwithstanding that the period has expired or the date has passed, extend that period or fix a later date on such terms and conditions as the Board may determine.

Incidental and other powers

3. Without prejudice to the preceding provisions of this Schedule, the Board may do anything which is calculated to facilitate the discharge of its functions or is incidental to the discharge of its functions.

Restriction on liability of the Board

4. The Board and any Member of the Board shall not be liable for any act or omission not due to its or his own wilful neglect or default.

Section 17.

SCHEDULE 3

PERSONS EMPLOYED IN GOVERNMENT SERVICE ON 1ST JANUARY 1997

General rule

1.—(1) The following persons may not be members of the Scheme by virtue of section 17(2)(a)—

- (a) a person employed in government service under a contract for a fixed term made before 1st January 1997 which provides for a gratuity to be paid to him at the end of the contract or for contributions to be made to a pension scheme on his behalf;
- (b) a person employed in government service under a contract made on or after 1st January 1997, unless the contract expressly provides for him to be a member of the Scheme;
- (c) a person employed in government service immediately before 1st January 1997, otherwise than under a contract for a fixed term, who has, before 1st January 1998, made an election in writing not to join the Scheme.

(2) Subject to sub-paragraph (1), the provisions of this Ordinance shall have effect in accordance with this Part of this Schedule in relation to any person to whom paragraph 2 applies.

2.—(1) This paragraph applies to any person who—

- (a) was employed in government service immediately before 1st January 1997, and
- (b) continued to be so employed on that day, and
- (c) is not prevented from being a member of the Scheme by paragraph 1 above, and
- (d) if his place of work on 1st January 1997 was outside the Falkland Islands, was engaged in the Falkland Islands.

(2) This paragraph shall apply to a person employed in government service on 1st January 1997 whether or not that person continues to be so employed on 1st January 1998.

Transfer values

3.—(1) The Financial Secretary shall transfer to the Board sums by way of transfer values, calculated in accordance with the formula set out in sub-paragraph (2), in respect of each person to whom paragraph 2 applies, together with a further sum or sums representing interest on any such sum from 1st January 1997 until the date of payment to the Board at the rate of 10 per cent. per annum.

(2) Any sum which is to be paid to the Board by the Financial Secretary in pursuance of this paragraph shall be calculated in accordance with the following formula—

$$AV = (ERP) \frac{N}{M} + (ERLS) \left(\frac{1-p}{1-i} \right)^z$$

where—

- AV is the assumed capital cost of a retirement pension for the employee in question under the existing legislation or what would be that cost if his pension were funded;
- ERP is the annualised value of the retirement pension which would be payable under the existing legislation to the employee in question if he had not become a member of the Scheme and if he continued in government service, at the salary paid to him as at 1st January 1997, until normal retirement age;
- N is the aggregate length of service of the employee in government service as at 31st December 1996, expressed as whole calendar months;
- M is the anticipated aggregate length of service of the employee in government service as at his normal retirement age, assuming he continues in government service until that age, expressed as whole calendar months;
- ERLS is the capitalised value of any lump sum which would be payable under the existing legislation to the employee in question if he had not become a member of the Scheme and if he continued in government service, at the salary paid to him as at 1st January 1997, until normal retirement age;
- p is the assumed future annual rate of retail price inflation in the Falkland Islands, which for the purposes of this section is 4.5 per cent.
- i is the assumed future annual rate of return on the transfer value in the Falkland Islands, which for the purposes of this section is 10 per cent;
- z is the difference between the employee's normal retirement age and his age on the anniversary of his birth nearest to 31st December 1996.

(3) For the purposes of sub-paragraph (2), "existing legislation", in relation to any person, means the legislation in force on 31st December 1996 which made provision for the payment of a pension to or in respect of that person in the event that he reached normal retirement age without ceasing to be in government service.

