



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CXIIIV

31st January 2005

No. 1

Appointments

Caroline Mary Aldridge, Home Help, Health and Social Services, 01.01.05.
 Mark David Bridges, Teacher, Education Department, 01.01.05.
 David Graham Clarke, Teacher, Education Department, 01.01.05.
 Doreen Evelyn Margaret Jones, Home Help, Health and Social Services, 01.01.05.
 Roma Ann Plato, Accountancy Officer/Accountant, Treasury, 04.01.05.
 Daphne Arthur-Almond, Teacher, Education Department, 10.01.05.
 Vincent Paris Tremayne, Staff Nurse, Health and Social Services, 14.01.05.
 Lars Brunner, Fisheries Observer, Fisheries Department, 19.01.05.
 Michael Terry Johnson, Staff Nurse, Health and Social Services, 31.01.05.

Completion of Contracts

Mark David Bridges, Teacher, Education Department, 31.12.04.
 Alison Edith Early, Teacher, Education Department, 31.12.04.
 Charlotte Ellen Vaile, Teacher, Education Department, 31.12.04.

Renewal of Contracts

Alison Edith Early, Teacher, Education Department, 01.01.05.
 Charlotte Ellen Vaile, Teacher, Education Department, 01.01.05.

Transfer

Lisa Pole-Evans, from Learning Support Assistant, Falkland Islands Community School, to Learning Support Assistant, Infant and Junior School, 01.01.05.

Promotions

Ralph Harris, from Foreman, Plant and Vehicle Section, Public Works Department, to Plant and Vehicle Manager, Public Works Department, 15.12.04.

Jane Felle, Staff Nurse, Health and Social Services, to Senior Staff Nurse, Health and Social Services, 01.01.05.

Johan Wilkinson, Biomedical Scientist, Health and Social Services, to Senior Biomedical Scientist, Health and Social Services, 20.01.05.

Resignations

Matthew Damien Balding, Refueller/Handyman, Falkland Islands Government Air Service, 17.01.05.

Clare Butler, Staff Nurse, Health and Social Services, 17.01.05.

Geoffrey Eric Benjamin, Senior Biomedical Scientist, Health and Social Services, 19.01.05.

Retirement

Bruce Raymond May, Senior Power Station Operator, Public Works Department, 27.01.05.

NOTICES

No. 1

25th January 2005

INDEX OF RETAIL PRICES

The calculation of the Index for the quarter ended 31 December 2004 has now been completed.

A summary of the Index for the last four quarters is shown below:-

Date	Index	Annual % Increase	Quarter % Increase
31.03.04	109.67	1.051	0.064
30.06.04	111.63	3.237	1.880
30.09.04	113.00	3.632	1.227
31.12.04	115.65	5.616	2.345

D. HOWATT,
Financial Secretary.

No. 2

19th January 2005

HIGHWAYS (WEIGHT LIMITS) ORDINANCE 2004**SECTION 1****COMMENCEMENT NOTICE**

IN EXERCISE of my powers under section 1 of the Highways (Weight Limits) Ordinance 2004, I hereby notify that the Ordinance shall come into force on 1st April 2005.

Dated this 19th day of January 2005.

H. J. S. PEARCE C.V.O.,
Governor.

No. 3

18th January 2005

APPLICATION FOR NATURALISATION

Notice is hereby given that Anna Vladimirovna HARRIS (Nee STRIJAK, KULIKOVA) is applying to His Excellency the Governor for naturalisation. Any person who knows of any reason why naturalisation should not be granted is invited to send a written and signed statement of the facts to the Immigration Officer, Customs & Immigration Department, Stanley within 21 days of the date of publication of this notice.

D. HOY,
Immigration Officer.

No. 4

25th January 2005

APPLICATION FOR PERMANENT RESIDENCE

Notice is hereby given that Monica Ximena Navarro Salgado has applied through the Principal Immigration Officer to be granted a Permanent Residence Permit by the Governor.

Any person who knows of any reason why this permit should not be granted, should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs and Immigration Department, Stanley by 21 February 2005.

D. HOY,
Immigration Officer.



THE FALKLAND ISLANDS GAZETTE

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Vol. CXIIIV

28th February 2005

No. 2

Appointments

Christopher John Davies, Technician/Engineer, Public Works Department, 23.01.05.
 Lucinda Jane Bennett, Health Visitor, Health Services Department, 01.02.05.
 Robert John MacAskill, Power Station Operator, Public Works Department, 01.02.05.
 Miranda McKee, Health Visitor, Health Services Department, 01.02.05.
 Sara McPhee, Credit Controller, Treasury, 01.02.05.
 Murtaza Fazlabbai Khanbhai, Medical Officer, Health Services Department, 05.02.05.
 Daisy Gapol, Housekeeper, Government House, 14.02.05.
 Charlene Taria Olsen, Staff Nurse, Health Services Department, 14.02.05.

Completions of Contract

Kirsty Adele Parry, Practice Nurse, Health Services Department, 07.02.05.
 Jennifer Anne Webster, Senior Staff Nurse, Health Services Department, 28.02.05.

Promotions

Derek Samuel Goodwin, from Assistant Foreman, Public Works Department, to Foreman, Public Works Department, 01.02.05.
 Derek Patrick Short, from Gardener, Government House, to Head Gardener, Government House, 01.02.05.

Transfers

Lillian Rose Orissa Kidd, from Head Gardener, Government House, to Clerk, Post Office, 01.02.05.

Barry Marwood Neilson, from Plant Operator/Handyman, Public Works Department, to Power Station Operator, Public Works Department, 01.02.05.

NOTICES

Customs Ordinance 2003

In exercise of the powers conferred by Section 7(3) of the Customs Ordinance 2003, I hereby appoint:

CPL Daryl John PILGRIM- K8413357

to be a temporary Customs Officer from 30 January 2005 to 30 May 2005.

R. J. KING,
Collector of Customs.

No. 5

8th February 2005

ENVIRONMENTAL RESEARCH UNIT LIMITED

Company Number: 11114

NOTICE IS HEREBY GIVEN that the above named company was dissolved pursuant to section 353 of the Companies Act 1948 in its application to the Falkland Islands on the 8th day of February 2005.

Dated this 8th day of February 2005.

J. C. ROWLAND,
Registrar of Companies

No. 6

25th February 2005

APPLICATIONS FOR NATURALISATION

Notice is hereby given that the below named persons are applying to His Excellency the Governor for naturalisation.

Luis Alberto BAHAMONDE SALAZAR
Kim Andrea CHATER (Nee ROBERTSON)

Any person who knows of any reason why naturalisation should not be granted to any individual is invited to send a written and signed statement of the facts to the Immigration Officer, Customs & Immigration Department, Stanley within 21 days of the date of publication of this notice.

D. HOY,
Immigration Officer.

No. 7

25th February 2005

APPLICATION FOR PERMANENT RESIDENCE

Notice is hereby given that Arigela Geraldine Mary BENDYSHE (Nee Beresford) has applied through the Principal Immigration Officer to be granted a Permanent Residence Permit by the Governor.

Any person who knows of any reason why this permit should not be granted, should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs & Immigration Department, Stanley by 22 March 2005.

D. HOY,
Immigration Officer.

No. 8

28th February 2005

CURRENCY NOTES RULES (Title 25.1.1)

In exercise of the powers conferred by Rule 3 of the Currency Notes Rules, His Excellency The Governor has approved the following changes to the list of Currency Officers –

Appointment

LOVERIDGE, Marie Pearl with effect from 13 June 2003

Cancellation of Appointment

McPHEE, Sara with effect from 13 June 2003

Appointments

McPHEE, Sara)

TONNER, Michele) with effect from 22 February 2005

PLATO, Roma Ann)

TRIGGS, Donna Louise

Cancellation of Appointments

HAWKSWORTH, Terence

WILSON, James Andrew with effect from 22 February 2005

LOVERIDGE, Marie Pearl

The following is a full list of Currency Officers with effect from 22 February 2005:

CHEEK, Marie

DODD, Nigel Keith

ECCLES, Moira Cameron

FARIA, Susana Caroline Berntsen

HOWATT, Derek Frank

KING, Peter Thomas

LYSE, Linda Margaret

McPHEE, Sara

PADGETT, Keith

PLATO, Roma Ann

TONNER, Michele

TRIGGS, Donna Louise

COMMISSIONERS OF CURRENCY

THE TREASURY

STANLEY

28 FEBRUARY 2005



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CXIII

31st March 2005

No. 3

Appointment

James Patrick Lang, Refueller/Handyman, Falkland Islands
Government Air Service, 28.03.05.

Resignations

Ruth Watson, Auxiliary Nurse, Health and Social Services,
07.03.05.
Fiona Wallace, Support Worker, Health and Social Services,
16.03.05.

Retirement

Raymond Newman, Store Person, Public Works Department,
21.03.05.

NOTICES

No. 9

23rd February 2005

JKMARUOSALIMITED
Company Number: 11146

NOTICE IS HEREBY GIVEN that the above named
company was dissolved pursuant to section 353 of the
Companies Act 1948 in its application to the Falkland
Islands on the 23rd day of February 2005.

Dated this 23rd day of February 2005.

J. C. ROWLAND,
Registrar of Companies.

No. 10

22nd March 2005

FALKLAND ISLANDS**APPOINTMENT OF ACTING ATTORNEY
GENERAL**

I HOWARD JOHN STREDDER PEARCE Commander of the Royal Victorian Order Governor of the Falkland Islands **HEREBY** authorise **MELANIE LOUISE BEST CHILTON** to discharge the functions and duties of the post of Attorney General of the Falkland Islands during the absence overseas of the substantive holder of the post of Attorney General **DAVID GEOFFREY LANG** from 19 March 2005 until his return to the Falkland Islands.

Given under my hand and the Public Seal at Stanley on this 22nd day of March 2005.

H. J. S. PEARCE C.V.O.,
Governor.

No. 11

22nd March 2005

FALKLAND ISLANDS**APPOINTMENT OF ACTING CORONER**

I HOWARD JOHN STREDDER PEARCE Commander of the Royal Victorian Order Governor of the Falkland Islands **HEREBY** authorise **MELANIE LOUISE BEST CHILTON** to discharge the functions and duties of the post of Coroner whenever the person for the time being holding the post of Senior Magistrate and the substantive holder of the post of Attorney General **DAVID GEOFFREY LANG** are both unavailable to discharge the functions power and authority of Coroner through absence from the Falkland Islands or inability to perform the functions and duties of the post.

Given under my hand and the Public Seal at Stanley on this 22nd day of March 2005.

H. J. S. PEARCE C.V.O.,
Governor.

No. 12

23rd March 2005

APPLICATIONS FOR NATURALISATION

Notice is hereby given that the below named individuals are applying to His Excellency the Governor for naturalisation:

Carl Francis FREEMAN
Dianne May FREEMAN (nee SCOTT)
Tracy FREEMAN (Born Malisa FREEMAN)

Any person who knows of any reason why naturalisation should not be granted is invited to send a written and signed statement of the facts to the Immigration Officer, Customs & Immigration Department, Stanley within 21 days of the date of publication of this notice.

D. HOY,
Immigration Officer.

No. 13

23rd March 2005

APPLICATION FOR PERMANENT RESIDENCE

Notice is hereby given that Angel Honorio LATORRE OBANDO has applied through the Principal Immigration Officer to be granted a Permanent Residence Permit by the Governor.

Any person who knows of any reason why this permit should not be granted, should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs and Immigration Department, Stanley by 22 April 2005.

D. HOY,
Immigration Officer.

No. 14

23rd March 2005

FALKLAND ISLANDS STATUS APPLICATION

Notice is hereby given that Alan Claude FOWLER has applied through the Principal Immigration Officer for Falkland Islands Status to be granted to him by the Governor.

Any person who knows of any reason why such status should not be granted, should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs & Immigration Department, Stanley by 22 April 2005.

D. HOY,
Immigration Officer.

Customs Ordinance 2003

In exercise of the powers conferred by Section 7(3) of the Customs Ordinance 2003, I hereby appoint:

CPL Stuart Paul RICHARDS - S8252781

to be a temporary Customs Officer from 26 February 2005 to 26 June 2005.

R. J. KING,
Collector of Customs.

Customs Ordinance 2003

In exercise of the powers conferred by Section 7(3) of the Customs Ordinance 2003, I hereby appoint:

SGT Mark GUMLEY - R8246492
WO Brian John MAIN - R8115967

to be a temporary Customs Officers from 02 March 2005 to 06 July 2005.

R. J. KING,
Collector of Customs.



THE FALKLAND ISLANDS GAZETTE Extraordinary

PUBLISHED BY AUTHORITY

Vol. CXIII

31st March 2005

No. 4

NOTICES

No. 15

2nd March 2005

SUPREME COURT OF THE FALKLAND ISLANDS

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

TAKE NOTICE THAT Gladys Eveline King of Stanley, Falkland Islands died on the 30th day of March 1999 intestate.

WHEREAS Peter Thomas King and Robert John King have applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

NOTICE IS HEREBY GIVEN pursuant to Section 4 of the Administration of Estates Ordinance to all persons resident in the Falkland Islands 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.

C. J. KING,
Registrar, Supreme Court.

Stanley
Falkland Islands
2nd day of March 2005

No. 16

2nd March 2005

SUPREME COURT OF THE FALKLAND ISLANDS

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

TAKE NOTICE THAT Vernon Thomas King of Stanley, Falkland Islands died on the 19th day of February 2005 intestate.

WHEREAS Peter Thomas King and Robert John King have applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

NOTICE IS HEREBY GIVEN pursuant to Section 4 of the Administration of Estates Ordinance to all persons resident in the Falkland Islands 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.

C. J. KING,
Registrar, Supreme Court.

Stanley
Falkland Islands
2nd day of March 2005



**THE
FALKLAND ISLANDS GAZETTE
Extraordinary**

PUBLISHED BY AUTHORITY

Vol. CXIIIV

1st May 2005

No. 5

The following are published in this Supplement -

Register of Electors

000001	Adams	John Harvey	21 Ross Road East
000002	Adams	Marjorie Rose	21 Ross Road East
000003	Adeoye	Anneliese Rose	25 Shackleton Drive
000004	Alazia	Andrew	66 Davis Street
000005	Alazia	Anita Jayne	Government House
000006	Alazia	Freda	22 Fitzroy Road
000007	Alazia	Freda Evelyn	17 Jersey Road
000008	Alazia	James Andrew	22 Fitzroy Road
000009	Alazia	Jason Neville	Lookout Lodge
000010	Alazia	Maggie Ann	6 John Street
000011	Alazia	Sandra Marie	66 Davis Street
000012	Alazia	Yvonne	Flat4 1A Moody Sreet
000013	Alazia-McLaughlin	Colleen	11 Fitzroy Road East
000014	Aldridge	Caroline Mary	2 McKay Close
000015	Aldridge	Kenneth John	2 McKay Close
000016	Aldridge	Stephen John	2 McKay Close
000017	Allan	John	39 Ross Road
000018	Allan	Joyce Ena	39 Ross Road
000019	Allan	Michael Charles	3 Philomel Place
000020	Allan	Sarah Louise	3 Philomel Place
000021	Almonacid	Orlando	1 Villiers Sreet
000022	Almond	Adrian Arthur James	4 Allardyce Street
000023	Anderson	Carol Anne	22 Endurance Avenue
000024	Anderson	Claudette	1 Goss Road
000025	Anderson	Eddie	22 Endurance Avenue
000026	Anderson	Elizabeth Nellie	42 Davis Street
000027	Anderson	Falkland John	26 Shackleton Drive
000028	Anderson	Jamie Falkland	18 Murray Heights
000029	Anderson	Jenny	8 Goss Road
000030	Anderson	Lynda June	6b St Mary's Walk
000031	Anderson	Margaret Kathleen	18 Murray Heights
000032	Anderson	Mildred Nessie	8b St Marys Walk
000033	Anderson	Paul James	9 Fieldhouse Close
000034	Anderson	Reginald Stanford	18 Murray Heights
000035	Anderson	Richard Louis	88 Davis Street
000036	Anderson	Tony James	8 Goss Road
000037	Anderson	Tony James	Y.M.C.A
000038	Anderson	William John Stanley	6b St Mary's Walk
000039	Anthony	Enid Elizabeth	6 Dairy Paddock Road
000040	Anthony	Geraldine Sylvia	FIGO
000041	Arkhipkin	Alexander Ivanovich	27 Goss Road
000042	Armstrong Ford	Karen Jane	22 Jersey Road
000043	Arthur-Almond	Daphene Margaret	4 Allardyce Street
000044	Baber	Angela Mary	5 Narrows View
000045	Baker	Alison Margaret	12 Endurance Avenue
000046	Barkman	Kirsty Michelle	16 Fieldhouse Close
000047	Barnes	Marlene Estela	2a Brisbane Road
000048	Barnes	Paul	2 Watson Way

000049	Barton	Alison Mary	6 Villiers Street
000050	Barton	Arthur John	6 Villiers Street
000051	Bates	Barbara	8 Watson Way
000052	Bates	James William	8 Watson Way
000053	Battersby	Jon Alan	16 Fieldhouse Close
000054	Battersby	Margaret Mary	16 Fieldhouse Close
000055	Beckett	Vivien Delia	2 Discovery Close
000056	Bedford	Kita Muriel	13 Jersey Road
000057	Benjamin	Geoffrey Eric	19 Goss Road
000058	Benjamin	Robin Eric	19 Goss Road
000059	Benjamin	Wendy Edith	19 Goss Road
000060	Berntsen	Cecilia Del Rosario	14 St Marys Walk
000061	Berntsen	Christian Olaf Alexander	15a James Street
000062	Berntsen	Falkland	10 Fitzroy Road
000063	Berntsen	Gene Stanley	YMCA Stanley
000064	Berntsen	Iain Kenneth	2 Dean Street
000065	Berntsen	John Alexander	7 Jeremy Moore Avenue Flat
000066	Berntsen	Kenneth Frederick	1 Racecourse Road East
000067	Berntsen	Marjorie Florence	6 McKay Close
000068	Berntsen	Matthew John	Lookout Lodge
000069	Berntsen	Olaf Christian Alexander	35 Eliza Crescent
000070	Berntsen	Patrick	10 A James Street
000071	Berntsen	Rachel Ena	15a James Street
000072	Berntsen	Trevor John	6 McKay Close
000073	Berntsen	Trina Mary Shirlene	Flat 9 6 Jersey Road
000074	Berntsen	Valdamar Lars	14 St. Marys Walk
000075	Berntsen	Valorie Marcela	30 Endurance Avenue
000076	Bertrand	Catherine Gladys	11 Ross Road East
000077	Besley-Clark	Barbara June	53 Callaghan Road
000078	Besley-Clark	Craig Norman Leigh	53 Callaghan Road
000079	Besley-Clark	Norman	53 Callaghan Road
000080	Betts	Arlette	Lafone House Ross Road
000081	Betts	Donald William	7 Jeremy Moore Avenue
000082	Betts	Ellen Alma	21 Fitzroy Road
000083	Betts	George Winston Charles	35 Ross Road West
000084	Betts	Ian	1 Villiers Street
000085	Betts	Lucia Elizabeth	35 Ross Road West
000086	Betts	Michael George	35 Ross Road West
000087	Betts	Owen	14 Fieldhouse Close
000088	Betts	Peter James	10 Ian Campbell Drive
000089	Betts	Priscilla Violet Morrison	14 Fieldhouse Close
000090	Betts	Severine	3 Allardyce Street
000091	Betts	Shirley Rose	7 Jeremy Moore Avenue
000092	Betts	Simon Keith	Reflections Flat Dean Street
000093	Betts	Stephen	7 Jeremy Moore Avenue
000094	Betts	Tyrone Trevor	7 Short Street
000095	Biggs	Ailie Christine	16 Endurance Avenue
000096	Biggs	Alastair Gordon	Trehayle 50 John Street

000097	Biggs	Althea Maria	3 Dairy Paddock Road
000098	Biggs	Betty Josephine	9 Moody Street
000099	Biggs	Christopher David	5 James Street
000100	Biggs	Coleen Margot	9 Moody Street
000101	Biggs	Daniel Craig	16 Endurance Avenue
000102	Biggs	Edith Joan	Trehayle 50 John Street
000103	Biggs	Frances	16 Endurance Avenue
000104	Biggs	Kyle Alexander	16 Endurance Avenue
000105	Biggs	Leslie Frederick	3 Dairy Paddock Road
000106	Biggs	Marian June	30 Ross Road East
000107	Biggs	Michael Elfed	21 Fitzroy Road
000108	Biggs	Peter Julian Basil	16 Endurance Avenue
000109	Biggs	Richard John	30 Ross Road East
000110	Binnie	Linda Rose	6 Fieldhouse Close
000111	Binnie	Ronald Eric	6 Fieldhouse Close
000112	Binnie	Susan	3 Brandon Road
000113	Birmingham	Alexsandra Sally	4 Drury Street
000114	Birmingham	John	4 Drury Street
000115	Bishop	Corina Rose	7 Eliza Crescent
000116	Bishop	Nigel Ian	7 Eliza Crescent
000117	Blackley	Candy Joy	4 Barrack Street
000118	Blackley	Maurice	The Lodge Market Garden
000119	Blackley	Shane David	4 Barrack Street
000120	Blake	Alexander Charles	38 Eliza Crescent
000121	Blake	Anthony Thomas	14 Watson Way
000122	Blake	Lionel Geoffrey	1 Ross Road
000123	Blake	Sally Gwynfa	1 Ross Road
000124	Blake	Thomas Patrick	12 Ross Road West
000125	Blizard	Malvina Mary	51 Fitzroy Road
000126	Blyth	Agnes Ruth	2 Brandon Road
000127	Blyth	Paz Neri	5 St Marys Walk
000128	Bolt	Dennis John	4 Watson Way
000129	Bonner	Alan Paul	8 Pioneer Row
000130	Bonner	Angela Jane	5a Ross Road East
000131	Bonner	Avril Margaret Rose	4 Felton Court
000132	Bonner	Donald William	Chaffeurs Cottage
000133	Bonner	Ewan Shane	28 Jersey Road
000134	Bonner	Hayley Trina	41 Ross Road West
000135	Bonner	Keith James	4 Felton Court
000136	Bonner	Linda Jane	4A Ross Road West
000137	Bonner	Lindsay Jane	4a Ross Road West
000138	Bonner	Nicholas	4A Ross Road West
000139	Bonner	Odette Ellen May	Madecosie 15 Jersey Estate
000140	Bonner	Paul Roderick	5 John Street
000141	Bonner	Richard James	8 Murray Heights
000142	Bonner	Stevie Coppell	Dolphin Cottage
000143	Bonner	Terence Leslie	Madecosie 15 Jersey Estate
000144	Bonner	Timothy	41 Ross Road West

000145	Bonner	Vera Ann	5 John Street
000146	Bonner	Vera Joan	Chaffeurs Cottage
000147	Bonner	Violet	40 Ross Road
000148	Booth	Jessie	Racecourse Cottage
000149	Booth	Myriam Margaret Lucia	7 Philomel Street
000150	Booth	Stuart Alfred	Racecourse Cottage
000151	Bound	Joan	10 Barrack Street
000152	Bowles	Norma Evangeline	1A Villiers Street
000153	Bowles	Sarah	9 Drury Street
000154	Bowles	William Edward	1A Villiers Street
000155	Bowles	William George Troyd	9 Drury Street
000156	Bragger	Edward Laurence	14 Jeremy Moore Avenue
000157	Bragger	Stacey John	14 Jeremy Moore Avenue
000158	Brickle	Paul	32 Fitzroy Road
000159	Brock	Juanita Lois	Flat5 1 Jeremy Moore Ave
000160	Brooks	Cheryl Rose	25 Callaghan Road
000161	Brooks	Peter William	25 Callaghan Road
000162	Brown	Dinah May	Sir Rex Hunt House
000163	Browning	Colin George	1 Moody Street
000164	Browning	Edwina	96 Davis Street
000165	Browning	Gavin	Lookout Lodge
000166	Browning	Henry Stanbury	Lookout Lodge
000167	Browning	Joan Lucy Ann	5 Villiers Street
000168	Browning	Nathan David	3 Dairy Paddock Road
000169	Browning	Rex	35 Davis Street
000170	Browning	Richard William	96 Davis Street
000171	Browning	Trevor Osneht	5 Villiers Street
000172	Brownlee	Andrew Samuel	19 Ross Road East
000173	Brownlee	Lynn Frances	19 Ross Road East
000174	Buckett	Ronald Peter	49 Fitzroy Road
000175	Buckett	Roy Peter	Lookout Lodge
000176	Buckett	Susan Vera	49 Fitzroy Road
000177	Buckland	Darlene Joanna	5 James Street
000178	Buckley-Whitney	Helena Jane	2 Pioneer Row
000179	Budd	Dennis Raymond	5 Ian Campbell Drive
000180	Budd	Pamela Joan	5 Ian Campbell Drive
000181	Burnett	Robert Southern	2 Glasgow Road
000182	Burns	Mary Anne	34 Davis Street
000183	Burston	Catherine	91 Davis Street
000184	Burston	Stephen Leslie	91 Davis Street
000185	Bury	Ian Thomas	63 Davis Street
000186	Butcher	Michael George	3A Dairy Paddock Road
000187	Butcher	Trudi	3A Dairy Paddock Road
000188	Butler	Elsie Maud	10 Thatcher Drive
000189	Butler	Frederick Lowther Edward	10 Thatcher Drive
000190	Butler	George Joseph	1A Moody Street
000191	Butler	Jonathan Jeffers	3 Jeremy Moore Avenue
000192	Butler	Laurence Jonathan	2 Davis Street East

000193	Butler	Margaret Orlanda	5 Short Street
000194	Butler	Orlanda Betty	2 Davis Street East
000195	Buxton	Nicole Gabrielle	9 Campbell Drive
000196	Cameron	Jane Diana Mary Keith	Old Bakery Fitzroy Road
000197	Cant	Carol Rosine	24 Goss Road
000198	Cant	Martin Ronald	24 Goss Road
000199	Cant	Phillip Martin	24 Goss Road
000200	Cantlie	Derek William	27 Callaghan Road
000201	Carey	Anthony Michael	19 Ross Road West
000202	Carey	Gladys	19 Ross Road West
000203	Carey	Martin Rex	21 Eliza Cove Crescent
000204	Carey	Mary Ann Margaret	18 Ross Road West
000205	Carey	Sarah Jane	Gardeners Cottage
000206	Carey	Terence James	18 Ross Road West
000207	Cartwright	Stephen	39 Ross Road West
000208	Castle	David Peter	26 John Street
000209	Castle	Isobel	26 John Street
000210	Ceballos	Eulogio Gabriel	28 Endurance Avenue
000211	Ceballos	Isabel	12 Brisbane Road
000212	Ceballos-Anderson	Alastair Jaime	1 Goss Road
000213	Chaloner	Anthony Ross	37 Eliza Crescent
000214	Chaloner	Sheila Catherine	41 Ross Road
000215	Chapman	Elsie Mary	7 Drury Street
000216	Chapman	Paul	29 Fitzroy Road
000217	Chater	Jane	3 Short Street
000218	Chater	Thomas Frederick	3 Short Street
000219	Chater	William John	7 Biggs Road
000220	Cheek	Gerald Winston	9 Biggs Road
000221	Cheek	Janet Lynda	35 Ross Road East
000222	Cheek	Marie	9 Biggs Road
000223	Cheek	Rosalind Catriona	32 Goss Road East
000224	Cheeseman	Kaye Melanie	1a Capricorn Drive
000225	Cheeseman	Stanley John	3 Pioneer Row
000226	Clapp	Kevin Christopher	1 Murray Heights
000227	Clark	Douglas James	53 Callaghan Road
000228	Clark	Hector	27 Eliza Crescent
000229	Clark	Jonathan Andrew	Flat 10 Jersey Road
000230	Clark	Joyce Kathleen	27 Eliza Crescent
000231	Clarke	Angela Sindy	1B Capricorn Road
000232	Clarke	Angeline Gloria	17 Scoresby Close
000233	Clarke	Anika Doreen	2 Arch Green
000234	Clarke	Camilla Marie	8 Drury Street
000235	Clarke	Christopher	5 Discovery Close
000236	Clarke	David James	17 Ross Road West
000237	Clarke	Derek Simon	23 Jeremy Moore Avenue
000238	Clarke	Doreen	17 Ross Road West
000239	Clarke	Eva Lynn	19 Jersey Road
000240	Clarke	Felicity Marie	7 Fitzroy Road

000241	Clarke	Gwynne Edwina	17 Jeremy Moore Avenue
000242	Clarke	Ian	Lookout Lodge Stanley
000243	Clarke	Isabel Joan	12 Fieldhouse Close
000244	Clarke	James Martin	3 McKay Close
000245	Clarke	Jeremy Ian Thomas	7 Fitzroy Road
000246	Clarke	Joan Patricia Marion	Flat 6, 6 Jersey Road
000247	Clarke	Jonathan Terence	17 Jeremy Moore Avenue
000248	Clarke	Joseph Gwyn	Lookout Lodge
000249	Clarke	Julie Ann	Globe Tavern
000250	Clarke	Luke Anthony	Lookout Lodge
000251	Clarke	Margaret Ann	3 H Jones Road
000252	Clarke	Marvin Thomas	7 Fitzroy Road
000253	Clarke	Ronald John	17 Ross Road West
000254	Clarke	Rudy Thomas	8 Drury Street
000255	Clarke	Stephen Boyd	12 Fieldhouse Close
000256	Clarke	Suzanna	18 Hansen Hill
000257	Clarke	Terence John	17 Jeremy Moore Avenue
000258	Clarke	Tracey Clare	23 Jeremy Moore Avenue
000259	Clarke	Trudi Ann	7 Fitzroy Road
000260	Clarke	Violet Rose	8 Ian Campbell Drive
000261	Clasen	Wayne Ian Summers James	17 Davis Street
000262	Clausen	Andrea Patricia	3 St Marys Walk
000263	Clausen	Denzil	Cottage St Mary's Walk
000264	Clausen	Denzil George Gustavius	3 St Marys Walk
000265	Clausen	Melanie	54 Davis Steet
000266	Clayton	Brian	Dorada
000267	Clayton	Jade Anne	16 St Mary's Walk
000268	Clement	Gary	9 Snake Street
000269	Clement	Jane	9 Snake Street
000270	Clement	Lee	9 Snake Street
000271	Clement	Sara Jane	10 Snake Street
000272	Clement	Wayne	10 Snake Street
000273	Cletheroe	Kenneth Stanley	45 Fitzroy Road
000274	Clifton	Darwin Lewis	53 Davis Street
000275	Clifton	Marie	6 Discovery Close
000276	Clifton	Melvyn	12 Callaghan Road
000277	Clifton	Neil	11 Hansen Hill
000278	Clifton	Stephen Peter	61 Fitzroy Road
000279	Clifton	Terence Charles	3 Ross Road West
000280	Clifton	Teresa Ann	12 Callaghan Road
000281	Clifton	Valerie Ann	61 Fitzroy Road
000282	Cockwell	Jennifer Marie	90 Davis Street
000283	Cockwell	John Richard	14 Ross Road West
000284	Cockwell	Maurice Adam	90 Davis Street
000285	Cockwell	Samuel George	14 Ross Road West
000286	Cofre	Elvio Miguel	41 Eliza Crescent
000287	Collins	Brian Richard	41 Davis Street
000288	Collins	Hazel	41 Davis Street

000289	Collins	Shiralee	14 Jersey Road
000290	Connolly	Kevin Barry	1 King Street
000291	Coombe	Robert Dean	1a Capricorn Road
000292	Cotter	Caroline Jane	9 Jeremy Moore Avenue
000293	Cotter	Jacqueline Ann	9 Jeremy Moore Avenue
000294	Cotter	Mary Jane	9 Jeremy Moore Avenue
000295	Cotter	Timothy Stewart	9 Jeremy Moore Avenue
000296	Courtney	Anthony Clive	30 Goss Road
000297	Courtney	Julie	30 Goss Road
000298	Cousins	Juliet Ann	F I G O
000299	Coutts	Charles Lindsay	33 Ross Road
000300	Coutts	John	36 Ross Road West
000301	Coutts	Olga	33 Ross Road
000302	Crabb	Elizabeth Ann	34a Davis Street
000303	Crowie	Alan John	72 Davis Street
000304	Crowie	Ana Bonita	72 Davis Street
000305	Crowie	Clare Frances	6 Rowlands Rise
000306	Crowie	David Martin	Lookout Lodge
000307	Crowie	David Sean	51 Callaghan Road
000308	Crowie	Michelle	1 Discovery Close
000309	Crowie	Nicola Jane	35 Callaghan Road
000310	Crowie	Peter James	35 Callaghan Road
000311	Crowie	Robert John	35 Callaghan Road
000312	Crowie	Roxanne	72 Davis Street
000313	Curtis	Alfred William Hamilton	6 Brandon Road West
000314	Curtis	Barbara Annette Hamilton	37 Ross Road East
000315	Curtis	Barbara Joan	6 Brandon Road West
000316	Curtis	Bonnie Elizabeth Hamilton	6 Brandon Road West
000317	Curtis	James William Hamilton	6 Ross Road
000318	Davies	Anthony Warren	7 Callaghan Road
000319	Davies	Christine Susan	F I G O
000320	Davies	Colin George	15 Ross Road West
000321	Davies	Eileen Wynne	15 Ross Road West
000322	Davies	Jacqueline Nancy	7 Callaghan Road
000323	Davies	Richard Andrew	4 Fitzroy Road East
000324	Davies	Samantha	7 Callaghan Road
000325	Davies	Sarah	4 Fitzroy Road East
000326	Davies	Sian Karen	7 Callaghan Road
000327	Davies	William	F I G O
000328	Davis	Ellen Rose	39 Davis Street
000329	Davis	Maurice	39 Davis Street
000330	Davis	Roy George Victor	6 Narrows View
000331	Davis	Stacey Elizabeth	6a Jeremy Moore Avenue
000332	Davis	Yona	40 Ross Road
000333	Davy	Patrick Alex Field	Flat3 3 Jeremy Moore Ave
000334	Dent	Janice Vanessa	16 Scoresby Close
000335	Dent	Stephen John	16 Scoresby Close
000336	Desborough	Gladys Malvina	14 Allardyce Street

000337	Dickson	Iris	2 Dairy Paddock Road
000338	Dickson	Michael Keith	12 Dairy Paddock Road
000339	Dickson	Ronald Edward	2 Dairy Paddock Road
000340	Didlick	Fiona Margaret	Lady Hunt House
000341	Didlick	Graham John	Lady Hunt House
000342	Didlick	Imogen Fiona	13 Jeremy Moore Avenue
000343	Diggle	Jean Katherine	12 Jersey Road
000344	Diggle	Roger John	12 Jersey Road
000345	Dobbys	Kathleen Gay	60 Davis Street
000346	Dodd	Alison	1 Pioneer Row
000347	Dodd	Nigel Keith	1 Pioneer Row
000348	Doherty	Ian	2 Brisbane Road
000349	Donnelly	Derek	38 Ross Road East
000350	Drysdale	Karen Margaret	1 Watson Way
000351	Duncan	Doreen	Tenacres
000352	Duncan	Peter Reid Howard	1 Thatcher Drive
000353	Earnshaw	Jacqueline Elizabeth	37 Ross Road West
000354	East	Justin Clive Richard	1 Fieldhouse Close
000355	East	Michelle Jane	36 Ross Road East
000356	Eccles	Bernard Leslie	18 Jeremy Moore Avenue
000357	Eccles	Moiria Cameron	18 Jeremy Moore Avenue
000358	Edwards	Emma Jane	41 Ross Road East
000359	Ellick	Joanne Marie	11 McKay Close
000360	Ellick	Nicholas Charles	11 McKay Close
000361	Elliot	Elizabeth Rose	15 Callaghan Road
000362	Elliot	Henry James	15 Callaghan Road
000363	Ellis	Cyril	24 Ross Road East
000364	Ellis	Lucy	11 James Street
000365	Ellis	Paul	43 John Street
000366	Ellis	Sally Jean	43 John Street
000367	Ellis	Valerie	24 Ross Road East
000368	Elsby	Barry	Moody Brook House
000369	Eriksen	Fiona Alison	5 Racecourse Road
000370	Evans	Gladys Alberta	6 Barrack Street
000371	Evans	Michelle Paula	Murray Heights
000372	Evans	Susan Maureen	45 Ross Road East
000373	Ewing	Gordon	4 Jeremy Moore Avenue
000374	Ewing	Irene	4 Jeremy Moore Avenue
000375	Eynon	Carol	8 Villiers Street
000376	Eynon	David John	8 Villiers Street
000377	Faria	Basil Harry	3a Brisbane Road
000378	Faria	Maria Anne	3a Brisbane Road
000379	Faria	Mary Ann	6a St Mary's Walk
000380	Faria	Paul	22 Hansen Hill
000381	Faria	Susana Caroline Berntsen	22 Hansen Hill
000382	Felton	Faith Dilys	41 Callaghan Road
000383	Felton	Sonia Ellen	14 Scoresby Close
000384	Felton	Violet Regina Margaret	German Camp Callaghan

000385	Felton	Walter Arthur	9 Thatcher Drive
000386	Ferguson	Ellen Rose	51 Callaghan Road
000387	Ferguson	Finlay James	51 Callaghan Road
000388	Ferguson	Hugh	15 Pioneer Row
000389	Ferguson	John William	47 Ross Road East
000390	Ferguson	Marie Anne	36 Ross Road West
000391	Ferguson	Robert John	4a St Mary's Walk
000392	Ferguson	Robert John Andrew	47 Ross Road East
000393	Ferguson	Rose	6 Thatcher Drive
000394	Ferguson	Sian Yvonne	21 Shackleton Drive
000395	Ferguson	Stephanie Janet	47 Ross Road East
000396	Ferguson	Thelma	4a St Mary's Walk
000397	Fiddes	Douglas Graham	The Brook, Moody Brook
000398	Fiddes	Gardner Walker	3 Watson Way
000399	Fiddes	Mary McKinnon	4 Moody Street
000400	Fiddes	Melody Christine	3 Watson Way
000401	Fiddes	Robert	4 Moody Street
000402	Finlayson	Iris Heather	3 Capricorn Road
000403	Finlayson	Kimberly Elizabeth	26 Ross Road East
000404	Finlayson	Marc Ian	Y.M.C.A
000405	Finlayson	Marilyn Christine	24 James Street
000406	Finlayson	Peter	24 James Street
000407	Finlayson	Phyllis	6 Brandon Road
000408	Finn	Natalie Anne	11 Fitzroy Road East
000409	Fisher-Smith	Julie Anne	8 Fieldhouse Close
000410	Floyd	Amanda Susan	4b Ross Road West
000411	Floyd	Michael	7 Pitaluga Place
000412	Floyd	Michael Anthony	7 Pitaluga Place
000413	Floyd	Steven Paul	26 Hansen Hill
000414	Fogerty	Richard Edwin John	Stone Cottage By-Pass road
000415	Ford	Alison Jane Marie	9 Jersey Road
000416	Ford	Arthur Henry	6 Drury Street
000417	Ford	Cara Michelle	5 Philomel Street
000418	Ford	Christopher James	6 Felton Court
000419	Ford	Colin Stewart	15 Kent Road
000420	Ford	Colleen Mary	12 Davis Street
000421	Ford	Darrel Michael	54 Davis Street
000422	Ford	David	70 Davis Street
000423	Ford	Donna Marie	26 Shackleton Drive
000424	Ford	Frederick James	12 Davis Street
000425	Ford	Gerard Allan	Flat 1 3 Jeremy Moore
000426	Ford	Jonathan	3 Pitaluga Place.
000427	Ford	Julie Ann	3 Pitaluga Place.
000428	Ford	Leann Caroline	15 Kent Road
000429	Ford	Leonard	9 Jersey Road
000430	Ford	Marvyn Neil	Lookout Lodge
000431	Ford	Michael	82 Davis Street
000432	Ford	Neil Fraser	6 Drury Street

000433	Ford	Robert	1 Davis Street
000434	Ford	Simon	1 James Street
000435	Ford	Tanya Louise	24 James Street
000436	Forrest	Jennifer Carol	16 Kent Road
000437	Forrest	Michael John	16 Kent Road
000438	Forster	Amanda	9 Fieldhouse Close
000439	Forster	Lynne	5 Discovery Close
000440	Fowler	Daniel Martin	2 Glasgow Road
000441	Fowler	John Andrew Thomas	9 Philomel Street
000442	Fowler	Veronica May	2 Glasgow Road
000443	France	Graham Brian	7 Snake Street
000444	France	Ian Peter	7 Snake Street
000445	France	Jane Aileen Marie	7 Snake Street
000446	Freeman	Carl Francis	10 James Street
000447	Freeman	Dianne May	10 James Street
000448	Freeman	Rachael	10 James Street
000449	Freeman	Tracy	26 Hansen Hill
000450	Freer	Pamela Jane	56 John Street
000451	Freer	Stephen Paul James	56 John Street
000452	Fullerton	Mary Ellen	1 Yates Place
000453	Fyfe	David MacGregor	6 Capricorn Road
000454	George	Kevin Charles	26 Ross Road East
000455	Gilbert	Christopher Paul	11 Campbell Drive
000456	Gilbert	Judith Elizabeth	22 Jeremy Moore Avenue
000457	Gilbert	Mark Ian	22 Jeremy Moore Avenue
000458	Gilbert	Neil Robert	22 Jeremy Moore Avenue
000459	Gilbert	Robert Ernest	22 Jeremy Moore Avenue
000460	Gilbert	Sharon	11 Campbell Drive
000461	Gilson-Clarke	Dustin James	Flat 1 30 Jersey Road
000462	Gisby	Annie	33 Fitzroy Road
000463	Gleadell	Ian Keith	4 Philomel Place
000464	Goodwin	Bonita Colleen	Flat 1 30 Jersey Road
000465	Goodwin	Christopher Sturdee	Lookout Lodge
000466	Goodwin	Colin Valentine	86 Davis Street
000467	Goodwin	Derek Samuel	Flat 1 30 Jersey Road
000468	Goodwin	Emily Rose	7 Brisbane Road
000469	Goodwin	Gareth Kevin	13 Murray Heights
000470	Goodwin	Hazel Rose	3 Police Cottages 7 Ross
000471	Goodwin	June Elizabeth	86 Davis Street
000472	Goodwin	Mandy Hazel	45 Callaghan Road
000473	Goodwin	Rachel Karen	45 Callaghan Road
000474	Goodwin	Robin	45 Callaghan Road
000475	Goodwin	Robin Christopher	27 Callaghan Road
000476	Goodwin	Simon James	Lookout Lodge
000477	Goodwin	Una	27 Callaghan Road
000478	Goodwin	William John Maurice	7 Brisbane Road
000479	Gordon	Robert James Alexander	16 Hansen Hill
000480	Goss	Annagret	16 Jeremy Moore Avenue

000481	Goss	Dorothy Ellen	4 Discovery Close
000482	Goss	Eric Miller	2 Fitzroy Road East
000483	Goss	Ian Ernest Earle	98 Davis Street
000484	Goss	Morgan Edmund	16 Jeremy Moore Avenue
000485	Goss	Roy Shepherd	Gardeners Cottage
000486	Goss	Shirley Ann	2 Fitzroy Road East
000487	Goss	Susan Diann	98 Davis Street
000488	Goss	William Henry (jnr)	7 Brandon Road
000489	Gough	Ivan	8 John Street
000490	Gough	Phyllis Candy	8 John Street
000491	Grant	Milly	3 Moody Street
000492	Gray	David Edward	22 Ross Road West
000493	Gray	Patricia May	22 Ross Road West
000494	Green	David William	Lois Cottage John Street
000495	Greenland	James Andrew William	24 Murray Heights
000496	Greenough	Geoffrey	50 Davis Street
000497	Greenough	Wanda Rose	50 Davis Street
000498	Grimmer	Edward	21 Hansen Hill
000499	Hadden	Alexander Burnett	27 Fitzroy Road
000500	Hadden	Sheila Peggy	27 Fitzroy Road
000501	Halford	Rodney John	Tenacres
000502	Halford	Sara Jayne	Tenacres
000503	Halford	Sharon	Tenacres
000504	Hall	Greg Allan	39 Ross Road
000505	Halliday	Cathy Anne	5 Drury Street
000506	Halliday	Gerald	1 Moody Street Flat 1
000507	Halliday	Jeffrey James	8 Murray Heights
000508	Halliday	Priscilla Alison	9 Villiers Street
000509	Halliday	Raynor	9 Brisbane Road
000510	Hancox	Rachel Mary	5 McKay Close
000511	Hancox	Robert James	9 Ross Road West
000512	Hansen	Douglas John	6 Fitzroy Road
000513	Hansen	Keva Elizabeth	1 Dairy Paddock Road
000514	Hansen	Terence Joseph	41 Eliza Crescent
000515	Hardcastle	Simon Brook	7 Ross Road East
000516	Harris	Christopher James	5 Ross Road East
000517	Harris	Dennis Sefton	19 Callaghan Road
000518	Harris	Heather	3 Ross Road East
000519	Harris	Jill Yolanda Miller	19 Fitzroy Road
000520	Harris	Karl Henry	5a Ross Road East
000521	Harris	Leeann Watson	10 Dairy Paddock Road
000522	Harris	Leslie Sidney	19 Fitzroy Road
000523	Harris	Michael Ronald	3 Ross Road East
000524	Harris	Ralph Aaron	10 Dairy Paddock Road
000525	Harris	Wendy Ann	19 Callaghan Road
000526	Harvey	Muriel Elizabeth Elsie	2 King Street
000527	Harvey	Sheila	8 Barrack Street
000528	Harvey	William	21 Fitzroy Road

000529	Hawksworth	Christopher	29 Fitzroy Road
000530	Hawksworth	Mary Catherine	5A Brisbane Road
000531	Hawksworth	Pauline May	29 Fitzroy Road
000532	Hawksworth	Ryan	29 Fitzroy Road
000533	Hawksworth	Terence	5A Brisbane Road
000534	Hayward	Marjorie	30 Eliza Cove Road
000535	Hayward	Neville	4 Biggs Road
000536	Hayward	Peter Dennis	30 Eliza Cove Road
000537	Hazell	Lee Felton	7 Rowlands Rise
000538	Heathcock	Andrew James	17 Goss Road
000539	Heathman	Malcolm Keith	15 Eliza Cove Road
000540	Heathman	Mandy Gail	15 Eliza Cove Road
000541	Heathman	Nyree	16 Hansen Hill
000542	Heathman	Tara	9 Snake Hill
000543	Henry	Alan Richard	8 Beaver Road
000544	Henry	Patricia Denise	8 Beaver Road
000545	Hernandez Manterola	Miguel Angel	3 Murray Heights
000546	Hernandez Trevello	Maria Elena	3 Murray Heights
000547	Hewitt	Frances Agnes	5 Thatcher Drive
000548	Hewitt	Gary George	3 Hebe Place
000549	Hewitt	Margaret Ann	3 Hebe Place
000550	Hewitt	Rachel Catherine Orissa	4b St. Marys Walk
000551	Hewitt	Robert John David	3 Thatcher Drive
000552	Hewitt	Tara Marie	3 Hebe Place
000553	Hills	Richard William	5 Davis Street
000554	Hirtle	Christine	5 Capricorn Road
000555	Hirtle	Debbie Ann	2b Capricorn Road
000556	Hirtle	Leonard Lloyd	2 Ian Campbell Drive
000557	Hirtle	Michael Barry	2 Ian Campbell Drive
000558	Hirtle	Rose Ann Shirley	4 Villiers Street
000559	Hirtle	Shirley	2 Ian Campbell Drive
000560	Hobman	Anilda Marilu	5 Police Cottages
000561	Hobman	Luis Alfonzo	5 Police Cottages
000562	Hoggarth	Agnes Christina	2 James Street
000563	Howatt	Derek Frank	4 Racecourse Road
000564	Howatt	Suzanna Margaret	4 Racecourse Road
000565	Howe	Alison Delia	36 Davis Street
000566	Howe	Paul Anthony	36 Davis Street
000567	Howells	Anne Stephanie	Flat 2 5 Jeremy Moore
000568	Howells	Roger	Flat 2 5 Jeremy Moore
000569	Hoy	Dawn	2 Dean Street
000570	Humphreys	Hannah Elaine	7 Dean Street
000571	Humphreys	Margaret Anne	6 Yates Place
000572	Hutton	Elizabeth Isabella	3 John Street
000573	Hutton	Philip	3 John Street
000574	Igao	Alejandro Neri	13 Scoresby Close
000575	Igao	Noel Neri	10 Goss Road
000576	Igao	Pauline Lynx	10 Goss Road

000577	Ingham	Rebecca Justine	15 Pioneer Row
000578	Inglis	Alison Anne MacKenzie	9 Short Street
000579	Irvine	Andrew Grant McKenzie	9 McKay Close
000580	Jackson	Kathleen	23 Fitzroy Road
000581	Jackson	Malcolm	23 Fitzroy Road
000582	Jackson	Mark Malcolm	5 Drury Street
000583	Jacobsen	Alistair	1A Philomel Street
000584	Jacobsen	Catherine Joan	1A Philomel Street
000585	Jacobsen	Tanzi	1a Philomel Street
000586	Jaffray	Arlette Sharon	7 Jersey Road
000587	Jaffray	Derek Charles	2 Arch Green
000588	Jaffray	Elaine Michele	8 Discovery Close
000589	Jaffray	Estelle Anita	11 Snake Street
000590	Jaffray	Frank Alexander	8 Discovery Close
000591	Jaffray	Gerard Alan	19 Jersey Road
000592	Jaffray	Helen Rose	84 Davis Street
000593	Jaffray	Jacqueline Ann	17 Watson Way
000594	Jaffray	Janet	3 Fitzroy Road East
000595	Jaffray	John	3 Fitzroy Road East
000596	Jaffray	John Summers	84A Davis Street
000597	Jaffray	John Willie	21 Watson Way
000598	Jaffray	June Elizabeth	17 Ross Road East
000599	Jaffray	Kenneth Ian	7 Jersey Road
000600	Jaffray	Lisa Jane	5 Hebe Street
000601	Jaffray	Phyllis	21 Watson Way
000602	Jaffray	Shaun Melvin	24 Endurance Avenue
000603	Jaffray	Stephen James	5 James Street
000604	Jaffray	Tanya Fiona	5 Hebe Street
000605	Jaffray	Terence Roy	24 Hansen Hill
000606	Jaffray	Terri-Ann	24 Endurance Avenue
000607	Jaffray	Tony	84 Davis Street
000608	Jaffray	Tracy	3 Fitzroy Road East
000609	Jennings	Hamish Warren	76 Davis Street
000610	Jennings	Margaret Ellen	76 Davis Street
000611	Jennings	Neil	K E M H
000612	Jennings	Stephen	5 Fitzroy Road
000613	Johnson	Lily Ann	5 Hebe Street
000614	Johnson	Michael Neil	5 Kent Road
000615	Johnston	Anne Rollason	6 Capricorn Road
000616	Jones	Alan Smith	26 Ross Road West
000617	Jones	David Richard	6 Allardyce Street
000618	Jones	Doreen Evelyn Margaret	6 Allardyce Street
000619	Jones	Evan Glynn	8 Anderson Drive
000620	Jones	Jennifer	26 Ross Road West
000621	Jones	John Hugh	8 Anderson Drive
000622	Jones	Kevin Richard	19 Biggs Road
000623	Jones	Michelle	8 Anderson Drive
000624	Jones	Yvonne Malvina	6 Racecourse Road Flat 1

000625	Jonson	Amy Elizabeth	3 Davis Street
000626	Jordan	Cara Jane	12 Goss Road
000627	Jordan	Ian Phillip	12 Goss Road
000628	Joshua	Josephine Mary	14a Brandon Road
000629	Joshua	Larry Arthur	14a Brandon Road
000630	Keane	Alva Rose Marie	18 Davis Street
000631	Keane	Olaf James	18 Davis Street
000632	Keane	Thomas James	18 Davis Street
000633	Keenleyside	Charles Desmond	3 Pioneer Row
000634	Keenleyside	Dorothy Maud	3 Pioneer Row
000635	Keenleyside	Manfred Michael Ian	2 Snake Street
000636	Keenleyside	Nanette Barbara	2 Snake Street
000637	Kenny	Erling	20 James Street
000638	Kidd	John Nathan	1 Hebe Street
000639	Kidd	Lillian Rose Orissa	1 Hebe Street
000640	Kiddle	Robert Karl	Flat 2 1 Moody Street
000641	King	Anna Constance Eve	34 Ross Road
000642	King	Cherilyn Julie	4 Biggs Road
000643	King	Desmond George Buckley	38 Davis Street
000644	King	Glynis Margaret	13 Ross Road East
000645	King	Michelle Beverley	51 Ross Road East
000646	King	Peter Thomas	10 Jeremy Moore Avenue
000647	King	Robert John	22/24 Davis Street
000648	King	Rosemarie	10 Jeremy Moore Avenue
000649	Kirkham	Campbell Joseph	5 Capricorn Road
000650	Kultschar	John William	4 Davis Street East
000651	Kultschar	Richard Paul	4 Davis Street
000652	Kultschar	Yvonne Rosina	4 Davis Street East
000653	Ladron De Guevara Vilches	Carmen Benilda	22/24 Davis Street
000654	Ladron Guevara	Carmen Benilda	22/24 Davis Street
000655	Ladron Guevara	Simon	22/24 Davis Street
000656	Laffi	Atilio Segundo	3 Brisbane Road
000657	Laffi	Kathleen Mary	3 Brisbane Road
000658	Lang	Colin David	2 Brisbane Road
000659	Lang	David Geoffrey	28 Goss Road
000660	Lang	James Patrick	2 Davis Street
000661	Lang	Marie-Bernard Therese	13 Murray Heights
000662	Lang	Patrick Andrew	8a Moody Street
000663	Lang	Phillippa Josephine	19 Murray Heights
000664	Lang	Sandra Shirleen	Flat 1 6 Jersey Road
000665	Lang	Tamara Colette	4 Barrack Street
000666	Lang	Theresa Margaret	28 Goss Road
000667	Lang	Velma Emily	8a Moody Street
000668	Lang	Wendy Diane	2 Brisbane Road
000669	Lang	William Frank	3 James Street
000670	Larsen	Ellen	74 Davis Street
000671	Lazo	Javier Waldemar Sanchez	80 Davis Street
000672	Lazo	Joanna Rose	80 Davis Street

000673	Lee	Alfred Leslie	11 Drury Street
000674	Lee	Beverley Christina	10 Allardyce Street
000675	Lee	Gladys	11 Drury Street
000676	Lee	Joanne Hazel Rose	4 Pioneer Row
000677	Lee	Leslie James	10 Allardyce Street
000678	Lee	Mandy John	15 James Street
000679	Lee	Mervyn Richard	10 Allardyce Street
000680	Lee	Myles	14 Davis Street
000681	Lee	Nicola Ruth	3 Davis Street
000682	Lee	Owen Henry	4 Pioneer Row
000683	Lee	Tanya	15 Campbell Drive
000684	Lee	Trudi Dale	10 Allardyce Street
000685	Lee	Victoria Jane	Y.M.C.A
000686	Legg	Robert Keith	Lookout Lodge
000687	Lennie	Elane Maria	9 Narrows View
000688	Lennie	Gordon Carnie	9 Narrows View
000689	Lewis	David James	3 Ian Campbell Drive
000690	Lewis	James	2b St. Marys Walk
000691	Lewis	Jason	9 Short Street
000692	Lewis	Jean	2b St. Marys Walk
000693	Lewis	Pamela Irene	3 Ian Campbell Drive
000694	Leyland	Frank	10 Brandon Road
000695	Leyland	Vera	10 Brandon Road
000696	Liddle	Alison Catherine	7 Fitzroy Road East
000697	Liddle	Gordon Malcolm	7 Fitzroy Road East
000698	Limburn	Monica	1 Moody Street Flat 3
000699	Livermore	Anton	33 Callaghan Road
000700	Livermore	Isla Karen	Flat 4 7 Jeremy Moore
000701	Llamosa	Theresa Kathleen	25 Shackleton Drive
000702	Lloyd	Melvyn John	31 Ross Road West
000703	Lloyd	Valerie Ann	31 Ross Road West
000704	Loftus	Geoffrey	11 Firzroy Road
000705	Loveridge	Daniel Nolan	11 Short Street
000706	Loveridge	Marie Pearl	11 Short Street
000707	Lowe	Anthony Trevor	54 Davis Street
000708	Luxton	Jennifer Mary	4 Hebe Place
000709	Luxton	Michael	1A Pioneer Row
000710	Luxton	Nicola	1A Pioneer Row
000711	Luxton	Robin	1 Jersey Road
000712	Luxton	Stephen Charles	7 Narrows View
000713	Luxton	Sybil Grace	38 John Street
000714	Luxton	Wendy Jennifer	1 Jersey Road
000715	Luxton	Winifred Ellen	15 Fitzroy Road
000716	Lyse	Ethel Malvina	65 Fitzroy Road
000717	Lyse	Linda Margaret	65 Fitzroy Road
000718	Macaskill	Angus Lindsay	8 Jeremy Moore Avenue
000719	Macaskill	Jeanette May	8 Jeremy Moore Avenue
000720	Macaskill	John	34 Ross Road West

000721	Macaskill	Robert John	1 Brisbane Road
000722	Macaskill	Tracey Jayne	1 Brisbane Road
000723	MacDonald	Andrew James	Flat 2 6 Jersey Road
000724	MacDonald	Colin George	Flat 2 6 Jersey Road
000725	MacDonald	Derek George	Flat 6 7 Jeremy Moore
000726	MacDonald	Irene	Flat 2 6 Jersey Road
000727	Maddocks	Robert Charles	11 Murray Heights
000728	Marrow	Elizabeth Alice	13 Jeremy Moore Avenue
000729	Marsh	Kevin Roy	36 Ross Road East
000730	May	Angela Jane	11 Jersey Road
000731	May	Brian Roy	21 Jeremy Moore Avenue
000732	May	Bruce Raymond	9 Kent Road
000733	May	Christopher Raymond	9 Callaghan Road
000734	May	Connie	9 Kent Road
000735	May	Donna Monica	17 Davis Street
000736	May	Heather	1 Glasgow Road
000737	May	Jonathan Roy	12 Jeremy Moore Avenue
000738	May	Lindsey Olga	9 Callaghan Road
000739	May	Lucinda Vikki	12 Jeremy Moore Avenue
000740	May	Monica	21 Jeremy Moore Avenue
000741	May	Roger	11 Jersey Road
000742	May	William Albert	1 Glasgow Road
000743	McBain	Arthur	29 Goss Road
000744	McBain	Rhoda Margaret	29 Goss Road
000745	McCallum	Bettina Kay	14 Drury Street
000746	McCallum	Christopher John	8A Jeremy Moore Avenue
000747	McCallum	Tanya	8a Jeremy Moore Avenue
000748	McCallum	Timothy Andrew	14A Drury Street
000749	McCormick	Dale Ronald	24 Eliza Crescent
000750	McCormick	Wayne Stanley James	12 Endurance Avenue
000751	McGill	Cara Jane	6a Jeremy Moore Avenue
000752	McGill	Coral Elizabeth	3 Allardyce Street
000753	McGill	Darrel Ian	20 Jeremy Moore Avenue
000754	McGill	David William	17 James Street
000755	McGill	Derek Gary	12 Scoresby Close
000756	McGill	Diane Beverley	2 James Street
000757	McGill	Doris Mary	32 Davis Street
000758	McGill	Gary	16 St Mary's Walk
000759	McGill	Glenda	1c Capricorn Road
000760	McGill	Heather Margaret	17 James Street
000761	McGill	Ian Peter	1c Capricorn Road
000762	McGill	Len Stanford	2 James Street
000763	McGill	Lorraine Iris	10 Ross Road East
000764	McGill	Teresa Rose	26 Ross Road East
000765	McGinness	Janice	10 Beaver Road
000766	McKay	Christine	6 Drury Street
000767	McKay	Clara Mary	20 Ross Road West
000768	McKay	Georgina Rose	84a Davis Street

000769	McKay	Heather Valerie	16 Eliza Crescent
000770	McKay	Jeannie Paullina	64 Davis Street
000771	McKay	Jennifer Coral	24 Eliza Crescent
000772	McKay	John David Toby	51 Callaghan Road
000773	McKay	Mandy Rose	51 Callaghan Road
000774	McKay	Melvyn Andrew	55 Davis Street
000775	McKay	Michael John	64 Davis Street
000776	McKay	Neil	62 Davis Street
000777	McKay	Paul Anthony	3 Nutt Cartmel Drive
000778	McKay	Peter John	21 Ross Road West
000779	McKay	Rex	16 Eliza Crescent
000780	McKay	Shelley Jane	7 Villiers Street
000781	McKay	Trudi Ann	10 Ian Campbell Drive
000782	McKay	William Robert	20 Ross Road West
000783	McKee	Miranda	12 Watson Way
000784	McKee	Richard Buick	12 Watson Way
000785	McKenzie	Alice Maude	Moody Brook Homestead
000786	McKenzie	Charles Alexander Albert	Moody Brook Homestead
000787	McLaren	Caroline Mary	12 Allardyce Street
000788	McLaren	Kevin Derek Charles	51 Callaghan Road
000789	McLaren	Tony Eugene Terence	12 Allardyce Street
000790	McLeod	David	49 Callaghan Road
000791	McLeod	Glenda Otadoy	49 Callaghan Road
000792	McLeod	Ian	9 Fitzroy Road
000793	McLeod	Ian James	30 Endurance Avenue
000794	McLeod	Jane Elizabeth Diana	5 Pitaluga Place
000795	McLeod	Janet Wensley	75 Davis Street
000796	McLeod	Janice	2 Ross Road West
000797	McLeod	Joan May	1a Moody Street
000798	McLeod	John (1)	1 Campbell Drive
000799	McLeod	John (2)	23 Hansen Hill
000800	McLeod	Louise	1 Campbell Drive
000801	McLeod	Madeline Jean	1 Campbell Drive
000802	McLeod	Mally	9 Fitzroy Road
000803	McLeod	Margaret Ann	13 Fitzroy Road East
000804	McLeod	Michael William	5 Short Street
000805	McLeod	Pearl Mary Ann	3 Brisbane Road
000806	McLeod	Robert	75 Davis Street
000807	McLeod	Robert John	2 Ross Road West
000808	McMullen	June	8 Brandon Road
000809	McMullen	Lucille Anne	6a John Street
000810	McMullen	Matthew John	5 Fieldhouse Close
000811	McMullen	Tony	8 Brandon Road
000812	McPhee	Denise	4 Brandon Road West
000813	McPhee	Iris Blanche	31 Ross Road East
000814	McPhee	Justin Owen	4 Brandon Road West
000815	McPhee	Marjorie May	14 John Street
000816	McPhee	Owen Horace	14 John Street

000817	McPhee	Patrick	31 Ross Road East
000818	McPhee	Sara	1 Hebe Place
000819	McRae	David Michael	2 H Jones Road
000820	McRae	Elvis Richard	Lookout Lodge
000821	McRae	Gloria Linda	2 H Jones Road
000822	McRae	Kerry Jane	10 Watson Way
000823	McRae	Mandy	1 James Street
000824	McRae	Michael	10 Watson Way
000825	McRae	Richard Winston	Flat 6 6 Racecourse Road
000826	Medforth	Natasha Bonita	6 Jersey Road
000827	Middleton	Brian	13 McKay Close
000828	Middleton	Caren	5 Beaver Road
000829	Middleton	Caroline Ann	7 James Street
000830	Middleton	Dennis Michael	Dolphin Cottage
000831	Middleton	Graham Cyril	50 Davis Street
000832	Middleton	Joan Eliza	8 James Street
000833	Middleton	Kerry Ann	Dolphin Cottage
000834	Middleton	Leonard	67 Fitzroy Road
000835	Middleton	Nevin Alexander	5 Beaver Road
000836	Middleton	Phillip John	5 St Marys Walk
000837	Middleton	Sharon Elizabeth	Dolphin Cottage
000838	Middleton	Stephanie Anne	13 McKay Close
000839	Middleton	Yvonne Allison	50 Davis Street
000840	Miller	Andrew Nigel	12 Brisbane Road
000841	Miller	Bruce Graham	10 Pioneer Row
000842	Miller	Carol	Marine Cottage, Moody
000843	Miller	Gail Marie	6a Brisbane Road
000844	Miller	Janet Mary	Market Garden Hse Airport
000845	Miller	Jayne Elizabeth	27 Davis Street
000846	Miller	Jeanette	10 Pioneer Row
000847	Miller	Simon Roy	Marine Cottage, Moody
000848	Miller	Steven Geoffrey	Flat 7 1 Jeremy Moore
000849	Miller	Steven Geoffrey	Flat 7 1 Jeremy Moore
000850	Miller	Timothy John Durose	Market Garden Hse Airport
000851	Mills	Terence Kenneth	43 Callaghan Road
000852	Minnell	Adrian James	Flat 4 30 Jersey Road
000853	Minnell	Michelle Rose	41 Eliza Crescent
000854	Minto	Alistair Daen	Lookout Lodge
000855	Minto	Barbra Pennisi	9 Fitzroy Road
000856	Minto	Dilys Rose	18 Endurance Avenue
000857	Minto	Graham Stewart	15 James Street
000858	Minto	Patrick Andrew	3b Jersey Road
000859	Minto	Timothy Ian	18 Enurance Avenue
000860	Miranda	Augusto	31 Davis Street
000861	Miranda	Carmen	20 Davis Street
000862	Miranda	Ramon	3 Drury Street
000863	Miranda	Winifred Dorothy	3 Drury Street
000864	Mitchell	Leon John	6 Discovery Close

000865	Moffatt	Angela	20 Ross Road East
000866	Moffatt	James	20 Ross Road East
000867	Moffatt	Jay	20 Ross Road East
000868	Moffatt	Kelly	20 Ross Road
000869	Moffatt	Sean	20 Ross Road East
000870	Molkenbuhr	Lee Charles	19 Sullivan Street
000871	Morris	Alana Marie	4 Callaghan Road
000872	Morris	David	4 Callaghan Road
000873	Morris	Jason Paul	59 Fitzroy Road
000874	Morris	Michelle Jane	Lady Hunt House John Street
000875	Morris	Trevor Alan	6 McKay Close
000876	Morrison	Doreen	82 Davis Street
000877	Morrison	Edgar Ewen	4 Capricorn Road
000878	Morrison	Fayan	54 John Street
000879	Morrison	Graham Stewart	34a Davis Street
000880	Morrison	Jacqueline Denise Anita	13 Ian Campbell Drive
000881	Morrison	Joan Margaret	3 Felton Court
000882	Morrison	Joanne Elizabeth	3 Racecourse Road East
000883	Morrison	Joleen Coleen	3 Felton Court
000884	Morrison	Kenneth	13 Ian Campbell Drive
000885	Morrison	Lewis Ronald	12 Callaghan Road
000886	Morrison	Marcus Lewis	82 Davis Street
000887	Morrison	Michael John	10 Fitzroy Road East
000888	Morrison	Muriel Eliza Ivy	7 Thatcher Drive
000889	Morrison	Nanette Rose	46 Davis Street
000890	Morrison	Nichola Jane	4 Capricorn Road
000891	Morrison	Nigel Peter	3 Felton Court
000892	Morrison	Patrick	1 Brandon Road West
000893	Morrison	Paul Roderick	3 Racecourse Road East
000894	Morrison	Ronald Terence	5 Racecourse Road
000895	Morrison	Russell John Allan	9 Discovery Close
000896	Morrison	Stewart	46 Davis Street
000897	Morrison	Susan Margaret	10 Fitzroy Road East
000898	Morrison	Tamara	21 Hansen Hill
000899	Morrison	Timothy	YMCA
000900	Morrison	Violet Sarah	5 Racecourse Road
000901	Morrison	William Roderick Halliday	54 John Street
000902	Munro	Grant Mackintosh	69 Fitzroy Road
000903	Murphy	Andrew	2 King Street
000904	Murphy	Ann Susan	2 King Street
000905	Murphy	Bessie	4a St Mary's Walk
000906	Neilson	Barry Marwood	23 Ross Road
000907	Neilson	Edward Sydney	23 Ross Road
000908	Neilson	Harold Ian	6a Moody Street
000909	Neilson	Margaret	23 Ross Road
000910	Newell	Joseph Orr	3 Villiers Street
000911	Newell	Paula Michelle	Felton Stream Cottage
000912	Newell	Trudi Malvina	3 Villiers Street

000913	Newman	Andrew Raymond	51 Ross Road East
000914	Newman	Marlene	11 Jeremy Moore Avenue
000915	Newman	Raymond Winston	2 Yates Place
000916	Newman	Tansy Fiona	5 Jersey Road
000917	Newman	Terence	24 Endurance Avenue
000918	Nutter	Arthur Albert	9 Brandon Road
000919	Nutter	Josephine Lesley	9 Brandon Road
000920	O'Dean	Barry Charles	Lookout Lodge
000921	Olmedo	Alex	6 Watson Way
000922	Ormond	Christina Helen	6 Goss Road
000923	Ormond	Kevin Michael Patrick	6 Goss Road
000924	Ormond	Terrianne Helen	6 Goss Road
000925	Paice	Corrinne	3 Racecourse Road
000926	Paice	Craig Arthur	3 Racecourse Road
000927	Parke	James Fred	8 Endurance Avenue
000928	Parke	Janet Margaret	8 Endurance Avenue
000929	Parrin	Norman George	7 Yates Place
000930	Patterson-Smith	Ian Colin	15 Watson Way
000931	Pauloni	Hilary Maud	63 Fitzroy Road
000932	Pauloni	Romolo Vittorio	63 Fitzroy Road
000933	Paver	Bernadette Marguerite	Moody Brook House
000934	Payne	Dilys Agnes	2 Racecourse Road East
000935	Payne	Joanne Francis	2 Racecourse Road East
000936	Payne	Samantha Jane	2 Racecourse Road East
000937	Payne	St. John Peter	2 Racecourse Road East
000938	Peake	Arthur	19 James Street
000939	Peck	Burnerd Brian	22 James Street
000940	Peck	Carol Margaret	9 Rowlands Rise
000941	Peck	Christine	21 Jersey Road
000942	Peck	David John	15 Villiers Street
000943	Peck	David Patrick	78 Davis Street
000944	Peck	Eleanor Margaret	10 Davis Street
000945	Peck	Gordon Pedro James	34 Eliza Crescent
000946	Peck	Harwood John Charles	26 Eliza Crescent
000947	Peck	James	2 Barrack Street
000948	Peck	Maureen Heather	78 Davis Street
000949	Peck	Patrick William	78 Davis Street
000950	Peck	Shirley	2 Barrack Street
000951	Peck	Terence John	10 Davis Street
000952	PED		6 Beaver Road
000953	Ped	Mila Boybanting	6 Beaver Road
000954	Pennisi	Gladys Elisabeth	5 Villiers Street
000955	Perkins	Vivienne Esther Mary	33 John Street
000956	Perry	Hilda Blanche	6a St Marys Walk
000957	Perry	Thora Virginia	2 Thatcher Drive
000958	Peters	Shirley Vyona	1 Short Street
000959	Pettersson	Derek Richard	21 Eliza Crescent
000960	Pettersson	Tony	30 Davis Street

000961	Pettersson	Trudi Ann	21 Eliza Crescent
000962	Phillips	David Dawson	35 Fitzroy Road
000963	Phillips	Elisa	35 Fitzroy Road
000964	Phillips	Lynda	16 Brandon Road
000965	Phillips	Paul David	Waterfront Ross Road
000966	Phillips	Shula Louise	19 Sullivan Street
000967	Platt	Claire	5 Villiers Street
000968	Pole-Evans	Amy Rose	4 McKay Close
000969	Pole-Evans	John	16 Ross Road East
000970	Pole-Evans	Lisa	6a Moody Street
000971	Pole-Evans	Martin	36 Ross Road East
000972	Pole-Evans	Michael Anthony	4 McKay Close
000973	Pole-Evans	Paula	5 Biggs Road
000974	Pollard	Andrew Keith	4 Hebe Place
000975	Pollard	Elizabeth Eve	23 Ross Road East
000976	Pollard	John	23 Ross Road East
000977	Pollard	Mark John	4 Hebe Place
000978	Pompert	Joost Herman Willem	11 Ross Road West
000979	Poncet	Lars Nigel	2 Brandon Road West
000980	Poncet	Leiv	2 Brandon Road West
000981	Poncet	Sally Elizabeth	2 Brandon Road West
000982	Poole	Andrea Joan	52 John Street
000983	Poole	Christopher William	52 John Street
000984	Poole	Evelyn May	31 Fitzroy Road
000985	Poole	Michael James	52 John Street
000986	Poole	Nancy Margaret	52 John Street
000987	Poole	Raymond John	52 John Street
000988	Poole	Ross William	52 John Street
000989	Poole	Toby Raymond	52 John Street
000990	Poole	William John	31 Fitzroy Road
000991	Porter	Charles	11 Fitzroy Road
000992	Porter	Jean Lavinia	11 Fitzroy Road
000993	Porter	Tracy	5 Jeremy Moore Avenue
000994	Pratlett	Patricia Carol Ann	10 A James Street
000995	Prindle-Middleton	Stella Margaret	5 St Mary's Walk
000996	Pring	Bernadette June Spencer	5a Ross Road West
000997	Pring	Geoffrey Alan	5a Ross Road West
000998	Purvis	Alan	3 Narrows View
000999	Purvis	Marion Louise	3 Narrows View
001000	Reddick	Keith John	By-Pass Road
001001	Reeves	Carolyn Wendy	2 Moody Street
001002	Reeves	Jill Edith	3 Jeremy Moore Avenue
001003	Reeves	Michael	2 Moody Street
001004	Reid	Ann	Lois Cottage John Street
001005	Reid	Beverley Rose	12 James Street
001006	Reid	Colleen Rose	9 Fitzroy Road East
001007	Reid	John Alexander	41 Fitzroy Road
001008	Reid	Reynold Gus	4 Fieldhouse Close

001009	Reid D'Avino	Pamela Ruth	7 John Street
001010	Reive	Roma Endora Mary	8a St Marys Walk
001011	Rendell	Michael	8 Ross Road West
001012	Rendell	Nicholas Simon Oliver	8 Ross Road West
001013	Rendell	Phyllis Mary	8 Ross Road West
001014	Richards	Shirley	8a James Street
001015	Roberts	Cheryl Ann Spencer	49 Ross Road East
001016	Roberts	David Anthony	1 Mountain View
001017	Roberts	Laura May	7 Kent Road
001018	Roberts	Lynn	3 Gleadell Close
001019	Roberts	Peter James	49 Ross Road East
001020	Robertson Pompert	Janet	11 Ross Road West
001021	Robson	Alison Emily	15 Villiers Street
001022	Robson	Cherry Rose	5 Philomel Street
001023	Robson	Debbi Louisa	6 Felton Court
001024	Robson	Gerard Michael	1 Philomel Place
001025	Robson	Miranda Gay	6 Brisbane Road
001026	Robson	Patricia Jayne	18 Ross Road East
001027	Robson	Phyllis Ann	1 Philomel Place
001028	Robson	Raymond Nigel	6 Brisbane Road
001029	Robson	William Charles	18 Ross Road East
001030	Rodriguez Reid	Elizabeth Jayne	33 Ross Road West
001031	Ross	Andrea Joanna Ampuero	4 Rowlands Rise
001032	Ross	Claudio Javier Ampeuro	10 Murray Heights
001033	Ross	Glenn Stephen	23 Watson's Way
001034	Ross	Janet	23 Watson's Way
001035	Ross	Kerri-Anne	23 Watson Way
001036	Ross	Kevin John	70 Davis Street
001037	Ross	Lachlan Neil	7 Discovery Close
001038	Ross	Marie	70 Davis Street
001039	Ross	Rebecca Jane	70 Davis Street
001040	Ross	Roy	19 Jersey Road
001041	Ross	Sheena Margaret	2 Mountain View
001042	Rowland	Charlene Rose	19 Jeremy Moore Avenue
001043	Rowland	John Christopher	19 Jeremy Moore Avenue
001044	Rowland	Sarah Anne	19 Jeremy Moore Avenue
001045	Rowlands	Catherine Annie	3 Hebe Street
001046	Rowlands	Daisy Malvina	39 John Street
001047	Rowlands	Dorinda Roberta	3a Hebe Street
001048	Rowlands	Neil	3A Hebe Street
001049	Rowlands	Robert John	13 Callaghan Road
001050	Rozee	Betty Ellen	16 Davis Street
001051	Rozee	Derek Robert Thomas	16 Davis Street
001052	Rozee	Karen Michella	16 Davis Steet
001053	Rozee	Shona Mary	5 Pitaluga Place
001054	Sackett	Albert John	25a Ross Road East
001055	Sackett	Michael John Carlos	25a Ross Road East
001056	Sackett	Pauline	25 Ross Road East

001057	Sawle	Judith Margaret	Seaview Cottage Ross Road
001058	Sawle	Richard	Seaview Cottage Ross Road
001059	Seron	Jose Segundo	M/V Tamar C/o Byron Marine
001060	Shcherbich	Zhanna Nikolaevna	27 Goss Road
001061	Shepherd	Ramsey	4 Discovery Close
001062	Short	Alison	9 Pioneer Row
001063	Short	Brenda	11 Barrack Street
001064	Short	Celia Soledad	1 Racecourse Road
001065	Short	Christina Ethel	12 Brandon Road
001066	Short	Derek Patrick	16 Ross Road West
001067	Short	Dilys Margaret Ann	30 Jersey Road
001068	Short	Emily Christina	1 Fitzroy Road East
001069	Short	Gavin Phillip	Flat 7 6 Jersey Road
001070	Short	John Mark	6 Jersey Road Flat 7
001071	Short	Marc Peter	1 Racecourse Road
001072	Short	Marlene Cindy	9 Pitaluga Place
001073	Short	Montana Tyrone	4 Dairy Paddock Road
001074	Short	Nabil George	4 Dairy Paddock Road
001075	Short	Peter Robert	1 Fitzroy Road East
001076	Short	Richard Edward	9 Pitaluga Place
001077	Short	Riley Ethroe	11 Barrack Street
001078	Short	Vilma Alicia	4 Dairy Paddock Road
001079	Simmonds	Donald Rodney Falkland	48 Davis Street
001080	Simpson	Bertha Veronica	8 Rowlands Rise
001081	Simpson	James Alexander Bruce	7 Racecourse Road
001082	Simpson	James Garry	7 Racecourse Road
001083	Simpson	John Frederick	8 Rowlands Rise
001084	Simpson	Mirabel Hermione	7 Racecourse Road
001085	Sinclair	Veronica Joyce	21 Ross Road West
001086	Skene	Greta Winnora Miller	22 Ross Road East
001087	Smallwood	Akira Ali	105 Davis Street
001088	Smallwood	Margo Amee	105 Davis Street
001089	Smallwood	Michael Anthony	105 Davis Street
001090	Smith	Anthony David	38 Ross Road
001091	Smith	Caroline	2 Ross Road West
001092	Smith	Colin David	6 James Street
001093	Smith	Crystal Rose	Flat 4 1 Jeremy Moore Avenue
001094	Smith	Derek	8 Eliza Crescent
001095	Smith	Eric	Flat 2 1 Moody Street
001096	Smith	George Patterson	15 Watson Way
001097	Smith	Gerard Alexander	8 Barrack Street
001098	Smith	Gina Ruth Mary	28 Jersey Road
001099	Smith	Heather	19 Watson Way
001100	Smith	Ian Lars	5 Brandon Road
001101	Smith	Ileen Rose	28 Ross Road West
001102	Smith	James Terence	3 Fitzroy Road West
001103	Smith	Jennifer Ethel	6 Watson Way
001104	Smith	Jenny Lorraine	15 Watson Way

001105	Smith	John	28 Ross Road West
001106	Smith	John Derek	Flat4 1 Jeremy Moore Avenue
001107	Smith	Julia Trinidad	8 Eliza Crescent
001108	Smith	Martyn James	6A Ross Road West
001109	Smith	Michael Edmund	39 Eliza Crescent
001110	Smith	Natalie Marianne	6 James Street
001111	Smith	Nora Kathleen	5 Fitzroy Road East
001112	Smith	Paul	2 Ross Road West
001113	Smith	Paulette Rose	KEMH
001114	Smith	Robin Charles	19 Watson Way
001115	Smith	Roy Alan	11 Brandon Road
001116	Smith	Russell James	8 Fieldhouse Close
001117	Smith	Tyssen John Richard	28 Jersey Road
001118	Socodo	Pheobe Esther	Flat 6 I Jeremy Moore Avenue
001119	Sollis	Sarah Emma Maude	20 Drury Street
001120	Spicer	Mark Anthony	16 St Mary's Walk
001121	Spicer	Susan	16 St. Marys Walk
001122	Spink	Roger Kenneth	43 Ross Road East
001123	Spinks	Malvina Ellen	8 Yates Place
001124	Spruce	Helena Joan	29 Ross Road West
001125	Spruce	Mark Felton	29 Ross Road West
001126	Spruce	Terence George	29 Ross Road West
001127	Steen	Barbara Ingrid	39 Ross Road West
001128	Steen	Karen Lucetta	32 Fitzroy Road
001129	Steen	Kimberley Joanna	21 St Marys Walk
001130	Steen-MacDonald	Stacey Louise	3 Ian Campbell Drive
001131	Stenning	Anna Russalka	5B Ross Road West
001132	Stenning	Timothy Charles	5B Ross Road West
001133	Stephenson	Joan Margaret	Moody Valley House
001134	Stephenson	Katrina	4 Davis Street
001135	Stephenson	Zachary	4 Davis Street
001136	Stevens	Adrian John	Lady Hunt House John Street
001137	Stevens	Paul Theodore	6 Dairy Paddock Road
001138	Stevens	Valerie Ann	6 Dairy Paddock Road
001139	Stewart	Celia Joyce	12 St Marys Walk
001140	Stewart	Hulda Fraser	24 Ross Road West
001141	Stewart	Ian Bremner	34 Ross Road East
001142	Stewart	Irene Anne	Flat 3 6 Jersey Road
001143	Stewart	Kenneth Barry	3 Discovery Close
001144	Stewart	Pam Ellen	18 Endurance Avenue
001145	Stewart	Robert	12 St Marys Walk
001146	Stewart	Robert William	Flat 3 6 Jersey Road
001147	Stewart	Sheila Olga	34 Ross Road East
001148	Stewart	Sylvia Rose	7 Ross Road West
001149	Stewart-Reid	Carol Ellen Eva	41 Fitzroy Road
001150	Strange	Georgina	The Dolphins Snake Street
001151	Strange	Maria Marta	The Dolphins Snake Street
001152	Strange	Shona Marguerite	6b Ross Road West

001153	Summers	Brian	1 Ross Road East
001154	Summers	Dawn Rose	6 Biggs Road
001155	Summers	Deborah	14 Pioneer Row
001156	Summers	Dorothy Constance	42 Eliza Crescent
001157	Summers	Edith Catherine	5 Dean Street
001158	Summers	Irvin Gerard	Sir Rex Hunt House
001159	Summers	Jacqueline	11 Pioneer Row
001160	Summers	Jonathan Derek	5 Allardyce Street
001161	Summers	Judith Orissa	1 Ross Road East
001162	Summers	Lynn Jane	20 Jeremy Moore Avenue
001163	Summers	Michael Kenneth	6A Brisbane Road
001164	Summers	Michael Victor	11 Pioneer Row
001165	Summers	Naomi Christine	6a Brisbane Road
001166	Summers	Owen William	5 Brandon Road
001167	Summers	Rowena Elsie	5 Allardyce Street
001168	Summers	Roy	32 Eliza Crescent
001169	Summers	Sheila	Sir Rex Hunt House
001170	Summers	Sybella Catherine Ann	1 Ross Road West
001171	Summers	Sylvia Jean	8 Racecourse Road
001172	Summers	Terence	1 Ross Road West
001173	Summers	Tony	8 Racecourse Road
001174	Summers	Veronica	5 Brandon Road
001175	Sutcliffe	Lindsey Claire	3A Allardyce Street
001176	Sutherland	John Gall	3 Mountain View
001177	Sytchov	Vladimir	1 Felton Court
001178	Sytchova	Natalia Mikhaylovna	1 Felton Court
001179	Teale	Colin Edwin	8 Brisbane Road
001180	Teale	Jeannette	8 Brisbane Road
001181	Tellez	Arturo	6a Narrows View
001182	Tellez	Charlotte Melize	28 Jersey Road
001183	Tellez	Jose Hector	2 Hodson Villa West
001184	Thain	John	8 Davis Street
001185	Thain	Stephanie Ann	8 Davis Street
001186	Thom	David Anderson	47 Fitzroy Road
001187	Thom	Dorothy Irene	47 Fitzroy Road
001188	Thom	John Currie	25 Ross Road East
001189	Thom	Norma Ann	92 Davis Street
001190	Thomas	Jacqueline Joyce	11 Callaghan Road
001191	Thomas	Justin Paul	11 Callaghan Road
001192	Thompson	William John	Flat2 1 Moody Street
001193	Thorsen	Carol Margaret	17 Scoresby Close
001194	Thorsen	David Moller	17 Scoresby Close
001195	Tomlinson	Anita Helen	4 Ross Road
001196	Triggs	David William	3 Fieldhouse Close
001197	Triggs	Diane	3 Fieldhouse Close
001198	Triggs	Donna Louise	3 Fieldhouse Close
001199	Triggs	Michael David	3 Fieldhouse Close
001200	Tuckwood	John Rodney	1 Drury Street

001201	Tuckwood	Phyllis Majorie	1 Drury Street
001202	Turner	Diana Jane	8 Thatcher Drive
001203	Turner	Melvyn George	36 John Street
001204	Turner	Ronald	KEMH
001205	Tyrrell	Garry Bernard	1 Beaver Road
001206	Tyrrell	Gina Michelle	1 Beaver Road
001207	Valler	Glyndwr Huw	Flat4 8 Jersey Road
001208	Vidal Roberts	Leona Lucila	1 Mountain View
001209	Villalon	Hector Ricardo	7 McKay Close
001210	Villegas	Caroline	7 Fieldhouse Close
001211	Vincent	Janette Mary	10 Endurance Avenue
001212	Vincent	Stephen Lawrence	10 Endurance Avenue
001213	Wade	Donald Harold	17 Murray Heights
001214	Wade	June Rose Elizabeth	17 Murray Heights
001215	Wallace	Fiona Alice	21 Murray Heights
001216	Wallace	Fraser Barrett	10 John Street
001217	Wallace	Helen Jean	10 John Street
001218	Wallace	Ian	23 Callaghan Road
001219	Wallace	James Barrett	38 Ross Road West
001220	Wallace	Maria Lilian	38 Ross Road West
001221	Wallace	Michael Ian	23 Callaghan Road
001222	Wallace	Stuart Barrett	38 Ross Road West
001223	Wallace	Una	23 Callaghan Road
001224	Ward	Alison Denise	9 Anderson Drive
001225	Ward	Dennis James	9 Anderson Drive
001226	Watson	Ben	7 Moody Street
001227	Watson	Paul	20 Endurance Avenue
001228	Watson	Ruth Jane	20 Endurance Avenue
001229	Watt	Stephen Robert	11 Narrows View
001230	Watt	Sylvia Ann	11 Narrows View
001231	Watts	Patrick James	13 Brisbane Road
001232	Webb	Gary Colin	58 Davis Street
001233	Webb	Loretta Isobel	58 Davis Street
001234	White	Judy Marie	Flat 1 3 Jeremy Moore
001235	White	Kathleen Elizabeth	9 Thatcher Drive
001236	Whitney	Frederick William	1 Police Cottages 9 Ross
001237	Whitney	Henry Leslie	4 Thatcher Drive
001238	Whitney	Jason	15 Ross Road East
001239	Whitney	Kurt Ian	2 Pioneer Row
001240	Whitney	Lana Rose	22 Eliza Crescent
001241	Whitney	Leona Ann	5 Kent Road
001242	Whitney	Susan Joan	1 Police Cottages 9 Ross
001243	Wilkinson	Alistair Graham	5 Felton Court
001244	Wilkinson	Johan	5 Felton Court
001245	Wilkinson	Robert John	2a Brisbane Road
001246	Wilks	Bruce Allan	11 Fieldhouse Close
001247	Wilks	Susan Jean	11 Fieldhouse Close
001248	Williams	Eugene	23 Ross Road West

001249	Williams	Gillian Carol	Flat4 1 Jeremy Moore Avenue
001250	Williams	Glen	33 Ross Road East
001251	Williams	Margaret Elizabeth	33 Ross Road East
001252	Williams	Marlene Rose	23 Ross Road West
001253	Winter	Teresa Irene	4A Jeremy Moore Avenue
001254	Wylie	Julian Richard	1 McKay Close
001255	Yon	Gillian Rose	Ross Complex
001256	Zuvic-Bulic	Kuzma Mario	Holdfast House, Holdfast
001257	Zuvic-Bulic	Sharon Marie	Holdfast House, Holdfast

000001	Alazia	George Robert	Hope Cottage East Falkland
000002	Alazia	Hazel	Blue Beach East Falkland
000003	Alazia	Keith	Goose Green East Falkland
000004	Alazia	Mandy Gwyneth	Port Edgar Farm West Falkland
000005	Alazia	Michael Robert	Port Edgar Farm West Falkland
000006	Aldridge	Brian George	Goose Green East Falkland
000007	Aldridge	Diana Mary	Goose Green East Falkland
000008	Aldridge	Olive Elizabeth	Hill Cove West Falkland
000009	Aldridge	Terence William	Hill Cove West Falkland
000010	Anderson	Rupert William	Port Howard West Falkland
000011	Anderson Smith	Georgina Carol	Smylies Farm East Falkland
000012	Ashworth	Glennis	Riverside Farm East Falkland
000013	Ashworth	Iain	Riverside Farm East Falkland
000014	Ashworth	Malcolm	Riverside Farm East Falkland
000015	Bagley	Darren Clive	Riverview Farm East Falkland
000016	Bagley	Jacqueline Elizabeth	Riverview Farm East Falkland
000017	Barnes	Dierdre	Dunbar Farm West Falkland
000018	Barnes	Marshall	Dunbar Farm West Falkland
000019	Barrientos	Jose Sixto Ruiz	North Arm East Falkland
000020	Beattie	Ian Robert Ewen	North Arm East Falkland
000021	Berntsen	Arina Janis	Pebble Island
000022	Berntsen	Benjamin John	Elephant Beach East Falkland
000023	Berntsen	Leon	Albermarle Station West Falkland
000024	Berntsen	Pamela Margaret	Albermarle Station West Falkland
000025	Betts	Bernard Keith	Boundary Farm West Falkland
000026	Betts	Diane Joan	Boundary Farm West Falkland
000027	Betts	Irene Marion	Boundary Farm West Falkland
000028	Binnie	Horace James	Fox Bay Village West Falkland
000029	Bonner	Katie Jean	Port Howard West Falkland
000030	Bonner	Simon	Port Howard West Falkland
000031	Bonner	Susan Anne	Port Howard West Falkland
000032	Butler	Charmaine Sarah	Fitzroy East Falkland
000033	Chater	Anthony Richard	New Island
000034	Clark	Frederick Thomas	Hawkbit Fitzroy East
000035	Clarke	Alan Neil	Port Howard West Falkland
000036	Clarke	Jan Michael	Kings Ridge Farm East Falkland
000037	Clarke	Jeanette	Kings Ridge Farm East Falkland
000038	Clarke	Michael Jan	Kings Ridge Farm East Falkland
000039	Clarke	Shane Adrian	Bleaker Island
000040	Clausen	Henry Edward	Port Louis East Falkland
000041	Clausen	Sophie Marina	Fitzroy East Falkland
000042	Clifton	Leonard	Walker Creek East Falkland
000043	Clifton	Thora Janeene	Walker Creek East Falkland
000044	Cockwell	Benjamin William	Fox Bay Village West Falkland
000045	Cockwell	Clare Marie	Fox Bay Village West Falkland
000046	Cockwell	Grizelda Susan	Fox Bay Village West Falkland
000047	Davis	Aase	Evelyn Station East Falkland
000048	Davis	Doreen Susan	Stanley Dairy East Falkland

000049	Davis	Ian John	Evelyn Station East Falkland
000050	Davis	Nicholas	Stanley Dairy East Falkland
000051	Davis	Reginald John	Evelyn Station East Falkland
000052	Davis	William James	Goose Green East Falkland
000053	Decroliere	Carrie Madeline Helen	Fox Bay Village West Falkland
000054	Decroliere	Eric Ernest Albert	Fox Bay Village West Falkland
000055	Dickson	Charles George	Brookfield East Falkland
000056	Dickson	Doreen	Wreck Point Farm East Falkland
000057	Dickson	Gerald William	Wreck Point Farm East Falkland
000058	Dickson	Steven Charles	North Arm East Falkland
000059	Donnelly	Daniel	Crooked Inlet West Falkland
000060	Donnelly	Joyce Elizabeth	Crooked Inlet West Falkland
000061	Dunford	David Philip	Saddle Farm West Falkland
000062	Eagle	Alan William	Fitzroy Farm East Falkland
000063	Edwards	Norma	Lake Sullivan West Falkland
000064	Edwards	Roger Anthony	Lake Sullivan West Falkland
000065	Evans	Donna Newell	South Harbour West Falkland
000066	Evans	Michael David	South Harbour West Falkland
000067	Evans	Raymond	Pebble Island
000068	Evans	Richard Gregory	Elephant Beach East Falkland
000069	Evans	Tracy	Saunders Island
000070	Fairley	John	Port Stephens West Falkland
000071	Fiddes	Julia Bertrand	Walker Creek East Falkland
000072	Findlay	Andrew John	East Bay West Falkland
000073	Finlayson	Neil Roderick	North Arm East Falkland
000074	Ford	Paul Edward	North Arm East Falkland
000075	Forster	Gwyneth May	Bold Cove West Falkland
000076	Forster	James	Bold Cove West Falkland
000077	Gilding	Melanie Carol	Port Louis East Falkland
000078	Gilding	Peter Bernard	Port Louis East Falkland
000079	Gleadell	Marklin John	Walker Creek East Falkland
000080	Goodwin	Margo Jane	North Arm East Falkland
000081	Goodwin	Neil Alexander William	Johnsons Harbour East Falkland
000082	Goss	Margaret Rose	Horseshoe Bay East Falkland
000083	Goss	Michael Peter	Horseshoe Bay East Falkland
000084	Goss	Peter	Horseshoe Bay East Falkland
000085	Goss	Sandra Kathleen	Port San Carlos East Falkland
000086	Goss	Simon Peter Miller	Port San Carlos East Falkland
000087	Greenland	Bonita Doreen	Darwin House East Falkland
000088	Greenland	Kenneth David	Darwin House East Falkland
000089	Grierson	Hew McInnes	Blue Beach San Carlos East Falkland
000090	Grimmer	Keith	The Dunes Fitzroy River East Falkland
000091	Grimmer	Marilyn	The Dunes Fitzroy River East Falkland
000092	Halliday	Joyce Isabella Patience	Fox Bay Village West Falkland
000093	Halliday	Kenneth William	Fox Bay Village West Falkland
000094	Hansen	Ian	Main Point West Falkland
000095	Hansen	Lionel Raymond	Hill Cove West Falkland
000096	Hansen	Rose Idina	Hill Cove West Falkland

000097	Hansen	Susan Ann	Main Point West Falkland
000098	Hardcastle	Eileen Beryl	Darwin East Falkland
000099	Harvey	Jen	Hill Cove West Falkland
000100	Harvey	Valerie Ann	Hill Cove West Falkland
000101	Hawksworth	David	Plot 8 MPA Road East Falkland
000102	Heathman	Ailsa	Estancia East Falkland
000103	Heathman	Ewart Tony	Estancia East Falkland
000104	Hewitt	Sara Marie	Home Farm Douglas East Falkland
000105	Hill	Jennifer Eileen	Stoney Ridge West Falkland
000106	Hirtle	Anthony	Peaks Farm West Falkland
000107	Hirtle	Doris Linda	Port Howard West Falkland
000108	Hirtle	Odette Susan	Port Howard West Falkland
000109	Hirtle	Samantha	Peaks Farm West Falkland
000110	Hirtle	Susan Mary	Peaks Farm West Falkland
000111	Hobman	David Gonsalo	Chartres West Falkland
000112	Hobman	John Malcolm	Saladero East Falkland
000113	Hobman	Juan Jose Eleuterio	Goring Station West Falkland
000114	Hobman	Vivien	Saladero East Falkland
000115	Jaffray	Alexander	Lively Island
000116	Jaffray	Eileen	North Arm East Falkland
000117	Jaffray	Elliott Jessie	Lively Island
000118	Jaffray	Ian	North Arm East Falkland
000119	Jennings	Jacqueline Ann	Pebble Island
000120	Jones	Mark Henry	Fox Bay West Falkland
000121	Jones	Michael David	Head Of Bay East Falkland
000122	Jones	Sheila Janice	Head Of Bay East Falkland
000123	Kilmartin	Claire Elfreda	34 John Street
000124	Kilmartin	Kevin Seaton	Bluff Cove East Falkland
000125	Knight	Justin Robert Campbell	Coast Ridge West Falkland
000126	Knight	Keith Andrew	Coast Ridge West Falkland
000127	Knight	Nigel Arthur	Coast Ridge West Falkland
000128	Knight	Shirley Louvain Patricia	Coast Ridge West Falkland
000129	Larsen	Ronald Ivan	Speedwell Island
000130	Larsen	Yvonne	Speedwell Island
000131	Lee	Carole	Port Howard West Falkland
000132	Lee	Christopher	Port Howard West Falkland
000133	Lee	Elizabeth	Goose Green East Falkland
000134	Lee	John Alfred	Goose Green East Falkland
000135	Lee	Rodney William	Port Howard West Falkland
000136	Leo	Brenda May	NAAFI MPA East Falkland
000137	Livermore	Darren	Fitzroy East Falkland
000138	Lowe	Adrian Stewart	Murrel Farm East Falkland
000139	Lowe	Lisa Helen	Murrel Farm East Falkland
000140	Luxton	William Robert	Chartres West Falkland
000141	MacBeth	Martyn Raymond	Narrows Farm East Falkland
000142	MacBeth	Raymond John	Narrows Farm West Falkland
000143	Marsh	Alastair Roy	Shallow Harbour West Falkland
000144	Marsh	Anna Dierdre	Philomel Farm West Falkland