Contributions attributable to periods falling in the year 1997

4.—(1) The Financial Secretary shall pay to the Board a sum, or sums which in aggregate are, equal to the amount of contributions which he would have made under section 18 in respect of periods falling in 1997 if this Ordinance had come into force on 1st January 1997, together with a further sum or sums representing interest on any such sum from the date on which the contribution which it represents would have been made (had this Ordinance come into force on that date) until the date of payment to the Board.

(2) Interest under sub-paragraph (1) shall be paid at the rate of 10 per cent. per annum.

Protection of pensions

5.—(1) This paragraph applies in relation to any member who had reached the age of 40 years before 1st January 1997 and shall apply at the time he reaches his normal retirement age (the "retirement date").

(2) The Financial Secretary shall transfer to the Board such sum, if any, as may be necessary to ensure that the accumulated value of the member's share in the Scheme Fund (calculated in accordance with section 24(2)) at the retirement date is not less than the amount which would have been required to purchase an annuity and pay any lump sum which he would have received in accordance with the provisions of the existing legislation (within the meaning of paragraph 3(3)) if he had retired from government service on that date.

(3) For the purpose of determining, in relation to any person at his retirement date, whether or not any sum is to be transferred to the Board in accordance with sub-paragraph (2), the following assumptions shall be made—

- (a) that he had remained employed in government service until his retirement date;
- (b) that the existing legislation was applicable to him at that time;
- (c) that his salary at his retirement date was the same as it had been on 31st December 1996; and
- (d) that in the case of any person who had reached the age of 60 years before 1st January 1997, that his retirement date was 31st December 1996.

(4) The Board shall allocate any sum transferred in accordance with this paragraph in relation to any person to that person's individual member's account.

Benefits payable where employment terminated in 1997

6.—(1) Where a person's employment in government service terminated during the year 1997, whether because he retired or died or for any other reason, then, subject to the following provisions of this paragraph, the provisions of this Ordinance shall apply in relation to that person as if they had come into force on 1st January 1997 (with any necessary modifications).

(2) In this paragraph an "original annuity" means an annuity—

- (a) paid by way of pension to or in respect of any person who was employed in government service at any time, and
- (b) brought into payment in 1997.

(3) The Financial Secretary shall give notice to the Board that, as respects any original annuity identified in the notice and within such time as may be specified in the notice, he will pay into the Scheme such sum as may be necessary to enable the Board to arrange for another annuity to be paid on the same terms and to the same person as it was being paid at the time the notice is given.

(4) The Board shall accept any sums paid to it under this section and shall make all necessary arrangements for the payment of the annuity in accordance with subsection (3).

(5) Where the terms on which an original annuity, identified in a notice under subsection (3), was first brought into payment allowed for further annuities or sums to be paid to other persons if any specified event occurs, the Board shall ensure that such annuities or sums are paid to those persons if that event occurs.

(6) Where a lump sum has been paid to any person during 1997 to or in respect of a person within sub-paragraph (1), then the amount of that lump sum shall be set off against any entitlement that person or any other person may have by virtue of that sub-paragraph to any other lump sum payment, and if the earlier payment is less than any such other lump sum, the Board shall arrange for a sum equal to the difference to be paid in satisfaction of that entitlement; and the Financial Secretary shall provide any necessary sums.

(7) Any entitlement to any benefit under the legislation referred to in section 42 of any person to or in respect of whom the original annuity was paid shall cease as soon as arrangements made in accordance with sub-paragraph (4) for the payment of an annuity to the person to whom the original annuity was paid come into effect.

Scheme expenses

7. Section 14 shall apply to expenses which are incurred in relation to contributions payable by virtue of this Part of this Schedule as it applies in relation to other expenses.

Increase of contributions in certain cases

8.—(1) In relation to any person who was employed in government service immediately before 1st January 1997 and was 25 years of age or more on that day, section 18(2)(b) shall have effect as if for "10 per cent." there were substituted—

- (a) as respects any period falling between his 40th and 45th birthdays, "15 per cent.";
- (b) as respects any period falling between his 45th and 50th birthdays, "20 per cent.";
- (c) as respects any period falling between his 50th and 64th birthdays, "25 per cent.".