000145	Marsh	Gavin Nicholas	Philomel Farm West Falkland
000146	Marsh	Jodie Kim	Port North West Falkland
000147	Marsh	June Helen	Rincon Ridge West Falkland
000148	Marsh	Karen Diana	Fox Bay West Falkland
000149	Marsh	Leon Peter	Rincon Ridge West Falkland
000150	Marsh	Marlane Rose	Shallow Harbour West Falkland
000151	Marsh	Patricia Ann	Lakelands West Falkland
000152	Marsh	Robin Frank	Lakelands West Falkland
000153	Marsh	Samantha Ann	Rincon Ridge Farm West Falkland
000154	McCormick	Pauline Margaret Ruth	North Arm East Falkland
000155	McCormick	Richard Paul	North Arm East Falkland
000156	McGhie	James	Stoney Ridge West Falkland
000157	McGhie	Roy	Port North West Falkland
000158	McGhie	Thomas Forsyth	Saunders Island
000159	McGill	Robin Perry	Carcass Island
000160	McKay	Frazer Roderick	Teal River West Falkland
000161	McKay	Isabella Alice	Westley West Falkland
000162	McKay	Josephine Ann	Sheffield Farm West Falkland
000163	McKay	Kenneth Andrew	Sheffield Farm West Falkland
000164	McKay	Penelope Rose	Goring Station West Falkland
000165	McKay	Roy Derek	Sheffield Farm West Falkland
000166	McLeod	Albert John	Goose Green East Falkland
000167	McLeod	Henry Donald Alexander	North Arm East Falkland
000168	McLeod	Isabella Frances Diana	Fitzroy East Falkland
000169	McLeod	Sarah Rose	Goose Green East Falkland
000170	McPhee	June Iris	Brookfield East Falkland
000171	McPhee	Kenneth John	Brookfield East Falkland
000172	McPhee	Mark	Brookfield East Falkland
000173	McPhee	Sheila Margaret	Kingsford Valley Farm East Falkland
000174	McPhee	Terence Owen	Kingsford Valley Farm East Falkland
000175	McPhee	Trudi Lynette	Brookfield East Falkland
000176	Miller	Betty Larsen	North Arm East Falkland
000177	Miller	Catherine McLeod	Fox Bay Village West Falkland
000178	Miller	James Albert	Fox Bay Village West Falkland
000179	Miller	Philip Charles	Cape Dolphin East Falkland
000180	Miller	Sheena Melanie	Cape Dolphin East Falkland
000181	Minnell	Donna Marie	Moss Side East Falkland
000182	Minnell	Hazel Eileen	Port San Carlos East Falkland
000183	Minnell	Michael Robert	Moss Side East Falkland
000184	Morrison	Gerald	Goose Green East Falkland
000185	Morrison	John	Port Howard West Falkland
000186	Morrison	Kathleen Iris	Goose Green East Falkland
000187	Morrison	Lena	Port Howard West Falkland
000188	Morrison	Leslie Theodore Norman	Port Howard West Falkland
000189	Murphy	Roy David	Port Howard West Falkland
000190	Napier	Lily	West Point West Falkland
000191	Napier	Roderick Bertrand	West Point West Falkland
000192	Newman	Glynis Karen	Goose Green East Falkland

000193	Nightingale	Charlene	West Lagoons Farm West Falkland
000194	Nightingale	Karl Richard	West Lagoons Farm West Falkland
000195	Nightingale	Peter Richard	West Lagoons Farm West Falkland
000196	Norman	Heather Thelma	North Arm East Falkland
000197	Parkinson	Allen	Turners MPA East Falkland
000198	Peck	Davina Margaret	Shallow Bay West Falkland
000199	Peck	Farrah Louise	Shallow Bay West Falkland
000200	Peck	Paul	Shallow Bay West Falkland
000201	Phillips	Carol Joan	Hope Cottage East Falkland
000202	Phillips	Terence	Hope Cottage East Falkland
000203	Pitaluga	Antoinette Margaretha	Salvador East Falkland
000204	Pitaluga	Jene Ellen	Gibraltar Stn East Falkland
000205	Pitaluga	Nicholas Alexander	Salvador East Falkland
000206	Pitaluga	Robin Andreas McIntosh	Gibraltar Station East Falkland
000207	Pitt	Myra	Goose Green East Falkland
000208	Pole-Evans	Anthony Reginald	Saunders Island
000209	Pole-Evans	David Llewellyn	Saunders Island
000210	Pole-Evans	Louise Suzan	Saunders Island
000211	Pole-Evans	Shirley Helen	Manybranch West Falkland
000212	Pole-Evans	Suzan	Saunders Island
000213	Pole-Evans	William Reginald	Manybranch West Falkland
000214	Poncet	Dion Michael	Beaver Island
000215	Poncet	Jerome Pierre	Beaver Island
000216	Poole	Ella Josephine	Race Point East Falkland
000217	Poole	Juliet Hazel	Y M C A
000218	Poole	Steven Charles	Race Point East Falkland
000219	Porter	Joan	Shallow Harbour West Falkland
000220	Porter	William Kenneth	Fox Bay Village West Falkland
000221	Reeves	Ronald James	Port Howard West Falkland
000222	Reid	Emily Margaret	North Arm East Falkland
000223	Robertson	Ann	Port Stephens West Falkland
000224	Robertson	Paul Jonathan	Port Stephens West Falkland
000225	Robertson	Peter Charles	Port Stephens West Falkland
000226	Ross	William Henry	Fitzroy East Falkland
000227	Rozee	Fiona	Spring Point West Falkland
000228	Rozee	Ronald David	Spring Point West Falkland
000229	Saunders	Felicity Joan Carlie	Hawkbit Fitzroy East
000230	Short	Andrez Peter	Swan Inlet East Falkland
000231	Short	Elaine Elizabeth	Bleaker Island
000232	Short	George Godfrey Ivan	Great Britain Hotel East Falkland
000233	Short	Isobel Rose	Mullet Creek East Falkland
000234	Short	Lindsay Marie	Wineglass Station East Falkland
000235	Short	Patrick Warburton	Mullet Creek East Falkland
000236	Short	Robert Charles	Bleaker Island
000237	Short	Robert George	Wineglass Station East Falkland
000238	Sinclair	Simon Keith	Goose Green East Falkland
000239	Smith	Andrew John	Port San Carlos East Falkland
000240	Smith	Elenore Olive	Johnsons Harbour East Falkland

000241	Smith	Osmund Raymond	Johnsons Harbour East Falkland
000242	Smith	Robert William	Goose Green East Falkland
000243	Smith	Susan	Blue Beach East Falkland
000244	Smith	Terence George	North Arm East Falkland
000245	Steen	Gail	Paragon House Lafonia East Falkland
000246	Steen	Vernon Robert	Paragon House Lafonia East Falkland
000247	Stevens	Richard James	Port Sussex East Falkland
000248	Stevens	Toni Donna	Port Sussex East Falkland
000249	Strange	Ian John	New Island
000250	Taylor	Christopher John	Goose Green East Falkland
000251	Tellez	Rodolfo	Walker Creek East Falkland
000252	Thorsen	Gloria Penelope	Teal Inlet East Falkland
000253	Thorsen	Kristiane Annergret	Teal Inlet East Falkland
000254	Towersey	Diane	Port Stephens West Falkland
000255	Turner	Arthur Leonard Pitaluga	Rincon Grande East Falkland
000256	Turner	Elaine Ellen	Rincon Grande East Falkland
000257	Tuson	Olwyn Carol	Saunders Island West Falkland
000258	Velasquez	Arleen	North Arm East Falkland
000259	Velasquez	Oscar Hernan	North Arm East Falkland
000260	Watson	Glenda Joyce	Long Island East Falkland
000261	Watson	Neil	Long Island East Falkland
000262	Whitney	Daneila Grace	Green Patch Farm East Falkland
000263	Whitney	Dennis	Fitzroy East Falkland
000264	Whitney	Keith	Home Farm East Falkland
000265	Whitney	Patrick George	Green Patch Farm East Falkland
000266	Whitney	Tyrone	Home Farm East Falkland
000267	Wilkinson	David Clive Walter	Dunnose Head West Falkland
000268	Wilkinson	Rosemary	Dunnose Head West Falkland



THE FALKLAND ISLANDS GAZETTE

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30th April 2004 5

No. 6

Appointments

Sonia Felton-Eagle, Gardener, Government House, 01.04.05.
Stephen Allan Pearce, Police Constable, Royal Falkland Islands Police, 11.04.05.
Ferne Patricia Clarke, Learning Support Assistant, Education Department, 25.04.05.

Promotions

John Frederick Simpson, from Mechanic, Plant and Vehicle Section, Public Works Department, to Assistant Foreman, Plant and Vehicle Section, Public Works Department, 11.04.05.
Trudi Dale Lee, from Senior Clerk, Public Works Department, to Administrative Officer, Public Works Department, 13.04.05.

Completion of Contract

David McGregor Fyfe, Senior Dental Officer, Health Services Department, 31.03.05.

Resignations

Sarah Rowland, Police Constable, Royal Falkland Islands Police, 31.03.05.
Tracy Freeman, Part-time Receptionist, Education Department, 03.04.05.
Alex Igao, Plant Operator/Handyman, Highways Section, Public Works Department, 01.04.05.
Ulrik Bjorn Erikson, Plant Operator/Handyman, Highways Section, Public Works Department, 15.04.05.
Suzanne Clarke, Police Constable, Royal Falkland Islands Police, 30.04.05.
Annette Curtis, Learning Support Assistant, Education Department, 30.04.05.

Transfers

John Coutts, from Power Station Operator, Public Works Department, to Licensed Aircraft Engineer, Falkland Islands Government Air Service, 18.04.05.
Priscilla Alison Halliday, from Agricultural Assistant, Department of Agriculture, to Police Constable, Royal Falkland Islands Police, 25.04.05.
Yvonne Alison Middleton, Learning Support Assistant and Laboratory Technician, Education Department, to Stores Clerk, Health Services Department, 25.04.05.

NOTICES

No. 17

25th April 2005

INDEX OF RETAIL PRICES

The calculation of the Index for the quarter ended 31 March 2005 has now been completed.

A summary of the Index for the last four quarters is shown below:-

Date	Index	Annual % Increase	Quarter % Increase
30.06.04	111.63	3.237	1.880
30.09.04	113.00	3.632	1.227
31.12.04	115.65	5.616	2.345
31.03.05	116.55	6.370	0.778

D. HOWATT,
Financial Secretary.

No. 18

11th April 2005

**THE FALKLAND ISLANDS CONSTITUTION
ORDERS 1985-1997**

SECTION 80(1)(b) SCHEDULE 1

**APPOINTMENT OF ACTING JUDGE OF THE
SUPREME COURT**

IN EXERCISE of my powers under section 80(1)(b) of the Schedule 1 to the Falkland Islands Constitution Orders 1985-1997 and after consultation with James Arthur Wood, the Chief Justice, **I HOWARD JOHN STREDDER PEARCE, CVO, GOVERNOR** of the Falkland Islands;

DO APPOINT CHRISTOPHER PATRICK BROOKS PURCHAS QC to sit as an Acting Judge of the Supreme Court and to discharge all of the functions of the Chief Justice in relation only to proceedings in the Supreme Court commenced under Supreme Court reference numbers SC/CIV/18/04, SC/CIV/18a/04 and SC/CIV/19/04 being proceedings between Her Majesty's Attorney General for the Falkland Islands and Gordon Forbes Construction (Falklands) Limited and Christopher Robert Ford, Arbitrator and between Gordon Forbes Construction (Falklands) Limited and Her Majesty's Attorney General for the Falkland Islands;

AND PROVIDED that nothing in these presents shall operate so as to prevent the Chief Justice himself adjudicating in these proceedings or from exercising any of his functions in relation thereto;

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 8th day of April 2005.

H. J. S. Pearce C.V.O.,
Governor.

No. 19

26th April 2005

APPLICATION FOR PERMANENT RESIDENCE

Notice is hereby given that Victoria Jane WHITE has applied through the Principal Immigration Officer to be granted a permanent residence permit by the Governor.

Any person who knows of any reason why this permit should not be granted, should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs & Immigration Department, Stanley by 22nd May 2005.

D. Hoy,
Immigration Officer.

No. 20

15th April 2005

HIGHWAYS (WEIGHT LIMITS) ORDINANCE 2004

SECTION 6(4)

PROHIBITION NOTICE

IN EXERCISE of my powers under section 6(4) of the Highways (Weight Limits) Ordinance 2004, I hereby notify that the use of any motor vehicle, trailer or vehicle combination the authorised weight of which exceeds 15 metric tons is prohibited with effect from 1st May 2005 until 30th September 2005 inclusive on the following publicly maintainable highways -

(1) on East Falkland -

all roads beyond the Estancia junction as approached on the Port Louis Road from the direction of the Mount Kent turnoff;

the Fitzroy Road from its junction with the Stanley to Darwin Road to its end at Fitzroy settlement;

the San Carlos Road from its junction with the Stanley to Darwin Road to its end at San Carlos settlement; and

all roads beyond Darwin cemetery as approached from the North on the Stanley to Darwin Road,

(2) on West Falkland -

all publicly maintainable highways.

Dated this 13th day of April 2005.

M. M. I. Keenleyside,
Director of Public Works.

No. 21

26th April 2005

APPLICATIONS FOR NATURALISATION

Notice is hereby given that the below individuals are applying to His Excellency the Governor for naturalisation:

Caroline SMITH (Nee GARTLAND, GLASGOW, LAM)
Carmen Gloria DOHERTY BAHAMONDEZ
(Nee BAHAMONDEZ FUENTES)

Any person who knows of any reason why naturalisation should not be granted is invited to send a written and signed statement of the facts to the Immigration Officer, Customs & Immigration Department, Stanley within 21 days of the date of publication of this notice.

D. HOY,
Immigration Officer.



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31st May 2005

No. 7

Appointments

Justine Jury, Fisheries Observer, Fisheries Department, 27.04.05.
 Maria Faria, Auxiliary Nurse, Health Services Department, 01.05.05.
 Wendy Lang, Auxiliary Nurse, Health Services Department, 01.05.05.
 Dilys Minto, Auxiliary Nurse, Health Services Department, 01.05.05.
 Natasha Sytchova, Auxiliary Nurse, Health Services Department, 01.05.05.
 Leann Ford, Carer, Education Department, 13.05.05.
 Colin George Davis, Laboratory Technician/Learning Support Assistant, Education Department, 16.05.05.
 Rachael Freeman, Part-time Receptionist, Education Department, 22.05.05.

Promotions

Timothy Minto, from Assistant Foreman, Public Works Department, to Foreman, Public Works Department, 01.04.05.
 Kirsty Michelle Barkman, from Carer, Education Department, to Learning Support Assistant, Education Department, 02.05.05.

Completion of Contracts

John Burns, Assistant Power Station Manager, Public Works Department, 12.04.05
 Norman McGregor Edwards, Director of Health Services, Health Services Department, 16.05.05.
 Sally Owen, Dental Officer, Health Services Department, 20.05.05.
 Matthew Kelly, Meat Hygiene Inspector, Agriculture Department, 20.05.05.
 Teresa Athayde, Temporary Fisheries Observer, Fisheries Department, 30.05.05.

Renewal of Contract

John Burns, Assistant Power Station Manager, Public Works Department, 13.04.05

Transfers

Mandy Goodwin, from Cleaner, Falkland Islands Broadcasting Station, to Cleaner, Education Department, 01.05.05.
 John Gall Sutherland, from Plant Operator/Handyman, Quarry, Public Works Department, to Plant Operator/Handyman, Highways, Public Works Department, 01.05.05.
 Carmen Miranda, from Stores Clerk, Health Services Department, to Storesperson, Plant and Vehicle Workshop, Public Works Department, 09.05.05.

Resignation

Dr Bernadette Marguerite Paver, Medical Officer, Health Services Department, 11.05.05.

NOTICES

No. 22

25th April 2005

THE BANKING ORDINANCE (TITLE 10.1) THE BANKING (AMENDMENT) ORDINANCE 1996

NOTICE IS HEREBY GIVEN pursuant to Section 19(1) of the Banking Ordinance (Title 10.1), as amended, that the audited accounts of Standard Chartered Bank for the year ended 31st December 2004 are available for inspection at the bank branch office, Ross Road, Stanley, or a copy will be supplied on application to the Manager.

N. P. HUTTON,
 Manager,
 Standard Chartered Bank,
 P. O. Box 597,
 Stanley, Falkland Islands

No. 23

11th May 2005

**FALKLANDS LANDHOLDINGS CORPORATION
(AMENDMENT) ORDINANCE 2004**

SECTION 1

COMMENCEMENT NOTICE

IN EXERCISE of my powers under section 1 of the Falklands Landholdings Corporation (Amendment) Ordinance 2004, I hereby notify that the Ordinance shall come into force on the date on which this Notice is published in the Gazette.

Dated 11th day of May 2005.

H. HALL
Acting Governor.

No. 24

16th May 2005

APPLICATION FOR NATURALISATION

Notice is hereby given that Henry Hernan Guala Oyarzo is applying to His Excellency the Governor for naturalisation.

Any person who knows of any reason why naturalisation should not be granted is invited to send a written and signed statement of the facts to the Immigration Officer, Customs & Immigration Department, Stanley within 21 days of the date of publication of this notice.

D. HOY,
Immigration Officer

No. 25

23rd May 2005

APPLICATIONS FOR PERMANENT RESIDENCE

Notice is hereby given that the below named individuals have applied through the Principal Immigration Officer to be granted a Permanent Residence Permit by the Governor.

Robbie IJSSEL
Henry Victor BOUGHTON

Any person who knows of any reason why a permit should not be granted, should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs & Immigration Department, Stanley by 22nd of June 2005.

D. HOY,
Immigration Officer.

No. 26

23rd May 2005

FALKLAND ISLANDS STATUS APPLICATION

Notice is hereby given that the following person has applied through the Principal Immigration Officer for Falkland Islands

Status to be granted to him by the Governor.

Christian Leonard Edward John WILLIAMS

Any person who knows of any reason why such status should not be granted, should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs & Immigration Department, Stanley by 22nd of June 2005.

D. HOY,
Immigration Officer.

No. 27

16th May 2005

**Electricity Supply Regulations (Title 31.1.1)
(regulation 10)**

Notice is hereby given in accordance with regulation 10 of the Electricity Supply Regulations that the price of electricity will be increased from 13.5p to 15p per unit with effect from the first meter reading or pre-payment meter calibration on or after 1 July 2005.

The Treasury
Stanley
26 May 2005

No. 28

26th May 2005

**LEGISLATIVE COUNCIL OF THE FALKLAND
ISLANDS**

**Customs Ordinance 2003
(section 113)**

**CUSTOMS RESOLUTION OF THE LEGISLATIVE
COUNCIL**

No: 1 of 2005

RESOLVED by the Legislative Council, under section 113 of the Customs Ordinance 2003(a), on the 25th day of May 2005, as follows -

1. That the Customs Order (Title 26.1.2) is amended by the substitution for paragraph 2 thereof the following -

"2. The following import duties of customs shall be payable -

Item	Article	Rate of Duty
1.	Beer per litre	£ 0.24
2.	Wines per litre	£ 0.63
3.	Fortified Wines per litre	£ 0.75
4.	Spirituos Beverages per litre	£ 5.08
5.	Spirits per litre	£ 9.27
6.	Tobacco per kilo:	
	(a) Cigars	£182.75
	(b) Cigarettes	£152.03
	(c) Tobacco	£120.12"

2. This resolution may be cited as the Customs (Amendment of Import Duties) Resolution 2005 and comes into force on the 26th day of May 2005.

C. ANDERSON M.B.E.,
Clerk of Councils.



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 16

14th February 2005

No. 1

The following are published in this Supplement -

- The Liberia (Restrictive Measures) (Overseas Territories) Order 2004, (2004 No. 347);**
- The Liberia (United Nations Sanctions) Order 2004, (2004 No. 348);**
- The Sudan (Restrictive Measures) (Overseas Territories) Order 2004, (2004 No. 349);**
- The Burma (Restrictive Measures) (Overseas Territories) Order 2004, (2004 No. 1979);**
- The Sudan (Restrictive Measures) (Overseas Territories) (Amendment) Order 2004, (2004 No. 1980);**
- The Iraq (United Nations Sanctions) (Overseas Territories) (Amendment) Order 2004, (2004 No. 1983);**
- The International Criminal Tribunal for the former Yugoslavia (Restrictive Measures) (Overseas Territories) Order 2004, (2004 No. 3039);**
- The Child Abduction and Custody (Parties to Conventions) (Amendment) Order 2004, (2004 No. 3040);**
- The Burma (Restrictive Measures) (Overseas Territories) (Amendment) Order 2004, (2004 No. 3333).**

STATUTORY INSTRUMENTS

2004 No. 347

OVERSEAS TERRITORIES

The Liberia (Restrictive Measures) (Overseas Territories) Order 2004

<i>Made</i>	<i>11th February 2004</i>
<i>Laid before Parliament</i>	<i>12th February 2004</i>
<i>Coming into force</i>	<i>13th February 2004</i>

At the Court at Buckingham Palace, the 11th day of February 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833[1], the British Settlements Acts 1887 and 1945[2], 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, commencement, extent and application

1. - (1) This Order may be cited as the Liberia (Restrictive Measures) (Overseas Territories) Order 2004 and shall come into force on 13th February 2004.

(2)

(a) This Order shall extend to the territories listed in Schedule 1.

(b) Article 17 of this Order shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.

(c) In the application of this Order to any of the said territories the expression "the Territory" in this Order means that territory.

(3) Articles 3, 4 and 5 shall apply to any person within the Territory and any person elsewhere who is -

(a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person and is ordinarily resident in the Territory; or

(b) a body incorporated or constituted under the law of the Territory.

Interpretation

2. In this Order the following expressions have the meanings hereby respectively assigned to them, that is to say -

"assistance" means any form of assistance including technical assistance, services, financing and financial assistance;

"commander", in relation to an aircraft, means the member of the flight crew designated as commander of the aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

"document" includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"export" includes shipment as stores;

"exportation" in relation to any ship, submersible vehicle or aircraft, includes the taking out of the Territory of the ship, submersible vehicle or aircraft notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

"Governor" means the Governor or other officer administering the Government of the Territory;

"master", in relation to a ship, includes any person (other than a pilot) for the time being in charge of the ship;

"operator", in relation to an aircraft or vehicle, means the person for the time being having the management of the aircraft or vehicle;

"owner", in relation to a ship, where the owner of a ship is not the operator, means the operator and any person to whom it is chartered;

"restricted goods" means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003[3] made under the Export Control Act 2002[4];

"ship" includes every description of vessel used in navigation;

"shipment" includes loading into an aircraft;

"stores" means goods for use in a ship or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting, but excludes any goods for use in a ship or aircraft as merchandise for sale by retail to persons carried therein;

"vehicle" means a land transport vehicle.

RESTRICTED GOODS, ASSISTANCE AND TRAINING, IMPORTS

Supply of restricted goods

3. - (1) Any person who, except under the authority of a licence granted by the Governor under this article or article 4 -

(a) supplies or delivers;

(b) agrees to supply or deliver; or

(c) does any act calculated to promote the supply or delivery of,

restricted goods to any person in Liberia shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to a person in Liberia.

(2) Nothing in paragraph (1)(b) or (c) shall apply where the supply or delivery of the goods to the person concerned is authorised by a licence granted by the Governor under this article.

Exportation of restricted goods to Liberia

4. - (1) Except under the authority of a licence granted by the Governor under this article, restricted goods are prohibited to be exported from the Territory to any destination in Liberia or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Liberia.

(2) Any restricted goods which are exported or attempted to be exported shall be liable to forfeiture.

(3) Any person knowingly concerned in the exportation or attempted exportation of such goods shall be guilty of an offence under this Order.

(4) In any case where a person would, apart from this paragraph, be guilty of an offence under paragraph (3) above and of an offence under article 3(1) above, he shall not be guilty of the offence under paragraph (3) above.

Provision of assistance, advice or training related to restricted goods

5. Any person who, except under the authority of a licence granted by the Governor under this article, directly or indirectly provides to any person, entity or body in, or for use in, Liberia any:

- (a) assistance;
- (b) advice; or
- (c) training,

related to military activities or to the provision, manufacture, maintenance or use of restricted goods shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the assistance, advice or training in question was to be provided to a person, entity or body in, or for use in, Liberia.

Importation of rough diamonds from Liberia

6. - (1) Except under the authority of a licence granted by the Governor under this article, no person shall import directly or indirectly into the Territory any rough diamonds exported from Liberia.

(2) Subject to the provisions of paragraph (3) of this article, any person who contravenes the provisions of paragraph (1) of this article shall be guilty of an offence under this Order.

(3) In the case of proceedings for an offence in contravention of this article, it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the diamonds in question had been exported from Liberia.

Importation of round logs and timber products from Liberia

7. - (1) Except under the authority of a licence granted by the Governor under this article, no person shall import directly or indirectly into the Territory any round logs or timber products exported from Liberia.

(2) Subject to the provisions of paragraph (3), any person who contravenes the provisions of paragraph (1) shall be guilty of an offence under this Order.

(3) In the case of proceedings for an offence in contravention of this article, it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the round logs or timber products in question had been exported from Liberia.

Use of ships, aircraft and vehicles: restricted goods

8. - (1) Without prejudice to the generality of article 3, and except under the authority of a licence granted by the Governor under this article, no ship or aircraft to which this article applies, and no vehicle within the Territory, shall be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside Liberia to any destination therein.

(2) This article applies to ships registered in the Territory, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person who is -

(a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas), or a British protected person and is ordinarily resident in the Territory; or

(b) a body incorporated or constituted under the law of the Territory.

(3) If any ship, aircraft or vehicle is used in contravention of paragraph (1) then -

(a) in the case of a ship registered in the Territory or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in paragraph (2)(a) or (b), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(c) in the case of a vehicle, the operator of the vehicle,

shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the carriage of the goods in question was, or formed part of, carriage from any place outside Liberia to any destination therein.

(4) Nothing in paragraph (1) shall apply where the supply or delivery or exportation from the Territory of the goods concerned to Liberia was authorised by a licence granted by the Governor under article 3 or 4.

(5) Nothing in this article shall be construed so as to prejudice any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

GENERAL

Customs powers to demand evidence of destination which goods reach

9. Any exporter or any shipper of restricted goods which have been exported from the Territory shall, if so required by the Governor, furnish within such time as the Governor may allow proof to the Governor's satisfaction that the goods have reached either -

(a) a destination to which they were authorised to be exported by a licence granted under this Order; or

(b) a destination to which their exportation was not prohibited by this Order,

and, if he fails to do so, he shall be guilty of an offence under this Order, unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

Offences in connection with applications for licences, conditions attaching to licences, etc.

10. - (1) If for the purposes of obtaining any licence under this Order any person makes any statement, or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, he shall be guilty of an offence under this Order.

(2) Any person who has done any act under the authority of a licence granted by the Governor under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order:

Provided that no person shall be guilty of an offence under this paragraph where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, by the Governor after the doing of the act authorised by the licence.

Declaration as to goods: powers of search

11. - (1) Any person who is about to leave the Territory shall, if he is required to do so by an officer authorised for the purpose by the Governor -

(a) declare whether or not he has with him any restricted goods which are destined for Liberia or for delivery, directly or indirectly, to or to the order of any person in Liberia; and

(b) produce any such goods as aforesaid which he has with him.

(2) Any such officer, and any person acting under his direction, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid:

Provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

(3) Any person who without reasonable excuse refuses to make a declaration, or fails to produce any goods, or refuses to allow himself to be searched in accordance with the foregoing provisions of this article, shall be guilty of an offence under this Order.

(4) Any person who under the provisions of this article makes a declaration which to his knowledge is false in a material particular, or recklessly makes any declaration which is false in a material particular, shall be guilty of an offence under this Order.

Investigation, etc. of suspected ships

12. - (1) Where any authorised officer has reason to suspect that any ship to which article 8 applies has been or is being or is about to be used in contravention of paragraph (1) of that article

(a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 8, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2).

(2) The further action referred to in paragraph (1)(c) is either -

(a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or

(b) to request the master of the ship to take any one or more of the following steps -

(i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;

(ii) if the ship is then in port in the Territory, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;

(iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii); and

(iv) to take her to any other destination that may be specified by the officer in agreement with the master.

(3) Without prejudice to the provisions of article 15(3), where -

(a) a master refuses or fails to comply with a request made under paragraph 2(b); or

(b) an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with,

any such officer may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.

(4) Before or on exercising any power conferred by this article, an authorised officer shall, if requested to do so, produce evidence of his authority.

(5) In this article "authorised officer" means -

(a) any commissioned naval or military officer;

(b) any British consular officer;

(c) any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected aircraft

13. - (1) Where any authorised person has reason to suspect that any aircraft to which article 8 applies has been or is being or is about to be used in contravention of paragraph (1) of that article -

(a) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) if the aircraft is then in the Territory, any authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)) further request the charterer, the operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the Territory until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 15(3), where an authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

(a) enter, or authorise entry, upon any land and upon that aircraft;

(b) detain, or authorise the detention of, that aircraft and any of its cargo; and

(c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article -

"authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected vehicles

14. - (1) Where any authorised person has reason to suspect that any vehicle in the Territory has been or is being or is about to be used in contravention of article 8 -

(a) he may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the operator and the driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his inspection such documents so relating and such goods as he may specify;

(c) any authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (b)) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in the Territory until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 15(3), where any authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

(a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;

(b) detain, or authorise the detention of, that vehicle and any goods contained in it; and

(c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article -

"authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 12 to 14

15. - (1) No information furnished or document produced by any person in pursuance of a request made under article 12, 13 or 14 shall be disclosed except -

(a) with the consent of the person by whom the information was furnished or the document was produced:

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

(b) to any person who would have been empowered under article 12, 13 or 14 to request that it be furnished or produced or to any person holding or acting in any office under or in the service of -

(i) the Crown in respect of the Government of the United Kingdom;

(ii) the Government of the Isle of Man;

(iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;

(iv) the States of Jersey; or

(v) the Government of any British overseas territory;

(c) on the authority of the Governor, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to Liberia decided upon by the Security Council of the United Nations or the Council of the European Union; or

(d) with a view to the institution of, or otherwise for the purposes of, any proceedings -

(i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

(2) Any power conferred by article 12, 13 or 14 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether the information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.

(3) Each of the following persons shall be guilty of an offence under this Order, that is to say

(a) a master of a ship who disobeys any direction given under article 12(2)(a);

(b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who -

(i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 12, 13 or 14 by any person empowered to make it, or

(ii) furnishes any document or information which to his knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular, to such a person in response to such a request;

(c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under article 12, 13 or 14.

(4) Nothing in articles 12 to 15 shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

Obtaining of evidence and information

16. The provisions of Schedule 3 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor -

(a) of evidence and information for the purpose of securing compliance with or detecting evasion of -

(i) this Order in the Territory; or

(ii) any law making provision with respect to any of the matters regulated by this Order that is in force in the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory; and

(b) of evidence of the commission of -

(i) in the Territory, an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs; or

(ii) with respect to any of those matters, an offence under the law of the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory.

Penalties and proceedings

17. - (1) Any person guilty of an offence under article 3(1), 4(3), 5, 6(2), 7(2) or 8(3) shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both; or

(b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(2) Any person guilty of an offence under article 15(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 3 shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both; or

(b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(3) Any person guilty of an offence under article 10(1) or (2) or article 11(4) shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction to a fine not exceeding £5,000 or its equivalent.

(4) Any person guilty of an offence under article 15(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 3 shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(5) Any person guilty of an offence under article 9 or 11(3) shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.

(6) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

(7) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be commenced at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(8) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

(9) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

Exercise of powers of the Governor

18. - (1) The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order (other than the power to give authority under Schedule 3 to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

(2) Any licences granted under this Order shall be in writing and may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

Miscellaneous

19. - (1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done anywhere other than the Territory provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 1(2)(a)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St. Helena and Dependencies

South Georgia and South Sandwich Islands

The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus

Turks and Caicos Islands

Virgin Islands

SCHEDULE 2

Article 1(2)(b)

APPLICATION OF ARTICLE 17 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1. - (1) Any person who commits an offence under article 3(1), 4(3), 5, 6(2), 7(2) or 8(3), or paragraph 5(b) or (d) of Schedule 3, shall be liable on conviction -

(a) if tried on Information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine, or to both;

(b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

2. Any person who commits an offence under article 10(1) or (2), 11(4), or 15(3)(b)(ii) is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

3. Any person who commits an offence under article 15(3)(a), (b)(i) or (c), or paragraph (5)(a) or (c) of Schedule 3, is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

4. Any person who commits an offence under article 9 or 11(3) is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or its equivalent.

5. Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on

the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

6. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

7. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

8. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

SCHEDULE 3

Article 16

EVIDENCE AND INFORMATION

1. - (1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor may request any person in or resident in the Territory to furnish to him any information in his possession or control, or to produce to him any document in his possession or control, which he may require for the purpose of securing compliance with or detecting evasion of this Order; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in sub-paragraph (1) shall be taken to require any person who has acted as counsel or solicitor for any person to furnish or produce any privileged information or document in his possession in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested so to do under this paragraph, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

(5) The furnishing of any information or the production of any document under this paragraph shall not be treated as a breach of any restriction imposed by statute or otherwise.

2. - (1) If any justice of the peace is satisfied by information on oath given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case -

(a) that there is reasonable ground for suspecting that an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified; or

(b) that any documents which ought to have been produced under paragraph 1 and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorising any police officer or constable, together with any other persons named in the warrant and any other police officers or constables, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or, as the case may be, the vehicle, ship or aircraft.

(2) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) may do any or all of the following things -

(a) inspect and search those premises or the vehicle, ship or aircraft for any material which he has reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;

(b) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;

(c) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds to believe are required to be produced in accordance with paragraph 1; or

(d) seize anything that is necessary to be seized in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Any information required in accordance with sub-paragraph (2) which is contained in a computer and is accessible from the premises or from any vehicle, ship or aircraft must be produced in a form in which it can be taken away and in which it is visible and legible.

(4) A police officer or constable lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) may:

(a) search any person whom he has reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and

(b) seize anything he finds in a search referred to in paragraph (a) if he has reasonable grounds for believing that it is evidence of an offence referred to in this paragraph:

Provided that no person shall be searched in pursuance of this sub-paragraph except by a person of the same sex.

(5) Where, by virtue of this paragraph, a person is empowered to enter any premises, vehicle, ship or aircraft he may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such an offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

(7) In the application of this paragraph to the Sovereign Base Areas of Akrotiri and Dhekelia any reference to a justice of the peace includes a reference to a judge or associate judge.

3. A person authorised by the Governor to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of his authority before exercising that power.

4. No information furnished or document produced (including any copy of an extract made of any document produced) by any person in pursuance of a request made under this Schedule and no document seized under paragraph 2(2) shall be disclosed except -

(a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized:

Provided that a person who has obtained information or is in possession of a document only in his capacity as a servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right; or

(b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or to any person holding or acting in any office under or in the service of -

(i) the Crown in respect of the Government of the United Kingdom;

(ii) the Government of the Isle of Man;

(iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;

(iv) the States of Jersey; or

(v) the Government of any British overseas territory;

(c) on the authority of the Governor, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to Liberia decided upon by the Security Council of the United Nations or the Council of the European Union; or

(d) with a view to the institution of, or otherwise for the purposes of, any proceedings -

(i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under the law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

5. Any person who -

(a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it; or

(b) furnishes any information or produces any document which to his knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular, to such a person in response to such a request; or

(c) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule; or

(d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies to each of the territories specified in Schedule 1. It gives effect to Resolution 1521, adopted by the Security Council of the United Nations on 22nd December 2003, which prohibits the delivery or supply of arms and related matériel, the provision of assistance, advice and training related to the provision, manufacture, maintenance or use of arms and related

matériel, and bans the import of diamonds and round logs or timber products from Liberia, and to a Common Position adopted by the Council of the European Union on 10th February 2004 which adopted the measures in Resolution 1521 and applied additional related measures to Liberia.

It replaces The Liberia (United Nations Sanctions) (Overseas Territories) Order 2001 (S.I. 2001/946), and The Liberia (United Nations Sanctions) (Overseas Territories) (No. 2) Order 2001 (S.I. 2001/1867 as amended by S.I. 2003/1876), which ceased to have effect by virtue of the cancellation of the relevant parts of United Nations Security Council resolution 1343 of 7th March 2001 and resolution 1478 of 6th May 2003.

Notes:

[1] 1833 c. 85.

[2] 1887 c. 54 and 1945 c. 7.

[3] S.I. 2003/2764.

[4] 2002 c. 28.

STATUTORY INSTRUMENTS

2004 No. 348

UNITED NATIONS

The Liberia (United Nations Sanctions) Order 2004

<i>Made</i>	<i>11th February 2004</i>
<i>Laid before Parliament</i>	<i>12th February 2004</i>
<i>Coming into force</i>	<i>13th February 2004</i>

At the Court at Buckingham Palace, the 11th day of February 2004

Present,

The Queen's Most Excellent Majesty in Council

Whereas under Article 41 of the Charter of the United Nations the Security Council of the United Nations has, by a resolution adopted on 22nd December 2003 called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to decisions of that Council in relation to Liberia:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946[1], is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement, operation and extent

1. - (1) This Order may be cited as the Liberia (United Nations Sanctions) Order 2004 and shall come into force on 13th February 2004.

(2) If the Security Council of the United Nations takes any decision which has the effect of cancelling or suspending the operation of the resolution adopted by it on 22nd December 2003, in whole or in part, this Order shall cease to have effect or its operation shall be suspended, in whole or in part, as the case may be, in accordance with that decision; and particulars of that decision shall be published by the Secretary of State in a notice in the London, Edinburgh and Belfast Gazettes.

(3) This Order shall extend to the United Kingdom.

(4) Articles 3 and 4 shall apply to any person within the United Kingdom and to any person elsewhere who is -

(a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person; or

(b) a body incorporated or constituted under the law of any part of the United Kingdom.

Interpretation

2. In this Order the following expressions have, except where otherwise expressly provided, the meaning hereby respectively assigned to them, that is to say -

"body corporate" includes a Scottish partnership and; in relation to such a partnership, any reference to a director or other officer of a body corporate is a reference to a partner;

"commander", in relation to an aircraft, means the member of the flight crew designated as commander of the aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

"document" includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"export" includes shipment as stores;

"exportation" in relation to any ship, submersible vehicle or aircraft, includes the taking out of the United Kingdom of the ship, submersible vehicle or aircraft notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

"master", in relation to a ship, includes any person (other than a pilot) for the time being in charge of the ship;

"operator", in relation to an aircraft or vehicle, means the person for the time being having the management of the aircraft or vehicle;

"owner", where the owner of a ship is not the operator, means the operator and any person to whom it is chartered;

"restricted goods" means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003[2];

"ship" has the meaning it bears in section 313 of the Merchant Shipping Act 1995[3];

"shipment" (and cognate expressions) and "stores" shall have the meanings they bear in the Customs and Excise Management Act 1979[4];

"vehicle" means a land transport vehicle.

RESTRICTED GOODS

Supply of restricted goods

3. - (1) Any person who, except under the authority of a licence granted by the Secretary of State under this article or article 4 -

(a) supplies or delivers:

(b) agrees to supply or deliver; or

(c) does any act calculated to promote the supply or delivery of,

restricted goods to any person in Liberia shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to a person in Liberia.

(2) Nothing in paragraph (1)(b) or (c) shall apply where the supply or delivery of the goods to the person concerned is authorised by a licence granted by the Secretary of State under this article.

Exportation of restricted goods to Liberia

4. Except under the authority of a licence granted by the Secretary of State under this article, restricted goods are prohibited to be exported from the United Kingdom to any destination in Liberia or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Liberia.

Use of ships, aircraft and vehicles: restricted goods

5. - (1) Without prejudice to the generality of article 3, and except under the authority of a licence granted by the Secretary of State under this article, no ship or aircraft to which this article applies, and no vehicle within the United Kingdom, shall be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside Liberia to any destination therein.

(2) This article applies to ships registered in the United Kingdom, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person who is -

(a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person; or

(b) a body incorporated or constituted under the law of any part of the United Kingdom.

(3) If any ship, aircraft or vehicle is used in contravention of paragraph (1) then -

(a) in the case of a ship registered in the United Kingdom or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in paragraph (2)(a) or (b), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(c) in the case of a vehicle, the operator of the vehicle,

shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the carriage of the goods in question was, or formed part of, carriage from any place outside Liberia to any destination therein.

(4) Nothing in paragraph (1) shall apply where the supply or delivery or exportation from the United Kingdom of the goods concerned to Liberia was authorised by a licence granted by the Secretary of State under article 3 or 4.

(5) Nothing in this article shall be construed so as to prejudice any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

GENERAL

Customs powers to demand evidence of destination which goods reach

6. Any exporter or any shipper of restricted goods which have been exported from the United Kingdom shall, if so required by the Commissioners of Customs and Excise, furnish within such time as they may allow proof to their satisfaction that the goods have reached either -

(a) a destination to which they are authorised to be exported by a licence granted under this Order; or

(b) a destination to which their exportation was not prohibited by this Order,

and, if he fails to do so, he shall be guilty of an offence under this Order, unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

Offences in connection with application for licences, conditions attaching to licences, etc

7. - (1) If for the purpose of obtaining any licence under this Order any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, he shall be guilty of an offence under this Order.

(2) Any person who has done any act under the authority of a licence granted by the Secretary of State under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order.

Provided that no person shall be guilty of an offence under this paragraph where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, by the Secretary of State after the doing of the act authorised by the licence.

Declaration as to goods: powers of search

8. - (1) Any person who is about to leave the United Kingdom shall, if he is required to do so by an officer of Customs and Excise -

(a) declare whether or not he has with him any restricted goods which are destined for Liberia or for delivery, directly or indirectly, to or to the order of any person in Liberia; and

(b) produce such goods as aforesaid which he has with him.

Any such officer, and any person acting under his direction, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid:

Provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

(2) Any person who without reasonable excuse refuses to make a declaration, or fails to produce any goods, or refuses to allow himself to be searched in accordance with the foregoing provisions of this article shall be guilty of an offence under this Order.

(3) Any person who under the provisions of this article makes a declaration which to his knowledge is false in a material particular, or recklessly makes any declaration which is false in a material particular, shall be guilty of an offence under this Order.

Investigation, etc. of suspected ships

9. - (1) Where any authorised officer has reason to suspect that any ship to which article 5 applies has been or is being or is about to be used in contravention of paragraph (1) of that article

(a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 5, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2).

(2) The further action referred to in paragraph (1)(c) is either -

(a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or

(b) to request the master of the ship to take any one or more of the following steps:

(i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;

(ii) if the ship is then in port in the United Kingdom, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;

(iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in subparagraph (ii); and

(iv) to take her to any other destination that may be specified by the officer in agreement with the master.

(3) Without prejudice to the provisions of article 12(3), where -

(a) a master refuses or fails to comply with a request made under paragraph (2)(b); or

(b) an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with,

any such officer may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.

(4) In this article "authorised officer" means an officer as is referred to in section 284(1) of the Merchant Shipping Act 1995.

Investigation, etc. of suspected aircraft

10. - (1) Where any authorised officer or authorised person has reason to suspect that any aircraft to which article 5 applies has been or is being or is about to be used in contravention of paragraph (1) of that article -

(a) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) if the aircraft is then in the United Kingdom, any authorised officer or authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)) further request the charterer, operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the United Kingdom until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 12(3), where an authorised officer or authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

(a) enter, or authorise entry, upon any land and upon that aircraft;

(b) detain, or authorise the detention of, that aircraft and any of its cargo; and

(c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article -

"authorised officer" means any officer of the Customs and Excise;

"authorised person" means any person authorised by the Secretary of State for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected vehicles

11. - (1) Where any authorised officer or authorised person has reason to suspect that any vehicle in the United Kingdom has been or is being or is about to be used in contravention of article 5 -

(a) he may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the operator and the driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his inspection such documents so relating and such goods as he may specify; and

(c) any authorised officer or authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (b)) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in the United Kingdom until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 12(3), where any authorised officer or authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

(a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;

(b) detain, or authorise the detention of, that vehicle and any goods contained in it; and

(c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article -

"authorised officer" means any officer of the Customs and Excise;

"authorised person" means any person authorised by the Secretary of State for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 9 to 11

12. - (1) No information furnished or document produced by any person in pursuance of a request made under article 9,10 or 11 shall be disclosed except -

(a) with the consent of the person by whom the information was furnished or the document was produced:

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

(b) to any person who would have been empowered under article 9,10 or 11 to request that it be furnished or produced or to any person holding or acting in any office under or in the service of:

(i) the Crown in respect of the Government of the United Kingdom;

(ii) the Government of the Isle of Man;

(iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;

(iv) the States of Jersey; or

(v) the Government of any territory listed in Schedule 1;

(c) on the authority of the Secretary of State, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to Liberia decided upon by the Security Council of the United Nations; or

(d) with a view to the institution of, or otherwise for the purposes of, any proceedings -

(i) in the United Kingdom, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under any law making provision with respect to such matter that is in force in any of the Channel Islands, the Isle of Man or any territory listed in Schedule 1 to this Order.

(2) Any power conferred by article 9, 10 or 11 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether the information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.

(3) Each of the following persons shall be guilty of an offence under this Order, that is to say

(a) a master of a ship who disobeys any direction given under article 9(2)(a);

(b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who:

(i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 9, 10 or 11 by any person empowered to make it, or

(ii) furnishes any document or information which to his knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request;

(c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under article 9, 10 or 11.

(4) Nothing in articles 9 to 12 shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

Obtaining of evidence and information

13. The provisions of Schedule 2 shall have effect in order to facilitate the obtaining, by or on behalf of the Secretary of State or the Commissioners of Customs and Excise -

(a) of evidence and information for the purpose of securing compliance with or detecting evasion of -

(i) this Order in the United Kingdom; or

(ii) any law making provision with respect to any of the matters regulated by this Order that is in force in any of the Channel Islands or the Isle of Man or any territory listed in Schedule 1; and

(b) of evidence of the commission of -

(i) in the United Kingdom, an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs; or

(ii) with respect to any of those matters, an offence under the law of any of the Channel Islands or the Isle of Man or any territory listed in Schedule 1.

Investigations by the Commissioners of Customs and Excise

14. Where the Commissioners of Customs and Excise investigate or propose to investigate any matter with a view to determining -

(a) whether there are grounds for believing that an offence under this Order has been committed; or

(b) whether a person should be prosecuted for such an offence,

the matter shall be treated as an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979.

Penalties and proceedings

15. - (1) Any person guilty of an offence under article 3 or 5(3) shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both; or

(b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(2) Any person guilty of an offence under article 12(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 2 shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(3) Any person guilty of an offence under article 7(1) or (2) or article 8(3) shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction to a fine not exceeding the statutory maximum.

(4) Any person guilty of an offence under article 12(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 2, shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(5) Any person guilty of an offence under article 6 or 8(2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(7) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980[5], a summary offence under this Order may be tried by a magistrates' court in England and Wales if an information is laid at any time within three years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his knowledge.

(8) Notwithstanding anything in section 136 of the Criminal Procedure (Scotland) Act 1995[6], summary proceedings in Scotland for an offence under this Order may be commenced at any time within 12 months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge; and subsection (3) of that section applies for the purpose of this paragraph as it applies for the purpose of that section:

Provided that such proceedings shall not be commenced after the expiration of three years from the commission of the offence.

(9) Notwithstanding anything in article 19 of the Magistrates' Courts (Northern Ireland) Order 1981[7], summary proceedings in Northern Ireland for an offence under this Order may be instituted at any time within three years after the commission of the offence and within 12

months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his knowledge.

(10) For the purposes of this article -

(a) a certificate signed by or on behalf of the prosecutor or the Lord Advocate (as the case may be) as to the date on which such evidence as is referred to in paragraphs (7), (8) and (9) came to his knowledge shall be conclusive evidence of that fact; and

(b) a certificate purporting to be so signed shall be presumed to be so signed unless the contrary is proved.

(11) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

(12) In England and Wales, subsection (2) of section 24 of the Police and Criminal Evidence Act 1984[8] shall apply to the offences under this Order that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them, as if they were mentioned in that subsection; and accordingly such offences shall be arrestable offences within the meaning of that Act.

(13) In Scotland, where a constable reasonably believes that a person has committed or is committing an offence under this Order, he may arrest that person without a warrant.

(14) In Northern Ireland, paragraph (2) of article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989[9] shall apply to the offences under this Order that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them, as if they were mentioned in that paragraph; and accordingly such offences shall be arrestable offences within the meaning of that Order.

(15) No proceedings for an offence under this Order, other than for a summary offence, shall be instituted in England, Wales or Northern Ireland except by the Secretary of State or with the consent of the Attorney General or, as the case may be, the Attorney General for Northern Ireland:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

Exercise of the powers of the Secretary of State

16. - (1) The Secretary of State may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Secretary of State shall be construed accordingly.

(2) Any licences granted under this Order shall be in writing and may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

A.K Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 12

DISCLOSURE OF INFORMATION - LISTED TERRITORIES

Anguilla

Bermuda

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Gibraltar

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St Helena and Dependencies

South Georgia and the South Sandwich Islands

The Sovereign Base Area of Akrotiri and Dhekelia in the Island of Cyprus

Turks and Caicos Islands

Virgin Islands

SCHEDULE 2

Article 13

EVIDENCE AND INFORMATION

1. - (1) Without prejudice to any other provision of this Order, or any provision of any other law, the Secretary of State or the Commissioners of Customs and Excise may request any person in or resident in the United Kingdom to furnish to him or to them any information in his possession or control, or to produce to him or to them any document in his possession or control, which he or they may require for the purpose of securing compliance with or detecting evasion of this Order; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in sub-paragraph (1) shall be taken to require any person who has acted as counsel or solicitor for any person to furnish or produce any privileged information or document in his possession in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested so to do under this paragraph, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

(5) The furnishing of any information or the production of any document under this paragraph shall not be treated as a breach of any restriction imposed by statute or otherwise.

2. - (1) If any justice of the peace is satisfied by information on oath given by any constable or person authorised by the Secretary of State or the Commissioners of Customs and Excise to act for the purposes of this paragraph either generally or in a particular case -

(a) that there is reasonable ground for suspecting that an offence under this Order or, with respect to any of the matters regulated by this Order, an offence under any enactment relating to customs has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified; or

(b) that any documents which ought to have been produced under paragraph 1 and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorising any constable or any officer of the Customs and Excise, together with any other persons named in the warrant and any other constables, to enter the premises specified in the information or, as the case may be, any premises upon which the

vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or, as the case may be, the vehicle, ship or aircraft.

(2) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) may do any or all of the following things -

(a) inspect and search those premises or the vehicle, ship or aircraft for any material which he has reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;

(b) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;

(c) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds to believe are required to be produced in accordance with paragraph 1; or

(d) seize anything that is necessary to be seized in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Any information required in accordance with sub-paragraph (2) which is contained in a computer and is accessible from the premises or from any vehicle, ship or aircraft must be produced in a form in which it can be taken away and in which it is visible and legible.

(4) A constable or officer of the Customs and Excise lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) may -

(a) search any person whom he has reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and

(b) seize anything he finds in a search referred to in paragraph (a), if he has reasonable grounds for believing that it is evidence of an offence referred to in this paragraph:

Provided that no person shall be searched in pursuance of this sub-paragraph except by a person of the same sex.

(5) Where, by virtue of this paragraph, a person is empowered to enter any premises, vehicle, ship or aircraft he may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such an offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

(7) In the application of this paragraph to Scotland any reference to a justice of the peace includes a reference to a sheriff; and any reference to information on oath is a reference to evidence on oath.

3. A person authorised by the Secretary of State to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of his authority before exercising that power.

4. No information furnished or document produced (including any copy of an extract made of any document produced) by a person in pursuance of a request made under this Schedule and no document seized under paragraph 2(2) shall be disclosed except:

(a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized:

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right; or

(b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or to any person holding or acting in any office under or in the service of -

(i) the Crown in respect of the Government of the United Kingdom;

(ii) the Government of the Isle of Man;

(iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;

(iv) the States of Jersey; or

(v) the Government of any territory listed in Schedule 1 to this Order;

(c) on the authority of the Secretary of State, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to Liberia decided upon by the Security Council of the United Nations; or

(d) with a view to the institution of, or otherwise for the purposes of, any proceedings -

(i) in the United Kingdom, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence against any enactment relating to customs; or

(ii) for any offence under any law making provision with respect to such matters that is in force in any of the Channel Islands, the Isle of Man or any territory listed in Schedule 1.

5. Any person who -

(a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it; or

(b) furnishes any information or produces any document which to his knowledge is false in a material particular; or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request; or

(c) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule; or

(d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, implements the prohibition of the sale or supply of arms and related materiel to Liberia pursuant to decisions of the Security Council of the United Nations in resolution 1521 of 22nd December 2003. It replaces The Liberia (United Nations Sanctions) Order 2001 (S.I. 2001/947) which ceased to have effect by virtue of the cancellation of the relevant parts of United Nations Security Council resolution 1343 of 7th March 2001.

Notes:

[1] 1946 c. 45.

[2] S.I. 2003/2764.

[3] 1995 c. 21.

[4] 1979 c. 2.

[5] 1980 c. 43.

[6] 1995 c. 46.

[7] S.I. 1981/1675 (N.I.26).

[8] 1984 c. 60.

[9] S.I. 1989/1341 (N.I. 12).

STATUTORY INSTRUMENTS

2004 No. 349

OVERSEAS TERRITORIES

The Sudan (Restrictive Measures) (Overseas Territories) Order 2004

<i>Made</i>	<i>11th February 2004</i>
<i>Laid before Parliament</i>	<i>12th February 2004</i>
<i>Coming into force</i>	<i>13th February 2004</i>

At the Court at Buckingham Palace, the 11th day of February 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833[1], the British Settlements Acts 1887 and 1945[2], 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, commencement, extent and application

1. - (1) This Order may be cited as the Sudan (Restrictive Measures) (Overseas Territories) Order 2004 and shall come into force on 13th February 2004.

(2)

(a) This Order shall extend to the territories listed in Schedule 1.

(b) Article 15 of this Order shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.

(c) In the application of this Order to any of the said territories the expression "the Territory" in this Order means that territory.

(3) Articles 3, 4 and 5 shall apply to any person within the Territory and any person elsewhere who is -

(a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person and is ordinarily resident in the Territory; or

(b) a body incorporated or constituted under the law of the Territory.

Interpretation

2. In this Order the following expressions have the meanings hereby respectively assigned to them, that is to say -

"assistance" means any form of assistance, including technical assistance, services, financing and financial assistance;

"commander", in relation to an aircraft, means the member of the flight crew designated as commander of the aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

"document" includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"export" includes shipment as stores;

"exportation" in relation to any ship, submersible vehicle or aircraft, includes the taking out of the Territory of the ship, submersible vehicle or aircraft notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

"Governor" means the Governor or other officer administering the Government of the Territory;

"master", in relation to a ship, includes any person (other than a pilot) for the time being in charge of the ship;

"operator", in relation to an aircraft or vehicle, means the person for the time being having the management of the aircraft or vehicle;

"owner", in relation to a ship, where the owner of a ship is not the operator, means the operator and any person to whom it is chartered;

"restricted goods" means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003[3] made under the Import, Export and Customs Powers (Defence) Act 1939[4];

"ship" includes every description of vessel used in navigation;

"shipment" includes loading into an aircraft;

"stores" means goods for use in a ship or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting, but excludes any goods for use in a ship or aircraft as merchandise for sale by retail to persons carried therein;

"vehicle" means a land transport vehicle.

RESTRICTED GOODS, TECHNICAL ASSISTANCE AND TRAINING

Supply of restricted goods

3. - (1) Any person who, except under the authority of a licence granted by the Governor under this article or article 4 -

(a) supplies or delivers;

(b) agrees to supply or deliver; or

(c) does any act calculated to promote the supply or delivery of,

restricted goods to any person in Sudan shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to a person in Sudan.

(2) Nothing in paragraph (1)(b) or (c) shall apply where the supply or delivery of the goods to the person concerned is authorised by a licence granted by the Governor under this article.

Exportation of restricted goods to Sudan

4. - (1) Except under the authority of a licence granted by the Governor under this article, restricted goods are prohibited to be exported from the Territory to any destination in Sudan or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Sudan.

(2) Any restricted goods which are exported or attempted to be exported shall be liable to forfeiture.

(3) Any person knowingly concerned in the exportation or attempted exportation of such goods shall be guilty of an offence under this Order.

(4) In any case where a person would, apart from this paragraph, be guilty of an offence under paragraph (3) and of an offence under article 3(1), he shall not be guilty of the offence under paragraph (3).

Provision of assistance, advice or training related to military activities

5. Any person who, except under the authority of a licence granted by the Governor under this article, directly or indirectly provides to any person in Sudan any:

(a) assistance;

(b) advice; or

(c) training,

related to military activities shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the assistance, advice or training in question was to be provided to a person in Sudan.

Use of ships, aircraft and vehicles: restricted goods

6. - (1) Without prejudice to the generality of article 3, and except under the authority of a licence granted by the Governor under this article, no ship or aircraft to which this article applies, and no vehicle within the Territory, shall be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside Sudan to any destination therein.

(2) This article applies to ships registered in the Territory, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person who is -

(a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas), or a British protected person and is ordinarily resident in the Territory; or

(b) a body incorporated or constituted under the law of the Territory.

(3) If any ship, aircraft or vehicle is used in contravention of paragraph (1) then -

(a) in the case of a ship registered in the Territory or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in paragraph (2)(a) or (b), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(c) in the case of a vehicle, the operator of the vehicle,

shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the carriage of the goods in question was, or formed part of, carriage from any place outside Sudan to any destination therein.

(4) Nothing in paragraph (1) shall apply where the supply or delivery or exportation from the Territory of the goods concerned to Sudan was authorised by a licence granted by the Governor under article 3 or 4.

(5) Nothing in this article shall be construed so as to prejudice any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

GENERAL

Customs powers to demand evidence of destination which goods reach

7. Any exporter or any shipper of restricted goods which have been exported from the Territory shall, if so required by the Governor, furnish within such time as the Governor may allow proof to the Governor's satisfaction that the goods have reached either -

(a) a destination to which they were authorised to be exported by a licence granted under this Order; or

(b) a destination to which their exportation was not prohibited by this Order,

and, if he fails to do so, he shall be guilty of an offence under this Order, unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

Offences in connection with applications for licences, conditions attaching to licences, etc.

8. - (1) If for the purposes of obtaining any licence under this Order any person makes any statement, or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, he shall be guilty of an offence under this Order.

(2) Any person who has done any act under the authority of a licence granted by the Governor under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order:

Provided that no person shall be guilty of an offence under this paragraph where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, by the Governor after the doing of the act authorised by the licence.

Declaration as to goods: powers of search

9. - (1) Any person who is about to leave the Territory shall, if he is required to do so by an officer authorised for the purpose by the Governor -

(a) declare whether or not he has with him any restricted goods which are destined for Sudan or for delivery, directly or indirectly, to or to the order of any person in Sudan; and

(b) produce any such goods as aforesaid which he has with him.

(2) Any such officer, and any person acting under his direction, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid:

Provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

(3) Any person who without reasonable excuse refuses to make a declaration, or fails to produce any goods, or refuses to allow himself to be searched in accordance with the foregoing provisions of this article, shall be guilty of an offence under this Order.

(4) Any person who under the provisions of this article makes a declaration which to his knowledge is false in a material particular, or recklessly makes any declaration which is false in a material particular, shall be guilty of an offence under this Order.

Investigation, etc. of suspected ships

10. - (1) Where any authorised officer has reason to suspect that any ship to which article 6 applies has been or is being or is about to be used in contravention of paragraph (1) of that article

(a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 6, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2).

(2) The further action referred to in paragraph (1)(c) is either -

(a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or

(b) to request the master of the ship to take any one or more of the following steps -

(i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;

(ii) if the ship is then in port in the Territory, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;

(iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii); and

(iv) to take her to any other destination that may be specified by the officer in agreement with the master.

(3) Without prejudice to the provisions of article 13(3), where -

(a) a master refuses or fails to comply with a request made under paragraph (2)(b); or

(b) an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with,

any such officer may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.

(4) Before or on exercising any power conferred by this article, an authorised officer shall, if requested to do so, produce evidence of his authority.

(5) In this article "authorised officer" means -

(a) any commissioned naval or military officer;

(b) any British consular officer;

(c) any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected aircraft

11. - (1) Where any authorised person has reason to suspect that any aircraft to which article 6 applies has been or is being or is about to be used in contravention of paragraph (1) of that article -

(a) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) if the aircraft is then in the Territory, any authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)) further request the charterer, the

operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the Territory until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 13(3), where an authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

(a) enter, or authorise entry, upon any land and upon that aircraft;

(b) detain, or authorise the detention of, that aircraft and any of its cargo; and

(c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article -

"authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected vehicles

12. - (1) Where any authorised person has reason to suspect that any vehicle in the Territory has been or is being or is about to be used in contravention of article 6 -

(a) he may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the operator and the driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his inspection such documents so relating and such goods as he may specify; and

(c) any authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (b)) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in the Territory until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 13(3), where any authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

- (a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;
- (b) detain, or authorise the detention of, that vehicle and any goods contained in it; and
- (c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article -

"authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 10 to 12

13. - (1) No information furnished or document produced by any person in pursuance of a request made under article 10, 11 or 12 shall be disclosed except -

(a) with the consent of the person by whom the information was furnished or the document was produced:

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

(b) to any person who would have been empowered under article 10, 11 or 12 to request that it be furnished or produced or to any person holding or acting in any office under or in the service of -

(i) the Crown in respect of the Government of the United Kingdom;

(ii) the Government of the Isle of Man;

(iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;

(iv) the States of Jersey; or

(v) the Government of any British overseas territory;

(c) on the authority of the Governor, to any person in the service of the Government of any other country for the purpose of assisting that Government in securing compliance with or detecting evasion of measures in relation to Sudan decided upon by the Council of the European Union; or

(d) with a view to the institution of, or otherwise for the purposes of, any proceedings -

(i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

(2) Any power conferred by article 10, 11 or 12 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether the information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.

(3) Each of the following persons shall be guilty of an offence under this Order, that is to say

(a) a master of a ship who disobeys any direction given under article 10(2)(a);

(b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who -

(i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 10, 11 or 12 by any person empowered to make it, or

(ii) furnishes any document or information which to his knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular, to such a person in response to such a request;

(c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under article 10, 11 or 12.

(4) Nothing in articles 10 to 13 shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

Obtaining of evidence and information

14. The provisions of Schedule 3 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor -

(a) of evidence and information for the purpose of securing compliance with or detecting evasion of -

(i) this Order in the Territory; or

(ii) any law making provision with respect to any of the matters regulated by this Order that is in force in the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory; and

(b) of evidence of the commission of -

(i) in the Territory, an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs; or

(ii) with respect to any of those matters, an offence under the law of the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory.

Penalties and proceedings

15. - (1) Any person guilty of an offence under article 3, 4, 5 or 6(3) shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both; or

(b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(2) Any person guilty of an offence under article 13(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 3 shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both; or

(b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(3) Any person guilty of an offence under article 8(1) or (2) or article 9(4) shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction to a fine not exceeding £5,000 or its equivalent.

(4) Any person guilty of an offence under article 13(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 3 shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(5) Any person guilty of an offence under article 7 or 9(3) shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.

(6) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any

neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

(7) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be commenced at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(8) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

(9) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

Exercise of powers of the Governor

16. - (1) The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order (other than the power to give authority under Schedule 3 to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

(2) Any licences granted under this Order shall be in writing and may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

Miscellaneous

17. - (1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done anywhere other than the Territory provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 1(2)(a)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St. Helena and Dependencies

South Georgia and South Sandwich Islands

The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus

Turks and Caicos Islands

Virgin Islands

SCHEDULE 2

Article 1(2)(b)

APPLICATION OF ARTICLE 15 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1. - (1) Any person who commits an offence under article 3, 4, 5 or 6(3), or paragraph 5(b) or (d) of Schedule 3, shall be liable on conviction -

(a) if tried on Information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine, or to both;

(b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

2. Any person who commits an offence under article 8(1) or (2), 9(4), or 13(3)(b)(ii) is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

3. Any person who commits an offence under article 13(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 3, is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

4. Any person who commits an offence under article 7 or 9(3) is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or its equivalent.

5. Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

6. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

7. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

8. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

SCHEDULE 3

Article 14

EVIDENCE AND INFORMATION

1. - (1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor may request any person in or resident in the Territory to furnish to him any information in his possession or control, or to produce to him any document in his possession or control, which he may require for the purpose of securing compliance with or detecting evasion

of this Order; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in sub-paragraph (1) shall be taken to require any person who has acted as counsel or solicitor for any person to furnish or produce any privileged information or document in his possession in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested so to do under this paragraph, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

(5) The furnishing of any information or the production of any document under this paragraph shall not be treated as a breach of any restriction imposed by statute or otherwise.

2. - (1) If any justice of the peace is satisfied by information on oath given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case -

(a) that there is reasonable ground for suspecting that an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified; or

(b) that any documents which ought to have been produced under paragraph 1 and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorising any police officer or constable, together with any other persons named in the warrant and any other police officers or constables, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or, as the case may be, the vehicle, ship or aircraft.

(2) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) may do any or all of the following things -

(a) inspect and search those premises or the vehicle, ship or aircraft for any material which he has reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;

(b) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;

(c) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds to believe are required to be produced in accordance with paragraph 1; or

(d) seize anything that is necessary to be seized in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Any information required in accordance with sub-paragraph (2) which is contained in a computer and is accessible from the premises or from any vehicle, ship or aircraft must be produced in a form in which it can be taken away and in which it is visible and legible.

(4) A police officer or constable lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) may:

(a) search any person whom he has reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and

(b) seize anything he finds in a search referred to in paragraph (a) if he has reasonable grounds for believing that it is evidence of an offence referred to in this paragraph:

Provided that no person shall be searched in pursuance of this sub-paragraph except by a person of the same sex.

(5) Where, by virtue of this paragraph, a person is empowered to enter any premises, vehicle, ship or aircraft he may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such an offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

(7) In the application of this paragraph to the Sovereign Base Areas of Akrotiri and Dhekelia any reference to a justice of the peace includes a reference to a judge or associate judge

3. A person authorised by the Governor to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of his authority before exercising that power.

4. No information furnished or document produced (including any copy of an extract made of any document produced) by any person in pursuance of a request made under this Schedule and no document seized under paragraph 2(2) shall be disclosed except -

(a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized:

Provided that a person who has obtained information or is in possession of a document only in his capacity as a servant or agent of another person may not give consent for the purposes of this

sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

(b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or to any person holding or acting in any office under or in the service of -

(i) the Crown in respect of the Government of the United Kingdom;

(ii) the Government of the Isle of Man;

(iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;

(iv) the States of Jersey; or

(v) the Government of any British overseas territory;

(c) on the authority of the Governor, to any person in the service of the Government of any other country for the purpose of assisting that Government in securing compliance with or detecting evasion of measures in relation to Sudan decided upon by the Council of the European Union; or

(d) with a view to the institution of, or otherwise for the purposes of, any proceedings -

(i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under the law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

5. Any person who -

(a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it;

(b) furnishes any information or produces any document which to his knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular, to such a person in response to such a request;

(c) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule; or

(d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies to each of the territories specified in Schedule 1. It gives effect to a Common Position adopted by the Council of the European Union on 9th January 2004 which prohibits (a) the delivery or supply of arms and related matériel to Sudan, from Member States' territories, by their nationals, or using their flagged vessels and aircraft; (b) the provision of technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related matériel to any person, entity or body in, or for use in, Sudan; and (c) the provision of financing or financial assistance related to military activities to any person, entity or body, in or for use in, Sudan.

Notes:

[1] 1833 c. 85.

[2] 1887 c. 54 and 1945 c. 7.

[3] S.I. 2003/2764.

[4] 1939 c. 69.

2004 No. 1979

OVERSEAS TERRITORIES

**The Burma (Restrictive Measures) (Overseas Territories) Order
2004**

Made - - - - - 27th July 2004

Laid before Parliament 28th July 2004

Coming into force - - - 29th July 2004

At the Court at Buckingham Palace, the 27th day of July 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833(1), the British Settlements Acts 1887 and 1945(2), 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:—

INTRODUCTORY

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Burma (Restrictive Measures) (Overseas Territories) Order 2004 and shall come into force on 29th July 2004.

- (a) This Order shall extend to the territories listed in Schedule 1.
- (b) Article 19 shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.
- (c) In the application of this Order to any of the said territories the expression “the Territory” in this Order means that territory.

(2) Articles 3,4,5,7,8 and 9 shall apply to any person within the Territory and to any person elsewhere who is:

- (a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas), or a British protected person and is ordinarily resident in the Territory; or
- (b) a body incorporated or constituted under the law of the Territory.

(1) 1833 c. 85.

(2) 1887 c. 54 and 1945 c. 7.

Interpretation

2.—(1) In this Order, the following expressions have, except where otherwise expressly provided, the meanings hereby respectively assigned to them, that is to say –

“assistance” means any form of assistance including technical assistance, services, financing and financial assistance;

“commander”, in relation to an aircraft, means the member of the flight crew designated as commander of the aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

“document” includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“export” includes shipment as stores;

“exportation” in relation to any ship, submersible vehicle or aircraft, includes the taking out of the Territory of the ship, submersible vehicle or aircraft notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

“funds, financial assets or economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

“Governor” means the Governor or other officer administering the Government of the Territory;

“listed person” means any member of the Government of Burma, or any natural or legal person, entity or body associated with them, as is listed in the Annex (as modified from time to time) to Council Common Position 2004/423/CFSP, adopted by the Council of the European Union on 26 April 2004;

“master”, in relation to a ship, includes any person (other than a pilot) for the time being in charge of the ship;

“operator”, in relation to an aircraft or vehicle, means the person for the time being having the management of the aircraft or the vehicle;

“owner”, in relation to a ship, where the owner of a ship is not the operator, means the operator and any person to whom it is chartered;

“relevant institution” means –

- (a) the person or body responsible for carrying out in the Territory the functions of a monetary authority;
- (b) any person who may lawfully accept deposits in or from within the Territory by way of business; and
- (c) any society established lawfully in the Territory whose principal purpose is the making of loans secured on residential property where such loans are funded substantially by its members;

“restricted goods” means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003⁽³⁾ made under the Export Control Act 2002⁽⁴⁾ and equipment that might be used for internal repression as listed in Schedule 3;

“ship” includes every description of vessel used in navigation;

“shipment” includes loading into an aircraft;

⁽³⁾ S.I. 2003/2764.

⁽⁴⁾ 2002 c. 28.

“stores” means goods for use in a ship or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting, but excludes any goods for use in a ship or aircraft as merchandise for sale by retail to persons carried therein;

“Supreme Court” means the court of the Territory having unlimited jurisdiction in civil proceedings;

“vehicle” means land transport vehicle.

(2) For the purpose of the definition of “relevant institution” in paragraph (1) –

(a) the activity of accepting deposits has the meaning given in any relevant order made under section 22 of the Financial Services and Markets Act 2000⁽⁵⁾; and

(b) a person is not regarded as accepting deposits by way of business if –

(i) he does not hold himself out as accepting deposits on a day to day basis, and

(ii) any deposits which he accepts are accepted only on particular occasions, whether or not involving the issue of any securities.

(3) In determining for the purposes of paragraph (2)(b)(ii) whether deposits are accepted only on particular occasions, regard is to be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(4) For the purpose of identifying a “listed person” referred to in paragraph (1), the Governor shall cause a notice containing the names and other particulars of such listed persons to be published in the Gazette of the Territory as necessary from time to time.

RESTRICTED GOODS, ASSISTANCE AND TRAINING

Supply of restricted goods

3. Any person who, except under the authority of a licence granted by the Governor under this article or article 4,

(a) supplies or delivers,

(b) agrees to supply or deliver, or

(c) does any act calculated to promote the supply or delivery of,

restricted goods to any person or place in Burma shall be guilty of an offence under this Order unless he proves that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to a person or place in Burma.

Exportation of restricted goods to Burma

4.—(1) Except under the authority of a licence granted by the Governor under this article, restricted goods are prohibited to be exported from the Territory to any destination in Burma or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Burma.

(2) Any restricted goods which are exported or attempted to be exported shall be liable to forfeiture.

(3) Any person knowingly concerned in the exportation or attempted exportation of such goods shall be guilty of an offence under this Order.

(4) In any case where a person would, apart from this paragraph, be guilty of an offence under paragraph (3) and of an offence under article 3, he shall not be guilty of the offence under paragraph (3).

⁽⁵⁾ 2000 c. 8.

Provision of assistance, advice or training

5. Any person who, except under the authority of a licence granted by the Governor under this article, directly or indirectly provides to any person, entity or body in, or for use in, Burma any assistance, advice or training related to military activities or to the provision, manufacture, maintenance or use of any restricted goods shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the assistance, advice or training in question was to be provided to a person, entity or body in, or for use in, Burma.

Use of ships, aircraft and vehicles: restricted goods

6.—(1) Without prejudice to the generality of article 3, no ship or aircraft to which this article applies, and no vehicle within the Territory, shall be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside Burma to any destination therein.

(2) This article applies to ships registered in the Territory, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person who is –

- (a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas), or a British protected person and is ordinarily resident in the Territory; or
- (b) a body incorporated or constituted under the law of the Territory.

(3) If any ship, aircraft or vehicle is used in contravention of paragraph (1) then –

- (a) in the case of a ship registered in the Territory or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
- (b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in paragraph (2)(a) or (b), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
- (c) in the case of a vehicle, the operator of the vehicle,

shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the carriage of the goods in question was, or formed part of, carriage from any place outside Burma to any destination therein.

(4) Nothing in paragraph (1) shall apply when the supply or delivery or exportation from the Territory of the goods concerned to Burma was authorised by a licence granted by the Governor under article 3 or 4.

(5) Nothing in this article shall be construed so as to prejudice any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

FUNDS, FINANCIAL ASSETS OR ECONOMIC RESOURCES

Making funds, financial assets or economic resources available to any listed person

7. Any person who, except under the authority of a licence granted by the Governor under this article, makes any funds, financial assets or economic resources available to or for the benefit of any listed person shall be guilty of an offence under this Order.

Freezing of funds, financial assets or economic resources

8.—(1) Where the Governor has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds, financial assets or economic resources are held is or may be a listed person, the Governor may by notice direct that those funds, financial assets or economic resources are not to be made available to any person, except under the authority of a licence granted by the Governor under article 7.

(2) A direction given under paragraph (1) shall specify either –

- (a) the period for which it is to have effect; or
 - (b) that the direction is to have effect until it is revoked by notice under paragraph (3).
- (3) The Governor may by notice revoke a direction given under paragraph (1) at any time.
- (4) The expiry or revocation of a direction shall not affect the application of article 7 in respect of the funds, financial assets or economic resources in question.
- (5) A notice under paragraph (1) or (3) shall be given in writing to the person holding the funds, financial assets or economic resources in question ("the recipient"), and shall require the recipient to send a copy of the notice without delay to the person whose funds, financial assets or economic resources they are, or on whose behalf they are held ("the owner").
- (6) A recipient shall be treated as complying with that requirement if, without delay, he sends a copy of the notice to the owner at his last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.
- (7) Where a direction has been given under paragraph (1), any person by, for or on behalf of whom those funds, financial assets or economic resources are held may apply to the Supreme Court for the direction to be set aside; and on such application the court may set aside the direction.
- (8) A person who makes an application under paragraph (7) shall give a copy of the application and any witness statement or affidavit in support to the Governor (and to any other person by, for or on behalf of whom those funds, financial assets or economic resources are held), not later than seven days before the date fixed for the hearing of the application.
- (9) Any person who contravenes a direction under paragraph (1) is guilty of an offence under this Order.
- (10) A recipient who fails to comply with such a requirement as is mentioned in paragraph (5) is guilty of an offence under this Order.

Facilitation of activities prohibited under article 7 or 8(9)

9. Any person who knowingly and intentionally engages in any activities the object or effect of which is to enable or facilitate the commission (by that person or another) of an offence under article 7 or 8(9) is guilty of an offence under this Order.

Failure to disclose knowledge or suspicion of measures

- 10.—(1) A relevant institution is guilty of offence if:
- (a) it knows or suspects that a person who is, or has been at any time since the coming into force of this Order, a customer of the institution, or is a person with whom the institution has had dealings in the course of its business since that time:
 - (i) is a listed person; or
 - (ii) has committed an offence under article 7, 8(9) or 12(2); and
 - (b) it does not disclose to the Governor the information or other matter on which the knowledge or suspicion is based as soon as is reasonably practicable after that information or other matter comes to its attention.
- (2) Where a relevant institution discloses to the Governor:
- (a) its knowledge or suspicion that a person is a listed person or a person who has committed an offence under article 7, 8(9) or 12(2), or
 - (b) any information or other matter on which that knowledge or suspicion is based,
- the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

GENERAL

Customs powers to demand evidence of destination which goods reach

11. Any exporter or any shipper of restricted goods which have been exported from the Territory shall, if so required by an officer authorised for the purpose by the Governor, furnish within such time as the Governor may allow proof to the Governor's satisfaction that the goods have reached a destination to which their exportation was not prohibited by this Order, and, if he fails to do so, he shall be guilty of an offence under this Order unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

Offences in connection with applications for licences, conditions attaching to licences, etc

12.—(1) If for the purposes of obtaining any licence under this Order any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, he shall be guilty of an offence under this Order.

(2) Any person who has done any act under the authority of a licence granted by the Governor under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order:

Provided that no person shall be guilty of an offence under this paragraph where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, by the Governor after the doing of the act authorised by the licence.

Declaration as to goods: power of search

13.—(1) Any person who is about to leave the Territory shall, if he is required to do so by any authorised person:

- (a) declare whether or not he has with him any restricted goods which are destined for a person or place in Burma or for delivery, directly or indirectly, to or to the order of any person in Burma; and
- (b) produce any such goods as aforesaid which he has with him.

(2) Any authorised person, and any person acting under his direction, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid, provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

(3) Any person who without reasonable excuse refuses to make a declaration, or fails to produce any goods or refuses to allow himself to be searched in accordance with the foregoing provisions of this article, shall be guilty of an offence under this Order.

(4) Any person who under the provisions of this article makes a declaration which to his knowledge is false in a material particular or recklessly makes any declaration which is false in a material particular shall be guilty of an offence under this Order.

(5) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(6) In this article, "authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected ships

14.—(1) Where any authorised officer has reason to suspect that any ship to which article 6 applies has been or is being or is about to be used in contravention of paragraph (1) of that article:

- (a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;

- (b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and
 - (c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 6, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2).
- (2) The further action referred to in paragraph (1)(c) is either:
- (a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or
 - (b) to request the master of the ship to take any one or more of the following steps:
 - (i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;
 - (ii) if the ship is then in port in the Territory, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;
 - (iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii); and
 - (iv) to take her to any other destination that may be specified by the officer in agreement with the master.
- (3) Without prejudice to the provisions of article 17(3), where:
- (a) a master refuses or fails to comply with a request made under paragraph (2) (b), or
 - (b) an authorised officer otherwise has reason to suspect that a request that has been so made may not be complied with,

any such officer may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.

(4) Before or on exercising any power conferred by this article, an authorised officer shall, if requested to do so, produce evidence of his authority.

(5) In this article "authorised officer" means:

- (a) any commissioned naval or military officer;
- (b) any British consular officer;
- (c) any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected aircraft

15.—(1) Where any authorised person has reason to suspect that any aircraft to which article 6 applies has been or is being or is about to be used in contravention of paragraph (1) of that article:

- (a) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify;
- (b) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force; and

- (c) if the aircraft is then in the Territory any authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (a)) further request the charterer, operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the Territory until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 17(3), where any authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose:

- (a) enter, or authorise entry, upon any land and upon that aircraft;
- (b) detain, or authorise the detention of, that aircraft and any of its cargo; and
- (c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article, "authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected vehicles

16.—(1) Where any authorised person has reason to suspect that any vehicle in the Territory has been or is being or is about to be used in contravention of article 6:

- (a) he may request the operator and the driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his inspection such documents so relating and such goods as he may specify;
- (b) he may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force; and
- (c) any authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (a)) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in the Territory until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 17(3), where any authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose:

- (a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;
- (b) detain, or authorise the detention of, that vehicle and any goods contained in it; and
- (c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article, "authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 14 to 16

17.—(1) No information furnished or document produced by any person in pursuance of a request made under article 14, 15 or 16 shall be disclosed except:

- (a) with the consent of the person by whom the information was furnished or the document was produced, provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by

- any person who is entitled to that information or the possession of that document in his own right;
- (b) to any person who would have been empowered under article 14, 15 or 16 to request that it be furnished or produced to any person holding or acting in any office under or in the service of:
 - (i) the Crown in respect of the Government of the United Kingdom;
 - (ii) the Government of the Isle of Man;
 - (iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;
 - (iv) the States of Jersey; or
 - (v) the Government of any British overseas territory; or
 - (c) with a view to the institution of, or otherwise for the purposes of, any proceedings:
 - (i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or
 - (ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.
- (2) Any power conferred by article 14, 15 or 16 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.
- (3) Each of the following persons shall be guilty of an offence under this Order, that is to say:
- (a) a master of a ship who disobeys any direction given under article 14(2)(a);
 - (b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who:
 - (i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 14, 15 or 16 by any person empowered to make it, or
 - (ii) furnishes any document or information which to his knowledge is false in a material particular or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request;
 - (c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any person (or any person acting under the authority of any such person) in the exercise of his powers under article 14, 15 or 16.
- (4) Nothing in articles 14 to 17 shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

Obtaining of evidence and information

18. The provisions of Schedule 4 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor:

- (a) of evidence or information for the purpose of securing compliance with or detecting evasion of:
 - (i) this Order in the Territory; or
 - (ii) any law making provision with respect to the matters regulated by this Order that is in force in the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory; and
- (b) of evidence of the commission of –

- (i) in the Territory, an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs; or
- (ii) with respect to any of those matters, an offence under the law of the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory.

Penalties and Proceedings

19.—(1) Any person guilty of an offence under article 3, 4(3), 5, 6(3), 7, 8(9) or 9 shall be liable:

- (a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both; or
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(2) Any person guilty of an offence under article 17(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 4 shall be liable –

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both; or
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(3) Any person guilty of an offence under article 12(1) or (2) or article 13(4) shall be liable:

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both; or
- (b) on summary conviction to a fine not exceeding £5,000 or its equivalent.

(4) Any person guilty of an offence under article 8(10), 10, 17(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 4 shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £5,000 or its equivalent or to both.

(5) Any person guilty of an offence under article 11 or 13(3) shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.

(6) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(7) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(8) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

(9) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

Exercise of powers of the Governor

20.—(1) The Governor may to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order to any

person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

(2) Any licences granted under this Order shall be in writing and may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

Miscellaneous

21.—(1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done anywhere other than the Territory provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

27th July 2004

A. K. Galloway
Clerk to the Privy Council

SCHEDULE 1

Article 1(2)(a)

TERRITORIES TO WHICH THIS ORDER EXTENDS

Anguilla

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St. Helena and Dependencies

South Georgia and the South Sandwich Islands

The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus

Turks and Caicos Islands

Virgin Islands

SCHEDULE 2

Article 1(2)(b)

APPLICATION OF ARTICLE 19 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1.—(1) Any person who commits an offence under article 3, 4, 5, 6(3), 7, 8(9) or 9, or paragraph 5(b) or (d) of Schedule 4, shall be liable on conviction:

(a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine, or to both;

(b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

2. Any person who commits an offence under article 12(1) or (2), 13(3), or 17(3)(b)(ii) is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

3. Any person who commits an offence under article 17(3)(a), (b)(i) or (c), or paragraph (5)(a) or (c) of Schedule 4, is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

4. Any person who commits an offence under article 8(10) or 10 is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding £5,000 or its equivalent, or to both.

5. Any person who commits an offence under article 11 or 13(3) is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or its equivalent.

6. Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

7. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

8. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

9. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

SCHEDULE 3

Article 2(1)

EQUIPMENT THAT MIGHT BE USED FOR INTERNAL REPRESSION

10. Helmets providing ballistic protection, anti-riot helmets, anti-riot shields and ballistic shields and specially designed components therefor.

11. Specially designed fingerprint equipment.

12. Power controlled searchlights.

13. Construction equipment provided with ballistic protection.

14. Hunting knives.

15. Specially designed production equipment to make shotguns.

16. Ammunition hand-loading equipment.

17. Communications intercept devices.
18. Solid-state optical detectors.
19. Image-intensifier tubes.
20. Telescopic weapon sights.
21. Smooth-bore weapons and related ammunition, other than those specially designed for military use, and specially designed components therefor; except:
 - (a) signal pistols;
 - (b) air- and cartridge-powered guns designed as industrial tools or humane animal stunners.
22. Simulators for training in the use of firearms and specially designed or modified components and accessories therefor.
23. Bombs and grenades, other than those specially designed for military use, and specially designed components therefor.
24. Body armour, other than those manufactured to military standards or specifications, and specially designed components therefor.
25. All-wheel-drive utility vehicles capable of off-road use that have been manufactured or fitted with ballistic protection, and profiled armour for such vehicles.
26. Water cannon and specially designed or modified components therefor.
27. Vehicles equipped with a water cannon.
28. Vehicles specially designed or modified to be electrified to repel boarders and components therefor specially designed or modified for that purpose.
29. Acoustic devices represented by the manufacturer or supplier as suitable for riot-control purposes, and specially designed components therefor.
30. Leg-irons, gang-chains, shackles and electric-shock belts, specially designed for restraining human beings; except:
 - handcuffs for which the maximum overall dimension including chain does not exceed 240 mm when locked.
31. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating substance (such as tear gas or pepper sprays), and specially designed components therefor.
32. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (including electric-shocks batons, electric shock shields, stun guns and electric shock dart guns (tasers)) and components therefor specially designed or modified for that purpose.
33. Electronic equipment capable of detecting concealed explosives and specially designed components therefor; except:
 - TV or X-ray inspection equipment.
34. Electronic jamming equipment specially designed to prevent the detonation by radio remote control of improvised devices and specially designed components therefor.
35. Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except:

- those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflaters, electric-surge arresters or fire sprinkler actuators).

36. Equipment and devices designed for explosive ordnance disposal; except:

- (a) bomb blankets;
- (b) containers designed for folding objects known to be, or suspected of being improvised explosive devices.

37. Night vision and thermal imaging equipment and image intensifier tubes or solid state sensors therefor.

38. Software specially designed and technology required for all listed items.

39. Linear cutting explosive charges.

40. Explosives and related substances as follows:

- amatol,
- nitrocellulose (containing more than 12,5 % nitrogen),
- nitroglycol,
- pentaerythritol tetranitrate (PETN),
- picryl chloride,
- tinitorphenylmethylnitramine (tetryl),
- 2,4,6-trinitrotoluene (TNT)

41. Software specially designed and technology required for all listed items.

SCHEDULE 4

Article 18

EVIDENCE AND INFORMATION

42.—(1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor may request any person in or resident in the Territory to furnish to him any information in his possession or control, or to produce to him any document in his possession or control, which he may require for the purpose of securing compliance with or detecting evasion of this Order; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in the foregoing sub-paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to furnish or produce any privileged information or document in his possession in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested so to do under this paragraph, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

(5) The furnishing of any information or the production of any document under this paragraph shall not be treated as a breach of any restriction imposed by statute or otherwise.

43.—(1) If any judge, justice of the peace or magistrate is satisfied by information on oath given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case:

- (a) that there is reasonable ground for suspecting that an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs, has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified, or
- (b) that any documents which ought to have been produced under paragraph 1 and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorising any police officer or constable, together with any other persons named in the warrant and any other police officers or constables, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or as the case may be, the vehicle, ship or aircraft.

(2) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) may do any or all of the following things:

- (a) inspect and search those premises or the vehicle, ship or aircraft for any material which he has reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;
- (b) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;
- (c) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds to believe are required to be produced in accordance with paragraph 1; or
- (d) seize anything that is necessary to be seized in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Any information required in accordance with sub-paragraph (2) which is contained in a computer and is accessible from the premises or from any vehicle, ship or aircraft must be produced in a form in which it can be taken away and in which it is visible and legible.

(4) A police officer or constable lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) may –

- (a) search any person whom he has reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and
- (b) seize anything he finds in a search referred to in paragraph (a), if he has reasonable grounds for believing that it is evidence of an offence referred to in this paragraph:

Provided that no person shall be searched in pursuance of this sub-paragraph except by a person of the same sex.

(5) Where, by virtue of this paragraph a person is empowered to enter any premises, vehicle, ship or aircraft he may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such an offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

44. A person authorised by the Governor to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of his authority before exercising that power.

45. No information furnished or document produced (including any copy of an extract made of any document produced) by a person in pursuance of a request made under this Schedule and no document seized under paragraph 2(2) shall be disclosed except –

- (a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized: provided that a person

who has obtained information or is in the possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this subparagraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced, or to any person holding or acting in any office under or in the service of –
 - (i) the Crown in respect of the Government of the United Kingdom,
 - (ii) the Government of the Isle of Man,
 - (iii) the States of Guernsey or Alderney or the Chief Pleas of Sark,
 - (iv) the States of Jersey, or
 - (v) the Government of any British overseas territory; or
- (c) with a view to the institution of, or otherwise for the purposes of, any proceedings –
 - (i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs, or
 - (ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

46. Any person who –

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it; or
- (b) furnishes any information or produces any document which to his knowledge is false in a material particular or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request; or
- (c) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule; or
- (d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies to each of the British overseas territories listed in Schedule 1. It imposes restrictive measures in respect of Burma and the continuing serious violations of human rights in that country and the failure of its military authorities to enter into substantive discussions with the democratic movement concerning a process leading to national reconciliation, respect for human rights and democracy. These measures include the prohibition of the delivery or supply of arms and related material and equipment that might be used for internal repression in Burma, and the prohibition of making available funds, financial assets or economic resources to listed persons and the freezing of their funds, financial assets or economic resources. It gives effect to measures adopted by the European Union in Council Common Position 2004/423/CFSP.

2004 No. 1980

OVERSEAS TERRITORIES

**The Sudan (Restrictive Measures) (Overseas Territories)
(Amendment) Order 2004**

<i>Made</i> - - - -	<i>27th July 2004</i>
<i>Laid before Parliament</i>	<i>28th July 2004</i>
<i>Coming into force</i> - -	<i>29th July 2004</i>

At the Court at Buckingham Palace, the 27th day of July 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833(a), the British Settlements Acts 1887 and 1945(b), 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 and commencement

1.—(1) This Order may be cited as the Sudan (Restrictive Measures) (Overseas Territories) (Amendment) Order 2004 and shall come into force on 29th July 2004.

(2) In this Order “the Order” means the Sudan (Restrictive Measures) (Overseas Territories) Order 2004(c).

Amendment of the Order

2. In Article 2 the definition of “restricted goods” shall be replaced by the following definition:

““restricted goods” means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(d) made under the Export Control Act 2002(e).”

3. Article 5 of the Order shall be amended by:

- (a) replacing the words “person in Sudan” wherever that term appears, with the words “person, entity or body in, or for use in, Sudan”; and

(a) 1833 c. 85.

(b) 1887 c. 54 and 1945 c. 7.

(c) SI 2004/349

(d) SI 2003/2764

(e) 2002 c.28.

- (b) inserting after the term "military activities" the words "or to the provision, manufacture, maintenance or use of restricted goods".

A K Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Sudan (Restrictive Measures) (Overseas Territories) Order 2004 to give effect more precisely to the Common Position adopted by the Council of the European Union on 9th January 2004. The amendment makes it clear that it is prohibited to provide assistance, advice or training related to the provision, manufacture, maintenance and use of arms and related matériel and that the prohibition also applies where advice, assistance or training is provided to any person, entity or body in, or for use in, Sudan. The opportunity has also been taken to amend the reference in the definition of restricted goods to correctly refer to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 being made under the Export Control Act 2002.

2004 No. 1983

UNITED NATIONS

The Iraq (United Nations Sanctions) (Overseas Territories)
(Amendment) Order 2004

<i>Made</i> - - - -	<i>27th July 2004</i>
<i>Laid before Parliament</i>	<i>28th July 2004</i>
<i>Coming into force</i> - -	<i>29th July 2004</i>

At the Court at Buckingham Palace, the 27th day of July 2004

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, commencement, interpretation and extent

1.—(1) This Order may be cited as the Iraq (United Nations Sanctions) (Overseas Territories) (Amendment) Order 2004 and shall come into force on 29th July 2004.

(2) In this Order, “the principal Order” means the Iraq (United Nations Sanctions) (Overseas Territories) Order 2003(b).

(3) This Order shall extend to the territories listed in Schedule 1 to the principal Order.

Amendment of article 4 of principal Order

2. In article 4 of the principal Order, the definition of “restricted goods” shall be replaced by the following definition:

““restricted goods” means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(c) made under the Export Control Act 2002(d);”

(a) 1946 c. 45.
(b) S.I. 2003/1516.
(c) S.I. 2003/2764.
(d) 2002 c. 28.

New article 10a of principal Order

3. After article 10 of the principal Order, there shall be added a new article 10a as follows:

“Exception

10a. The privileges and immunities provided in articles 9 and 10 shall not apply with respect to any legal proceedings, nor to any resulting final judgement, arising out of a contractual obligation entered into by Iraq after 30th June 2004.”

A. K. Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, amends the Iraq (United Nations Sanctions) (Overseas Territories) Order 2003 to give effect to resolution 1546 adopted by the Security Council of the United Nations on 8th June 2004, and to update the definition of “restricted goods”.

2004 No. 3039

OVERSEAS TERRITORIES

**The International Criminal Tribunal for the former Yugoslavia
(Restrictive Measures) (Overseas Territories) Order 2004**

<i>Made</i> - - - -	<i>17th November 2004</i>
<i>Laid before Parliament</i>	<i>18th November 2004</i>
<i>Coming into force</i> - -	<i>19th November 2004</i>

At the Court at Buckingham Palace, the 17th day of November 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833(a), the British Settlements Acts 1887 and 1945(b), 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:—

INTRODUCTORY

Citation, commencement, extent and application

1.—(1) This Order may be cited as the International Criminal Tribunal for the former Yugoslavia (Restrictive Measures) (Overseas Territories) Order 2004 and shall come into force on 19th November 2004.

- (a) This Order shall extend to the territories listed in Schedule 1.
- (b) Article 9 shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.
- (c) In the application of this Order to any of the said territories the expression “the Territory” in this Order means that territory.

(2) Articles 3, 4 and 5 shall apply to any person within the Territory and to any person elsewhere who is:

- (a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas), or a British protected person and is ordinarily resident in the Territory; or
- (b) a body incorporated or constituted under the law of the Territory.

(a) 1833 c. 85.

(b) 1887 c. 54 and 1945 c. 7.

Interpretation

2.—(1) In this Order, the following expressions have, except where otherwise expressly provided, the meanings hereby respectively assigned to them, that is to say –

“document” includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“funds, financial assets or economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

“Governor” means the Governor or other officer administering the Government of the Territory;

“ICTY” means the International Criminal Tribunal for the former Yugoslavia established by UN Security Council resolutions 808 (1993) and 827 (1993);

“listed person” means any person indicted by the ICTY and listed in the Annex (as modified from time to time) to Council Common Position 2004/694/CFSP, adopted by the Council of the European Union on 11 October 2004;

“relevant institution” means –

- (a) the person or body responsible for carrying out in the Territory the functions of a monetary authority;
- (b) any person who may lawfully accept deposits in or from within the Territory by way of business; and
- (c) any society established lawfully in the Territory whose principal purpose is the making of loans secured on residential property where such loans are funded substantially by its members;

“ship” includes every description of vessel used in navigation;

“Supreme Court” means the court of the Territory having unlimited jurisdiction in civil proceedings;

“vehicle” means land transport vehicle.

(2) For the purpose of the definition of “relevant institution” in paragraph (1) –

- (a) the activity of accepting deposits has the meaning given in any relevant order made under section 22 of the Financial Services and Markets Act 2000(a); and
- (b) a person is not regarded as accepting deposits by way of business if –
 - (i) he does not hold himself out as accepting deposits on a day to day basis, and
 - (ii) any deposits which he accepts are accepted only on particular occasions, whether or not involving the issue of any securities.

(3) In determining for the purposes of paragraph (2)(b)(ii) whether deposits are accepted only on particular occasions, regard is to be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(4) For the purpose of identifying a “listed person” referred to in paragraph (1), the Governor shall cause a notice containing the names and other particulars of such listed persons to be published in the Gazette of the Territory as necessary from time to time.

(a) 2000 c. 8.

FUNDS, FINANCIAL ASSETS OR ECONOMIC RESOURCES

Making funds, financial assets or economic resources available to any listed person

3. Any person who, except under the authority of a licence granted by the Governor under this article, makes any funds, financial assets or economic resources available to or for the benefit of any listed person shall be guilty of an offence under this Order.

Freezing of funds, financial assets or economic resources

4.—(1) Where the Governor has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds, financial assets or economic resources are held is or may be a listed person, the Governor may by notice direct that those funds, financial assets or economic resources are not to be made available to any person, except under the authority of a licence granted by the Governor under article 3.

(2) A direction given under paragraph (1) shall specify either –

(a) the period for which it is to have effect; or

(b) that the direction is to have effect until it is revoked by notice under paragraph (3).

(3) The Governor may by notice revoke a direction given under paragraph (1) at any time.

(4) The expiry or revocation of a direction shall not affect the application of article 3 in respect of the funds, financial assets or economic resources in question.

(5) A notice under paragraph (1) or (3) shall be given in writing to the person holding the funds, financial assets or economic resources in question ("the recipient"), and shall require the recipient to send a copy of the notice without delay to the person whose funds, financial assets or economic resources they are, or on whose behalf they are held ("the owner").

(6) A recipient shall be treated as complying with that requirement if, without delay, he sends a copy of the notice to the owner at his last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.

(7) Where a direction has been given under paragraph (1), any person by, for or on behalf of whom those funds, financial assets or economic resources are held may apply to the Supreme Court for the direction to be set aside; and on such application the court may set aside the direction.

(8) A person who makes an application under paragraph (7) shall give a copy of the application and any witness statement or affidavit in support to the Governor (and to any other person by, for or on behalf of whom those funds, financial assets or economic resources are held), not later than seven days before the date fixed for the hearing of the application.

(9) Any person who contravenes a direction under paragraph (1) is guilty of an offence under this Order.

(10) A recipient who fails to comply with such a requirement as is mentioned in paragraph (5) is guilty of an offence under this Order.

Facilitation of activities prohibited under article 3 or 4(9)

5. Any person who knowingly and intentionally engages in any activities the object or effect of which is to enable or facilitate the commission (by that person or another) of an offence under article 3 or 4(9) is guilty of an offence under this Order.

Failure to disclose knowledge or suspicion of measures

6.—(1) A relevant institution is guilty of an offence if:

- (a) it knows or suspects that a person who is, or has been at any time since the coming into force of this Order, a customer of the institution, or is a person with whom the institution has had dealings in the course of its business since that time:
 - (i) is a listed person; or
 - (ii) has committed an offence under article 3, 4(9) or 7(2); and
 - (b) it does not disclose to the Governor the information or other matter on which the knowledge or suspicion is based as soon as is reasonably practicable after that information or other matter comes to its attention.
- (2) Where a relevant institution discloses to the Governor:
- (a) its knowledge or suspicion that a person is a listed person or a person who has committed an offence under article 3, 4(9) or 7(2), or
 - (b) any information or other matter on which that knowledge or suspicion is based,
- the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

GENERAL

Offences in connection with applications for licences, conditions attaching to licences, etc

7.—(1) If for the purposes of obtaining any licence under this Order any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, he shall be guilty of an offence under this Order.