(2) In calculating the length of any period for the purposes of sub-paragraph (1), the day which is the later of the 2 birthdays shall be disregarded.

(3) Sub-paragraph (1) shall not apply in relation to any person who ceases to be employed in government service on or after 1st January 1997 as respects any subsequent period of employment in government service.

Passed by the Legislature of the Falkland Islands this 12th day of December 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.M.G., C.V.O.,
Governor.

Education (Amendment) (No 2) Ordinance 1997

(No: 19 of 1997)

ARRANGEMENTS OF PROVISIONS

Section

1. Short title
2. Amendment of the Education Ordinance 1989

ELIZABETH II



Colony of the Falkland Islands

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

EDUCATION (AMENDMENT)(No 2) ORDINANCE 1997

(No: 19 of 1997)

AN ORDINANCE

<i>(assented to:</i>	<i>16 December 1997)</i>
<i>(commencement:</i>	<i>on publication)</i>
<i>(published:</i>	<i>24 December 1997)</i>

To amend the Education Ordinance 1989 so as to make different provision in relation to the composition of the Board of Education.

ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Education (Amendment)(No 2) Ordinance 1997.

Amendment of the Education Ordinance 1989

2. The Education Ordinance 1989 is amended by replacing section 5(3) with the following—

“(3) Two of the members of the Board shall be appointed by the Governor from among the elected members of the Legislative Council and he shall appoint one of those two persons to be the Chairman of the Board.”.

Passed by the Legislature of the Falkland Islands this 12th day of December 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.M.G., C.V.O.,
Governor.

Mining (Amendment) Ordinance 1997

(No: 20 of 1997)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. Amendment of the Mining Ordinance (Cap. 48)

Schedule



Colony of the Falkland Islands

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

MINING (AMENDMENT) ORDINANCE 1997

(No. 20 of 1997)

AN ORDINANCE

(assented to: 16 December 1997)
(commencement: on publication)
(published: 24 December 1997)

To amend the Mining Ordinance.

ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Mining (Amendment) Ordinance 1997.

Amendment of the Mining Ordinance (Cap.48)

2. The Mining Ordinance is amended in the manner specified in the Schedule to this Ordinance.

SCHEDULE

Amendment of the Mining Ordinance

1. In the subsequent paragraphs of this Schedule, "the Ordinance" means the Mining Ordinance.
2. "Colonial Secretary" wherever it appears in the Ordinance is replaced by the words "Chief Executive".
3. Section 2 of the Ordinance is replaced by the following section—

"In this Ordinance, "mineral" means any substance including peat, other than water, and whether that substance is in solid, liquid or gaseous form, formed by or subject to geological process."

4. Section 5(2) is repealed and the following sections are inserted immediately following section 5—

"Restriction on assignment etc

5A.(1) A person to whom a licence or lease has been granted under section 5 shall not, except with the consent in writing of the Governor and in accordance with the conditions (if any) of the consent do anything whereby, under the law (including the rules of equity) of the Falkland Islands or of any other place, any right granted by the licence or lease or derived from a right so granted becomes exercisable by or for the benefit of or in accordance with the directions of another person.

(2) Without prejudice to the generality of subsection (1), an agreement or arrangement of any kind between the licensee or lessee and any other person permitting the carrying out in the licensed area or any part thereof any operation which the licensee or lessee is permitted to carry out only by virtue of the licence or lease is to be treated as an assignment of the licence or lease.

(3) A lessee shall not enter into any agreement providing for a person other than the lessee to become entitled to, or to any proceeds of sale of, any mineral which, at the time when the agreement is made, has not but may be won and saved under the lease to the lessee unless the terms of the agreement have been approved in writing by the Governor either unconditionally or subject to conditions, but the preceding provisions of this paragraph do not apply to an agreement for the sale of any mineral or minerals under which the price is payable after the mineral or minerals has or have been won and saved.