(2) Any person who has done any act under the authority of a licence granted by the Governor under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order:

Provided that no person shall be guilty of an offence under this paragraph where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, by the Governor after the doing of the act authorised by the licence.

Obtaining of evidence and information

8. The provisions of Schedule 3 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor:

- (a) of evidence or information for the purpose of securing compliance with or detecting evasion of:
 - (i) this Order in the Territory; or
 - (ii) any law making provision with respect to the matters regulated by this Order that is in force in the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory; and
- (b) of evidence of the commission of –
 - (i) in the Territory, an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs; or
 - (ii) with respect to any of those matters, an offence under the law of the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory.

Penalties and Proceedings

9.—(1) Any person guilty of an offence under article 3, 4(9) or 5 shall be liable:

- (a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both; or

- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.
- (2) Any person guilty of an offence under paragraph 5(b) or (d) of Schedule 3 shall be liable –
- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both; or
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.
- (3) Any person guilty of an offence under article 7(1) or (2) shall be liable:
- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both; or
- (b) on summary conviction to a fine not exceeding £5,000 or its equivalent.
- (4) Any person guilty of an offence under article 4(10), 6 or paragraph 5(a) or (c) of Schedule 3 shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £5,000 or its equivalent or to both.
- (5) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (6) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.
- (7) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.
- (8) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:
- Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

Exercise of powers of the Governor

10.—(1) The Governor may to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

(2) Any licences granted under this Order shall be in writing and may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

Miscellaneous

11.—(1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done anywhere other than the Territory provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law

substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 1(1)(a)

TERRITORIES TO WHICH THIS ORDER EXTENDS

Anguilla
British Antarctic Territory
British Indian Ocean Territory
Cayman Islands
Falkland Islands
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St. Helena and Dependencies
South Georgia and the South Sandwich Islands
The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus
Turks and Caicos Islands
Virgin Islands

SCHEDULE 2

Article 1(1)(b)

APPLICATION OF ARTICLE 9 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1.—(1) Any person who commits an offence under article 3, 4(9) or 5, or paragraph 5(b) or (d) of Schedule 3, shall be liable on conviction:

- (a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine, or to both;
- (b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

2. Any person who commits an offence under article 7(1) or (2) is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

3. Any person who commits an offence under paragraph (5)(a) or (c) of Schedule 3, is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

4. Any person who commits an offence under article 4(10) or 6 is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding £5,000 or its equivalent, or to both.

5. Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

6. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

7. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

8. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

SCHEDULE 3

Article 8

EVIDENCE AND INFORMATION

1.—(1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor may request any person in or resident in the Territory to furnish to him any information in his possession or control, or to produce to him any document in his possession or control, which he may require for the purpose of securing compliance with or detecting evasion of this Order; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in the foregoing sub-paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to furnish or produce any privileged information or document in his possession in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested so to do under this paragraph, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

(5) The furnishing of any information or the production of any document under this paragraph shall not be treated as a breach of any restriction imposed by statute or otherwise.

2.—(1) If any judge, justice of the peace or magistrate is satisfied by information on oath given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case:

- (a) that there is reasonable ground for suspecting that an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs, has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified, or

- (b) that any documents which ought to have been produced under paragraph 1 and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorising any police officer or constable, together with any other persons named in the warrant and any other police officers or constables, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or as the case may be, the vehicle, ship or aircraft.

(2) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) may do any or all of the following things:

- (a) inspect and search those premises or the vehicle, ship or aircraft for any material which he has reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;
- (b) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;
- (c) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds to believe are required to be produced in accordance with paragraph 1; or
- (d) seize anything that is necessary to be seized in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Any information required in accordance with sub-paragraph (2) which is contained in a computer and is accessible from the premises or from any vehicle, ship or aircraft must be produced in a form in which it can be taken away and in which it is visible and legible.

(4) A police officer or constable lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) may –

- (a) search any person whom he has reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and
- (b) seize anything he finds in a search referred to in paragraph (a), if he has reasonable grounds for believing that it is evidence of an offence referred to in this paragraph:

Provided that no person shall be searched in pursuance of this sub-paragraph except by a person of the same sex.

(5) Where, by virtue of this paragraph a person is empowered to enter any premises, vehicle, ship or aircraft he may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such an offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

3. A person authorised by the Governor to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of his authority before exercising that power.

4. No information furnished or document produced (including any copy of an extract made of any document produced) by a person in pursuance of a request made under this Schedule and no document seized under paragraph 2(2) shall be disclosed except –

- (a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized: provided that a person who has obtained information or is in the possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;
- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced, or to any person holding or acting in any office under or in the service of –
 - (i) the Crown in respect of the Government of the United Kingdom,

- (ii) the Government of the Isle of Man,
- (iii) the States of Guernsey or Alderney or the Chief Pleas of Sark,
- (iv) the States of Jersey, or
- (v) the Government of any British overseas territory; or
- (c) with a view to the institution of, or otherwise for the purposes of, any proceedings –
 - (i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs, or
 - (ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

5. Any person who –

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it; or
- (b) furnishes any information or produces any document which to his knowledge is false in a material particular or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request; or
- (c) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule; or
- (d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies to each of the British overseas territories listed in Schedule 1. It imposes restrictive measures in respect of certain persons indicted by the International Criminal Tribunal for the former Yugoslavia who remain at large. These measures prohibit making available funds, financial assets or economic resources to listed persons and the freezing of their funds, financial assets or economic resources. It gives effect to measures adopted by the European Union in Council Common Position 2004/694/CFSP.

STATUTORY INSTRUMENTS

2004 No.3040

CHILDREN AND YOUNG PERSONS

The Child Abduction and Custody (Parties to Conventions) (Amendment) Order 2004

Made 17th November 2004

At the Court at Buckingham Palace, the 17th day of November 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 2 and 13 of the Child Abduction and Custody Act 1985[1], is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as the Child Abduction and Custody (Parties to Conventions) (Amendment) Order 2004.

2. The Child Abduction and Custody (Parties to Conventions) (Amendment) Order 2003[2] is revoked.

3. In the Child Abduction and Custody (Parties to Conventions) Order 1986[3], for Schedules 1 and 2 there shall be substituted Schedules 1 and 2 set out in the Schedule to this Order.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE

Article 3

Schedules 1 and 2 substituted in the Child Abduction and Custody (Parties to Conventions) Order 1986

" SCHEDULE 1

Article 2

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION,
THE HAGUE, 25TH OCTOBER 1980

<i>Contracting States to the Convention</i>	<i>Territories specified in Declarations under Article 39 or 40 of the Convention</i>	<i>Date of Coming into Force of Convention as between the United Kingdom and the State or Territory</i>
Argentina	-	1st June 1991
Australia	Australian States and mainland Territories	1st January 1987
Austria	-	1st October 1988
The Bahamas	-	1st January 1994
Belarus	-	1st September 2003
Belgium	-	1st May 1999
Belize	-	1st October 1989
Bosnia and Herzegovina	-	7th April 1992
Brazil	-	1st March 2005
Burkina Faso	-	1st August 1992
Canada	Ontario	1st August 1986
	New Brunswick	1st August 1986
	British Columbia	1st August 1986
	Manitoba	1st August 1986
	Nova Scotia	1st August 1986
	Newfoundland	1st August 1986
	Prince Edward Island	1st August 1986
	Quebec	1st August 1986
	Yukon Territory	1st August 1986
	Saskatchewan	1st November 1986
	Alberta	1st February 1987
	Northwest Territories	1st April 1988
Chile	-	1st May 1994
China	Hong Kong Special Administrative Region	1st September 1997
	Macau Special Administrative Region	1st March 1999
Colombia	-	1st March 1996
Croatia	-	1st December 1991
Cyprus	-	1st February 1995
Czech Republic	-	1st March 1998
Denmark	-	1st July 1991
Ecuador	-	1st April 1992
Estonia	-	1st September 2003
Fiji	-	1st September 2003

Finland	-	1st August 1994
France	-	1st August 1986
Georgia	-	1st October 1997
Germany	-	1st December 1990
Greece	-	1st June 1993
Honduras	-	1st March 1994
Hungary	-	1st September 1986
Iceland	-	1st November 1996
Ireland	-	1st October 1991
Israel	-	1st December 1991
Italy	-	1st May 1995
Latvia	-	1st September 2003
Lithuania	-	1st March 2005
Luxembourg	-	1st January 1987
Macedonia	-	1st December 1991
Malta	-	1st March 2002
Mauritius	-	1st June 1993
Mexico	-	1st September 1991
Monaco	-	1st February 1993
Netherlands	-	1st September 1990
New Zealand	-	1st August 1991
Norway	-	1st April 1989
Panama	-	1st May 1994
Peru	-	1st September 2003
Poland	-	1st November 1992
Portugal	-	1st August 1986
Romania	-	1st February 1993
St Kitts and Nevis	-	1st August 1994
Serbia and Montenegro	-	27th April 1992
Slovakia	-	1st February 2001
Slovenia	-	1st June 1994
South Africa	-	1st October 1997
Spain	-	1st September 1987
Sweden	-	1st June 1989
Switzerland	-	1st August 1986
Turkey	-	1st August 2001
Turkmenistan	-	1st March 1998
United States of America	-	1st July 1988
Uruguay	-	1st September 2003
Uzbekistan	-	1st September 2003
Venezuela	-	1st January 1997
Zimbabwe	-	1st July 1995"

"SCHEDULE 2

Article 3

EUROPEAN CONVENTION ON RECOGNITION AND ENFORCEMENT OF DECISIONS
CONCERNING CUSTODY OF CHILDREN AND ON THE RESTORATION OF CUSTODY
OF CHILDREN, LUXEMBOURG, 20th MAY 1980

<i>Contracting States to the Convention</i>	<i>Territories specified in Declarations under Article 24 or 25 of the Convention</i>	<i>Date of Coming into Force of Convention as between the United Kingdom and the State or Territory</i>
Austria	-	1st August 1986
Belgium	-	1st August 1986
Cyprus	-	1st October 1986
Czech Republic	-	1st July 2000
Denmark	-	1st August 1991
Finland	-	1st August 1994
France	-	1st August 1986
Germany	-	1st February 1991
Greece	-	1st July 1993
Iceland	-	1st November 1996
Ireland	-	1st October 1991
Italy	-	1st June 1995
Latvia	-	1st August 2002
Liechtenstein	-	1st August 1997
Lithuania	-	1st March 2005
Luxembourg	-	1st August 1986
Malta	-	1st February 2000
Netherlands	-	1st September 1990
Norway	-	1st May 1989
Poland	-	1st March 1996
Portugal	-	1st August 1986
Spain	-	1st August 1986
Sweden	-	1st July 1989
Switzerland	-	1st August 1986
Turkey	-	1st June 2000"

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Child Abduction and Custody (Parties to Convention) Order 1986 to add Brazil and Lithuania to the list of Contracting States to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on 25th October 1980 (Cm. 33); and to add

Lithuania to the list of Contracting States to the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, signed at Luxembourg on 20th May 1980 (Cm.191).

Notes:

[1] 1985 c.60.

[2] S.I. 2003/1518.

[3] S.I. 1986/1159.

2004 No. 3333

OVERSEAS TERRITORIES

**The Burma (Restrictive Measures) (Overseas Territories)
(Amendment) Order 2004**

Made - - - - - 16th December 2004

Laid before Parliament 10th January 2005

Coming into force - - - 11th January 2005

At the Court at Buckingham Palace, the 16th day of December 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833^(a), the British Settlements Acts 1887 and 1945^(b), 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, commencement and extent

1.—(1) This Order may be cited as the Burma (Restrictive Measures) (Overseas Territories) (Amendment) Order 2004 and shall come into force on 11th January 2005.

(2) In this Order, “the principal Order” means the Burma (Restrictive Measures) (Overseas Territories) Order 2004^(c).

(3) This Order shall extend to the territories listed in Schedule 1 to the principal Order.

Amendments to principal Order

2.—(1) Article 1(2) of the principal Order is amended by replacing “Articles 3, 4, 5, 7, 8 and 9” in the first line with “Articles 3, 4, 5, 7, 8, 8a and 9”.

(2) Article 2(1) of the principal Order is amended by:

(a) inserting, in the appropriate place in alphabetical order, the following definitions:

^(a) 1833 c. 85.

^(b) 1887 c. 54 and 1945 c.7.

^(c) S.I. 2004/1979.

"the European Community" means the customs territory of the European Community as defined in article 3(3) of Council Regulation (EEC) No 2913/92 of 12th November 1992(a);

"Gazette" means the official gazette of a Territory or any other form in which official information is normally made available in that Territory;

"listed Burmese state-owned enterprise" means any enterprise as is listed in Annex IV (as modified from time to time) to "the Regulation";

"the Regulation" means Council Regulation (EC) No. 798/2004 of 26 April 2004(b) concerning certain restrictive measures in respect of Burma, as amended from time to time.

(3) Article 2(4) of the principal Order is amended by inserting after the words "For the purposes of identifying", the words "a "listed Burmese state-owned enterprise" or" and by inserting after the words "the names and other particulars of such", the words "listed Burmese state-owned enterprises and".

(4) After article 2(4) of the principal Order, this following new subsection is inserted:

"(5) Except where this Order provides otherwise, expressions used in the Regulation which are also used in this Order have the same meaning in this Order as they have in the Regulation."

(5) After article 2 of the principal Order, the following new article is inserted:

"European Community matters

2a. The Governor shall make available to persons in the Territory, in such manner as he may think fit the text of the Regulation, together with the text of any amending Council Regulations, whether those Regulations were made before or after the coming into force of this Order."

(6) The heading above article 7 of the principal Order is amended by replacing "OR ECONOMIC RESOURCES" with ", ECONOMIC RESOURCES OR INVESTMENT".

(7) After article 8 of the principal Order, the following new article is inserted:

"Prohibition on investment in Burmese state-owned enterprises

8a.—(1) Subject to the provisions of this Order, Article 8a of the Regulation shall have effect in the Territory, as if the Territory were a Member State of the European Community and the Regulation were a law of the Territory, so as to prohibit:

- (a) the granting of any financial loan or credit to the listed Burmese state-owned enterprises, or the acquisition of bonds, certificates of deposit, warrants or debentures issued by those enterprises; and
- (b) the acquisition or extension of a participation in the listed Burmese state-owned enterprises, including the acquisition in full of such enterprises and the acquisition of shares and securities of a participating nature.

(2) Any person who commits a breach of any prohibition in paragraph (1) is guilty of an offence.

(3) Paragraph (1) shall be without prejudice to the execution of trade contracts for the supply of goods or services on usual commercial payment conditions and the usual supplementary agreements in connection with the execution of these contracts such as export credit insurances, as provided by Article 8a(3) of the Regulation.

(a) OJ No L 302, 19.10.92, p1 as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ No L 236, 23.9.2003, p33).

(b) OJ No L 125, 28.4.2004, p. 4, as amended by Council Regulation (EC) No 1853/2004 of 25 October 2004 (OJ No L 323, 26.10.2004, p.11) and as amended from time to time.

(4) The provisions of paragraph 1(a) shall be without prejudice to the execution of an obligation arising from contracts or agreements concluded before 25 October 2004, as provided by Article 8a(4) of the Regulation.

(5) The prohibition in paragraph 1(b) shall not prevent the extension of a participation in a listed Burmese state-owned enterprise, if such extension is compulsory under an agreement concluded with the listed Burmese state-owned enterprise concerned before 25 October 2004, provided that the Governor, the United Kingdom Treasury and the European Commission shall be informed prior to any such transaction.”.

(8) The heading above article 9 of the principal Order is amended by replacing “article 7 or 8(9)” with “article 7, 8a or 8(9)”.

(9) Article 9 of the principal Order is amended by replacing “article 7 or 8(9)” with “article 7, 8a(2) or 8(9)”.

(10) The first line of article 10 of the principal Order is amended by inserting “an” immediately before “offence”.

(11) Article 10(1)(a)(i) of the principal Order is amended by inserting “or a listed Burmese state-owned enterprise” immediately after “listed person”.

(12) Article 10(1)(a)(ii) of the principal Order is amended by replacing “article 7, 8(9) or 12(2)” with “article 7, 8a(2), 8(9) or 12(2)”.

(13) Article 10(2)(a) of the principal Order is amended by inserting in the first line the words “or a listed Burmese state-owned enterprise” after “a listed person” and by replacing “article 7, 8(9) or 12(2)” with “article 7, 8a(2), 8(9) or 12(2)”.

(14) Article 19(1) of the principal Order is amended by inserting “8a(2),” after “7,”.

(15) Sub-paragraph 1(1) of Schedule 2 to the principal Order is amended by inserting “8a(2),” after “7,” in the second line.

(16) The paragraphs in Schedule 3 to the principal Order are renumbered so as to commence at the number “1” rather than “10”.

(17) The paragraphs in Schedule 4 to the principal Order are renumbered so as to commence at the number “1” rather than “42”.

(18) Sub-paragraph 1(3) (as so renumbered) of Schedule 4 to the principal Order is replaced with the following:

“(3) Where a person is convicted of an offence under paragraph 5 of this Schedule of failing to furnish or produce a document when requested so to do, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or provide the document.”.

(19) Paragraph 4 (as so renumbered) of Schedule 4 to the principal Order is amended by replacing the words “any copy of an extract” in the second line with the words “any copy or extract”.

A.K. Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Burma (Restrictive Measures) (Overseas Territories) Order (SI 2004/1979) (the principal Order) to give effect to further restrictive measures in respect of Burma agreed by the European Union in Common Position 2004/740/CFSP (25 October 2004). Council Regulation (EC) No. 798/2004 of 26 April 2004 (the Regulation), as amended by Council Regulation (EC) No 1853/2004 of 25 October 2004, implements these measures in EU Member States and this Order extends them to the British overseas territories listed in Schedule 1 to the principal Order. The measures consist of a ban, with certain exemptions, on new investment in listed Burmese state-owned enterprises.

This Order also makes minor amendments to the principal Order to correct various errors.

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The following are published in this Supplement -

Electoral (Amendment) Ordinance 2005 (No: 1 of 2005);

Fishery Products (Hygiene) (Revocation of Approval) Order 2005 (S. R. & O. No: 1 of 2005);

Merchant Shipping (Registration of Ships) (Fees) Regulations 2005 (S. R. & O. No: 1 of 2005);

The Iraq (United Nations Sanctions) (Overseas Territories) (Amendment) (No. 2) Order 2004, (2004 No. 1671);

The Iraq (United Nations Sanctions) (Overseas Territories) (Amendment) (No. 2) Order 2004, (2004 No. 1671) Correction.

ELIZABETH II



FALKLAND ISLANDS

HARRIET HALL,
Acting Governor.

Electoral (Amendment) Ordinance 2005

(No: 1 of 2005)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. Amendment of Electoral Ordinance

Schedule

ELIZABETH II



FALKLAND ISLANDS

ELECTORAL (AMENDMENT) ORDINANCE 2005

(No: 1 of 2005)

(assented to: 10th February 2005)

(commencement: upon publication)

(published: 21st February 2005)

AN ORDINANCE

To amend the Electoral Ordinance (Title 30.1)(a).

ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Electoral (Amendment) Ordinance 2005.

Amendment of Electoral Ordinance

2. The Electoral Ordinance is amended in the manner specified in the Schedule to this Ordinance.

(a) the Electoral Ordinance has previously been amended by No 2 of 1997, No 7 of 2000 and No 8 of 2001

SCHEDULE

Amendments to the Electoral Ordinance

1. Section 2 is amended —

(a) by inserting the following definition immediately preceding the definition of “qualifying date” —

“ “qualifying address”, in relation to a person registered in a register of electors, is the address in respect of which he is entitled to be so registered;”,

(b) the definition of “the qualifying period” is amended by replacing the words “section 4(1)” with the words “section 4”.

2. In this Schedule, any reference to a section or subsection or other provision is a reference to the section, subsection or other provision of the Electoral Ordinance as amended immediately preceding the enactment of this Ordinance.

3. Section 3 is repealed.

4. Section 4 is repealed and is replaced by the following section —

“Meaning of “resident for the qualifying period”

4. A person is to be regarded as having been resident in the Falkland Islands for the qualifying period if he has been or under sections 8A to 8C he is to be treated as having been resident at an address or addresses in the Falkland Islands aggregating to a continuous period of not less than 12 months immediately preceding the qualifying date.”

5. Section 5 is repealed.

6. The following cross-heading is inserted immediately prior to section 8 —

“Entitlement to registration”.

7. Section 8 is repealed and replaced by the following section —

“Entitlement to be registered as an elector

8.—(1) A person is entitled to be registered in the Register of Electors for a constituency if on the relevant date he —

(a) is resident or is under sections 8A to 8C to be treated as being resident at an address in the constituency on the qualifying date and has been resident in the Falkland Islands for the qualifying period;

(b) is qualified under the provisions of section 27(1) of the Constitution to be registered as an elector for the purpose of the election of members of the Legislative Council .

(2) For the purposes of section 27 of the Constitution “qualifying date”, in relation to a person, means the date on which an application for registration is made (or, by virtue of section 11(2), is treated as having been made) by him.”

8. The following sections are inserted after section 8 —

“Residence: general

8A.—(1) This section applies where the question whether a person is—

(a) is resident at a particular address on the qualifying date;

(b) has been resident in the Falkland Islands for the qualifying period,

for the purposes of section 8 falls to be determined for the purposes of that section.

(2) Regard shall be had, in particular, to the purpose and other circumstances, as well as to the fact of —

(a) his presence at, or absence from, the particular address on the date;

(b) his absence from the Falkland Islands at any time during the qualifying period,

by way of example, where at a particular time a person is staying at any place (whether within or outside the Falkland Islands) otherwise than on a permanent basis, he may in all the circumstances to be taken to be at that time —

(i) resident there if he has no home elsewhere, or

(ii) not resident there if he does have a home elsewhere.

(3) For the purpose of determining whether a person is resident in a dwelling on the qualifying date for the purposes of section 8 and whether on that date he had been resident within the Falkland Islands for the qualifying period, his residence in the dwelling shall not be taken to have been interrupted by reason of his absence in the performance, in the Falkland Islands or elsewhere, of any duty arising from or incidental to any office, service or employment held or undertaken by him if —

(a) he intends to resume actual residence,

(b) the dwelling serves as a permanent place of residence (whether for himself or for himself and other persons) and he would be in actual residence there but for his absence in the performance of that duty.

(4) For the purposes of subsection (3) any temporary period of unemployment shall be disregarded.

(5) Subsection (3) shall also apply in relation to a person's absence by reason of his attendance on a course provided by an educational institution, whether in the Falkland Islands or elsewhere, as it applies in relation to a person's absence in the performance of any duty such as is mentioned in that subsection.

(6) Subject to the subsequent provisions of this Part, a person who is detained at any place in legal custody, whether in the Falkland Islands or elsewhere, shall not, by reason of his presence there, be treated for the purposes of section 8 as resident there but as being resident at the address at which he would under the foregoing provisions of this section be treated as being resident if he had not been detained in legal custody.

Residence: merchant seamen

8B. At any time when a merchant seaman is not resident in the Falkland Islands and who would have been resident there but for the nature of his occupation, he shall be treated for the purposes of section 8 as being resident at any place in the Falkland Islands at which he would have been resident but for the nature of his occupation. For this purpose "merchant seamen" means any person other than a member of Her Majesty's Services or the armed services of any other country whose employment or the greater part of it is carried out onboard seagoing ships, and includes any such person while temporarily without employment.

Residence: persons remanded in custody etc

8C.—(1) This section applies to a person who is detained at any place and is so detained otherwise than after —

(a) being convicted of any offence, or

(b) a finding in criminal proceedings that he did the act or made the omission charged.

(2) A person to whom this section applies shall be regarded for the purposes of section 8 as being resident in the dwelling house in which, under section 8A, he would be treated as being resident if his absence therefrom were an absence in the performance of a duty arising from or incidental to any office, service or employment held or undertaken by him and to which section 8(3)(b) applied."

9. There is inserted after section 8C the following centred heading —

"Registration of Electors".

10. Sections 9 to 22 are repealed and are replaced by the following sections —

"Registers of Electors

9.—(1) The Registration Officer shall maintain a Register of Electors for each constituency.

(2) Each Register shall contain —

- (a) the names of the persons appearing to the Registration Officer to be entitled to be registered in it (subject to their complying with any prescribed requirements);
- (b) insofar as it is practicable to do so and subject to any prescribed exceptions, the qualifying addresses of the persons registered in it; and
- (c) in relation to each such person, that person's electoral number.

(3) A person's electoral number is such number (with or without any letters) as is for the time being allocated by the Registration Officer to that person as his electoral number for the purposes of the Register in question and those numbers shall be allocated by the Registration Officer in such a way as to ensure, so far as is reasonably practicable, that the numbers run consecutively.

(4) The Registration Officer's duty under subsection (1) includes the duty to take reasonable steps to obtain information required by him in connection with the performance of his duty under that subsection (without prejudice to any specific requirement of this Ordinance or Regulations under it).

Maintenance of Registers: annual canvass

10.—(1) The Registration Officer shall conduct an annual canvass for the purpose of ascertaining the persons who are for the time being entitled to be, or to remain, registered as electors in relation to a constituency.

(2) The canvass for any year shall be conducted by reference to residence on the 15th March in that year.

(3) The form to be used for the purposes of a canvass shall be either a form prescribed for those purposes or a form to the same effect.

(4) In connection with a canvas the Registration Officer may, for the purpose of —

- (a) supplementing the information obtained by the use of any such form, or
- (b) where any such form has not been returned, obtaining any information designed to be obtained by the use of the form,

make such further enquiries as he thinks fit.

(5) On the conclusion of a canvas a Registration Officer shall make such alterations in his registers as fall to be made in accordance with section 11 as a result of the canvass.

(6) In this section "residence" means residence for the purposes of section 8.

Maintenance of the Registers: registration of electors

11.—(1) The Registration Officer shall determine all applications for registration which are—

- (a) made to him in accordance with the prescribed requirements, or
- (b) treated as made to him by virtue of subsection (2) of this section.

(2) Where —

- (a) in connection with the canvass under section 10, the form completed in respect of any address specifies any person as a person who is entitled to be registered in a Register, and
- (b) that person is not for the time being registered in the Register in respect of that address,

he shall be treated as having made, on the 15th March in the year in question, an application for registration in the Register in respect of that address.

(3) The Registration Officer shall also determine all objections to a person's registration made in accordance with the prescribed requirements by another person whose name appears in the Register in question.

(4) Subsections (1) and (3) of this section apply to applications and objections asking —

- (a) for the omission, insertion or alteration of a date as that on which a person will become of voting age and entitled to registration, or
- (b) for the alteration of the qualifying address in respect of which a person is registered,

as they apply to applications for registration and objections to a person's registration respectively.

(5) Where the name of a person ("the elector") is duly entered in a Register in respect of any address, the elector is entitled to remain registered in the Register in respect of that address until such time as the Registration Officer —

- (a) determines, on the conclusion of a canvass under section 10, that the elector was not resident at that address on the 15th March in question, or that because —
 - (i) the form mentioned in section 10(4) was not returned in respect of that address, or
 - (ii) for any other reason, insufficient information was obtained as to whether the elector was resident at that address,

the Registration Officer is unable to satisfy himself that the elector was then so resident at that address, or

(b) determines in any prescribed circumstances, that the elector has ceased to be resident at that address or has otherwise ceased to satisfy the conditions for registration set out in section 8.

(6) Where the entitlement of a person to remain registered in a Register in respect of any address terminates by virtue of subsection (5) of this section, the Registration Officer shall remove that person's entry from the Register once the Officer has satisfied any prescribed requirements applying in relation to the removal of that entry.

(7) Subsection (6) does not apply if, or to the extent that, regulations so provide in relation to any prescribed circumstances; and regulations may, in particular, authorise the Registration Officer to retain entries in his Registers for the prescribed period if he thinks fit in cases where the form mentioned in section 10(4) has not been returned in respect of any address.

(8) In this section —

“determines” means determines in accordance with regulations; and

“resident” means resident for the purposes of section 8.

Publication of Registers

12.—(1) Following the conclusion of the canvass conducted by the Registration Officer for any year under section 10, the Registration Officer shall publish a revised version of the Register for both constituencies by the 1st May in that year or by such later date as Regulations may prescribe.

(2) The revised versions of the Register for each constituency shall incorporate —

(a) all the alterations which are required to be made in them as mentioned in section 10(5); and

(b) any alterations which are required to be made by virtue of section 13(3).

(3) The Registration Officer may in addition, if he thinks fit, publish a revised version of the Register for either of the constituencies at any time between —

(a) the time when the Register was last published in accordance with subsection (1) of this section, and

(b) the time when it is due to be next so published,

and the Registration Officer, if he proposes to publish a revised version of a Register in accordance with this subsection, must publish notice of his intention to do so by such time and in such manner as may be prescribed.

(4) When revising a Register for publication under this section the Registration Officer shall make such changes affecting the electoral numbers of persons registered in the Register as he considers necessary in order to comply with section 9(4).

(5) Where a revised version of a Register is published at any time under this section, the Register has effect in the form in which it is so published as from that time until the time when —

(a) a revised version is next so published, or

(b) if earlier, any alteration to the Register takes effect under section 14 or 15.

(6) Any reference in this section or section 14 to the publication of a revised version of the Register is to its publication in accordance with regulations made in pursuance of section 209.

Alteration of Registers

13.—(1) This section applies where, at any time (“the relevant time”) after the publication of a revised version of the Register by the Registration Officer under section 12, the Registration Officer —

(a) on an application for registration being made by any person in accordance with the prescribed requirements, determines that that person is entitled to be registered;

(b) is required by virtue of any provision of this Part, to remove a person’s entry from the Register;

(c) is notified of any decision on an appeal by virtue of section 19 which requires any such alteration in the Register as is mentioned in subsection (4) of that section; or

(d) determines that the Register contains any clerical error.

(2) In such a case the Registration Officer shall (subject to subsection (3)) issue, in the prescribed manner, a notice specifying the appropriate alteration in the Register and —

(a) the notice shall be so issued by him —

(i) on the first day of the month which follows that in which the relevant time falls, or

(ii) if that day is less than 14 days after that time, on the first day of the month immediately following that month; and

(b) (subject to section 14(1)) the alteration in question shall have effect as from the beginning of the day on which the notice is issued.

(3) Subsection (2) does not require the Registration Officer to issue a notice under that subsection in a case where (apart from this subsection) that subsection would require the notice to be issued —

(a) at the beginning of the month containing the date on which a revised version of the Register is next due to be published in accordance with section 12(1) or (3), or

(b) at the beginning of either of the two months preceding that containing the date on which a revised version of the Register is next due to be published in accordance with section 12(1),

and in such a case the alteration in question shall be made in that revised version of the Register.

(4) Subsection (2) also does not require the Registration Officer to issue a notice under that subsection in a case where section 14(3) requires him to issue a notice under that provision.

(5) No alteration affecting a published version of the Register of Electors shall be made otherwise than in accordance with this section and section 14.

(6) For the purposes of subsection (1) of this section “determines” means determines in accordance with regulations.

Alteration of Registers: pending elections

14.—(1) An alteration in a published version of a Register of Electors which takes effect under section 13(2) after the final nomination day in the case of an election to which this section applies shall not have effect for the purposes of that election unless the alteration —

(a) is made in consequence of a decision or determination falling within section 13(1)(c) or (d); and

(b) takes effect on or before the tenth day before the date of the poll.

(2) Subsection (3) of this section applies where —

(a) at any time before the appropriate publication date in the case of an election to which this section applies, section 13 applies to the Registration Officer, by virtue of subsection (1) of that section, in connection with a decision or determination —

(i) falling within subsection (1)(c) or (d) of section 13, and

(ii) in consequence of which a person's name falls to be entered in (or removed from) the Register in respect of an address; and

(b) no alteration made in consequence of that decision or determination —

(i) has already taken effect, or

(ii) is due to take effect, under subsection (2) of that section on or before the tenth day before the date of the poll.

(3) In such a case the Registration Officer shall issue, in the prescribed manner, a notice specifying the appropriate alteration in the Register and —

(a) the notice shall be so issued by him on the appropriate publication date; and

(b) the alteration shall take effect as from the beginning of that day.

(4) In this section —

“the appropriate publication date”, means either the eleventh or the tenth day before the date of the poll, as the Registration Officer may determine;

“the final nomination day”, in relation to an election, means the last day on which nomination papers may be delivered to the Returning Officer for the purposes of the election.

Supplemental provisions as to elections

Effect of Registers

15.—(1) A person registered as an elector, or entered into the list of proxies, shall not be excluded from voting on any of the following grounds (but this shall not prevent the rejection of the vote under scrutiny, or affect his liability to any penalty for voting). The grounds are—

(a) that he is not of voting age;

(b) that he is not, or, on the relevant date or the date of his appointment as a proxy (as the case may be), was not —

(i) a person who enjoys Falkland Islands Status; or

(ii) is not a person whose name appeared on the Register of Electors for a constituency in force on 1st September 1997; or

(iii) a Commonwealth citizen; or

(c) that he is, or, on the relevant date or the date of his appointment as a proxy (as the case may be), was, otherwise not qualified to be registered as an elector.

(2) In subsection (1) "the relevant date" means —

(a) in relation to a person registered in the Register in question as published in accordance with section 12(1), the 15th March immediately preceding the date of publication of the Register;

(b) in relation to any other person registered in the Register in question, the relevant date for the purposes of section 4.

Effect of misdescription

16. No misnomer or inaccurate description of any person or place named —

(a) in a register of electors, or

(b) in any list, record, proxy paper, nomination paper, ballot paper, notice or other document required for the purposes of this Ordinance

affects the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

Discharge of registration duties

17.—(1) The Registration Officer shall comply with any general or special directions which may be given by the Governor with respect to the arrangements to be made by the Registration Officer for carrying out his functions under this Ordinance.

(2) Without prejudice to the generality of subsection (1), the directions which may be given under that provision include directions requiring the Registration Officer to maintain Registers in a specified electronic form; and any such directions may in particular specify —

(a) the software which is to be used in connection with the maintenance of the Registers in that form;

(b) the standards in accordance with which that software is to be maintained and updated;

(c) how information required (by or under any enactment) to be included in the Registers is to be recorded and stored in that form.

(3) Any of the duties and powers of a Registration Officer may be performed or exercised by any deputy for the time being approved by the Chief Executive, and the provisions of this apply to any such deputy so far as respects any duties or powers to be performed or exercised by him as they apply to the Registration Officer.

(4) Any acts authorised or required to be done by or with respect to the Registration Officer may, in the event of his incapacity to act or of a vacancy, be done by the Chief Executive or any other public officer authorised by the Chief Executive to do that act.

Power to make regulations as to registration etc

18. Without prejudice to the generality of the power of the Governor under section 209 of this Ordinance to make regulations, provision may be made by regulations made under that section —

(a) with respect to the form of the Register of Electors and any special lists or records required by this Ordinance in connection with the Register or with any election;

(b) with respect to —

(i) the procedure to be followed in the preparation of the Register and the place and manner of its publication, and

(ii) the procedure to be followed in the preparation of any such special lists or records, and the time, place and manner of their publication; and

(c) generally with respect to any matters incidental to the provisions of this Ordinance so far as those provisions relate to the registration of electors or to voting by post or proxy.

Registration appeals

19.—(1) An appeal lies to the Magistrate's Court —

(a) from any decision under this Ordinance of the Registration Officer on any application for registration or objection to a person's registration made to and considered by him,

(b) from any decision under this Ordinance of the Registration Officer disallowing a person's application to vote by proxy or by post as elector or to vote by post as proxy, in any case where the application is not made for a particular election only,

but an appeal does not lie where a person desiring to appeal has not availed himself of a prescribed right to be heard by or make representations to the Registration Officer on the matter which is the subject of the appeal, or has not given the prescribed notice of appeal within the prescribed time.

(2) Subject to the Constitution, no appeal shall lie from a decision of the Magistrate's Court under this section, except that an appeal shall lie as of right to the Supreme Court against any order for the payment of costs.

(3) An appeal to the Magistrate's Court by virtue of this section which is pending when notice of an election is given shall not prejudice the operation as respects the election of the

decision appealed against, and anything done in pursuance of the decision shall be as good as if no such appeal had been brought and shall not be affected by the decision of the appeal.

(4) Notice shall be sent to the Registration Officer of the decision of the Magistrate's Court on any appeal by virtue of this section, and the Registration Officer shall in accordance with the preceding provisions of this Part make such alterations in the Register as may be required to give effect to the decision.

(5) Where, as a result of the decision on an appeal, an alteration in the Register made in pursuance of subsection (4) of this section takes effect under section 12(5), 13(2) or 14(3) on or before the last day on which nomination papers nominating candidates at an election may be delivered to the Returning Officer, subsection (3) of this section does not apply to that appeal as respects that election.

(6) The Registration Officer shall undertake such duties in connection with appeals brought by virtue of this section as may be prescribed and shall on any such appeal be deemed to be a party to the proceedings.

Disqualification list

20.—(1) The Registration Officer shall on or after the 15th day of March in each year compile a list of such persons appearing to him to be otherwise qualified to be registered as electors for the relevant constituency and who, in his opinion, are by virtue of any provision of section 27(2) of the Constitution disqualified from being so registered ("the disqualification list").

(2) The disqualification list shall not be open to inspection by the public, but the Registration Officer shall upon the application of any person inform him, and if so requested, in writing, whether his name appears on the disqualification list.

(3) The Registration Officer may require the Chief Medical Officer, the Chief Police Officer or any other person who, in the opinion of the Registration Officer, may have information relevant to the preparation of the disqualification list to provide such information to him and any person so required shall provide that information to the Registration Officer within seven days.

(4) An appeal lies to the Magistrate's Court at the instance of any person whose name appears on the disqualification list against the decision of the Registration Officer to include his name upon that list but such an appeal does not lie where the person desiring to appeal has not availed himself of a prescribed right to be heard by or make representations to the Registration Officer in relation to the appearance of that person's name upon the disqualification list. Subsections (2) to (6) of the preceding section apply in relation to an appeal under subsection (4) of this section as they do in relation to an appeal under subsection (1) of the preceding section."

11. Section 23(3)(b) is amended by the insertion after the words “a Justice of the Peace” of the words “or, if the applicant is overseas at the time he makes the application, by such a person or by a minister of religion, bank manager, commissioner for oaths, police officer or any other person approved by the Registration Officer for the purpose.”.

12. The following section is inserted after section 23 —

“Facilities for voting overseas

23A.—(1) The Governor may by Order make provision enabling an elector to make application to the Registration Officer to be registered as a postal voter at an address in the United Kingdom to which postal ballot papers for completion by the elector may be sent.

(2) No such provision as is referred to in subsection (1) shall be made by Order unless that order appoints a Falkland Islands Government Office in the United Kingdom as the place to which postal ballot papers for completion by electors sent postal ballot papers to an address in the United Kingdom may send such ballot papers when completed.

(3) An Order under subsection (1) shall make provision requiring the electronic transmission to the Returning Officer of a true copy of any postal ballot paper and prescribed document accompanying the postal ballot paper to the Recording Officer.

(4) An Order under this section may contain such further provisions as are necessary or expedient and in particular such provisions as may be necessary or expedient to enable and require copy postal ballot papers received by the Recording Officer and transmitted under the provisions of the Order to be counted in the same way as if they were original postal ballot papers in respect of the same constituency and received by the Returning Officer in the Falkland Islands.

(5) An Order under subsection (1) may make such consequential amendments as may be required to any provision of this Ordinance insofar as it relates to postal voting, postal ballot papers or the counting of postal ballot papers.”

13. Section 41 is repealed.

14. Section 42 is amended as follows —

(a) in paragraph (c) of subsection (1), by replacing the words “the preliminary list” with the words “a register of electors”;

(b) by inserting the following paragraph after paragraph (c) of subsection (1) —

“(ca) as to the manner, and the times of which, a person may make application for his name to be included in an electoral register and the qualifications for such inclusion;” and

(c) in subsection (2) by replacing all words appearing after the word “given” with the words “in the month of May and in the month”.

15. Section 43(1) is amended by omitting the words “in the preliminary list or”.

16. Sections 44 and 46 are repealed.

17. Section 47(2) is amended by replacing the words “Registrar General” with the words “Chief Executive”.

18. Section 53(2) is amended —

(a) by omitting the words “Director of Agriculture”;

(b) by inserting the words “Director of Health and Social Services” after the words “Director of Fisheries”;

(c) by replacing the words “Director of Oil” by the words “Director of Minerals and Agriculture”.

19. Section 58 is amended by inserting the following subsection after subsection (1)—

“(1A) At an election or referendum being held in the Camp constituency, when no election is taking place or referendum is being held on the same day in the Stanley constituency, an elector who is permitted to vote at a polling place on that day may do so at any polling place appointed under section 59(3) or (3A).”.

20. Section 59 is amended by inserting the following subsection—

“(3A) When a poll is to be taken in an election or a referendum in relation to the Camp constituency on any day, but no poll is to be taken at an election or a referendum in the Stanley constituency on the same day, at least one polling place within the Stanley constituency shall be appointed at which persons permitted to vote at a polling place in respect of the Camp constituency may vote in that election or referendum.”.

Passed by the Legislature of the Falkland Islands this 28th day of January 2005.

C. ANDERSON M.B.E.,
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 M.B.E.,
Clerk of Councils.

SUBSIDIARY LEGISLATION

FISHERIES

Fishery Products (Hygiene)(Revocation of Approval) Order 2005

(S. R. & O. No: 1 of 2005)

Made: 27th January 2005

Published: 21st February 2005

Coming into force: upon publication

IN EXERCISE of my powers under section 3(1) of the Fishery Products (Hygiene) Ordinance 1998(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 Fishery Products (Hygiene)(Revocation of Approval) Order 2005 and comes into force on publication in the *Gazette*.

Revocation of approval of factory fishing vessels

2. The Fishery Products (Hygiene)(Designated Vessels) Order 1998(b) is hereby revoked insofar as it applies to the vessel named "Polar Fury".

Made this 27th day of January 2005

H.J.S Pearce C.V.O.,
Governor

EXPLANATORY NOTE

(not forming part of the above Order)

The Fishery Products (Hygiene) Ordinance 1998, coupled with the regulations made under it, enables the operators of a factory fishing vessel to obtain confirmation that their vessel meets the standards of hygiene prescribed in the European Commission. The vessel whose designation is revoked by this Order is no longer a vessel to which the provisions of the legislation apply.

(a) No. 7 of 1998

(b) SR&O. No. 55 of 1998

SUBSIDIARY LEGISLATION

MERCHANT SHIPPING

Merchant Shipping (Registration of Ships)(Fees) Regulations 2005

S. R. & O. No: 2 of 2005

Made: 3rd February 2005

Published: 21st February 2005

Coming into force: upon publication

IN EXERCISE of my powers under section 10 of the Merchant Shipping Act 1995(a) in its application to the Falkland Islands under the Merchant Shipping Ordinance 2001(b) and of all other powers enabling me in that behalf, I hereby make the following Regulations —

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Registration of Ships)(Fees) Regulations 2005 and shall come into force upon publication in the *Gazette*.

Fees for registration of ships

2. The fees for registration of ships under the Merchant Shipping (Registration of Ships) Regulations 2001(c) are prescribed in the Schedule to these Regulations.

Made this third day of February 2005

H.J.S. Pearce C.V.O.,
Governor

(a) 1995 c.21;
(b) No 15 of 2001
(c) SR&O No 30 of 2001

SCHEDULE

Merchant Ships & Yachts registered under Part I or IV of the Register

1.	Application for initial Registration of a ship (including registration of a ship whose Registry has expired)	£160.00
	The above fee is non-refundable if registration is refused.	
2.	Renewal of registration (without a break in registration)	£80.00
3.	Registration of a transfer of ownership or shares in a registered ship:	
	a) One transfer	£ 80.00
	b) Where more than one transfer in relation to a ship is lodged at the same time:	
	Two transfers	£ 95.00
	Three transfers	£115.00
	Four transfers or more	£130.00
4.	Registration of mortgages:	
	a) One mortgage	£100.00
	b) Where more than one mortgage in relation to the same loan over the same ship at the same time:	
	Two mortgages	£200.00
	Three mortgages	£275.00
	Four mortgages	£340.00
	Five mortgages or more	£400.00
5.	Registration of notice of intended mortgage	£ 30.00
6.	Issue of duplicate certificate of registry	£ 15.00
7.	Issue of transcripts of entries in the Register relating to any one ship:	
	a) For current entries	£25.00
	b) For other entries	£30.00
8.	Personal inspection of the Register	£15.00
9.	Registration of change of name of ship	£35.00
10.	Registration of change of measurement, tonnage or engine particulars recorded in the Register	£35.00
11.	Transfer to a port in the UK or another British possession	£35.00
12.	Transfer from a port in the UK or another British possession	£115.00

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|-----|---|---------|
| 13. | Application to the Registrar for provisional registration of a ship | £115.00 |
| 14. | Full registration of a ship directly following provisional registration | £75.00 |

Fishing Vessels Registered on Part II or IV of the Register

- | | | |
|----|--|---------|
| 1. | Application for registration of a vessel (and of a vessel whose Registry has expired): | |
| | a) With full registration | £160.00 |
| | b) With simple registration | £120.00 |
| | The above fee is non-refundable if registration is refused. | |
| 2. | Renewal of registry (without a break in registration) | £ 80.00 |
| 3. | Registration of Transfer of Ownership or shares of a registered vessel: | |
| | a) One share block: | |
| | i. With full registration | £ 80.00 |
| | ii. With simple registration | £ 60.00 |
| | b) Where more than one share block is lodged at the same time: | |
| | Two share blocks: | |
| | i. With full registration | £ 95.00 |
| | ii. With simple registration | £ 70.00 |
| | Three share blocks: | |
| | i. With full registration | £115.00 |
| | ii. With simple registration | £ 85.00 |
| | Four share blocks: | |
| | i. With full registration | £135.00 |
| | ii. With simple registration | £100.00 |
| | Five or more share blocks: | |
| | i. With full registration | £160.00 |
| | ii. With simple registration | £120.00 |
| 4. | Change of vessel from simple to full registration | £ 80.00 |
| 5. | Registration of mortgages: | |
| | a) One mortgage | £100.00 |

b)	Where more than one mortgage in relation to the same loan over the same ship at the same time:	
i.	Two mortgages	£200.00
ii.	Three mortgages	£275.00
iii.	Four mortgages	£340.00
iv	Five mortgages or more	£400.00
6.	Registration of notice of intended mortgage	£ 30.00
7.	Issue of duplicate certificate of registry	£ 15.00
8.	Issue of transcripts of entries in the Register relating to any one ship:	
	For current entries	£ 25.00
	For other entries	£ 30.00
9.	Personal inspection of the Register	£ 15.00
10.	Registration of change of name of ship	£ 35.00
11.	Registration of change of measurement, tonnage or engine particulars recorded in the Register	£ 35.00
12.	Transfer to a port in the UK or another British possession	£ 35.00
13.	Transfer from a port in the UK or another British possession	£115.00
14.	Application to the Registrar for provisional registration of a ship	£115.00
15.	Full registration of a ship directly following provisional registration	£ 75.00

Small Ships Registered on Part III of the Register

Registration of vessel (and of a vessel whose Registry has expired)	£20.00
Issue of duplicate certificate of registry	£15.00
Issue of transcripts of entries in the Register relating to any one ship:	
for current entries	£10.00
for other entries	£15.00

EXPLANATORY NOTE

(not forming part of the above Regulations)

These Regulations set fees for the registration of ships under the Merchant Shipping (Registration of Ships) Regulations 2001.

2004 No. 2671

UNITED NATIONS

The Iraq (United Nations Sanctions) (Overseas Territories)
(Amendment) (No. 2) Order 2004

<i>Made</i>	- - - -	<i>13th October 2004</i>
<i>Laid before Parliament</i>		<i>14th October 2004</i>
<i>Coming into force</i>	- -	<i>15th October 2004</i>

At the Court at Buckingham Palace, the 13th day of October 2004

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, commencement, construction and extent

1.—(1) This Order may be cited as the Iraq (United Nations Sanctions) (Overseas Territories) (Amendment)(No.2) Order 2004 and shall come into force on 15th October 2004.

(2) In this Order, “the principal Order” means the Iraq (United Nations Sanctions) (Overseas Territories) Order 2003(b).

(3) This Order shall extend to the territories listed in Schedule 1 to the principal Order.

Exportation of restricted goods to Iraq

2. Article 6 of the principal Order is replaced by the following article:

“Exportation of restricted goods to Iraq

6.—(1) Except under the authority of a licence granted by the Governor under this article, restricted goods are prohibited to be exported from the Territory to any destination in Iraq or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Iraq.

(2) Any restricted goods which are exported or attempted to be exported shall be liable to forfeiture.

(a) 1946, c. 45

(b) S.I. 2003/1516, amended by S.I.s 2004/1983 and 2004/2036.

(3) Any person knowingly concerned in the exportation or attempted exportation of such goods shall be guilty of an offence under this Order.

(4) In any case where a person would, apart from this paragraph, be guilty of an offence under paragraph (3) and of an offence under article 5, he shall not be guilty of the offence under paragraph (3)."

Declaration as to goods: power of search

3. In Article 13(1) of the principal Order, before "the Governor", insert the words "an officer authorised for the purpose by".

Investigation, etc, of suspect ships

4. After Article 14(4) of the principal Order, insert the following:

"(5) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority."

Amendment of the 2000 Order

1. The Iraq (United Nations Sanctions)(Overseas Territories) Order 2000 ("the 2000 Order")(a) continues in force and is amended as set out in the Schedule to this Order.

Transitional provisions

2.—(1) Notwithstanding the revocation of article 4 of the 2000 Order by the Schedule to this Order, any direction which was given by the Governor under that article and was still in effect immediately before this Order came into force remains in effect until it is revoked by a notice given under this article.

(2) Where a notice was published under article 4 of the 2000 Order immediately before the revocation of that article by this Order, article 5(4) and article 5A shall continue to apply in relation to funds to which that notice applied notwithstanding the revocation of article 4, and the amendments made to article 5(4) and 5A, by this Order.

(3) Any person who contravenes a direction given under article 4 of the 2000 Order is guilty of an offence and shall be liable –

- (a) on conviction on indictment to imprisonment for a term not exceeding seven years, or a fine, or both;
- (b) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

(4) Articles 9, 10 and 11(4) to (9) of the 2000 Order, and article 12 of the 2000 Order so far as it concerns those provisions, apply in relation to paragraph (3) of this article (and the provisions of the 2000 Order that refer to it) as they apply in relation to the 2000 Order.

A. K. Galloway
Clerk of the Privy Council

(a) S.I. 2000/3242, amended by S.I.s 2001/3649, 2003/1347 and 2003/1516.

SCHEDULE

Article 5

AMENDMENT OF THE IRAQ (UNITED NATIONS SANCTIONS) (OVERSEAS TERRITORIES) ORDER 2000

Interpretation

1.—(1) In article 2(1) of the Iraq (United Nations Sanctions)(Overseas Territories) Order 2000(a) (“the Order”):

(a) after the definition of “the 2003 resolution”, insert—

““the 2004 Order” means the Iraq (United Nations Sanctions) (Amendment) Order 2004(b);”;

(b) delete the definition of “designated funds”;

(c) for the definition of “designated person”, substitute:

““designated person” means a person who is not a listed person but is a designated 23a person or a designated 23b person.”;

(d) for the definition of “immediate family member”, substitute:

““immediate family member” includes a parent, son (whether or not adopted), daughter (whether or not adopted), spouse, or sibling of the whole or half blood;”;

(e) for the definition of “Sanctions Committee”, substitute:

““Sanctions Committee” means such committee as is established by the Security Council of the United Nations with responsibility from time to time for identifying pursuant to paragraph 19 of the 2003 resolution individuals and entities referred to in paragraph 23 of that resolution;”;

(f) for the definition of “senior official”, substitute:

““senior official” includes any individual who immediately before 20th March 2003 was —

- (i) a cabinet official of the former government of the Republic of Iraq;
- (ii) a member of the former Iraqi Parliament;
- (iii) a head or senior member of the Iraqi military or security forces, intelligence services, military police or paramilitary police who was of a rank at least equivalent to a listed 23b person;
- (iv) a head or senior member of an enterprise that was owned or controlled by the former government of the Republic of Iraq who was of a rank at least equivalent to a listed 23b person;
- (v) a senior member of the Iraqi Ba'ath Party who was of a rank at least equivalent to a listed 23b person; or
- (vi) an official of a lower rank who performed crucial functions at least equivalent to those performed by a listed 23b person.”; and

(g) insert alphabetically the following new definitions:

““designated 23a person” means any person whose funds (including any funds held for him or on his behalf) are subject to a direction given by the Governor under article 4A(1);

(a) S.I. 2000/3242, amended by S.I.s 2001/3649, 2003/1347 and 2003/1516.
(b) S.I. 2004/2036.

“designated 23b person” means any person whose funds (including any funds held for him or on his behalf) are subject to a direction given by the Governor under article 4A(2);

“listed person” means a listed 23a person or a listed 23b person;

“listed 23a person” means any person identified by the Sanctions Committee pursuant to paragraph 19 of the 2003 resolution as being an entity referred to in paragraph 23(a) of that resolution;

“listed 23b person” means any person identified by the Sanctions Committee pursuant to paragraph 19 of the 2003 resolution as being an individual or entity referred to in paragraph 23(b) of that resolution;

“Supreme Court” means the court of the Territory having unlimited jurisdiction in civil proceedings;”.

(2) In article 2(3) of the Order:

- (a) for “a body (“B”) is controlled by a person or government (“P”) if”, substitute “the circumstances in which a body (“B”) is to be treated as being controlled by a person or government (“P”) include, but are not limited to, where”;
- (b) in sub-paragraph (a), delete “or” in the last place it appears; and
- (c) after sub-paragraph (b), insert—
 - “(c) P, by virtue of his or its voting power in B or otherwise, is entitled to make use of any or all of B's assets;
 - (d) P manages itself and B, or B and other bodies, together whilst publishing consolidated accounts;
 - (e) P shares, jointly and severally, the financial liabilities of B; or
 - (f) P provides any form of guarantee for the financial liabilities of B.”.

Making funds available to designated 23b persons and listed 23b persons

2.—(1) For the heading before article 3 of the Order, substitute “Making funds available to designated 23b persons and listed 23b persons”.

(2) In article 3(1) of the Order, for “to a designated person”, substitute “directly or indirectly to a designated 23b person or a listed 23b person”.

Freezing funds of listed persons

3. After article 3 of the Order, insert:

“Freezing funds of listed persons

3A.—(1) Any person who, except under the authority of a licence granted by the Governor under article 5, makes available to any person—

- (a) any funds that he held on 22nd May 2003 for or on behalf of a listed 23a person; or
- (b) any funds that he holds for or on behalf of a listed 23b person,

is guilty of an offence.

(2) In proceedings for an offence under this article, it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.”.

Freezing of funds on suspicion

4.—(1) Article 4 of the Order is revoked.

(2) Before Article 5 of the Order, insert:

“Freezing of funds on suspicion

4A.—(1) Where the Governor has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be –

- (a) a listed 23a person; or
- (b) an entity (wherever incorporated or constituted) that immediately before 20th March 2003 was owned or controlled by the government of the Republic of Iraq, the Governor may by notice direct that such of those funds as were held by, for or on behalf of that person on 22nd May 2003 are not to be made available to any person except under the authority of a licence granted by the Governor under article 5.

(2) Where the Governor has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be –

- (a) a listed 23b person;
- (b) a senior official;
- (c) an immediate family member of a person referred to in sub-paragraph (a) or (b);
- (d) an entity (wherever incorporated or constituted) owned or controlled by a person referred to in sub-paragraph (a), (b) or (c); or
- (e) a person acting on behalf, or at the direction, of a person referred to in sub-paragraph (a), (b) or (c),

the Governor may by notice direct that those funds are not to be made available to any person except under the authority of a licence granted by the Governor under article 5.

(3) A notice given under paragraph (1) or (2) must specify either –

- (a) the period for which the direction is to have effect; or
- (b) that the direction is to have effect until it is revoked by notice under paragraph (5).

(4) The Governor must publish a notice given under paragraph (1) or (2) in the way appearing to him to be best calculated to bring it to the attention of the public.

(5) The Governor may by notice revoke a direction given under paragraph (1) or (2) at any time.

(6) The Governor must publish a notice given under paragraph (5) in the same manner as the original notice given under paragraph (1) or (2) was published.

(7) The expiry or revocation of a direction given under paragraph (1) or (2) does not affect the application of article 3 or 3A in respect of the funds in question.

(8) Where a direction has been given under paragraph (1) or (2), any person by, for or on behalf of whom those funds are held may apply to the Supreme Court for the direction to be set aside; and on such application the court may set aside the direction.

(9) A person who makes an application under paragraph (8) must give a copy of the application and any witness statement or affidavit in support to the Governor (and to any person by, for or on behalf of whom those funds are held) not later than seven days before the date fixed for the hearing of the application.

(10) Any person who contravenes a direction under paragraph (1) or (2) is guilty of an offence.”.

Licences

5. In article 5(4) of the Order, for “article 3(1) or 4(1)” substitute “article 3(1), 3A(1), 4A(1) or 4A(2)”.

Transfer of designated funds

6.—(1) In article 5A(1) of the Order:

- (a) for "article 4(1)", substitute " article 4A(1) or 4A(2)"; and
 - (b) in sub-paragraph (b)(i) –
 - (i) before "notify" insert "shall"; and
 - (ii) for "on whose behalf he held the funds" substitute "on behalf of whom the funds were held".
- (2) In article 5A(2) of the Order :
- (a) for "article 4(1)", substitute " article 4A(1) or 4A(2)"; and
 - (b) in sub-paragraph (b)(i), for "by, for, or on whose behalf he held the funds;", substitute "by, for or on behalf of whom the funds were held;".
- (3) After article 5A(2) of the Order, insert –
- “(2A) Within 28 days of the publication by the Governor of notification that the Sanctions Committee has published a list of listed 23a persons, any person included in that list or holding funds for or on behalf of any person included in that list shall –
- (a) cause the transfer of such funds as were held by, for or on behalf of that person on 22nd May 2003 to the account of the Development Fund for Iraq held at the Federal Reserve Bank of New York; and
 - (b) notify the Governor in writing of :
 - (i) the identity of the person by, for or on behalf of whom the funds were held;
 - (ii) the amount transferred; and
 - (iii) the date the transfer took place.
- (2B) Within 28 days of the publication by the Governor of notification that the Sanctions Committee has published a list of listed 23b persons, any person included in that list or holding funds for or on behalf of a person included in that list shall –
- (a) cause the transfer of any funds held by, for or on behalf of that person to the account of the Development Fund for Iraq held at the Federal Reserve Bank of New York; and
 - (b) notify the Governor in writing of –
 - (i) the identity of the person by, for or on behalf of whom the funds were held;
 - (ii) the amount transferred; and
 - (iii) the date the transfer took place.
- (2C) Any person who holds funds that are required to be transferred to the account of the Development Fund for Iraq by paragraph (2A) or (2B) after the expiry of the period referred to in the appropriate paragraph must, as soon as possible after he becomes aware that he holds such funds –
- (a) cause the transfer of those funds to the account of the Development Fund for Iraq held at the Federal Reserve Bank of New York; and
 - (b) notify the Governor in writing of –
 - (i) the identity of the person by, for or on behalf of whom the funds were held;
 - (ii) the amount transferred; and
 - (iii) the date the transfer took place.
- (2D) The Governor must publish notification of any list referred to in paragraph (2A) or (2B) in the way appearing to him to be best calculated to bring it to the attention of the public.”.
- (4) In article 5(3) of the Order –
- (a) for "Neither paragraph (1) nor (2) applies" substitute "Paragraphs (1) to (2C) do not apply";
 - (b) in sub-paragraph (a) for "that paragraph", substitute "the appropriate paragraph";

- (c) in sub-paragraph (c) for “that paragraph”, substitute “the appropriate paragraph”.
- (5) In article 5(4) of the Order, for “(1) or (2)” substitute “(1), (2), (2A), (2B) or (2C)”.
- (6) In article 5(5) of the Order, for “(1) or (2)” substitute “(1), (2), (2A), (2B) or (2C)”.
- (7) In article 5(6) of the Order, for “(1) or (2)” substitute “(1), (2), (2A), (2B) or (2C)”.
- (8) In article 5(7) of the Order, for “(1) or (2)” substitute “(1), (2), (2A), (2B) or (2C)”.

Facilitation of offences

6. In article 6 of the Order after “article 3” insert “, 3A or 4A(10) or article 6(3) of the 2004 Order”.

Failure to disclose knowledge or suspicion of sanctions offences

7.—(1) In article 8(1)(a) of the Order –

- (a) after “a designated person”, insert “or a listed person”;
- (b) after “article 3,” insert “3A, 4A(10),”;
- (c) after “article 5A” insert “or article 6(3) of the 2004 Order”.

(2) In article 8(2) of the Order for paragraph (a), substitute –

“(a) its knowledge or suspicion that a person is a listed person or a designated person or has committed an offence under article 3, 3A, 4A(10), 5(4) or 5A or article 6(3) of the 2004 Order, or;”.

Penalties and proceedings

8. In article 11(1) of the Order, after “article 3,” insert “3A, 4A(10),”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, amends the Iraq (United Nations Sanctions) (Overseas Territories) Order 2003 to replace provisions extended to certain territories regarding exportation of restricted goods with provisions equivalent to those in the United Kingdom, and to make further provision regarding authorisation of persons by the Governor to search persons, and evidence of authorisation in relation to the investigation of suspect ships.

This Order also amends the Iraq (United Nations Sanctions) (Overseas Territories) Order 2000 (the "2000 Order") which gives effect to certain aspects of the sanctions imposed against Iraq by resolution 661 (1990) adopted by the Security Council of the United Nations on 6th August 1990, to take account of amendments contained in resolution 1483 (2003) and resolution 1518 (2003) adopted by the Security Council of the United Nations on 22nd May 2003 and 24th November 2003 respectively.

Paragraph 1(1)(e) of the Schedule amends the definition of "Sanctions Committee" in the 2000 Order to take account of the new Committee established by resolution 1518 (2003) for the purposes of identifying persons subject to certain measures imposed by resolution 1483 (2003). The remaining provisions of paragraph 1 of the Schedule amend or insert definitions in the 2000 Order reflecting other changes made by the Schedule and give effect to guidance issued by the United Nations Security Council Committee established pursuant to resolution 661 (1990) on the meaning of terms used in resolution 1483 (2003).

The remaining provisions of the Schedule amend the 2000 Order to make improvements in its operation. In particular, provision has been made for persons listed by the Sanctions Committee automatically to become subject to the sanctions regime without the need for the Governor so to direct. It also clarifies the powers of the Governor to direct freezing of funds. Article 6 of the Order makes transitional provisions in respect of directions given by the Governor, and funds covered by notices published, prior to the coming into force of this Order.

The Order applies to the following territories: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, St Helena Dependencies, South Georgia and the South Sandwich Islands, Turks and Caicos Islands, and the UK Sovereign Base Areas of Akrotiri and Dhekelia in the island of Cyprus.

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2004 No. 2671

UNITED NATIONS

**The Iraq (United Nations Sanctions) (Overseas Territories)
(Amendment) (No. 2) Order 2004**

ISBN 0-11-049945-X

CORRECTION

Page 2, under “Amendment of the 2000 Order”; article “1” should be renumbered article “5”;

Page 2, under “Transitional provisions”; article “2” should be renumbered article “6”;

Page 6, in the Schedule, paragraph 6(4); “In article 5(3) of the Order -” should read “In article 5A(3) of the Order -”;

Page 7, in the Schedule, delete paragraph 6(4)(c);

Page 7, in the Schedule, paragraphs 6(5) through to 6(8); “In article 5...” should read “In article 5A...”;

Page 7, in the Schedule, under “Facilitation of offences”; paragraph “6” should be renumbered paragraph “7”;

Page 7, in the Schedule, under “Failure to disclose knowledge or...”; paragraph “7” should be renumbered paragraph “8”; and

Page 7, in the Schedule, under “Penalties and proceedings ”; paragraph “8” should be renumbered paragraph “9”.

January 2005



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 16

31st March 2005

No. 3

The following are published in this Supplement -

Capital Equalisation Fund Order 2005, (S. R. & O. No: 3 of 2005);

Explanatory Memorandum, Employment Protection (Amendment) Bill 2005;

Employment Protection (Amendment) Bill 2005;

Explanatory Memorandum, Falkland Islands Pensions Scheme (Amendment) Bill 2005;

Falkland Islands Pensions Scheme (Amendment) Bill 2005;

Extra Statutory Concession No. 6, Use of company vehicles;

**The Child Abduction and Custody (Falkland Islands) (Amendment) Order 2005,
(2005 No. 244).**

SUBSIDIARY LEGISLATION

**PUBLIC FUNDS ORDINANCE
(Title 42.1)**

Capital Equalisation Fund Order 2005

S. R. & O. No: 3 of 2005

Made: 16 February 2005

Published: 31 March 2005

Commencing: on publication

IN EXERCISE of my powers under section 11(1) of the Public Funds Ordinance (Title 42.1)(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 Capital Equalisation Order 2005 and comes into force upon publication.

Authorisation to expenditure of Capital Equalisation Fund

2.—(1) The Governor may at any time authorise the Financial Secretary to withdraw from the Capital Equalisation Fund any sum which is required to provide for any expenditure of a capital nature for which provision has been made in the Capital Programme approved by the Standing Finance Committee of the Legislative Council.

(2) Without prejudice to the generality of paragraph (1), the Governor hereby authorises the Financial Secretary to withdraw from the Capital Equalisation Fund such sums not exceeding six million nine hundred and twenty-five thousand six hundred and twenty pounds (£6,925,620) as are required to defray the expenditure provided for in respect of the expenditure of the Capital Programme, particulars of which are set out in the Schedule to this Order.

Made this sixteenth day of February 2005

H. J. S. Pearce C.V.O.,
Governor

Schedule

Current Programme
2004/2005

SUMMARY OF EXPENDITURE

951	General	120,000
952	Loans & Investments	443,750
953	Plant & Vehicles	568,380
954	Roads	1,710,940
955	Housing	515,830
956	Government Land & Buildings	1,947,210
957	Municipal Services	1,238,360
958	Air Transportation	202,470
959	Consultancies	156,000
960	Departmental Assets	22,680
		<hr/>
		6,925,620

EXPLANATORY NOTE

(not forming part of the above Order)

This Order, made with the consent of the Secretary of State for Foreign and Commonwealth Affairs (1) provides that the Governor may at any time authorise the Financial Secretary to withdraw from the Capital Equalisation Fund sums to meet expenditure in the Government's approved Capital Programme and (2) specifically authorises the withdrawal of sums not exceeding £6,925,620 out of the Fund to meet the expenditure of the Fund, particulars of which are set out in the Schedule to the Order.

EXPLANATORY MEMORANDUM

Employment Protection (Amendment) Bill 2005

This Bill proposes the amendment of the Employment Protection Ordinance 1989 to extend the protection against unfair dismissal to public officers. The Bill would:-

- (a) repeal the exclusion of public officers from the provisions of the Ordinance;
- (b) replicate the provisions in respect of UK civil servants in that they will continue to hold office “during Her Majesty's pleasure” and are not statutorily entitled to minimum periods of notice albeit that the Falkland Islands Government Management Code makes provisions in this respect. This is required in order to maintain consistency with section 76 of the Falkland Islands Constitution;
- (c) exclude officers employed under a fixed term contract from access to the redundancy provisions and unfair dismissal provisions merely by virtue of the end of their contract period;
- (d) make provisions in respect of compensation awards to encourage the use of internal appeals procedures before application to the Court; and
- (e) exclude police officers from a range of provisions which are inappropriate by virtue of their status as members of a disciplined force (and replicates the situation in respect of UK police officers).

Employment Protection (Amendment) Bill 2005

(No: of 2005)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title
2. Amendment of section 3 of Title 32.3
3. New section 49A of Title 32.3
4. Replacement of section 52 of Title 32.3
5. Amendment of section 53 of Title 32.3
6. New section 75A of Title 32.3
7. New section 78A in Title 32.3

EMPLOYMENT PROTECTION (AMENDMENT) BILL 2005

(No: of 2005)

(assented to: 2005)

(commencement: 2005)

(published: 2005)

A BILL

for

AN ORDINANCE

To amend the Employment Protection Ordinance (Title 32.3).

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Employment Protection (Amendment) Ordinance 2005.

Amendment of section 3 of Title 32.3

2.—(1) Section 3 of the Employment Protection Ordinance (hereinafter in this Ordinance called “Title 32.3”) is amended —

(a) by repealing subsection (1); and

(b) by deleting in subsection (2) —

(i) the words “Without prejudice to the generality of subsection (1)” at the beginning of the subsection, and

(ii) paragraphs (a) and (b),

(c) by adding the following subsection —

“(3) For the purposes of this Ordinance a person occupying a salaried public office shall be deemed to be employed in that office, and the Crown shall be deemed to be his employer.”

New section 49A of Title 32.3

3. Title 32.3 is amended by the insertion of the following section after section 49 —

“Sections 47 to 49 not to apply to public officers

49A. Nothing in sections 47 to 49 applies to or in respect of persons serving as a public officers (including police officers) or to any employment or engagement as a public officer.”

Replacement of section 52 of Title 32.3

4. Section 52 of Title 32.3 is repealed and replaced by the following section —

“The right

52.—(1) Every employee shall have the right not to be unfairly dismissed by his employer.

(2) Subject to the subsequent provisions of this Ordinance this section applies to every employment except insofar as its application is excluded by or under any provision of this Ordinance.”

Amendment of section 53 of Title 32.3

5. Section 53 is amended —

(a) in subsection (2) by replacing the words “subsection (3)” with the words “subsections (3) and (3A);

(b) by inserting the following subsections after subsection (3) —

“(3A) Paragraph (b) of subsection (3) does not apply and Part VII of this Ordinance does not apply —

(a) where the employee was residing outside the Falkland Islands at the time he was recruited; or

(b) wherever he was residing at that time the employee did not have Falkland Islands status or have a permanent residence permit at the time he was recruited.

(3B) For the purposes of subsection (3A) —

(a) a person is recruited at the time at which he is notified of the decision by the employer to offer him employment if that is different from the time at which he entered into the relevant contract of employment; and

(b) “Falkland Islands status” has the same meaning as it has under section 17(5) of the Constitution and “permanent residence permit” has the same meaning it has under the Immigration Ordinance 1999.”

New section 75A of Title 32.3

6. Title 32.3 is amended by the insertion of the following section after section 75 —

“Internal appeal procedure

75A.—(1) Where in a case in which an award of compensation for unfair dismissal falls to be made under section 66(2) or 69(2) the court finds that —

(a) the employer provided a procedure for appealing against dismissal;

(b) the complainant was, at the time of the dismissal or within a reasonable period afterwards, given written notice stating that the employer provided the procedure and including details of it; but

(c) the complainant did not appeal against the dismissal under the procedure,

(otherwise than because the employer prevented him from doing so),

the court shall reduce the compensatory award included in the award for unfair dismissal by such amount (if any) as it considers just and equitable.

(2) Where in a case in which an award of compensation for unfair dismissal falls to be made under section 66(2) or 69(2)(a) the court finds that —

(a) the employer provided a procedure for appealing against dismissal, but

(b) the employer prevented the complainant from appealing against dismissal under the procedure,

the award of compensation for unfair dismissal shall include a supplementary award of such amount (if any) as the court considers just and equitable.

(3) In determining the amount of a reduction under subsection (1) or a supplementary award under subsection (2) the court shall have regard to all the circumstances of the case, including in particular the chances that an appeal under the procedure provided by the employer would have been successful.

(4) The amount of such a reduction or supplementary award shall not exceed the amount of two week's pay.

(5) In relation to persons serving as public officers the previous provisions of this section shall be construed as if the meaning of words "appeal against" included apply for a review of and the meaning of "appealing" included applying for a review of.

New section 78A in Title 32.3

7. Title 32.3 is amended by the insertion of the following section in Part VII (Redundancy Payments), immediately before section 79 —

"This Part not to apply to public officers

78A. This Part does not apply to public officers (including police officers)."

New section 107A in Title 32.3

8. Title 32.3 is amended by the insertion of the following section immediately after section 107—

"Exclusion of provisions in relation to police officers

107A. Sections 15 to 21, 31 to 51, Part IV and Part VI do not apply to police officers."

EXPLANATORY MEMORANDUM

Falkland Islands Pensions Scheme (Amendment) Bill 2005

This Bill amends the Falkland Islands Pension Schemes Ordinance 1997. The principal amendments are concerned with the benefits which are payable to members who become permanently incapacitated through ill-health or disablement and have to retire before they reach normal retirement age. Under the Bill, the incapacitated person will be able to choose to receive certain pension benefits as from the time of such early retirement. Other minor amendments to the 1997 Ordinance are also made in the Bill.

Clause 1 sets out the Bill's commencement and the short title for the Bill. It provides for the Bill to come into force when it is published in the Gazette. It also provides that references in the Bill to the Pensions Scheme Ordinance are to the Falkland Islands Pensions Scheme Ordinance 1997.

Clause 2 amends section 26 of the Pensions Scheme Ordinance to allow contributions to be refunded to members who become permanently unable to work through ill-health or disablement before they have worked for two years or been members of the Scheme for two years. At present section 26 does not deal with cases of permanent disablement, and preserves individual accounts of members who cease to contribute but remain in the Falkland Islands and available for work, in the expectation that at some time in the future contributions might start to be made in respect of those members once more. In the case of permanent disablement this cannot be expected so the contributions will be refunded in these cases.

Clause 2 also amends section 26(8) by introducing greater flexibility in refunding contributions to members. At present the Board is required to pay the sums within 4 months of the termination date with no provision for later payments. But it is quite possible in the case of serious illness that the Board will be notified of the member's circumstances too late to enable payment to be made within that timeframe. The amendment allows for later payments but still requires the Board to act with due diligence and expedition.

Clause 3 amends section 32(2) of the Pensions Scheme Ordinance which makes provision for the payment of sums equal to the accrued value of the member's individual account in cases where the member is seriously ill and not expected to live very long. At present entitlement to the section 32(2) benefits is limited to cases where the member is entitled to benefits under section 28(1) which means that the member must be over 50 years old at the time. The amendment ends this restriction and opens up the section 32(2) benefits to cases where the member is younger than 50 years of age.

Clause 4 introduces a new *section 32A* into the Pensions Scheme Ordinance. Subsection (1) of the new section restricts the application of the new provision to members who retire early on grounds of ill-health or disablement before reaching normal retirement age. The new provision does not apply to members who are FIG employees unless they have less than 2 years' service as FIG employees as all other FIG employees are covered by clause 5. Normal retirement age is defined in section 3 of the Pensions Scheme Ordinance to mean the age provided for retirement in the terms of employment disregarding any special provision for retirement at an earlier age.

The benefits will be available only where the Chief Medical Officer has certified that the member is permanently unfit for work. The retiring member must notify the Board of the retirement. Where all the requirements are met, subsection (3) of section 32A ensures that benefits under section 28(1) will be available to the member before reaching normal retirement age. The right to defer benefits is removed as that will not be needed. Section 33B (inserted by clause 5) will not apply since, where section 28 benefits are payable under this new provision, the whole of the member's individual account will be used to fund the benefits.

The new *section 32A* will apply to members who retire on or after the date on which the provisions contained in the Bill come into force, including members who joined FIPS before then.

Clause 5 introduces new provisions into the 1997 Ordinance to allow pension benefits for civil servants to come into force on early retirement on grounds of ill-health or disablement.

Clause 5(1) inserts a new section 33A into the 1997 Ordinance. *Section 33A* sets out the circumstances in which a member may retire early with a pension or annuity in payment as from the date of the member's retirement. *Section 33A(1)* restricts the application of the new provisions to civil servants other than civil servants working outside the Falkland Islands who were recruited outside the Falkland Islands. The new benefits will only be available where the retiring officer is in government service when he or she retires. The new provision will not apply where the officer has left government service before retirement and either is not working or is working in the private sector. In many cases, members who are not entitled to early benefits under these provisions will be entitled to early benefits under the new section 32A.

Section 33A(2) sets out the main definitions used in the new provision.

Section 33A(3) excludes from the new provision those with less than 2 years' service and those who were first employed in government service before 1st January 1997 and have continued in that service with no interruptions. In the first case, FIPS benefits are not payable generally to those with less than 2 years' service. Under section 26 of the 1997 Ordinance all contributions are returnable to the employee where the employee does not complete 2 years' service and certain conditions are met. One such condition is that the member ceases to be resident or habitually resident in the Falkland Islands within 6 months of the end of the employment. However clause 2 of the Bill amends section 26 to make this restriction inapplicable where the member retires on permanent incapacity grounds. Where the employee dies before completing 2 years' service the Board must apply the employee's individual member's account in accordance with section 32(1).

In the other case where the employee first started his employment before 1st January 1997, the benefits will continue to be those currently available, which are referred to in section 17(3A) of the 1997 Ordinance. In this case the employee does not cease to be employed in government service and receives a reduced salary until reaching normal retirement age when the FIPS benefits can come into payment in the ordinary way.

Section 33A(4) makes the payment of the new benefits dependent on an early retirement certificate being issued by the Chief Medical Officer ("the CMO"). This certificate will certify

that in the opinion of the CMO the member is permanently incapable of being employed in government service in any capacity. The certificate will be given to the member to whom it refers and copies will be given to the Pensions Board and the Financial Secretary.

Section 33A(5) sets out the two new options which the member may choose when he receives an early retirement certificate. These are to take either:-

(a) the FIPS benefits brought into payment on retirement instead of in accordance with the normal rules of the FIPS scheme (not before the age of 50 years nor later than 75 years), or

(b) the Old Scheme Fund Benefits specified in Schedule 5 to the 1997 Ordinance. This Schedule is set out in Schedule 1 to the Bill. These benefits will be paid out of the Old Scheme Fund, defined in section 2 of the 1997 Ordinance as the fund established under the Pensions (Old Scheme) Fund Ordinance 1999.

Section 33A(6) requires the member to choose option (a) or (b) before the end of the 12 months following the issue of the early retirement certificate. If no election is made, the member will take the FIPS benefits under the existing provisions of the 1997 Ordinance, but not earlier than at the age of 50 years.

The FIPS benefits for those with an early retirement certificate will not be enhanced except to the extent that they are brought into payment earlier than would normally be the case. An early retirement election to receive FIPS benefits may contain a subsidiary election not to take into account the member's additional voluntary contributions and other amounts in the member's individual account in determining the value of that account for the purposes of section 28(1) of the 1997 Ordinance. Section 28(1) provides that the value of the member's account is the amount used to purchase an annuity (with or without a commutation for lump sums) under the FIPS Scheme.

If this subsidiary election is not made, the amount available to the member to purchase FIPS benefits on early retirement will include the entire sum in the member's individual account. If that election is made, the amount used to purchase FIPS benefits at early retirement will include only those sums attributable to the member's employment in government service. The other amounts will be available in the future to purchase other benefits in accordance with section 33B, also inserted by clause 5 of the Bill.

Where an OSF election is made, *section 33A(10) to (12)* provide that the Board shall pay the Financial Secretary the amount in the member's individual account less any amounts not attributable to government service. The Financial Secretary must pay such amounts into the Old Scheme Fund and pay out of that Fund any benefits to which the member becomes entitled under the election.

Section 33B allows any member who has made a FIPS or OSF early retirement election to use any sums remaining in the member's individual account after effect has been given to the early retirement election to purchase other FIPS benefits in accordance with the provisions of the 1997 Ordinance as modified by the new section 33B(2).

Expressions used in section 33B have the same meaning as they have in section 33A.

Clause 5(2) introduces Schedule 5 which is set out in Schedule 1 to the Bill and prescribes the new Old Scheme Fund benefits which are to be made available to members with an early retirement certificate. The main benefit will be a pension equal to one-eightieth of the member's last annual salary multiplied by the number of years service, increased as follows:-

(a) if actual service is 10 years or less, the number of years will be doubled;

(b) if actual service is more than 10 years, the number of years will be increased by 10 years, except that, where the member is more than 54 years old at retirement, the increase is limited to the number of years between his age and 64 years. The number cannot exceed 40 years.

In addition, provision is made for surviving spouses' and dependants' pensions, all of which will come into payment on the member's death. In the case of a surviving spouse, the pension will be equal to one-half of the member's pension at the time of death. The dependant's pension will be equal to one-quarter of that pension but, if there are more than two dependants, each dependant's pension will be equal to one-half of the member's pension divided by the number of dependants. A dependant's pension will not be increased if another dependant's pension or a surviving spouse's pension ceases to be payable.

Paragraphs 2(2) to (4) allow a member to elect to commute up to 25% of the pension in order to receive a lump sum. The lump sum will be equal to the amount the member determines (subject to the 25% maximum) multiplied by £12.50. This election must be made at the same time the OSF election is made under section 33A(5)(b). Provision is made for the Financial Secretary to allow a later election in case of a slip-up in the timing of the two elections.

Paragraph 2(5) provides that if a member who has elected to receive the Old Scheme Fund benefits under Schedule 5 dies before the end of the period of 5 years after retirement, an amount equal to the amount of pension payments which would have been payable after the member's death during those 5 years had the member lived until the end of that period will be distributed by the Board in accordance with section 30 of the 1997 Ordinance. Section 30 anticipates that the distribution will generally be made to the surviving spouse and dependants but allows the Board a discretion to distribute the sum to others and also caters for situations where the member dies intestate.

Paragraph 2(6) ensures that any pension payable under Schedule 5 will be increased annually by at least 3 per cent.

Paragraph 3 provides that a pension under the Schedule shall be payable until death of the recipient or in the case of a dependant's pension until the dependency ends.

Paragraph 4 requires an abatement of pension to be made where the member, at any time before reaching the age of 64 years, recovers sufficiently to return to work and the remuneration from that employment added to the pension exceeds the salary payable at that time in respect of the post the member held immediately before retiring on grounds of ill-health or disablement. All calculations for this purpose will be carried out using annual figures, grossing up earnings where necessary.

The amount abated will be equal to that excess and will be deducted from the pension on a

monthly basis. Where the abatement comes into effect after the employment has begun, retrospective deductions to recover the excess will be made.

Paragraph 4 requires the Financial Secretary to review the position of each member in receipt of a pension payable in accordance with Schedule 5 at least once every three years. Each member is required to cooperate with such a review: if cooperation is not forthcoming, the Financial Secretary is authorised to abate the pension by such amount as appears reasonable in the circumstances.

If there is a dispute about any matter relating to a review, either side can request the Governor to consider the matter. The Governor's decision on the dispute will be final and binding on both sides.

An abatement under *paragraph 4* will cease when the member reaches the age of 64 years or on the member's death if earlier.

Clause 6 amends section 29 of the 1997 Ordinance so as to allow members of FIPS who are not working to qualify for additional benefits in cases of permanent ill-health or disablement. Section 29(2) at present only allows such benefits to be arranged by members or their employers where the member is in work, and can retire. The amendment extends the scope of the provision to cases where the member does not actually retire but suffers from ill-health or disablement on a permanent basis.

Clause 7 amends section 31 of the 1997 Ordinance so as to improve the position of dependants of members who die after retirement. At present the dependants' pensions only come into payment if there is no surviving spouse. The amendment will change this so that the dependant's pension will come into payment on the death of the member even if the member leaves a surviving spouse.

Clause 7(2) ensures that the new provisions will only apply where the member dies on or after the Bill comes into force. Since it is not possible to change existing annuity contracts, this amendment is limited to annuity contracts entered into after the commencement date.

Clause 8 makes a number of small amendments to the 1997 Ordinance to correct clerical or typographical errors.

Falkland Islands Pensions Scheme (Amendment) Bill 2005

(No: of 2005)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title, commencement and interpretation
2. Refund of contributions in cases of early retirement on grounds of ill-health or disablement
3. Discretionary benefits in cases of terminal illness
4. Benefits for non-FIG employees in cases of ill-health or disablement
5. Early retirement by FIG employees on grounds of ill-health or disablement
6. Amendment to section 29 of the Pension Scheme Ordinance
7. Amendment to section 31 of the Pension Scheme Ordinance
8. Minor amendments to the Pensions Scheme Ordinance

Schedule — Early retirement on grounds of ill-health or disablement

FALKLAND ISLANDS PENSIONS SCHEME (AMENDMENT) BILL 2005

(No: of 2005)

A BILL

for

AN ORDINANCE

To make provision with respect to the provision of benefits for certain members of the Falkland Islands Pensions Scheme retiring on grounds of ill-health or disablement; and to make minor amendments to the Falkland Islands Pensions Scheme Ordinance 1997(a).

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title, commencement and interpretation

1.—(1) This Ordinance may be cited as the Falkland Islands Pensions Scheme (Amendment) Ordinance 2005.

(2) This Ordinance shall come into force on publication of the Ordinance in the Gazette.

(3) Any reference in this Ordinance to the Pensions Scheme Ordinance is a reference to the Falkland Islands Pensions Scheme Ordinance 1997.

Refund of contributions in cases of early retirement on grounds of ill-health or disablement

2.—(1) Section 26 of the Pensions Scheme Ordinance (refund of contributions in certain cases) shall be amended as follows.

(2) After subsection (3) there shall be inserted —

“(3A) Subsection (3) shall not apply where a member is certified by the Chief Medical Officer as being permanently unfit for work because of ill-health or disablement.”

(3) For subsection (8) there shall be substituted —

“(8) A payment under subsection (1) shall be made as soon as is reasonably practicable after the termination date.”

(4) Subsection (2) applies in any case where the Chief Medical Officer issues a certificate for the purposes of section 26(3A) on or after the coming into force of this Ordinance.

(a) No 18 of 1997

Discretionary benefits in cases of terminal illness

3. In section 32(2) of the Pensions Scheme Ordinance (discretionary benefits where member becomes terminally ill and his expectation of life is short) the word “and”, at the end of paragraph (a), and paragraph (b) shall cease to have effect.

Benefits for non-FIG employees in cases of ill-health or disablement

4.—(1) The following section shall be inserted in the Pensions Scheme Ordinance after section 32 —

“Early retirement on grounds of ill-health or disablement: benefits for members other than FIG employees

32A.—(1) This section applies in any case where a member —

- (a) retires on grounds of ill-health or disablement before reaching normal retirement age,
- (b) at the time of that retirement, is not a member of the Scheme within section 17(2)(a) or is such a member but has been employed in government service for less than 2 years,
- (c) has, within 12 months of the date of retirement, notified the Board in writing of that retirement and, in the case of a member within paragraph (b), (d), (f), (g) or (h) of section 17(2), of the fact that contributions are ceasing, or have ceased, to be made in respect of the member, and
- (d) is not entitled to any repayment of contributions under section 26.

(2) For the purposes of subsection (1) a member shall be taken to have retired on grounds of ill-health or disablement if —

- (a) the member becomes so ill or disabled as to be permanently unable to work, whether or not the member has been working before retirement, and
- (b) the Chief Medical Officer has certified that the member is permanently so ill or disabled;

and in this subsection “work” includes any kind of paid employment, whether as an employee or as a self-employed person or as an office-holder.

(3) Where a notification has been made under subsection (1)(c) by a member, and a certificate relating to that member has been issued by the Chief Medical Officer as mentioned in subsection (2), this Part of this Ordinance shall apply in relation to the member subject to the following modifications —

- (a) section 28 (Scheme benefits: general rules) shall apply with the omission of subsections (3), (4) to (9) and (11);

(b) section 33B (treatment of AVCs etc) shall not apply; and

(c) in Schedule 4, paragraph 1(2) (deferment of benefits) shall not apply.”

(2) Section 32A shall apply in relation to members who retire on or after the date this Ordinance comes into force.

Early retirement by FIG employees on grounds of ill-health or disablement

5.—(1) After section 33 of the Pensions Scheme Ordinance there shall be inserted —

“Early retirement on grounds of ill-health or disablement: benefits for FIG employees

33A.—(1) This section applies in relation to any member who retires from employment in government service before his normal retirement age on grounds of ill-health or disablement and is immediately before that retirement a member of the Scheme within section 17(2)(a).

(2) In this section and section 33B —

“the member” means any member to whom this section applies;

“retirement” means retirement as mentioned in subsection (1);

“early retirement certificate” means a certificate issued as mentioned in subsection (4);

“early retirement election” means an election under subsection (5);

“FIPS early retirement election” means an election under subsection (5)(a);

“OSF early retirement election” means an election under subsection (5)(b);

“non-government service contributions”, in relation to any member, means amounts in the member’s individual account attributable to additional voluntary contributions or to any employment otherwise than in government service.

(3) Subsection (1) does not apply in any of the following cases —

(a) where the member’s employment in government service began before 1st January 1997 and has been uninterrupted since that date;

(b) if the member has not been employed in government service for at least 2 years.

(4) Subsection (1) does not apply if the Chief Medical Officer has not issued an early retirement certificate stating that in the Chief Medical Officer’s opinion the member is permanently incapable of carrying out the duties of any employment in the government service, but where an early retirement certificate is issued to a member who makes an early retirement election, benefits payable in pursuance of that election shall be payable as from the

date of the member's retirement.

The Chief Medical Officer shall give the early retirement certificate to the member concerned and send copies to the Board and the Financial Secretary.

(5) The member may elect to receive —

(a) FIPS benefits payable under this Part as modified in accordance with subsection (8),
or

(b) Old Scheme Fund benefits specified in Schedule 5.

(6) An election under subsection (5) —

(a) must be in writing and signed by the member; and

(b) must be given to the Board not later than 12 months after the early retirement certificate is issued to the member.

(7) The Board shall give a copy of any early retirement election to the Financial Secretary.

(8) Where a member makes a FIPS early retirement election, this Part shall apply in relation to that member subject to the following modifications —

(a) section 28 (Scheme benefits: general rules) shall apply with the omission of subsections (3), (4) to (9) and (11);

(b) section 29 (optional benefits payable on death before retirement) shall not apply;

(c) section 33B (treatment of AVCs etc) shall apply; and

(d) in Schedule 4, paragraph 1(2) (deferment of benefits) shall not apply.

(9) A FIPS early retirement election may include an election to disregard any non-government service contribution in determining the accrued value of the member's account for the purpose of section 28(1).

(10) In any case where the member makes an OSF early retirement election, the Board shall transfer out of the Scheme Fund to the Financial Secretary an amount equal to the accrued value of the member's individual account less any non-government service contributions.

(11) The Financial Secretary shall transfer any such amount to the Old Scheme Fund.

(12) Benefits payable in consequence of an OSF early retirement election shall be provided by the Financial Secretary.

Treatment of AVCs etc where early retirement election made

33B.—(1) This section applies where a member has made an early retirement election and the value of that member's individual account (after effect has been given to that election) is attributable to non-government service contributions.

(2) Where this section applies in relation to a member, this Part shall apply in relation to that member subject to the following modifications —

(a) section 28 (Scheme benefits: general rules) shall apply with the omission of subsections (3) and (11);

(b) any benefits payable by virtue of the early retirement election shall be disregarded for the purposes of section 32.

(3) This section shall be construed as one with section 33A."

(2) The Schedule to this Ordinance, which sets out the Schedule to be inserted in the Pensions Scheme Ordinance as Schedule 5 to that Ordinance, shall have effect.

Amendment to section 29 of the Pensions Scheme Ordinance

6.—(1) In section 29 of the Pensions Scheme Ordinance (optional benefits in case of death or early retirement on grounds of ill-health or disablement) after subsection (1) there shall be inserted —

"(1A) For the purposes of subsection (1)(b) a person who is not working shall, unless the arrangements otherwise provide, be taken to have retired on grounds of ill-health or disablement if they become so ill or disabled that they are permanently unable to work; and in this subsection "work" includes any kind of paid employment, whether as an employee or as a self-employed person or as an office-holder."

Amendment to section 31 of the Pensions Scheme Ordinance

7.—(1) In section 31(4) of the Pensions Scheme Ordinance (qualifying annuities for dependants) the word "and", at the end of paragraph (a) of subsection (4), and paragraph (b) of that subsection shall cease to have effect.

(2) This section shall apply in relation to annuities for dependants of persons who die on or after the day this Ordinance comes into force.

Minor amendments to the Pensions Scheme Ordinance

8.—(1) The Pensions Scheme Ordinance shall have effect subject to the following amendments.

(2) In section 2(2)(a) for "person" there shall be substituted "a person".

(3) In section 3(1)(a) for "circumstance" there shall be substituted "circumstances".

- (4) In section 4 for "Pension" there shall be substituted "Pensions".
- (5) In section 8(1)(b) after "far" there shall be inserted "as".
- (6) In section 10(2)(a) after "purposes" there shall be inserted "of".
- (7) In section 18(3) after "any of" there shall be inserted "the".
- (8) In section 23(2) for "Pension" there shall be substituted "Pensions".
- (9) In section 25(1)(f) for first "that" there shall be substituted "the".
- (10) In section 26(4) the second "if" shall cease to have effect.
- (11) In section 28 —
 - (a) at the end of paragraph (b) there shall be inserted "and";
 - (b) at the beginning of paragraph (c) there shall be inserted "such benefits".
- (12) In section 34(5)(e) for "to pension" there shall be substituted "to a pension".
- (13) In section 36(1) for "person" there shall be substituted "member".
- (14) In section 42 for "Pension" there shall be substituted "Pensions" and for "1980" there shall be substituted "1979".

Section 42 shall be deemed always to have had effect subject to these amendments.

- (15) In paragraph 10(5) of Schedule 1 after "expected" there shall be inserted "to".
- (16) In paragraph 1(2) of Schedule 2 —
 - (a) in paragraph (b) "and" shall cease to have effect; and
 - (b) in paragraph (c) at the end there shall be added "and".
- (17) In paragraph 5A(6)(a) and (b) of Schedule 3 for "prices" (in both places) there shall be substituted "price".

SCHEDULE

section 5(2)

EARLY RETIREMENT ON GROUNDS OF ILL-HEALTH OR DISABLEMENT

1. The following Schedule shall be inserted in the Pensions Scheme Ordinance as Schedule 5 —

“SCHEDULE 5 ALTERNATIVE BENEFITS PAYABLE IN CERTAIN CASES OF EARLY RETIREMENT

1.—(1) This Schedule applies where a member makes an OSF election.

(2) In this Schedule —

“member” in relation to an OSF election, means the member making the election;

“OSF election” means an election under section 33A(5)(b);

“spouse” has the meaning given by section 31(11); and

“dependant” has the meaning given by section 31(12).

2.—(1) In any case where an OSF election has been made, the Old Scheme Fund benefits payable to or in respect of the member are the following —

(a) subject to sub-paragraph (3), an annual pension equal to $\left(\frac{n}{80}\right)p$,

where p is the member’s annual salary at the date of retirement, and

n is the number of years during which the member has been an employee in government service (expressed as whole years and any part less than a year as a fraction of a year) —

(i) where that is not more than 10 years, multiplied by 2; or

(ii) in any other case, increased by 10;

but subject to a maximum of 40 years or if the member is aged at least 54 years at retirement, the number of years the member would have been employed in government service if his employment in government service had continued without interruption until his 64th birthday;

(b) on the member’s death, an annual pension for a surviving spouse equal to 50 per cent of the member’s pension payable at the member’s death;

(c) if the member leaves any dependant (within the meaning of section 31(12)), a

dependant's pension payable in respect of each dependant equal to —

(i) 25 per cent of the member's pension (as at the member's death) in respect of each dependant up to a maximum of two, or

(ii) if there are more than two, 50 per cent of that pension divided by the number of dependants,

payable as from the member's death.

(2) A member may elect to receive a lump sum equal to £12.50 multiplied by the specified amount.

(3) An election under paragraph (2) must be made in writing to the Financial Secretary not later than the date the OSF election is made or by such later date as the Financial Secretary may allow, and where such an election is made the pension payable under sub-paragraph (1)(a) shall be reduced by the specified amount.

(4) In sub-paragraphs (2) and (3) "the specified amount" means such amount, not exceeding one-quarter of the pension calculated in accordance with sub-paragraph (1)(a) (but disregarding sub-paragraph (3)), as the member specifies in the election under sub-paragraph (2).

(5) In any case where the member dies before the 5th anniversary of the date of his retirement, an amount equal to the aggregate of the pension payments which, if the member had not died, would have been payable to the member in respect of the period starting with the date of his death and ending on that anniversary, shall be paid to the Board which shall hold and apply any such amount in accordance with section 30 (the discretionary trusts).

(6) Any pension payable under this Schedule shall be increased annually by at least 3 per cent.

Duration of pension

3.—(1) Any pension payable to a member or a member's spouse shall be payable until the death of the member or the spouse, as the case may be.

(2) Any pension payable under this Schedule to or for the benefit of a dependant shall be payable until the period of dependency ends.

Abatement of pension

4.—(1) In any case where a pension is payable to a member under this Schedule, the Financial Secretary shall arrange for a review of the member's circumstances to be carried out and if as a result of the review the Financial Secretary is satisfied that the member is in

employment or has been in employment and the aggregate of the member's remuneration from that employment and the pension payable under this Schedule exceeds the salary currently payable in respect of the post in government service occupied by the member at the time of his retirement, the pension shall be abated by the amount of that excess.

(2) Amounts used in any calculation carried out for the purposes of a review in accordance with sub-paragraph (1) shall be annual amounts.

(3) The member shall co-operate in the carrying out of any such review and provide all information which the Financial Secretary reasonably requires; and if the member does not comply with this requirement, the Financial Secretary may abate the pension by such figure as appears to him to be reasonable in the circumstances.

(4) In the event of any dispute arising as to any matter arising under or in relation to such a review, the member or the Financial Secretary may request the Governor to consider the matter.

(5) The Governor, if requested to consider any aspect of a review under sub-paragraph (1), shall give his decision in writing to the member and the Financial Secretary; and that decision shall be binding on both parties to the dispute.

(6) Reviews under this paragraph with respect to any member shall be carried out at least once in every three year period following the member's retirement until the member reaches the age of 64 years.

(7) Any abatement under this section shall cease on the member's death or, if later, the member's 64th birthday (if it has not ceased earlier)."

ESC 6 Use of company vehicles

[Amended 24 February 2005, coming into force effective from 1 January 2005]

Section 3(1)(b) of the Taxes (Benefits in Kind) Rules 2003 introduces a charge to tax, from 1 January 2004, on the benefit of a vehicle provided by an employer to an employee for his or her own use (or for the use by any member of that employee's family), other than wholly for the purpose of performing the duties of that employment.

Under the Ordinance and Benefit in Kind Rules "employee" includes company directors.

The taxable annual value of having such a vehicle provided is £3000. There is an alternative taxable value of £40 per day if a vehicle is only made available on an ad hoc, rather than a regular, basis.

A vehicle provided by an employer to an employee is normally made available to enable the employee to carry out the duties of that employment. Where a vehicle is made available by reason of an employee's employment the legislation provides that it will be automatically treated as having been made available for private use. This means that a vehicle benefit charge will automatically apply.

However, the vehicle benefit charge will not apply if the employee

- is specifically prohibited from using the vehicle privately, **and**
- does not in fact use it privately.

Note that there are two parts to this test.

The mere prohibition of private use is insufficient on its own to prevent a tax charge. It is also necessary to show that a vehicle is not used for private motoring.