(4) A lessee shall not, without the consent of the Governor, dispose of any mineral won and saved under the lease to the lessee in such a manner that the disposal, to the knowledge of the lessee or without the lessee knowing it, fulfills or enables another person to fulfill obligations which a person who controls the lessee, or a person who is controlled by a person who controls the lessee, is required to fulfill by an agreement of which the terms require approval by virtue of subsection (3); and subsections (2) and (4) and (6) of section 416 of the Income and Corporation Taxes Act 1988 of the United Kingdom shall apply for the purposes of determining whether for the purposes of this subsection a person has control of another person, with the following modifications—

(a) for the words "greater part" wherever they occur in the said subsection (2) there shall be substituted the words "one third or more"; and

(b) in the said subsection (6), for the word "may" there shall be substituted the word "shall", and the words "from such attribution" onwards shall be omitted and in the other provisions of that subsection any reference to the associate of a

person shall be construed as including only a relative of his (as defined by section 417(4) of that Act), a partner of his and a trustee of a settlement (as defined by section 618(4) of that Act) of which he is a beneficiary.

(5) Where the lessee is two or more persons, then without prejudice to the preceding provisions of this section, none of those persons shall enter into an agreement with respect to the entitlement of any of them to—

- (a) the benefit of any rights granted by the lease;
- (b) any mineral or minerals won and saved under the lease; or
- (c) any proceeds of sale of such mineral or minerals,

unless the terms of the agreement have been approved in writing by the Governor."

Grant of right to apply for a lease

5B.(1) The Governor may, with the approval of the Secretary of State, in consideration of works of prospecting undertaken by a licensee under a prospecting licence agree in that licence with the licensee that provided the licensee has performed and observed all his obligations under the prospecting licence the Governor will consider on its merits an application ("the application") by the licensee made at such time as is stipulated in the licence but not being after the expiry of the licence for the grant to the licensee of a lease to mine, take, win and carry away from a part or parts of the area comprised in the prospecting licence not exceeding in aggregate such percentage of the total area comprised in the prospecting licence as is stipulated therein.

(2) The Governor may in a prospecting licence further agree that he will not without the consent of the licensee within two years after the making of the application or such lesser period as is specified in the licence grant a mining lease to any other person of any area to which the application relates."

5. Section 6 of the Ordinance is amended—

- (a) by replacing the words "magistrate of the district" in subsection (2) by the words "Senior Magistrate"; and
- (b) by replacing the words "Judge" and all words appearing thereafter in subsection (3) with words with "Chief Justice from whom a further appeal on a point of law or of mixed fact and law shall lie to the Court of Appeal."

6. The words " fifty pounds (£50)" in section 13 of the Ordinance are replaced by the words "five thousand pounds".

Passed by the Legislature of the Falkland Islands this 12th day of December 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.M.G., C.V.O.,
Governor

Taxes (Falkland Islands Pensions Scheme) Ordinance 1997

(No: 21 of 1997)

ARRANGEMENT OF PROVISIONS

Section

1. Short title and commencement
2. Amendments to the Taxes Ordinance 1997

ELIZABETH II



Colony of the Falkland Islands

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

TAXES (FALKLAND ISLANDS PENSIONS SCHEME) ORDINANCE 1997

(No. 21 of 1997)

AN ORDINANCE

(assented to: 16 December 1997)
(commencement: in accordance with section 1(2))
(published: 24 December 1997)

To make provision with respect to the taxation of sums paid into or out of the Falkland Islands Pensions Scheme, and for connected matters.

ENACTED by the Legislature of the Falkland Islands as follows—

Short title and commencement

1.—(1) This Ordinance may be cited as the Taxes (Falkland Islands Pensions Scheme) Ordinance 1997.

(2) This Ordinance shall come into force on 1st January 1998.

Amendments to the Taxes Ordinance 1997

2.—(1) In section 64 (“Approved schemes” and other definitions)—

(a) after the definition of “member” there shall be inserted—

“ “the Falkland Islands Pensions Scheme” means the Falkland Islands Pensions Scheme established in accordance with the Falkland Islands Pensions Scheme Ordinance 1997;”.