- Thus a provided vehicle will result in liability even if no private use is made of it **unless such private use has been specifically prohibited**
AND
- even if the director or employee shows that private use of a vehicle has been specifically forbidden, there must be **no private use of it if a charge is to be avoided.**

Employees who are required to take a vehicle home because they are on call will not be charged on the benefit of that vehicle provided that it is only used in an emergency. For the avoidance of doubt we will not seek to charge a benefit on vehicles provided to public officers strictly in accordance with paragraphs 109 and 112 of Chapter K of General Orders.

Explanation

It is a fact that within the Falkland Islands it has become an established and long standing tradition for employees to use a vehicle provided by their employer, which is required for work purposes, for travelling from home to work and work to home, both at the start and end of the day and at lunchtime.

For the purposes of defining **private use** the use of that vehicle for travelling **directly** to and from work at the start and end of the day, and at lunchtime, will not be treated as private use.

If a vehicle is used for any other private purpose then a benefit in kind will arise and will become liable to tax. So, if on the way home an employee goes shopping that is a chargeable benefit. If, when on standby or on call the employee uses the vehicle to visit friends that is also a chargeable benefit.

N.B. This concession has been amended following approval by Executive Council at their meeting 24 February 2005. It will be applied retrospectively from 1 January 2005. The following, which was in the original concession,

“So we will not seek to charge a benefit on a vehicle provided to doctors, firemen, power station workers, etc. who are necessarily obliged to have that vehicle at their home in case they are called out in an emergency.”

has been replaced by

“For the avoidance of doubt we will not seek to charge a benefit on vehicles provided to public officers strictly in accordance with paragraphs 109 and 112 of Chapter K of General Orders.”

This change has been introduced to point out that FIG employees are not allowed to use FIG vehicles for private purposes without permission except for a strictly limited amount when on-call duty or unless such use has been properly authorised whereby an appropriate hire charge is payable.

Please note that, in the event abuse becomes apparent and cannot be controlled, there is a high risk that this concession will be withdrawn and, as a consequence, the Benefit in Kind Rules would be strictly applied. This would mean that any use of a vehicle provided by an employer for travel to and from work, etc. would result in a charge to tax as a benefit in kind.

STATUTORY INSTRUMENTS

2005 No. 244

CHILDREN AND YOUNG PERSONS

The Child Abduction and Custody (Falkland Islands) (Amendment) Order 2005

Made ----- 9th February 2005

Laid before Parliament -- 21st February 2005

Coming into force ----- 24th March 2005

At the Court at Buckingham Palace, the 9th day of February 2005

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 28 of the Child Abduction and Custody Act 1985(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

1. This Order may be cited as the Child Abduction and Custody (Falkland Islands) (Amendment) Order 2005, and shall come into force on 24th March 2005.

2. The Child Abduction and Custody (Falkland Islands) Order 1996(b) is amended —

(a) in article 2, by substituting for the words "sections 26 and 27" the words "section 27";
and

(b) in the Schedule, by deleting section 26.

A. K. Galloway
Clerk of the Privy Council

(a) 1985 c.60.

(b) S.I. 1996/3156.

EXPLANATORY NOTE
(This note is not part of the Order)

This Order removes from the Child Abduction and Custody (Falkland Islands) Order 1996 provisions which charge to Parliament expenses incurred by the Falkland Islands by virtue of the Order. These provisions are inappropriate and unnecessary, because local Falkland Islands legislation charges such expenses to public funds of the Islands. So far no such expenses have in fact been incurred.



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 16

11th April 2005

No. 4

The following are published in this Supplement -

Fishing Licences (Applications and Fees) Order 2005, (S. R. & O. No: 4 of 2005);

Coins Order 2005, (S. R. & O. No: 5 of 2005),

Fishery Products (Hygiene) (Designated Vessel) Order 2005, (S. R. & O. No: 6 of 2005);

Firearms and Ammunition (Amendment) Bill 2005;

Explanatory Memorandum, Falkland Islands Pensions Scheme (Amendment) (No 2) Bill 2005;

Falkland Islands Pensions Scheme (Amendment) (No 2) Bill 2005;

Immigration (Amendment) Bill 2005.

SUBSIDIARY LEGISLATION

FISHERIES

Fishing Licences (Applications and Fees) Order 2005

(S. R. & O. No: 4 of 2005)

Made: 24 March 2005

Published: 11 April 2005

Coming into force: upon publication

IN EXERCISE of my powers under section 20 of the Fisheries (Conservation and Management) Ordinance 1986(a) and of all other powers enabling me in that behalf, I make the following Order —

Commencement and citation

1. This Order may be cited as the Fishing Licences (Applications and Fees) Order 2005 and shall come into operation on the date it is first published in the Gazette and cease to have effect on 30th June 2005.

Application

2. Nothing in this Order applies to licences for exploratory or scientific purposes or to fishing within the territorial sea or internal waters.

Interpretation

3. In this Order —

“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;

“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;

“fishing licence” means a licence to catch or take fish within the fishing waters;

“FOCZ” means the outer conservation zone as defined in Proclamation 2 of 1990 as varied by Proclamation 1 of 1994;

(a) No 11 of 1986

“jigger” means a fishing boat which is equipped so as to be able to catch or take fish by means of jigging machines;

“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;

“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° 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 2005 and ending on 30th June 2005;

(b) in relation to a “B” licence the period commencing on 15th February 2005 and ending on 15th June 2005;

(c) in relation to a “C” licence the period commencing on 1st March 2005 and ending on 14th April 2005;

(d) in relation to an “F” licence the period commencing on 1st January 2005 and ending on 30th June 2005;

(e) in relation to a “G” licence the period commencing on 1st March 2005 and ending on 31st May 2005;

(f) in relation to a “S” licence the period commencing on 1st January 2005 and ending on 30th June 2005;

(g) in relation to a “W” licence the period commencing on 1st January 2005 and ending on 30th June 2005; and

(h) in relation to an “L” licence the period commencing on 1st January 2005 and ending on 30th June 2005.

“the principal Regulations” means the Fishing Regulations Order 1987;

“trawler” means a fishing boat which is equipped so as to be able catch or take fish by means of a trawl or trawls.

The principal Regulations

4. For so long as this Order is in force such of the provisions of the principal Regulations as are inconsistent with this Order 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 this Order.

Types of Licence

5.—(1) For the purpose of this Order 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 "G" licence;
- (f) an "L" licence;
- (g) an "S" licence; and
- (h) a "W" licence.

(2) An "A" licence authorises the catching or taking of any Finfish, that is to say a vertebrate fish having a dorsal fin, a ventral or pectoral fin and not in any case including Skate (*Rajidae*) or Toothfish (*Dissostichus eleginoides*) or squid of any kind.

(3) A "B" licence authorises the catching or taking within the northern area and the FOCZ of *Illex argentinus* and *Martialia hyadesi* only.

(4) A "C" licence authorises the catching or taking within the southern area of squid of the species *Loligo gahi*.

(5) An "F" licence authorises 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 "G" licence authorises 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*) or Skate (*Rajidae*).

(7) An "L" licence issued under these regulations authorises the catching of Toothfish (*Dissostichus eleginoides*)

(8) An "S" licence authorises the catching or taking of Blue Whiting (*Micromesistius australis*) and Hoki (*Macruronus magellanicus*).

(9) A "W" licence authorises the catching or taking of any finfish (that is to say a vertebrate fish having a dorsal fin, a ventral or pectoral fin) except Hake (*Merluccius spp.*), Toothfish (*Dissostichus eleginoides*) and Skate (*Rajidae*).

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, PO Box 598, Stanley, Falkland Islands.

(2) Any application to which paragraph (1) of this article relates shall be made so as to be received there by Thursday 30th September 2004.

(3) The Director of Fisheries in his discretion may consider an application lodged after the date mentioned in paragraph (2) of this article but is not bound to do so.

The Schedule and its Tables

7.—(1) Table 1 of the Schedule to this Order applies in respect of the fees payable for type "A" licences.

(2) Table 2 of the Schedule to this Order applies in respect of the fees payable for type "B" licences granted to any jigger.

(3) Table 3 of the Schedule to this Order 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 this Order applies in respect of the fees payable for type "C" licences.

(5) Table 5 of the Schedule to this Order applies in respect of the fees payable for type "F" licences.

(6) Table 6 of the Schedule to this Order applies in respect of the fees payable for type "G" licences.

(7) Table 7 of the Schedule to this Order applies in respect of the fees payable for type "S" licences.

(8) Table 8 of the Schedule to this Order applies in respect of the fees payable for type "W" licences.

(9) Table 9 of the schedule to this order applies in respect of fees payable for type "L" licences.

(10) All fees payable under this article shall be paid in pounds Sterling and in accordance with the principal Regulations.

(11) The explanatory notes at the commencement of each Table in the Schedule to this Order are for guidance only and shall not have legislative effect.

(12) This article and the Schedule has effect subject to article 8(3).

Licence 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 may impose such conditions in the licence as he considers necessary or expedient and, in particular, to 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 prescribed by a further Order 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.

Special provisions in relation to type “B” licences

9.—(1) The Director of Fisheries may, if he thinks fit, grant a type “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 prescribed by a further Order, must be paid.

Transshipment fees

10. The fee for transshipment or transshipment and export licences for the period 1st January 2005 to 30th June 2005 is £1,500 per transshipment operation. Where a fishing licence or combination of fishing licences are granted to a fishing vessel for a period of three or more months, a transshipment licence for the period 1st January to the 30th June 2005 will be issued.

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 2005 and ends on 30th June 2005 and will be subject to a closed area and provisions of the Fishing (Nets and Supplementary Equipment) Regulations Order 1990.
4. Fees 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, “GRT” 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 is the result of:

$$£(5.882 * GRT) + 15333$$

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 2005 and ends on 15th June 2005.
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, "GRT" 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; '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

Where the following is applicable —

I. Where the vessel held and utilised a comparable licence in respect of the first season 2004.

Fee payable is the result of:

$$£(0.383 * (GRT * (S + 1.5D))) + 102102$$

Less 1 % for each year licensed between 1995 and 2003

II In any case where Formula I does not apply —

Fee payable is the result of:

$$£(0.425 * (GRT * S + 1.5D))) + 113447$$

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 15 February 2005 and ends on 15th June 2005. (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 2005 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, "GRT" 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 is the result of:

$$£(3.687 * GRT) + 105796$$

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 species *Loligo Gahi* within the shaded (valid) area.
3. The season for this type of licence commences on 1st March 2005 and ends on 14th April 2005 and is exempt from the Fishing (Nets and Supplementary Net 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, "GRT" 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 is the result of:

$$£((97.566 * GRT) + 111621) / 3$$

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 2005 and ends on 30th June 2005 and will be subject to a closed area and the Fishing (Nets and Supplementary Equipment) Regulations Order 1990.

4. Fees calculated by the Formula set out in this Table are payable in respect of the number of months for which the licence is valid.)

Effective text (of legislative effect)

A. In the following Formula, "GRT" 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:

$$£(2.519 \times \text{GRT}) + 20344$$

TABLE 6

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 2005 and ends on 31st May 2005 and will be subject to a closed area and 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, "GRT" 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:

$$£(35.79 \times \text{GRT}) + 25465$$

TABLE 7

Finfish only - Species Restricted - Type "S" 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 equipped with Surimi factories, licensed to take Blue Whiting (*Micromesistius australis*) and Hoki (*Macruronus magellanicus*).
3. The season for this type of licence commences on 1st January 2005 and ends on 30th June 2005 and will be subject to 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, "GRT" 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 is the result of:

$$£(18.189 \times \text{GRT}) + 48416$$

TABLE 8
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 the 1st January 2005 and ends on the 30th June 2005 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, "GRT" 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

Fees payable per licensed month is the result of :

$$£(5.882 \times \text{GRT}) + 10333$$

TABLE 9
Toothfish – Type "L" Licences

(Explanatory notes:

1. These notes are **not** of legislative effect but are for guidance only.
2. Fees set out in this table apply to longliners licensed to take Toothfish (*Dissostichus eleginoides*) only.

3. The season for this type of licence commences on the 1st January 2005 and ends on the 30th June 2005.

4. Fees 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. A licence is not transferable.

Fee

Fees payable per licensed month is:

£24,244

Made this 24th day of March 2005

H.J.S. Pearce C.V.O.,
Governor

SUBSIDIARY LEGISLATION

CURRENCY

Coins Order 2005

(S. R. & O. No. 5 of 2005)

Made: 31 March 2005

Published:..... 11 April 2005

Coming into force: upon publication

IN EXERCISE of my powers under section 22 of the Currency Ordinance 1987 (Title 25.1) ("the Ordinance") 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 Coins Order 2005 and shall come into force upon publication in the *Gazette*.

New coins

2.—(1) The minting and issue of the coins described and specified in the Schedule to this Order are hereby authorised.

(2) The Schedule to this Order shall have effect so as to specify the denomination, fineness, weight, diameter, quality, shape, edge and number of the coins authorised by paragraph (1) of this article, the tolerance or remedy which may be permitted in respect of variations from the standard weight, diameter and fineness of the coins and the design of the obverse and reverse of the coins.

Deemed denomination of Crown coins and their value as legal tender

3. For all the purposes of the Ordinance —

(a) Cupro-Nickel Crown coins and Sterling Silver Crown coins authorised by this Order shall each be deemed to be of 25 pence denomination;

(b) Gold one fifth Crown coins authorised by this Order shall each be deemed to be of £1 denomination; and

(c) Gold one twenty-fifth Crown coins authorised by this Order shall each be deemed to be of 20 pence denomination,

and all those coins shall be legal tender in the Falkland Islands in the amount of their deemed denomination.

Made this 31st day of March 2005

H. J. S. Pearce C.V.O.,
Governor

SCHEDULE

Specifications of Falkland Islands coins to commemorate the Bicentenary of the Death of Admiral Nelson

Type	Gold Proof	Gold Proof	Silver Proof	Cupro-nickel
Denomination	1/5 th Crown	1/25 th Crown	1 Crown	1 Crown
Weight (grams)	6.22	1.24	28.28	28.28
Diameter (millimetres)	22.00	13.92	38.60	38.60
Fineness	999.9 Gold	999.9 Gold	0.925 Sterling Silver	75% Cu 25% Ni
Quality	Proof	Proof	Proof	Brilliant Uncirculated
Shape	Round	Round	Round	Round
Edge	Milled	Milled	Milled	Milled
Edition Limit	2,000	5,000	10,000	Unlimited
Mint	Pobjoy Mint Ltd			
Remedy	Variations to be allowed of the amount permitted by the Pobjoy Mint Ltd			
Obverse Design	The uncouped portrait of Her Majesty the Queen by Raphael Maklouf surrounded by the inscription "QUEEN ELIZABETH II FALKLAND ISLANDS" and the date "2005" at the bottom.			
Reverse Design	Design depicts an image of Captain Suckling and a young Horatio Nelson above an example of Nelson's signature with HMS Victory in the foreground. The inscription "HMS VICTORY" appears in the body of the design, "HORATIO NELSON 1758 – 1805" appears in the surround of the coin and the denomination at the bottom.			

EXPLANATORY NOTE (not forming part of the above Order)

This Order authorises the issue of cupro-nickel, silver and gold crown coins commemorating the Bicentenary of the Death of Admiral Nelson each of which is to be legal tender in the Falkland Islands in accordance with its deemed denomination stated in the Order.

SUBSIDIARY LEGISLATION

FISHERIES

Fishery Products (Hygiene)(Designated Vessel) Order 2005

(S. R. & O. No: 6 of 2005)

Made: 31 March 2005

Published: 11 April 2005

Coming into force: upon publication

IN EXERCISE of my powers under section 3(1) of the Fishery Products (Hygiene) Ordinance 1998(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 Fishery Products (Hygiene)(Designated Vessel) Order 2005 and comes into force on publication in the *Gazette*.

Designation of approved factory fishing vessels

2. The vessel named in the first column of the Schedule to this Order is designated as a vessel to which the provisions of the Fishery Products (Hygiene) Ordinance 1998 and all regulations thereunder apply and is assigned the approval number in the second column of that Schedule appearing against its name.

Made this 31st day of March 2005

H.J.S. Pearce C.V.O.,
Governor

SCHEDULE

Vessel Name
Protegat

Approval Number
1031

EXPLANATORY NOTE

(not forming part of the above Order)

The Fishery Product (Hygiene) Ordinance 1998, coupled with the regulations made under it, enables the operators of factory fishing vessels to obtain confirmation that their vessel meets the standards of hygiene prescribed in the European Commission. The vessel specified in the Schedule to the Order is one which has been inspected and which is now, by this Order, designated as a vessel to which the provisions of the legislation apply.

Firearms and Ammunition (Amendment) Bill 2005

(No: of 2005)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title
2. Amendment of section 18 of Title 23.2

FIREARMS AND AMMUNITION (AMENDMENT) BILL 2005

(No: of 2005)

(assented to: 2005)

(commencement: 2005)

(published: 2005)

A BILL

for

AN ORDINANCE

To amend the Firearms and Ammunition Ordinance (Title 23.2).

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Firearms and Ammunition (Amendment) Ordinance 2005.

Amendment of section 18 of Title 23.2

2. Section 18 of the Firearms and Ammunition Ordinance (Title 23.2) is amended —

(a) by replacing subsection (3) with the following —

“(3) Notwithstanding subsections (1) and (2) any person over the age of twelve years may use a firearm for target practice provided he does so —

(a) at a place approved by the chief police officer; and

(b) in the presence and under the supervision of an officer of an organisation which has been approved by the chief police officer.”

(b) by inserting thereafter the following subsection —

“(3A) In subsection (3) —

“organisation” means the Falkland Islands Defence Force and any association, club or other body of persons; and

“officer” means a person over the age of twenty-one years approved for the purpose —

(i) in the case of the Falkland Islands Defence Force by the officer commanding that Force; and

(ii) in any other case by the committee or other organ, however described, responsible for the management of the association, club or other body.”

OBJECTS AND REASONS

Section 18(3) of the Firearms and Ammunition Ordinance in its present form only permits a youth organisation to be approved for the purposes of the subsection so as to permit a member of that organisation to supervise a person over the age of twelve years at target practice. It is desired to widen the category of organisations which could be approved.

FALKLAND ISLANDS PENSIONS SCHEME (AMENDMENT)(NO 2) BILL 2005

EXPLANATORY MEMORANDUM

This Bill amends the Falkland Islands Pensions Scheme Ordinance 1997. The primary purpose of the Bill is to allow for compulsory contributions to be made by FIG employees. At present the pension arrangements for FIG employees are non-contributory although they may make additional voluntary contributions. The Bill proposes to change this situation so that FIG employees will have to make contributions to the pension scheme of up to 5 per cent of relevant monthly earnings as defined in section 18(4) of the Pensions Scheme Ordinance.

Minor and consequential amendments to the legislation are also included in the Bill.

Clause 1 sets out the Bill's commencement and the short title for the Bill. It provides for the Ordinance to come into force when published in the Gazette. The Bill also provides that references in the Bill to the Pensions Scheme Ordinance are to the Falkland Islands Pensions Scheme Ordinance 1997.

Clause 2 amends section 18 of the Pensions Scheme Ordinance. Section 18 is the main provision dealing with FIG employee contributions. At present the only compulsory contributions are made by the Financial Secretary. *Subsection (1)* will amend section 18 to allow other contributions to be required to be made by FIG employees. *Subsection (2)* amends section 18(4) which sets out the definition of "relevant monthly earnings". This is the amount by reference to which the contribution for FIG employees is calculated. The amendment removes a mismatch in the wording occurring in the provisions of section 18: it does not change the law.

Clause 3 inserts a new section 18A in the Pensions Scheme Ordinance. This section contains the framework within which the compulsory contributions by FIG employees will be made. *Subsection (1)* of the new section 18A identifies the employees to whom the new provisions will apply. These are employees whose employment as FIG employees began on or after the commencement date, that is to say, the date the Ordinance is published in the Gazette. This group of employees will include "rejoiners" — any who were employed in the government service but whose employment ceased and who subsequently rejoin the service on or after that date. *Subsection (2)* allows for the contributions to be made by the employees and *subsection (3)* requires the contributions to be made regularly on a monthly basis. *Subsection (4)* provides for the amount of the contribution to be set by the government but it cannot exceed 5 per cent of the employee's relevant monthly earnings. This matches the provision applying to the private sector set out in section 20(4) of the Pensions Scheme Ordinance. *Subsection (5)* directs that any contribution shall be deducted from the employee's salary and paid over to the Board.

Clause 4 contains consequential amendments to the Pensions Scheme Ordinance. *Subsection (1)* amends the definition in section 2 of the Pensions Scheme Ordinance of "employee contribution" so that it generally includes the new contributions to be made under section 18A. *Subsection (2)* amends section 20(1) which defines "employee contribution" as contributions made under section 20 by or for employees in the private sector. The amendment ensures that the meaning in section 20 remains limited to such contributions: this is a technical amendment needed because section 20 is limited in its application to employees in the private sector.

Falkland Islands Pensions Scheme (Amendment)(No 2) Bill 2005

(No: of 2005)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title, commencement and interpretation
2. Amendment of section 18
3. Contributions by FIG employees
4. Consequential amendments

FALKLAND ISLANDS PENSIONS SCHEME (AMENDMENT)(NO 2) BILL 2005

(No: of 2005)

(assented to: 2005)
(commencement: upon publication)
(published: 2005)

A BILL

for

AN ORDINANCE

To amend the Falkland Islands Pensions Scheme Ordinance 1997(a).

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title, commencement and interpretation

- 1.—(1) This Ordinance may be cited as the Falkland Islands Pensions Scheme (Amendment) (No 2) Ordinance 2005.
- (2) This Ordinance shall come into force on publication of the Ordinance in the Gazette.
- (3) Any reference in this Ordinance to the Pensions Scheme Ordinance is a reference to the Falkland Islands Pensions Scheme Ordinance 1997.

Amendment of section 18

2.—(1) In section 18(1) of the Pensions Scheme Ordinance (contributions for FIG employees payable by Financial Secretary) after “voluntary contribution” there shall be inserted “or any contribution under section 18A”.

(2) In subsection (4) for the words from the beginning to “time” there shall be substituted the words “For the purposes of this section “relevant monthly earnings”, in relation to any employee and any month, means such sums as are paid by the employer to the employee in respect of that month”.

Contributions by FIG employees

3.—(1) The following section shall be inserted in the Pensions Scheme Ordinance after section 18 —

“Contributions by FIG employees

18A.—(1) This section applies to any employee within section 17(2)(a) whose employment in government service began on or after the coming into force of the Falkland Islands Pensions Scheme (Amendment) (No 2) Ordinance 2005 (and any earlier period of employment which had been terminated shall be disregarded).

(2) A contribution may be made by such an employee under this section, and any such contribution is referred to in this Ordinance (except in section 20) as “an employee contribution”.

(3) An employee contribution shall be made on a regular basis in respect of each month during which the employee continues in employment in government service.

(4) The amount of an employee contribution in respect of any employee and any month shall be determined by the employer as a percentage of the employee’s earnings from employment in government service for that month, but shall not in any case exceed an amount equal to 5 per cent of the employee’s relevant monthly earnings (within the meaning of section 18(4)) from that employment for that month.

(5) Any employee contribution payable by an employee in respect of any month shall be deducted from that employee’s salary by the employer and accounted for by the employer to the Board.”

Consequential amendments

4.—(1) In section 2(1) of the Pensions Scheme Ordinance (Interpretation) the following shall be substituted for the definition of “employee contribution” —

““employee contribution” means a contribution under section 18A or 20;”.

(2) In section 20(1) (employee contributions for employees not in government service) after “Ordinance” there shall be inserted “(except in section 18A)”.

Immigration (Amendment) Bill 2005

(No: of 2005)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title
2. Amendment of the Immigration Ordinance 1999

IMMIGRATION (AMENDMENT) BILL 2005

(No. of 2005)

A BILL

for

AN ORDINANCE

To amend the Immigration Ordinance 1999.

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Immigration (Amendment) Ordinance 2005.

Amendment of the Immigration Ordinance 1999

2. The Immigration Ordinance 1999 is amended —

(a) by the replacement of section 18(4)(b) with the following subsection —

“(b) shall not be granted unless he shows that he intends that, in the event of a permanent residence permit being granted to him, his home or (if he has more than one) his principal home, will be in the Falkland Islands.”

(b) by insertion, after section 18, of the following section —

“Suspension of section 18

18A.—(1) If the Governor considers that circumstances have arisen, or may arise within the next twelve months, in which it is not, or may not be, in the interests of the Falkland

Islands for the time being that any further permanent residence permits shall be issued, he may by Order under this subsection suspend the operation of section 18 of this Ordinance.

(2) Any Order under subsection (1) shall, without prejudice to the making of a further Order under that subsection in relation to the same circumstances, cease to have effect on the expiration of twelve months from the date on which it came into effect."

OBJECTS AND REASONS

This Bill amends the Immigration Ordinance with regard to requiring an applicant for a permanent residence permit to demonstrate that he intends permanently to reside in the Falkland Islands and to enable a moratorium on the issue of permanent residence permits to be declared if it appears desirable to do so in the light of circumstances which have arisen.



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 16

18th April 2005

No. 5

The following are published in this Supplement -

Explanatory Memorandum, Mining Bill 2005;

Mining Bill 2005.

EXPLANATORY MEMORANDUM

MINING BILL 2005

Introductory

1. The Mining Bill 2005 would, if enacted, repeal and replace the Mining Ordinance (Title 53.2) which was originally enacted in 1918 and was amended in 1919, 1925 and 1950. The existing Mining Ordinance is inadequate in present circumstances to make the necessary provision in relation to mining operations and the exploitation of minerals within the Falkland Islands.

2. The Bill, like the existing Ordinance, only makes provisions in relation to minerals owned by the Crown and mining operations in relation to such minerals. It does not apply to privately owned minerals or to offshore minerals in "controlled waters".

3. *Clause 1* states that the Ordinance, if enacted, would come into force on such date as may be fixed by the Governor by notice published in the Gazette. It is intended that a number of sets of regulations under the Ordinance would be made after enactment and before the commencement of the Ordinance, including in particular regulations prescribing model clauses which would appear in licences granted under the Ordinance. Additionally, since environmental provision in relation to mining is largely contained in the Planning (Amendment) Bill, it is intended that that provision shall come into force, before, or contemporaneously with, the Ordinance.

4. *Clause 2* states that the Ordinance will, subject to *clause 5(2)*, bind the Crown. The effect of the latter provision, read with *clause 5(1)*, is to exempt the Crown from the need to obtain licences under the Ordinance for mining operations carried on by the Crown.

5. *Clause 3* states the application of the Ordinance (which has been explained above in paragraph 2).

6. *Clause 4* contains a number of definitions which are important in relation to other provisions of the Bill. The expression (*defined*) in relation to words or an expression in a later paragraph of this Explanatory Memorandum signifies that the word or expression is defined in *clause 4*. Among the definitions is one of "Crown minerals" as —

(a) all minerals in land belonging to the Crown which has never been alienated by the Crown;

(b) all minerals reserved to the Crown by the terms of any Crown Grant or Lease;

(c) all minerals conveyed to the Crown by the owner of any land and which have not subsequent to any such conveyance been granted by the Crown to any other person; and

(d) gold and silver.

Gold and silver belong to the Crown at common law, even if located in land belonging to somebody else.

7. Section 25(2) of the Land Ordinance (Title 45.1) provides that "every grant or lease of Crown lands shall be subject to the following reservations, restrictions and conditions unless they are expressly excluded or are not appropriate to the particular grant or lease...(d) all minerals are reserved to the Government, with full liberty at all times to search for, mine quarry and carry away the same and for that purpose to enter upon the land or any part thereof or authorise any company or person to do so...". This is the successor to a provision to a like effect in section 21 of the Land Ordinance 1903 (which however reserved a more restricted list of minerals). It was however the practice from some time in the 1880's to include a specific provision (as was used in the then Australian colonies) in Crown Grants and Crown Leases reserving all minerals to the Crown. In the result, with very limited exceptions in relation to early Crown Grants, the best known example of which still existing is in relation to the grant to Dean Brothers of Pebble Island, minerals in all land in the Falkland Islands belong to the Crown. Other land which such a reservation had not been made included the Grant of Douglas Station and the Lafone Grant. These exceptions ceased in 1983 and 1991 respectively when the land was purchased from the private owners and the Crown reserved the minerals when disposing of the land concerned.

Licences

8. *Clause 5 (1)* renders it unlawful for any person to prospect for, explore for or mine any Crown mineral without having obtained a licence to do so. There is an exception in *clause 5(3)* in relation to prospecting for or exploring for or mining for gold without motorised machinery in a "gold fossicking area" (*defined*). The purpose of this provision read with *clause 28(1)* is to enable minor recreational gold-mining operations (such as panning rivers or streams for alluvial gold) to be authorised on the sale of permits.

9. Further exceptions from the need to obtain a licence to prospect for, explore for or mine Crown minerals are contained in *clause 6(1)*. This would provide that the owner or occupier of any land, may for the purpose only of using the same upon that land may, without a licence, prospect for, mine, quarry or take stone, flint, chalk, gravel, sand or calcified seaweed in or on that land. But the owner or occupier will need the permission of the Governor in writing under *clause 6(2)* if he wishes to sell or otherwise dispose of any such mineral to a third party and must comply with any conditions subject to which such permission is granted. Contravention would constitute an offence under *clause 6(3)*.

10. *Clause 7(1)* would provide that nothing contained in the Bill, if enacted, would excuse a person from compliance with any obligation under any other written law, including in particular the Planning Ordinance. Mining operations will, in general constitute "development" as defined in that Ordinance. Thus the obtaining of a mining licence will not excuse a person from the need to obtain planning permission for any operations in relation to which planning permission is required under the Planning Ordinance. Under *clause 7(2)* contains a statement that it is a condition of every licence that any necessary planning permission be obtained.

11. Under *clause 8(1)* a licence granted under section 5 of the existing Mining Ordinance and which was in effect immediately prior to the commencement of the new law would continue to

have effect as if it had been granted under *clause 11* of the Bill on the same terms and conditions on which it was granted. A breach of any of those terms and conditions would, under the provisions of *clause 8(1)*, if committed after the commencement of the new law constitute an offence and be punishable in the same way as contraventions of terms and conditions of a licence granted under *clause 11* are to be punishable. *Clause 8(2)* provides that any licence continuing to have effect by virtue of *clause 8(1)* may be revoked, renewed or varied under the provisions of the new law as if it had been granted under *clause 11*. Under *clause 9(1)* a person could apply to the Director in the form prescribed by regulations under *clause 12* for the grant to him of a licence under *clause 11*. If so prescribed by regulations under *clause 9(3)*, an application fee would be payable. *Clause 9(2)* enables the Director to require an applicant to provide in writing such further information, additional to that required by regulations under *clause 9(3)* or the Governor might have requested the Director to obtain. *Clause 9(3)* would enable the Governor to make regulations prescribing fees to be paid on the making of an application for the grant of a licence and information to be provided by applicants.

12. Allocation of licences by public tender is provided for by *clause 10*. An applicant for a licence offered by public tender would be required to send to the Director an application for a licence in the form prescribed by regulations under *clause 12*. The Director would be required by *clause 10(3)* to reject any tender which in a material manner did not comply with the requirements of the tender notice or any regulations made under *clause 12*.

13. Provision for the grant of licences is made by *clause 11*. *Clause 11(1)* provides that subject to *clause 11(2)* the Governor with the consent of the Secretary of State could grant any body corporate a prospecting licence, an exploration licence or a mining licence in respect of such Crown minerals and land as are specified in the licence and that such a licence would be subject to such conditions as are contained or referred to in it or are deemed to be conditions subject to which the licence is granted. Provision is made by subsequent provisions of *clause 11* for the Governor to be able to grant the licence without consulting the Secretary of State provided that the Governor is satisfied that criteria stated in those provisions are met in relation to the licence in question.

14. *Clause 11(2)* provides that a licence shall not be granted in respect of the five categories of land specified in that subclause. *Clause 11(3)* provides that every licence granted is to be deemed to be granted subject to the compliance by the licensee with the provisions of the Model Clauses (*defined*) (so far as they are applicable in respect of the licence concerned) except to the extent that they are expressly excluded or modified by the terms of the licence. *Clause 11(4)* provides that a licence may not be granted unless the Governor is satisfied that the applicant is able to and intends to comply with the conditions of the licence if granted. By *clause 11(5)* the terms of the licence may require the payment to the Crown of an annual rent or fee (which may be variable or subject to increase in accordance with the provisions of the licence), and in the case of a mining licence, a royalty calculated in such manner as may be specified in the licence and, in the case of a prospecting licence or an exploration licence, such of the foregoing as the Governor considers appropriate in the circumstances of the case.

15. *Clause 12* enables the Governor to make regulations prescribing—

(a) conditions as to the size and shape of any area in respect of which a licence may be granted; and

(b) model clauses which must, unless he sees fit to exclude or modify them in any particular case, be incorporated in any such licence. Different regulations may be made in respect of different types of licence and in respect of different minerals. Model clauses not excluded from a licence are to be deemed to be conditions incorporated in that licence.

16. The Governor is prohibited by *clause 13(1)* from granting a licence under *clause 11* unless he believes that the applicant is likely to comply with and give proper effect to the licence. He can under *clause 13(2)* as a condition precedent to the grant of a licence under *clause 11* require the applicant to deposit with the Director or some other public officer such sum of money, bond or other document or thing by way of security for compliance with the conditions of the proposed licence as the Governor may direct. *Clause 13(3)* provides that, in particular, a requirement under *clause 13(2)* may be made in relation to the restoration by the holder of the licence of the land or part of the land the subject of the licence to which former state and condition or the carrying out of remedial or improvement works to that land at the conclusion of mining operations.

17. Under *clause 14* a duty is imposed on the Governor in the exercise of his powers to grant licence, to make regulations prescribing model clauses and, otherwise under the Bill, to balance the need to secure the effective and co-ordinated development of Crown minerals in any adjacent or neighbouring land with the need to secure as far as possible economic and other benefits to the residents of the Falkland Islands apart from enhancement of the Crown's revenues and the need to minimise any adverse effect upon the environment and to refuse to permit any activity which in his opinion would have an unacceptable degree of environmental impact but whether the Governor has, in any particular case, satisfactorily done so is not to be the subject of inquiry by any court, nor is anything in the Governor's duties stated in the clause to be construed as placing upon the Governor any obligation to grant or refuse a licence under *clause 11* to the applicant or any other person.

18. A general power for the Governor to impose conditions which the Governor considers reasonably necessary for the purpose of preventing or reducing, or making good, injury to the natural surface of the land in respect of which a licence was granted, or injury to anything on that natural surface, or consequential damage to any other land, is conferred by *clause 15(1)*. Such conditions may (*clause 15(2)*) include a condition that mining operations shall not be carried out within such distance of the natural surface of the land in respect of which the licence is granted as is specified in the condition. The Governor's powers under *clause 15* to impose conditions have effect without prejudice to the provisions of the Planning Ordinance (*clause 15(3)*).

19. *Clause 16* makes provision for the situation in which a further application or more than one further application is made for a licence in respect of all or part of the same piece of land, in respect of a common mineral, when an earlier application in respect of that land has not yet been decided. *Clause 16(1)* provides that the Governor may grant such of the applications received as he thinks fit, but shall not be obliged to grant any of them. *Clause 16(2)* makes provision in relation to applications for a licence where licences have been offered by tender.

20. *Clause 17(1)* enables a prospecting licence or an exploration licence to provide that the holder of such a licence shall have priority to all others to consideration of an application for the grant to him of a mining licence in respect of the whole or part of the land comprised in the prospecting or exploration licence but, if his prospecting or exploration licence does not extend to all minerals, only in respect of the mineral or minerals to which his licence extends. Such a right is described as "a priority right". Subsequent provisions of *clause 17* make detailed provision in relation to the exercise and effect of a priority right.

21. Under *clause 18(1)*, a prospecting licence cannot be granted for, or remain current for, a period exceeding four years from and including the date on which it was granted. The object of this is to prevent an applicant hanging on to prospecting rights so as to prevent somebody else prospecting the land in question. For similar reasons, *clause 18(2)* prevents the former holder of, or any person who had an interest in the prospecting licence while it was current from applying for a new prospecting licence or an exploration licence in respect of the same land until after the expiry of six months from the date on which the former prospecting licence ceased to be current. An object of this provision is to force a person who holds a prospecting licence to apply for an exploration licence, if it is wanted, before the expiration of the prospecting licence. *Clause 18(3)* provides that the holding of shares in a company listed on the stock exchange in the United Kingdom or Australia or in any prescribed country shall not constitute an interest in a prospecting licence. *Clause 18(4)* makes provision, in certain circumstances, for the grant of an exploration licence on the surrender, before its expiry, of a prospecting licence.

22. *Clause 18(5)* provides that where an application for a mining licence is made by the holder of a prospecting licence which is still current, the prospecting licence will not expire until after the application for the mining licence is determined.

23. Under *clause 19(1)* an exploration licence is to remain in force for a period of five years from and including the date on which it was granted. However, *clause 19(2), (3) and (4)* make provision in relation to the extension of an exploration licence. *Clause 19(5)* provides that where an application for a mining licence is made by the holder of an exploration licence in respect of any land and the term of the exploration licence would otherwise expire, the exploration licence is to continue in force in respect of the land the subject of the application until the application for a mining licence is determined.

24. Provision in relation to applications for mining licences is made by *clause 20*. A single application for a mining licence cannot (*clause 20(1)*) be made in respect of an area greater than 10 square kilometres but concurrent application for more than one mining licence can be made. An applicant for a mining licence is required by *clause 19(2)* to give notice in writing of his application to the owners and occupiers of all land to which his application relates and to the owners and occupiers of any other land not comprised in the application and over which any ancillary rights (*defined*) are required. Notice of the application in the Gazette and one or more newspapers published in the Falkland Islands is also required. The application must describe the area of land in respect of which the licence is sought and must be accompanied by a map on which the boundaries of the land the subject of the application are shown and a copy of the written description and map are to be incorporated in the notice (*clause 20(3)*). The applicant must state in his application whether or not he has applied for planning permission in respect of

the mining operations or in relation to any ancillary rights and whether that application has been decided and, if so, with what result.

25. Provision in relation to objections to the grant of mining licences is made by *clause 21*. Notice of objection must be given within 20 working days (*defined*) or such greater period as the Governor may allow of publication, or the latest date of publication of the notice of application under *clause 20(2)*. *Clause 21(2)* provides that it is not a valid ground of objection to an application for a mining licence that planning permission has not yet been granted, or has been refused. Under *clause 19(3)* the Governor is prohibited from granting a mining licence to the applicant, if any objection has been validly made, without first having given the objector and any other person, including the applicant, who wishes to be heard an opportunity of being heard by a person appointed by the Governor to inquire into and report to the Governor in relation to the matter ("the inspector"). *Clause 21(4)* enables the Governor to make regulations requiring a public inquiry into objections to be carried out into the grant of a mining licence when so directed by the Governor and the manner in which such an inquiry is to be carried out, the appointment of a person or persons as inspected to conduct such inquiry, the procedure at such an inquiry and the powers and duties of inspectors. If such an inquiry is directed by the Governor, the inspector is required by *clause 21(5)* to send to the Governor his report on the inquiry with his recommendation as to whether the Governor should grant or refuse the application for a mining licence. On receipt of the inspectors report (*clause 21(6)*), the Governor may with the consent of the Secretary of State grant or refuse a mining licence to the applicant, irrespective of whether the inspector has recommended the grant or refusal of it.

26. Under *clause 22(1)* it is provided that a mining licence is ordinarily to be current —

(a) for an initial period of 21 years; and

(b) where application for renewal is made within the final year of that 21 year period, as of right for a further period of 14 years as from the expiry of the initial period, provided that during the initial period the licensee has complied with all the terms and conditions of the licence.

27. *Clause 22(2)* enables the Governor to renew or further renew a mining licence for successive periods not exceeding 14 years. Where an application for the renewal of a mining licence is made by the holder of the licence and the term of that licence would otherwise expire under *clause 22(3)* the licence is to continue in force in respect of the land the subject of the application until the application for the renewal is decided. *Clause 23(1)* prevents an application being made by the former holder of a mining licence for a prospecting or exploration licence in respect of the same land within a period of twelve months from the date of the surrender, forfeiture, revocation or expiry of the mining licence within a period of twelve months from that date.

28. *Clause 24* makes provision in relation to the grant of gold fossicking permits and renders it unlawful to fossick for gold with any motorised machinery or machinery which is not hand held.

29. Provision for fossicking (*defined*) generally is made by *clause 25*. Fossicking, other than for gold, in land owned by the Crown would be lawful, except as provided by the clause.

30. The rights which would be conferred by prospecting licences, exploration licences and mining licences, respectively, are stated in *clauses 26, 27 and 28*. A prospecting licence would authorise the holder to prospect for the mineral or minerals to which the licence relates but the holder would not be authorised without the prior consent of the Director to excavate, extract or remove any earth, soil, rock, stone, fluid or mineral bearing substance in an amount which exceeds the quantity prescribed by regulations or stated in the licence. A prospecting licence would not authorise the holder to extract any water or confer any right upon the holder to enter upon any land other than in accordance with the provisions of the Ordinance. An exploration licence would authorise the holder to prospect and explore for the mineral or minerals to which the licence relates. The restrictions mentioned in relation to a prospecting licence will also apply in relation to an exploration licence. "Prospecting" and "exploration" are both terms defined in *clause 4*. "Prospecting" permits the execution of geological, geochemical and geophysical surveys, the taking of samples by hand or hand held methods and aerial surveys. "Exploration" on the other hand includes any activity undertaken for the purpose of identifying mineral deposits or occurrences and evaluating the feasibility of mining particular deposits or occurrences of one or more minerals, including drilling, dredging or excavation, which is reasonably necessary to determine the nature and size of a mineral deposit or occurrence. A mining licence would authorise the holder and his agents and employees on his behalf to work and mine the land in respect of the which the licence was granted for the mineral or minerals to which the licence relates and to take and remove them from the land.

31. *Clause 29* prohibits the commencement of any mining operation by the holder of a mining licence until he has paid or tendered to the owner and occupier of that land the amount of any compensation he is required to pay under and in accordance with the provisions of the Bill.

Revocation and surrender of licences

32. The Governor would be given power by *clause 30* to revoke a licence if he believes, on a report from the Director or otherwise, that a licensee has contravened or is contravening any provision of Part II of the Bill (that is, the Part which relates to prospecting, exploration and mining of Crown minerals) or any regulations made under that Part or has contravened or is contravening any condition of his licence. In those circumstances the Governor may cause a notice to be served on him containing the particulars specified in *clause 30(1)*. If the Governor is later satisfied that the holder of the licence has failed to comply with that notice, the Governor may by notice under *clause 30(2)* revoke the licence. A right of appeal to the Supreme Court against revocation of the licence would be conferred by *clause 30(3)*.

33. *Clause 31* confers power upon a licensee to surrender his licence at any time upon giving six months notice in writing. Surrender of the licence does not excuse the licensee from any antecedent contravention of the licence or any of its conditions or any antecedent act or omission giving rise to a cause of action.

34. *Clause 32* contains detailed provisions in relation to transfers and assignments of licences. The transfer or assignment of a licence without the consent in writing of the Governor would be prohibited by *clause 32(1)*. Under *clause 32(2)* "assignment" is given an extended meaning. Under *clause 32(3)* the holder of the licence is prohibited from entering, without the consent of

the Governor, into an agreement entitling another person to minerals or the proceeds of minerals yet to be mined.

Working facilities and support

35. Part III of the Bill (*clauses 34 to 70*) deals with the subject of working facilities and support in relation to mining operations.

36. *Clause 34* states the over-riding principle that subject to *clause 35* the granting of a licence under *clause 11* does not confer upon the holder a right of access to any land.

37. *Clause 35(1) and (2)* confer upon the Director, any public officer authorised by the Director, any consultant engaged by the Crown, a licensee and any employee, consultant or contractor of a licensee authorised by the licensee for the purpose, to enter on land for the subject of carrying out "minimum impact activity" (defined in *clause 2(1)*). This right of entry is subject to *clause 35(3) and clause 36*. *Clause 35(3)* requires notice of entry to be given and *clause 36(1)* would prohibit entry on certain classes of land specified in *clause 36(1)* unless entry is with the agreement of the owner and occupier of the land. Contravention of *clause 36(1)* is an offence under *clause 36(2)*.

38. Access to land for purposes other than minimum impact activity is the subject of *clause 37*. This requires either an access agreement agreed in writing between the licence holder and each owner and occupier of the land or the making of a compulsory rights order. However, it should be noted that under *clause 39*, prospecting, exploration or mining carried out below the surface of any land would not constitute prospecting, exploration or mining in or on land if the activity will not or is not likely to cause any damage to the surface of the land or any loss to the owner or occupier of the land, will not or is not likely to have any prejudicial effect in respect of the use and enjoyment of the surface of the land and will not or is not likely to have any prejudice or effect in respect of any possible future use of the surface of the land.

39. *Clause 40* would make provision in relation to dealing with disputes as to the classification of land or activities for the purposes of *clauses 35 and 36* and enable them to be referred to and dealt with by the Magistrate's Court.

40. *Clause 41* would make provision in relation to notices of request for an ancillary rights agreement. *Clause 41(2)* requires a person who wishes to obtain an ancillary rights agreement in his favour to endeavour to negotiate an agreement for such an arrangement with every owner and occupier of the relevant land. Notice must be given by the person wishing the ancillary rights to every owner and occupier in writing as to the matters specified in *clause 41(2)*.

41. The grant of ancillary rights by agreement is dealt with by *clause 42* which specify what an ancillary rights agreement must deal with. Under *clause 42(3)* an ancillary rights agreement may deal with such other matters as the parties may agree.

42. *Clause 43* deals with ancillary rights arrangements in relation to Crown land. It requires the Governor to have regard to matters specified in *clause 43(2)* and, additionally, requires the Governor to consult to the extent it is reasonably practicable to do so with those persons he

believes to be representative of interests likely to be substantially affected by the ancillary rights agreement and, additionally, the Planning and Building Committee as to whether the implementation of the ancillary rights agreement, if made, would involve doing anything by the grantee which would require planning permission.

43. It is of course, possible, that an ancillary rights agreement cannot be negotiated. For that reason *clause 44(1)* provides for an application to the Director for a declaration by the Governor that the making of a compulsory rights order would be in the public interest. An application under *clause 44(2)* would have to set out the circumstances alleged to justify the making of a compulsory rights order. Such an application would have to be forwarded to the Governor together with a statement of the Director's view (*clause 44(3)*) as to whether the making of a compulsory rights order would be in the public interest and would also require the Director to serve a copy of the application and of the statement on every owner and occupier of the land served with the notice. Under *clause 44(4)* before deciding whether or not to make a declaration that the making of a compulsory rights order would be in the public interest, the Governor would have to consider any written representations he might receive from any owner or occupier within 30 days of the service by the Director of the notice of the application. Under *clause 44(5)* if the Governor decides that making a compulsory rights order would be in the public interest he would be obliged to refer the matter to the Legislative Council and if that Council agreed could serve notice to that effect, giving reasons, on every owner or occupier affected. Any such owner or occupier would have the right, within 21 days of the service of the notice, to apply to the Supreme Court for an order that no such declaration be made. *Clause 44(6) and (7)* make provision with regard to the dealing with such applications by the Supreme Court.

44. Subject to no successful application to the Supreme Court having been made under *clause 44(5)* the Governor would have power to make a declaration that a compulsory rights order would be in the public interest. Such a declaration would be required to be published in the Gazette and would have effect to refer to the Magistrate's Court for determination the question as to whether a compulsory rights order should be made in favour of the applicant against the owner and occupier of any land affected.

45. *Clauses 46 and 47* make provision in relation to dealing with applications for a compulsory rights order by the Magistrate's Court. The Court would not be able to make a compulsory rights order until it has tried its best to get the parties to agree to a settlement acceptable to them. If the parties did come to such a settlement, the Court would have to make an order giving affect to that settlement. Otherwise the Magistrate's Court would conduct a hearing and, as soon as practicable after concluding the hearing, would under *clause 48(1)* (subject to *clause 49*) make a compulsory rights order in respect of the land concerned and would serve a copy of the order on each of the parties. *Clause 48(3)* requires that the Court's determination must specify the compensation as assessed by the Court, to which each owner or occupier of the land is entitled. Under *clause 48(4)* where the person desiring access has not obtained the required licence at the time of the meeting of the compulsory rights order, the Court must specify the compensation, as assessed by the Court, to which each owner and occupier would be entitled if the person requiring access has obtained the required licence: in such case the obligation to pay compensation is to be conditional upon the person desiring access obtaining the required licence.

46. Under *clause 49* the Court is not to make a compulsory rights order under *clause 48* unless:—

(a) it is satisfied that the arrangement is expedient in the public interest; and

(b) that it is not reasonably practicable to obtain the right by private arrangement for one or more of the reasons specified in *clause 49(1)(b)*.

47. If the Magistrate's Court refuses to make a compulsory rights order on the grounds that it is not satisfied that to do so is expedient to the public interest, the Governor or the applicant would have the right of appeal to the Supreme Court under *clause 49(2)*. A compulsory rights order granted under *clause 48* is, under *clause 50*, to take effect when a copy of the order has been served on each of the parties and the person desiring access is complied with any condition imposed under *clause 52(4)* where applicable (and subject to the order having been registered in the Land Charges Register those rights have effect as if the terms of the order were embodied in a deed duly executed by each of the parties and bind all subsequent owners and occupiers.