(b) at the end of each of the definitions of “personal pensions scheme” and “retirement benefit scheme” there shall be added “but does not include the Falkland Islands Pensions Scheme”.

(2) In section 65 (Meaning of "relevant earnings") after subsection (3) there shall be inserted—

"(3A) In relation to any contribution made to the Falkland Islands Pensions Scheme by a member of that Scheme, "relevant earnings" means—

(a) any earned income (including any amount which is deemed to be earned income) of that member 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 member or his 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 section 65(4)(b) after "contribution" there shall be inserted "to the Falkland Islands Pensions Scheme or".

(4) The following section shall be inserted in Part III of the Taxes Ordinance 1997 after section 65—

"Application of Part III to the Falkland Islands Pensions Scheme

65A.—(1) Section 67, 70, 73, 74 and 77 shall apply in relation to the Falkland Islands Pensions Scheme as they apply in relation to an approved retirement benefits scheme, subject to the following provisions of this section.

(2) In the application of any provision of this Part to the Falkland Islands Pensions Scheme by virtue of subsection (1)—

(a) any reference to an employee shall be construed as a reference to any member of the Scheme, whether or not an employee, and

(b) any reference to the administrator of a retirement benefits scheme shall be construed as a reference to the Pensions Board established under the Falkland Islands Pensions Ordinance 1997."

Passed by the Legislature of the Falkland Islands this 12th day of December 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.M.G., C.V.O.,
Governor.

Supplementary Appropriation (1997-1998)(No 2) Ordinance 1997

(No. 22 of 1997)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. Appropriation of further sum
3. Replenishment of Contingencies Fund

Schedule 1

Schedule 2

ELIZABETH II



Colony of the Falkland Islands

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

SUPPLEMENTARY APPROPRIATION (1997-1998) (No 2) ORDINANCE 1997

(No. 22 of 1997)

An Ordinance

(assented to: 16 December 1997)

(commencement: on publication)

(published: 24 December 1997)

To appropriate and authorise the withdrawal from the Consolidated Fund of the additional sum of £752,480 for the service of the financial year ending 30 June 1998.

ENACTED by the Legislature of the Falkland Islands as follows—

Short Title

1. This Ordinance may be cited as the Supplementary Appropriation (1997-1998) (No 2) Ordinance 1997.

Appropriation of further sum

2. The Financial Secretary may for the purposes specified in the Schedules cause to be withdrawn from the Consolidated Fund and applied to the service of the year commencing on 1 July 1997 and ending on 30 June 1998 ("the financial year") the further sum of £752,480 in addition to sums already appropriated by Ordinance.

Replenishment of Contingencies Fund

3.—(1) 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 Warrants the authority of which lapses on the commencement of this Ordinance.

(2) In subsection (1) "the Contingencies Warrants" means Contingencies Warrant Numbers 7 to 10 of 1997/1998.

SCHEDULE 1

HEAD OF SERVICE

PART I OPERATING EXPENDITURE

£

100	Aviation	3,300
250	Education and Training	69,620
350	Public Works	30,000
600	Central Administration	3,490
650	Pensions and Gratuities	67,000
800	Legislature	10,000
850	Falkland Islands Government Office - London	5,000
TOTAL OPERATING BUDGET		<u>188,410</u>

PART II CAPITAL BUDGET

950	Expenditure	222,100
TOTAL SUPPLEMENTARY EXPENDITURE		<u>£ 410,510</u>

SCHEDULE 2

HEAD OF SERVICE

PART I OPERATING EXPENDITURE

£

250	Education and Training	10,500
TOTAL OPERATING BUDGET		<u>10,500</u>

PART II CAPITAL BUDGET

950	Expenditure	331,470
TOTAL SUPPLEMENTARY EXPENDITURE		<u>£ 341,970</u>

Passed by the Legislature of the Falkland Islands this 12th day of December 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.