48. Variation of a compulsory rights order is dealt with by *clause 51*.

49. *Clause 52* makes general provision in relation to compensation. The criterion to be used in assessing compensation is what would be fair and reasonable between a willing grantor and a willing grantee having regard to the condition subject to which the compulsory rights order is made or the restriction is imposed (*clause 52(2)*). The subsequent provisions of *clause 52* and the subsequent provisions of *clauses 53 to 59*, where applicable, have effect subject to that overriding principle. Under *clause 52(4)* the Court would be able to impose as a condition on the determination of any ancillary rights arrangement or the imposition of any restriction that any compensation or consideration payable is to be paid, or the security to the satisfaction of the Court is to be given, before any right under the arrangement is commenced to be exercised or the restriction is enforced.

50. *Clauses 53 to 58* make provision in relation to the amount of compensation to be paid where agricultural land is to be the subject of a compulsory rights order.

51. *Clause 59* makes provision for compensation where the exercise of any easement or similar right over any land is prevented or injuriously affected by a compulsory rights order and *clause 60* makes provision for how the matter is to be dealt with where an owner or occupier of land with whom a person desiring access wishes to enter into an access arrangement is unknown or of unknown whereabouts and cannot after reasonable enquiry be discovered or found. In such a case an application is to be made to the Supreme Court for the appointment by the Court of a fit and proper person authorised to act on behalf of the owner or occupier as if he had been duly appointed by Power of Attorney to do so.

52. *Clause 61* enables a person to obtain the right of support by application to the Court. "Support" in this sense is the support to land or buildings necessary to prevent them collapsing or part collapsing and a person would need to make such an application if he does not already have a right of support to his land or buildings and fears that because of mining operations the land or buildings might be undermined. *Clause 63(1)* would enable the Magistrate's Court, if it sees fit

to impose restrictions by order and by *clause 61(4)* the Court can order compensation to be paid or given in respect of the imposition of the restrictions. The restrictions, under *clause 61(5)* could be either on the quantity or position of the minerals to be worked or on the methods of working or packing or otherwise as might be necessary to secure adequate support of the building or works to prevent or minimise damage to them.

53. *Clause 62(1)* would confer upon a person aggrieved a right of appeal against an order made under *clause 48 (Compulsory Rights Order)* or *clause 61 (Restriction on Working Minerals)*. The remaining provisions of *clause 62* make supplementary provision in relation to such appeals.

54. *Clauses 63 to 69* make provision in relation to the registration with the Registrar General of grants of licences, extensions of licences and access arrangements. Provision is also made for certified copies of licences registered with the Registrar General and for recorded documents to be open to search.

55. Under *clause 70* the Director is to keep a register of licences in such form as the Governor may approve. In this register brief particulars of all licences issued and all assignments of licences are to be recorded. The register is to be open to public inspection.

Part IV of the Bill: Health and Safety at Work and Protection of the Environment

56. *Clause 71* of the Bill makes provision in relation to the application by Order of provisions of Part 1 of the Health and Safety at Work etc. Act 1974 and regulations made under section 15(1) of that Act, with such modifications and exceptions as may be stated in the Order in relation to mines and quarries, operations connected with mines and quarries and to the processing, refining, smoking or treatment of any ore or rock and to associated matters. *Clause 74* enables the Governor to enter into an arrangements with the Health and Safety Executive of the United Kingdom to perform the same functions as they have there in connection with health and safety matters in mines and quarries.

57. *Clause 72* makes provision for civil liability for breach of a statutory duty under Part 1 of the Health and Safety at Work Act 1974 or any regulations made thereunder.

58. *Clause 73* makes provision for application in relation to mines and quarries and mining operations and the processing, refining, smoking or treatment of ore or rock and other operations in relation to mines of provisions of the Environmental Protection Act 1990, subject to such modifications and exceptions as are stated in the Order applying those provisions. It also enables an agreement or arrangement to be made with the Environment Agency for the exercise by that Agency of functions under the Environmental Protection Act in its application under the clause.

Part V: Miscellaneous

59. Part V of the Bill (*clauses 74 to 85*) contain a number of miscellaneous provisions. *Clause 74* requires the consent of the Governor for assignment of licences and specifies certain circumstances in which, for the purposes of the Bill if enacted, a licence is assigned. Failure to obtain the consent of the Governor to an assignment would, under *clause 74(3)* mean that the Governor would have power to terminate the licence and, additionally, except so far as it enabled

the Governor to terminate the licence an assignment of a licence would have no effect until and unless the Governor consents in writing to the assignment.

60. *Clause 74* states that neither a licence nor an access arrangements confers on a licensee or applicant for a licence and an estate or interest in the land to which it relates. This has the effect that none of the complex provisions of land law in relation to estates and interests in land have any application to a mining licence. *Clause 76* makes detailed provision in relation to the service of notices and *clause 77* makes provision in relation to the appointment of person to receive such notices.

61. Under *clause 78* the obstruction, hindering, resistance or deception of any person in the execution of any powers conferred on that person by or under the Ordinance constitutes a criminal offence.

62. *Clause 79* provides that where a person acting as the agent or employee of another person commits an offence provided for by the Bill the principal is also liable in respect of the offence. *Clause 79(2)* provides for some defences in relation to such an offence. *Clause 79(3)* provides for a director or other person concerned in the management of the body corporate to be himself guilty of an offence committed by a body corporate if the act that constituted the offence took place with his authority, permission or consent or if he knew or could reasonably be expected to have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent it or stop it.

63. Penalties for offences under the Bill would be provided for by *clause 80*. *Clause 81* would provide that it would not be necessary to prove that a defendant intended to do the act or acts or make the omission or omissions constituting an offence. *Clause 81(2)* would provide that it would be a defence to such a prosecution for the defendant to prove one or of a number of matters specified in the sub-clause. However, under *clause 81(3)* provides that ordinarily such a defence could not be relied on without having given 10 days written notice of the intention to rely upon that defence and with the facts alleged by the defendant to support that defence.

64. *Clause 82* provides that a prosecution for an offence under the Bill if enacted will be brought at any time within 12 months after the time when the contravention giving rise to the prosecution became known, or should have become known, to the director and that no prosecution for an offence could be commenced except by or with the consent of the Attorney General.

65. Under *clause 83* all offences under the Bill, if enacted, are to be tried summarily by the Magistrate's Court.

66. Powers to make regulations are contained in *clause 84* of the Bill. *Clause 85* of the Bill would repeal the present Mining Ordinance.

Mining Bill 2005

(No: of 2005)

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SCHEDULE 1

PROVISIONS AS TO COMPENSATION BY WAY OF PAYMENT OF COST OF WORKS

MINING BILL 2005

(No: of 2005)

(assented to: 2005)
(commencement: in accordance with section 1)
(published: 2005)

A BILL

for

AN ORDINANCE

To make new provision in relation to the prospecting and exploration for and exploitation of minerals.

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

PART I

INTRODUCTORY

Short title and commencement

1. This Ordinance may be cited as the Mining Ordinance 2005 and comes into force on such date as may be fixed by the Governor by notice published in the *Gazette*.

Ordinance to bind Crown

2. Subject to section 5(2), this Ordinance binds the Crown.

Application of this Ordinance

3.—(1) This Ordinance—

(a) applies —

(i) to minerals belonging to the Crown in the Falkland Islands, including, subject to paragraph (b), minerals in or beneath the beds of rivers, lakes, ponds and pools of water in the Falkland Islands,

(ii) to mineral operations in relation to such minerals; but

(b) does not apply —

(i) to minerals in the controlled waters, or

(ii) to minerals in private ownership.

Interpretation

4.—(1) In this Ordinance, except where the context otherwise requires —

“ancillary rights” means in relation to minerals, any facility, right or privilege and, in particular, but without prejudice to the foregoing includes -

(a) a right to let down the surface;

(b) a right of airway, shaftway or underground way leave or other right for the purpose of access to or conveyance of minerals or the ventilation or drainage of mines;

(c) a right to use and occupy the surface for the erection of washeries, coke ovens, railways, by-product works or other works or of dwellings for persons employed in connection with the working of the minerals or with any such works as aforesaid;

(d) a right to obtain a supply of water or other substances in connection with the working of minerals;

(e) a right to dispose of water or other substances in connection with the working of minerals.

“ancillary rights agreement” means an agreement between a person desiring ancillary rights in relation to land for the purpose of carrying out mineral related activities and the owner or occupier of that land;

“bed”—

(a) in relation to any river, means the space of land which the waters of the river cover at their fullest extent without overtopping the banks of the river, and

(b) in relation to a lake pond or pool of water means the space of land which the waters of the lake, pond or pool of water cover at their highest level without exceeding its physical margin;

“compulsory rights order” means an order made under section 48;

“contravene”, in relation to any obligation or requirement, includes a failure to comply with it and “contravention” has a corresponding meaning;

“controlled waters” has the same meaning as that expression has under section 2(1) of the Offshore Minerals Ordinance 1994;

“crop” means plants grown on cultivated land the produce of which is to be harvested;

“Crown land” means all land whatsoever which is owned by the Crown, including any national park so far as it is comprised in land owned by the Crown, the foreshore of the sea and the bed of any lake, pond, pool or river which is owned by the Crown;

“Crown minerals” means -

(a) all minerals in land belonging to the Crown which has never been alienated by the Crown;

(b) all minerals reserved to the Crown by the terms of any Crown Grant or Crown Lease;

(c) all minerals conveyed to the Crown by the owner of any land and which have not subsequent to such conveyance been granted by the Crown to any other person; and

(d) gold and silver;

“current”, in relation to a licence, means that that licence has been granted and has not expired or been surrendered or revoked and “currency” has a corresponding meaning;

“Director” means the Director of Mineral Resources;

“discovery” means the discovery of a deposit of a mineral or minerals;

“dwellinghouse” means any building, whether permanent or temporary, that is occupied, in whole or in part, as a residence (and includes any structure or outdoor living area that is ancillary to, and used wholly or principally for the purposes of the residence, but does not include the land upon which any building is sited);

“enter” includes “re-enter” and “entry” has a corresponding meaning;

“exploration” includes any activity undertaken for the purpose of identifying mineral deposits or occurrences and evaluating the feasibility of mining particular deposits or occurrences of one or more minerals (and includes any drilling, dredging or excavations (whether surface or sub-surface) that are reasonably necessary to determine the nature and size of a mineral deposit or occurrence) and “to explore” has a corresponding meaning;

“exploration licence” means an exploration licence granted as such under section 11 of this Ordinance or continuing to have effect as if so granted;

“foreshore” means any land covered and uncovered by the flow and ebb of the tide at mean spring tides;

“fossicking” means to search for, extract and remove rock, ore or other minerals, except diamonds and (except under a permit granted under section 28(1) in a gold fossicking area) except gold, in quantities not exceeding the prescribed amount and by means not prohibited by this Ordinance, as samples or specimens for the purpose of a mineral collection, lapidary work or a hobby interest;

“gold” includes any substance containing gold or having gold mixed in it;

“gold fossicking area” means any area declared under section 28(1) to be a gold fossicking area;

“Governor”, except where specifically stated to the contrary, inconsistent with the context or inconsistent with any provision of the Constitution, means the Governor advised by the Executive Council;

“in”, in relation to land, means on or under the surface of land;

“land” includes land covered by water other than any water which is part of the controlled waters;

“licence” means a prospecting licence, exploration licence or a mining licence granted under, or continuing to have effect as if granted under, this Ordinance;

“mine”, as a noun, means any place in, on or under which mining operations are carried on and includes a quarry;

“mine”, as a verb, includes any manner or method of mining operations;

“mineral” means any substance, other than water, and whether that substance is in a solid, liquid or gaseous form, which has been formed by or is subject to geological process and any naturally occurring inorganic substance beneath or at the surface of the earth, and whether or not any such substance is under water;

“minimum impact activity” means any of the following —

- (a) geological, geochemical and geophysical surveying;
- (b) taking samples by hand or hand-held methods;
- (c) aerial surveying;
- (d) land surveying;
- (e) any activity prescribed as minimum impact activity;

(f) any lawful act incidental to any activity to which paragraphs (a) to (e) of this definition relate which does not include —

- (i) the use of explosives,
- (ii) the cutting, destroying, removing or injuring of any vegetation on any other than a minimal scale,
- (iii) damage to improvements, stock or chattels on any land,
- (iv) any breach of the provisions of this or any other Ordinance,
- (v) any impacts prescribed as prohibited impacts, or
- (vi) entry on land prescribed as prohibited land;

“mining licence” means a licence granted under section 11 of this Ordinance as a mining licence;

“mining operations” includes quarrying operations and means any mode or method of working whereby the earth or any rock structure, stone, fluid or mineral bearing substance may be disturbed, removed, washed, sifted, crushed, leached, roasted, distilled, evaporated, smelted or refined or dealt with for the purpose of obtaining any mineral therefrom whether it has been previously disturbed or not and includes —

- (a) the removal of overburden by mechanical or other means and the stacking, deposit, storage and treatment of any substance believed to contain any mineral;
- (b) operations by means of which salt or other evaporates may be harvested;
- (c) operations by means of which mineral is recovered from any water supply or body of water;
- (d) any acts reasonably incidental to or conducive to any of the foregoing,

“model clauses” and “the model clauses” mean one or model clauses prescribed by regulations made under section 12(1);

“non-exclusive licence” means a licence which confers a right to prospect or explore for, mine or quarry any Crown owned mineral which right is not exclusive to the holder of the licence;

“notice” means a notice in writing;

“occupier”, in relation to land, means a person who has a right to occupy the land by virtue of a lease, sub-lease, licence or any renewal of any of the foregoing, and includes the holder of an exploration licence or mining licence who has a right of access in respect of the land for the

purpose of carrying out a mining operation or mining operations or an activity (other than a minimum impact activity) under the licence;

“this Ordinance” means this Ordinance as from time to time amended and in force and includes any subsidiary legislation made, or continuing to have effect as if made, under this Ordinance as from time to time amended and in force;

“owner” means —

(a) in relation to Crown Land, Her Majesty the Queen in right and title of Her Government of the Falkland Islands; and

(b) in relation to any other land, the person or persons who holds the fee simple title to the land.

“person” includes a body corporate, an unincorporated body of persons and a partnership;

“prescribed” means prescribed by regulations made under this Ordinance;

“prospecting” means —

(a) any activity authorised to be carried out by or by virtue of a prospecting licence granted under the repealed Ordinance; and

(b) any activity undertaken for the purpose of identifying land likely to contain exploitable mineral deposits or occurrences; and includes —

(i) geological, geochemical and geophysical surveys,

(ii) the taking of samples by hand or hand held methods, and

(iii) aerial surveys,

and “to prospect” has a corresponding meaning;

“prospecting licence” means a licence granted as a prospecting licence under section 11 of this Ordinance or continuing to have effect as if so granted and which authorises prospecting;

“regulations” means regulations made, or continuing to have effect, under any provision of this Ordinance;

“right of access” means, in respect of land, the right of a licensee, his employees, agents and contractors, to enter use and occupy that land for the purpose of carrying out any lawful activity under a licence; and

“working day” means any day which is not a Saturday, Sunday or public holiday.

(2) A reference in this Ordinance to “the clauses of the licence” is a reference to the model clauses incorporated in a licence pursuant to regulations made under section 12(1) (and, if appropriate, subject to such exclusions and modifications of such model clauses as may have been made by the licence) together with any other clauses included in, or conditions imposed by, a licence, in addition to any such model clauses, on the grant of that licence or otherwise in accordance with this Ordinance.

(3) In this Ordinance so far as is consistent with the context —

(a) words and expressions of the masculine gender include the corresponding words of the feminine gender and the neuter gender and vice versa;

(b) words in and expressions used in the singular include the corresponding words in the plural and vice versa.

(4) Subject to this Ordinance, the Interpretation and General Clauses Ordinance (Title 67.2) applies to and in relation to this Ordinance and expressions used in this Ordinance.

(5) Nothing in the Land (Non-residents) Ordinance 1999 applies in respect of the grant or assignment of licences under this Ordinance.

PART II

PROSPECTING, EXPLORATION AND MINING OF CROWN MINERALS

Prohibition of prospecting for, exploring for or mining of any Crown mineral

Certain operations unlawful without a licence

5.—(1) Subject to subsection (3) of this section and to section 6, it is unlawful for any person to prospect for, explore for or mine any Crown mineral unless he does so under and in accordance with the terms and conditions of a licence granted under this Ordinance or by virtue of section 8 having effect as if granted under this Ordinance.

(2) Subsection (1) does not bind the Crown.

(3) Subsection (1) does not prohibit prospecting for or exploring for, or mining, gold in a gold fossicking area other than by means of motorised machinery or machinery which is not hand held.

(4) A person who contravenes subsection (1) commits an offence.

Exception in favour of landowners to requirement to have licence

6.—(1) The owner or lessee of any land the minerals on or in which belong to the Crown may, for the purpose only of using the same upon the land or other land in the Falkland Islands in his ownership or occupation, without any licence under section 11 prospect for, explore for, mine, quarry or take stone, flint, chalk, gravel, sand or calcified seaweed in or on the land concerned.

(2) It is unlawful for the owner or lessee of any land who has lawfully quarried or taken any Crown mineral under the provisions of subsection (1) to sell or otherwise dispose of any of it to a third party without the permission of the Governor in writing or, if the Governor imposes any condition on granting such permission, without complying with every such condition which is for the time being current.

(3) A person who contravenes subsection (1) or (2) commits an offence.

Saving for other laws

Other legal requirements not affected

7.—(1) Nothing in this Ordinance, except in so far as may specifically be stated in it to the contrary, excuses any person from compliance with any other written law of the Falkland Islands, including in particular and without prejudice to the generality of the foregoing, the Planning Ordinance (Title 55.3).

(2) It shall be deemed to be a condition of every licence granted under this Ordinance (contravention of which constitutes contravention of section 5(1)) that nothing requiring the grant of planning permission under the Planning Ordinance shall be done except under and in accordance with such planning permission (including any conditions subject to compliance with which it was granted).

Transitional

Licences granted under repealed Ordinance

8.—(1) A licence which was granted under section 5 of the repealed Ordinance and which was current immediately prior to the commencement of this Ordinance shall continue to have effect as if it had been granted under section 11 of this Ordinance on the terms and conditions on which it was granted and contraventions of any of those terms and conditions committed after the commencement of this Ordinance shall constitute an offence and shall be punishable in the same way as contraventions of terms and conditions of a licence so granted are punishable.

(2) Any licence continuing to have effect by virtue of subsection (1) may be revoked, renewed or varied under the provisions of this Ordinance as if it had been granted under section 11.

Application for and grant of licence

Application for a licence

9.—(1) Any person may apply to the Director in the form prescribed by regulations under section 12 for the grant to him of a licence by the Governor under section 11. Every application shall be accompanied by such fee, if any, as is prescribed by regulations under subsection (3) of this section.

(2) Following receipt of such an application the Director may require the applicant to provide in writing such further information, additional to that required by such regulations, as the Director thinks fit or the Governor may have requested the Director to obtain.

(3) The Governor may make regulations prescribing fees to be paid on the making of an application for the grant of a licence and information to be provided by applicants (and such regulations may make different provision in relation to different minerals and different categories of licence).

Allocation by public tender

10.—(1) The Governor may from time to time by notice in the *Gazette* and such other publications as he thinks fit offer licences for allocation by public tender.

(2) Every notice for the purposes of subsection (1) must specify —

- (a) the type of licence offered;
- (b) the land and minerals to which the licence offered relates;
- (c) the manner in which tenders must be submitted, and the time by which such tenders must be received by the Director in order for such tenders to be valid; and
- (d) the conditions to which any licence granted pursuant to the tender will be subject (which must include the model clauses except in so far as they are varied or excluded by the notice)

and must require every tenderer to send to the Director an application for a licence in the form prescribed by regulations under section 12.

(3) The Director must reject any tender which in a material manner does not comply with the requirements of the notice or any such regulations.

(4) The Governor may decline to grant any licence pursuant to a tender, either to a particular tenderer or any tenderer.

(5) Any licence granted under section 11 pursuant to a tender under this section shall be granted subject to such conditions as were specified in the notice or subsequently agreed with the tenderer concerned.

Grant of licences

11.—(1) Subject to subsections (2), (3) and (5), the Governor may grant to any body corporate a prospecting licence, an exploration licence or a mining licence in respect of such minerals (being Crown minerals) and land as are specified in the licence, subject to such conditions as are contained or referred to in the licence or are deemed to be conditions subject to which the licence is granted.

(2) The Governor shall not exercise his powers under subsection (1) —

- (a) without the prior consent of the Secretary of State unless the Governor is satisfied that all of the conditions mentioned in subsection (3) are met; or

(b) in respect of —

- (i) any land or substratum thereof which lies within 100 metres of any dwellinghouse or other building enjoyed in connection with any dwellinghouse and within the same curtilage,
- (ii) any land which forms part of Stanley Common,
- (iii) any land held by the Crown subject to any covenant or obligation that it is used as an open space;
- (iv) any land within Stanley or the apparent boundaries of any settlement; or
- (v) any land used as or within 30 metres of a building, cemetery, burial ground, waterworks, dam, yard, stockyard, orchard, plant nursery, tree plantation, shelterbelt, airstrip or aerodrome.

(3) The conditions referred to in paragraph (a) of subsection (2) are —

- (a) any environmental impact statement required by law in relation to the mining activity has been obtained and published in accordance with law;
- (b) thereafter any necessary planning permission has been obtained;
- (c) the licence application relates only to stone, flint, chalk, gravel, sand or calcified seaweed to be won from land in the Falkland Islands (so that none of the mineral is to be won from the sea, any river or body of water); and
- (d) the Governor is satisfied, after taking all advice he considers appropriate, that there is no danger that the mining activity might —
 - (i) be prejudicial to any wetland of international importance designated under the Ramsar Convention, or prejudice any nature reserve or sanctuary;
 - (ii) occasion coastal erosion or the inundation of any land; or
 - (iii) have any significant adverse international implications.

(4) Every licence granted shall be deemed to be granted subject to the compliance by the licensee with the provisions of the model clauses (so far as they are applicable in respect of the licence concerned) except to the extent that they are expressly excluded or modified by the terms of the licence.

(5) The Governor shall not grant a licence under this section unless he is satisfied that the applicant is able to and intends to comply with the conditions of the licence if granted.

(6) The Governor may by the terms of the licence require the payment to the Crown of —

(a) an annual rent or fee, which may be variable or subject to increase in accordance with the provisions of the licence;

(b) in the case of a mining licence, a royalty calculated in such manner as may be specified in the licence;

(c) in the case of a prospecting licence or an exploration licence, any one or more of the foregoing the Governor considers appropriate in the circumstances of the case.

(7) A licence shall specify whether it is granted as a prospecting licence, an exploration licence or a mining licence.

(8) Subject to subsection (9), the Governor may with the consent of the holder of the licence, amend, vary, add to or augment the conditions of the licence he has granted under this section.

(9) Where, by virtue of paragraph (a) of subsection (2) read with subsection (3), the consent of the Secretary of State was required to the grant of the licence in question, the consent of the Secretary of State is also required to the exercise of the Governor's powers under subsection (8) in relation to that licence.

Other provisions in relation to the grant of licences

Model clauses

12.—(1) The Governor shall, before granting any licence under section 11 in respect of any mineral, make regulations under this section approved by the Secretary of State in relation to that mineral prescribing —

(a) conditions as to the size and shape of any area in respect of which a licence may be granted;

(b) model clauses which must, unless he sees fit to exclude or modify them in any particular case, be incorporated in any such licence,

and different regulations may be made under this section in respect of different types of licence and in respect of different minerals.

(2) Model clauses not excluded from a licence shall be deemed to be conditions incorporated in that licence.

Further provisions as to grant of licence

13.—(1) The Governor shall not grant a licence under section 11 unless he believes that the applicant for the licence is likely to comply with and give proper effect to the licence.

(2) The Governor may as a condition precedent to the grant of a licence under section 11 require the applicant to deposit with the Director or some other public officer such sum of money, bond or other document or thing by way of security for compliance with the conditions of the proposed licence as the Governor may direct.

(3) Without prejudice to the generality of subsection (2), a requirement under that subsection may in particular be made in relation to the restoration by the holder of the licence of the land or part of the land to be the subject of a licence to its former state and condition or the carrying out of remedial or improvement works to that land at the conclusion of mining operations.

General duties of the Governor

14.—(1) It shall be the general duty of the Governor in the exercise of his powers —

(a) under section 11, to grant licences;

(b) under section 12, to make regulations prescribing model clauses;

(c) otherwise under this Ordinance to balance the need —

(i) in connection with any licence granted in relation to any Crown minerals in any land to secure the effective and co-ordinated development of Crown minerals of the like kind in any adjacent or neighbouring land with the need

(ii) to secure so far as may be possible economic and other benefits to the residents of the Falkland Islands apart from enhancement of the Crown's revenues and the need

(iii) to minimise any adverse effect upon the environment and to refuse to permit any activity which in his opinion would have an unacceptable degree of environmental impact,

but no court shall have jurisdiction to enquire as to whether the Governor has in any particular case failed satisfactorily to balance those needs.

(2) Nothing in subsection (1) shall be construed as placing upon the Governor any obligation to grant or refuse a licence under section 11 to the applicant or any other person.

Conditions for prevention or reduction of injury to land

15.—(1) On the grant of a mining licence or at any subsequent time, the Governor may impose on the licensee such conditions as the Governor reasonably considers to be necessary for the purpose of preventing or reducing, or making good, injury to the natural surface of the land in respect of which the licence was granted, or injury to anything on the natural surface of that land or consequential damage to any other land.

(2) Without prejudice to the generality of subsection (1), the Governor may, on the grant of the mining licence or at any subsequent time, impose a condition that mining operations shall not be

carried out within such distance of the natural surface of the land in respect of which the licence is granted as is specified in the condition.

(3) This section has effect without prejudice to the provisions of the Planning Ordinance (Title 55.3)

Priority rights

Priority of applications

16.—(1) If a further application, or more than one further application, is made for a licence in respect of all or part of the same land and in respect of a common mineral as that in respect of which an earlier application which has not yet been determined was made, then unless under section 17 one of the applicants has a right to a licence in priority to all others, the Governor may grant such of the applications received as he thinks fit, but shall not be obliged to grant any of them.

(2) If his application was received by the Director on or after the date of publication of the notice of offer of the licence to which the tender relates then the applicant shall not have a right of priority over any tender made pursuant to that notice for a licence in respect of the same or partly the same land and a common mineral.

Right to consideration of application for mining licence in priority to all others

17.—(1) A prospecting licence or an exploration licence may provide that, subject to the provisions of that licence and to compliance by the licensee with the terms of that licence, the holder of that licence shall have the right in priority to all others to consideration of an application for the grant to him of a mining licence in respect of the whole or part of the land comprised in his prospecting or exploration licence ("a priority right"), but if his prospecting or exploration licence does not extend to all minerals, only in respect of the mineral or minerals to which his licence extends.

(2) A priority right must be exercised before the expiration of the prospecting licence or exploration licence (including any extension of that licence) and does not excuse the licensee under that licence from any provision of this Ordinance which he would not be excused from if that right did not exist.

(3) The Governor shall not be bound to grant a mining licence on the application of a person who has exercised a priority right, but if he refuses it shall not within three years grant a mining licence to any other person in respect of the same land and the same mineral or minerals to which the application relates unless he first gives an opportunity to the first-mentioned person, in accordance with subsection (4), to accept a mining licence on the same terms.

(4) Where the Governor is obliged by subsection (3) to give an opportunity to a person to accept a mining licence on the same terms as it would be otherwise offered to another person, he must give notice to the first-mentioned person ("the notifier") at his address last-known to the Governor—

(a) sufficiently specifying the terms on which the Governor proposes to issue the licence;

(b) informing him that, if he wishes to accept a licence on those terms, he must deliver to the Governor a notice in writing to that effect ("the notice of acceptance") within 60 days of the service upon him of that notice;

(c) that the Governor will be free to grant a licence on identical terms to any other person if he fails to so notify the Governor or to execute and return to the Governor so that it is received by the Governor within 30 days of its receipt from the Governor, a licence offered to him in accordance with subsection (5).

(5) If the Governor receives a notice of acceptance under subsection (3), he must send to the notifier within 30 days thereafter a form of licence in triplicate for execution by the notifier incorporating the terms specified in the notice under that subsection, and no other terms to be complied with by the notifier save only such as the notifier may have agreed with the Governor. If the Governor receives within the period mentioned in subsection (4)(c) both copies of the form of licence executed by the notifier, he shall himself execute all three copies under the Public Seal and return one copy to the notifier.

(6) If a person served with a notice under subsection (3) —

(a) informs the Governor in writing that he does not wish to take up the offer of a licence upon the terms specified in that notice;

(b) fails to deliver a notice of acceptance to the Governor in accordance with that notice; or

(c) fails to return in accordance with subsection (5) both copies of the form of licence and make at the same time any deposit of money or lodge with the Governor any bond required pursuant to section 13(2),

the Governor may grant a licence to any other person on terms identical to those offered in accordance with this section to the person having the priority right.

(7) The preceding provisions of this section shall have effect as often as may be necessary until the priority right is extinguished by effluxion of time or by the grant of a mining licence in accordance with this section.

Prospecting licences

Term of prospecting licence and right to be granted exploration licence

18.—(1) Subject to this Ordinance, a prospecting licence shall not be granted for, or remain current for, a period exceeding 4 years from and including the date on which it was granted.

(2) When a prospecting licence is surrendered, forfeited or expires the land the subject of the prospecting licence and any part of that land shall not be applied for as the subject of a proposed prospecting licence or exploration licence —

(a) by or on behalf of the person who was the holder of the prospecting licence immediately prior to the date of the surrender, revocation or expiry;

(b) by or on behalf of any person who had an interest in the prospecting licence while it was current,

until after the expiry of 6 months from the date on which it ceased to be current.

(3) For the purposes of subsection (2)(b), the holding of shares in a company listed on a stock exchange in the United Kingdom or Australia or in any prescribed country does not of itself constitute an interest in a prospecting licence.

(4) Subject to sections 12 to 14, and unless the prospecting licence expressly provides otherwise, if the holder of such a licence satisfies the Governor that the results of his prospecting under the prospecting licence justify the grant of an exploration licence in respect of any land and mineral to which the prospecting licence relates, the holder shall have the right, on applying under section 11 before the expiry of the prospecting licence, to surrender that licence so far as it relates to that land and to be granted in exchange an exploration licence in respect of that land or mineral.

(5) Where an application for a mining licence is made by the holder of a prospecting licence in respect of any land in respect of which that licence is at that time still current and the term of the prospecting licence would but for this subsection expire, that licence shall continue in force in respect of the land the subject of that application until the application for the mining licence is determined.

Exploration licences

Term of exploration licence

19.—(1) Subject to this Ordinance, an exploration licence shall remain in force for a period of 5 years from and including the date on which it was granted, and shall then expire.

(2) Notwithstanding subsection (1), but subject to subsection (3), the Governor with the consent of the Secretary of State may extend on such terms and conditions as he thinks fit an exploration licence as to an area of land, being an unbroken area not exceeding one half of the area comprised in the licence.

(3) The Governor shall not extend an exploration licence —

(a) for a period exceeding four years; or

(b) at all unless the applicant has submitted with his application a proposed programme of work to be carried out which the Governor is satisfied will provide for the satisfactory exploration of the land in respect of which the extension is sought and the Governor is satisfied that that land is so situated that it will not prevent or seriously hinder the exploration

by any other of any part of the remainder of the land comprised in the exploration licence as originally granted.

(4) Without prejudice to subsection (3), the Governor is not bound to extend the term of any exploration licence.

(5) Where an application for a mining licence is made by the holder of an exploration licence in respect of any land and the term of the exploration licence would but for this subsection expire, that licence shall continue in force in respect of the land the subject of that application until the application for a mining licence is determined.

Mining licences

Applications for mining licences

20.—(1) An application for a mining licence shall not be made in respect of an area greater than 10 square kilometres in area, but a person may concurrently apply for the grant of more than one mining licence. The application shall —

(a) describe all works which are intended to be carried out under the authority of the licence if granted;

(b) state whether and, if so what, ancillary rights over any land (whether comprised within the area in respect of which an application for a licence is made or not) are required in connection with the licence if granted;

(c) describe all works which are intended to be carried out in connection with those ancillary rights.

(2) An applicant for a mining licence shall give notice in writing of his application to the owners and occupiers of all land to which his application relates and to the owners and occupiers of any other land not comprised in the application and over which any ancillary rights are required, and shall publish notice of his application in the *Gazette* and one or more newspapers published in the Falkland Islands.

(3) The application shall be made by reference to a written description of the area of the land in respect of which the licence is sought and shall be accompanied by a map on which are clearly delineated the boundaries of the area and a copy of such written description and map shall be incorporated in the notice published in accordance with subsection (2).

(4) The applicant shall state in his application whether or not application has been made for planning permission—

(a) in relation to mining operations;

(b) in relation to any ancillary rights,

and whether that application has yet been determined and, if so, with what result.

Objections to grant of mining licences

21.—(1) A person who wishes to object to the grant of a mining licence shall lodge with the Director a notice of objection within 20 working days or such greater period as the Governor may allow from the date of the later of publication, pursuant to section 20(2), of notice of the application in the *Gazette* or date of the publication of the notice in a newspaper circulating in the Falkland Islands and, if more than one such publication, the latest of them.

(2) It is not a valid ground of objection to an application for a mining licence that planning permission has not yet been granted, or has been refused, in respect of any development required to enable, or to facilitate, mining under the licence applied for.

(3) If any objection is validly made to the grant of a mining licence the Governor shall not grant a mining licence to the applicant without first having given the objector and any other person, including the applicant, who wishes to be heard an opportunity of being heard by a person appointed by the Governor to inquire into and report to the Governor in relation to the matter ("the inspector").

(4) The Governor may make regulations requiring a public inquiry into objections to be carried out into the grant of a mining licence when so directed by the Governor and the manner in which such an inquiry is to be carried out, the appointment of a person or persons as inspector to conduct such an inquiry, the procedure at such an inquiry and the powers and duties of inspectors.

(5) After the inquiry has been concluded the inspector shall send to the Governor his report thereon with his recommendation as to whether the Governor should grant or refuse the application for a mining licence and the reasons for that recommendation.

(6) On receipt of the inspector's report the Governor may, with the consent of the Secretary of State grant or refuse a mining licence to the applicant, irrespective of whether the inspector has recommended the grant or refusal of it.

Terms of mining licences, options and renewals

22.—(1) Subject to this Ordinance, a mining licence shall be current —

(a) for an initial period of 21 years;

(b) where application for renewal is made during the final year of that 21 year period, as of right for a further period of 14 years as from the expiry of the initial period, provided that during the initial period the licensee has complied with all the terms and conditions of the licence but subject in respect of that further term to the provisions of this Ordinance in force on or after the date of renewal.

(2) Subject to subsection (1), the Governor may, if he thinks fit and with the consent of the Secretary of State renew or further renew a mining licence for successive periods but so that no

such period exceeds 14 years. In respect of any such period the provisions of this Ordinance in force on or after the date of the renewal shall apply as they do in respect of a further period to which paragraph (b) of subsection (1) applies.

(3) Where an application for the renewal of a mining licence is made by the holder of the licence and the term of that licence would but for this subsection expire, that licence shall continue in force in respect of the land the subject of that application until the application is determined.

Holder of surrendered, forfeited, revoked or expired mining licence not be granted new licence for a period in respect of same land

23. Where a mining licence is surrendered, forfeited, revoked or expires, a prospecting or exploration licence shall not be granted in respect of the land the subject of the former mining licence or any part of that land —

(a) to or on behalf of the person who was the holder of the mining licence immediately prior to the date of the surrender, forfeiture or expiry; or

(b) to any person who had an interest in the mining licence immediately prior to that date,

within a period of 12 months from and including that date.

Fossicking

Gold fossicking permits

24.—(1) The Governor may by Order declare any area of land owned by the Crown and not leased to or in the occupation of any other person to be a gold fossicking area and may by regulations provide for the issue of gold fossicking permits, permitting persons to fossick for gold in such an area and providing for the conditions of, and the fees chargeable for such permits.

(2) It is unlawful to fossick for gold with any motorised machinery or machinery which is not hand held.

(3) The designation of any area as a gold fossicking area does not prevent the granting of a licence under section 11 in respect of that area.

Fossicking generally

25.—(1) Subject to this section, it is lawful for any person to fossick, other than for gold, in an area of land owned by the Crown which is —

(a) outside the boundaries of Stanley and of any settlement;

(b) further than 100 metres from any dwellinghouse and any building enjoyed in connection with a dwellinghouse and within the same curtilage.

(2) It is unlawful to fossick upon or in —

- (a) any land which forms part of Stanley Common;
- (b) any land held by the Crown subject to any covenant or obligation that it be used as open space;
- (c) any land which is a reserve to which the Conservation of Nature and Wildlife Ordinance applies;
- (d) any land which is under crop or is in use at the time in question as a lambing paddock;
- (e) any land within Stanley or within the apparent boundaries of any settlement;
- (f) any land used as or within 30 metres of a building, cemetery, burial ground, waterworks, dam, yard, stockyard, garden, orchard, plant nursery, tree plantation, shelterbelt, airstrip or aerodrome;
- (g) any land leased to or in the occupation of any other person;
- (h) any land held by the Crown subject to any covenant or obligation that it be used as open space;
- (i) any Crown land which is prescribed by regulations as being land in which fossicking is not permitted.

Rights conferred by licences

Rights conferred by prospecting licence

26.—(1) A prospecting licence authorises the holder, subject to this Ordinance, and in accordance with any conditions to which the licence is subject, to prospect for the mineral or minerals to which the licence relates in the land comprised in the licence.

(2) The holder of a prospecting licence shall not without the prior written consent of the Director excavate, extract or remove any earth, soil, rock, stone, fluid or mineral bearing substance in an amount which, in total during the period for which the licence remains in force, exceeds such quantity as is prescribed by regulations or, if not so prescribed, is stated in the licence.

(3) Nothing in any prospecting licence shall have effect so as to authorise the holder of a prospecting licence any right to take any water whatsoever from any spring, lake, pond, pool, river or stream or any right to take water from any underground aquifer or source of water.

(4) The grant of a prospecting licence does not confer upon the holder of a prospecting licence or any person claiming under him any right to enter upon any land other than in accordance with the subsequent provisions of this Ordinance.

(5) A person who contravenes subsection (2) commits an offence.

Rights conferred by exploration licence

27.—(1) An exploration licence authorises the holder, subject to this Ordinance, and in accordance with any conditions to which the licence is subject —

(a) to prospect for the mineral or minerals to which the licence relates in the land comprised in the licence;

(b) to explore for the mineral or minerals to which the licence relates in the land comprised in the licence.

(2) Subsections (2) to (5) of section 26 apply in relation to an exploration licence as they do in relation to a prospecting licence but with the replacement of the words “prospecting licence”, wherever they appear in those subsections, with the words “exploration licence”.

Rights conferred by mining licences

28.—(1) Subject to this Ordinance, a mining licence authorises the holder and his agents and employees on his behalf —

(a) to work and mine the land in respect of which the licence was granted for the mineral or minerals to which the licence relates; and

(b) to take and remove from the land any mineral or minerals to which the licence relates and to dispose of them.

(2) All minerals lawfully mined by the holder or on his behalf under the authority of the mining licence belong to the holder.

(3) Subsections (2) to (5) of section 26 apply in relation to a mining licence as they do in respect of a prospecting licence but with the replacement of the words “prospecting licence” wherever they appear in those subsections with the words “mining licence”.

Compensation to be agreed upon or determined before mining operation commences

29.—(1) The holder of a mining licence shall not commence any mining operation on any land unless he has paid or tendered to the owner and the occupier of that land the amount of the compensation, if any, that he is required to pay under and in accordance with this Ordinance or he has made an agreement with the owner and the occupier as the amount, times and mode of the compensation, if any.

(2) “Owner” and “occupier” in subsection (1) include the Crown where the Crown is the owner or, as the case may be, the occupier of the land in question.

(3) Where any person to whom compensation is payable under this section —

(a) cannot be found;

(b) is, without a grant of personal representation having been made to his estate, dead; or

(c) is for any reason incapacitated at law from dealing with his property without a person having been lawfully appointed by him as his attorney or by a court of competent jurisdiction to act on his behalf,

any payment of compensation required by this section may be made to the Director in trust for that person or his attorney, personal representative or person appointed by a court of competent jurisdiction to act on his behalf, as the case requires.

Revocation and surrender of licences

Revocation of licence

30.—(1) If the Governor, on receipt of a report from the Director or otherwise, has reason to believe that a licensee has contravened or is contravening any provision —

(a) of this Part of this Ordinance or of any regulations made under this Part; or

(b) of any condition of his licence (including any model clause deemed to be a condition of his licence),

the Governor may cause to be served on him a notice —

(a) specifying the alleged contravention;

(b) requiring him, within 20 working days after the service of the notice or such longer time as the Governor may specify in the notice, to remedy the contravention, if capable of remedy (or, if not remediable to take such steps as are available to mitigate the consequences of the contravention) or show that the contravention complained of has not in fact occurred; and

(c) stating that failure to comply with the requirements of the notice may result in the revocation of the licence.

(2) If the Governor is satisfied that the holder of a licence has failed to comply with the requirements of a notice served under subsection (1), the Governor may, by notice served on the holder, revoke the licence on such date, not being less than 20 working days after the date of service of the notice as is specified in it, and, subject to subsection (4), the licence on the expiry of that period shall be revoked.

(3) A licensee who has been served with notice under subsection (2) may, not later than 20 working days after the date of service appeal against the Governor's decision to the Supreme Court.

(4) Where the licensee has appealed against the revocation of the licence, the licence remains in force until the determination of the appeal unless it sooner expires.

(5) The revocation of a licence does not release the holder from any liability in respect of —

- (a) any antecedent contravention of the licence or any of its conditions; or
- (b) any antecedent act or omission giving rise to a cause of action.

Surrender of licence

31.—(1) Subject to subsection (2), a licensee may surrender a licence or any part of it by giving six months' notice in writing to the Director of his intention to do so.

(2) Where a licence is surrendered, the licensee is not excused from —

- (a) any antecedent contravention of the licence or any of its conditions; or
- (b) any antecedent act or omission giving rise to a cause of action.

Transfers and assignments of licences

32.—(1) The holder of a licence 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, any right granted by the licence 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 holder of the licence and any other person permitting the carrying out in the licensed area or in any part thereof any operation which the holder of the licence is permitted to carry out only by virtue of the licence is to be treated as an assignment of the licence.

(3) The holder of a licence shall not enter into any agreement providing for a person other than the holder to become entitled to, or to the proceeds of sale of, any mineral which, at the time the agreement is made, has not been but may be won and saved under the licence unless the terms of the agreement have been approved in writing by the Governor either conditionally or subject to conditions, but the preceding provisions of this subsection 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) The holder of a licence shall not, without the consent of the Governor, dispose of any mineral won and saved under the licence in such a manner that the disposal, to the knowledge of the holder of the licence or without such knowledge, fulfils or enables another person to fulfil obligations which a person who controls the holder is required to fulfil by an agreement of which the terms require approval by virtue of subsection (3): and subsections (2) to (4) and (6) of section 416 of the Income and Corporation Taxes Act 1988 of the United Kingdom shall apply for the purpose of determining whether one person has control of another 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 holder of a licence 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 licence;
- (b) any mineral or minerals won and saved under the licence;
- (c) any proceeds of sale of such mineral or minerals,

unless the terms of the agreement have been approved in writing by the Governor.

(6) In so far as and to the extent that the provisions of any clause of the licence (including the model clauses incorporated therein) imposes any greater burden upon the licensee than is imposed by the foregoing subsections of this section (including characterising the sale or transfer of control of any shares in a licensee, being a company, as an assignment or partial assignment of the licence which is prohibited without the consent of the Governor) those provisions shall apply in addition to those subsections.

Unit development

33.—(1) If the Governor is satisfied that —

- (a) the land to which any 2 or more licences relate or any part of such land forms part of a single deposit of a mineral (a “mineral deposit”); and
- (b) in order to prevent waste or to secure the most economical and efficient extraction and to secure the maximum ultimate recovery of the mineral, the mineral deposit should be worked as a unit in co-operation by all relevant licensees whose licences comprise any part thereof,

the Governor may, of his own motion or at the request of any one or more of the licensees, by notice in writing require all the licensees to co-operate in the preparation of a scheme (a “development scheme”) for the working and development of the mineral deposit as a unit by the licensees in co-operation and to submit the scheme jointly for the approval of the Governor.

(2) A notice under subsection (1) must specify the land in respect of which, and the period within which, the Governor requires a development scheme to be submitted.

(3) If the Governor withholds his approval of a development scheme under subsection (1), the Governor shall notify the licensees that he has withheld approval and of his reasons for doing so

and shall invite the licensees to submit a modified development scheme for his approval within such time as the Governor specifies in the notice given under this subsection.

PART III WORKING FACILITIES AND SUPPORT

General principle

Licence does not give right of access to land

34. Subject to section 35, the granting of a licence under section 11 does not confer upon the holder a right of access to any land.

Access to land for minimum impact activity

Entry on land for minimum impact activity

35.—(1) Subject to subsection (3) and to section 36 —

- (a) the Director and any public officer authorised by the Director;
- (b) any consultant engaged by the Crown;
- (c) any employee or contractor of such a consultant authorised specifically or generally for that purpose,

may during the daytime enter any land in which the Crown owns the minerals, with such assistance as he thinks fit, and carry out minimum impact activity.

(2) Subject to subsection (3) and to section 41, a licensee and any employee, consultant or contractor of a licensee authorised by the licensee for the purpose may enter any land to which the licence relates and carry out minimum impact activity.

(3) Notwithstanding sections (1) and (2), no person may enter any land under either of those subsections without the consent of every owner and every occupier of that land unless not less than 10 working days' notice has been given to every owner and every occupier of the land of —

- (a) the date of intended entry;
- (b) the type and duration of any works to be carried out, and
- (c) a telephone number in the Falkland Islands of the person who intends to enter the land.

(4) Every person who enters land under this section shall, if required by any owner or occupier to do so, produce a copy of the authorisation or licence which gives rise to entry under this section.

(5) A person who enters land under this section shall not carry out any activity on or in the land other than a minimum impact activity.

(6) A person who contravenes any provision of this section commits an offence.

Entry on certain classes of land prohibited

36.—(1) Unless otherwise agreed between each owner and occupier of the land and the person requiring access, no person may under section 35 enter —

(a) any land which forms part of Stanley Common;

(b) any land held by the Crown subject to any covenant or obligation that it be used as open space;

(c) any land which is under crop or is in use at the time in question as a lambing paddock;

(d) any land within Stanley or within the apparent boundaries of any settlement;

(e) any land used as or within 30 metres of a building, cemetery, burial ground, waterworks, dam, yard, stockyard, garden, orchard, plant nursery, tree plantation, shelterbelt, airstrip or aerodrome,

for the purpose of carrying out any minimum impact activity.

(2) A person who contravenes subsection (1) commits an offence.

Access to land for other than minimum impact activity

Access to land other than for minimum impact activity

37.—(1) This section does not apply in respect of minimum impact activities.

(2) The holder of a licence shall not prospect, explore or mine in land to which his licence relates otherwise than in accordance with an access agreement which has been agreed in writing between the holder of the licence and each owner and occupier of the land or a compulsory rights order.

Effect of access agreement etc.

38.—(1) Where an owner or occupier has entered into an access agreement, the agreement shall be binding on that owner or occupier, and subject to access agreement having been registered in the Land Charges Register, on that owner or occupier's successors in title.

(2) On entering into an access arrangement which is of more than 6 months duration from the date of its commencement, the holder of the licence, applicant for a licence or prospective applicant for a licence who entered into the agreement shall forthwith lodge with the Registrar General 3 copies of particulars of the agreement together with an application for its registration

pursuant to the Land Charges Ordinance and a remittance for the fee payable on such registration.

(3) The placing by the Registrar General or by any other person acting by his authority of an entry in the Land Charges Register or any other register or record maintained by him of particulars of an access agreement shall operate as notice of that agreement and shall not operate to create any estate or interest in any land to which the access agreement relates (and accordingly the Land (Non-residents) Ordinance shall not apply in respect of it).

Meaning of entry on land

39. For the purposes of section 37 only, prospecting, exploration or mining carried out below the surface of any land do not constitute prospecting, exploration or mining in or on land if the activity in question —

- (a) will not or is not likely to cause any damage to the surface of the land or any loss to the owner or occupier of the land;
- (b) will not or is not likely to have any prejudicial effect in respect of the use and enjoyment of the surface of the land; or
- (c) will not or is not likely to have any prejudicial effect in respect of any possible future use of the surface of the land.

Dispute as to classification of land or activities

40.—(1) If any dispute arises as to whether or not —

- (a) any land is included in any class referred to in section 36;
 - (b) any activity is a minimum impact activity; or
 - (c) prospecting, exploration or mining carried out below the surface of any land constitutes prospecting, exploration or mining on or in land for the purposes of section 37,
- a party to the dispute may apply to the Magistrate's Court for that court to determine the matter.

(2) At least 10 working days' notice in writing of any such application shall be given by the applicant to every other party to the dispute.

(3) On receipt of any such application, the Courts Administrator shall give notice of the time and place fixed for the hearing of the application to the applicant and every other party to the dispute.

(4) The applicant and every other party to the dispute shall be entitled to be present at and heard in person or through his legal practitioner at the hearing of the application.

Notice of request for ancillary rights agreement

41.—(1) Any person who wishes to obtain ancillary rights in his favour ("the applicant") in order to prospect, explore or mine on or in land, or to erect or put in place or construct any

necessary buildings, pipes or cables, roads or other access ways or discharge waste water or other waste on land shall endeavour to negotiate an agreement for such an arrangement with every owner and occupier of the relevant land.

(2) The applicant shall notify every such owner and occupier in writing as to the following matters —

- (a) the land affected;
- (b) the purpose or purposes for which the ancillary rights are required;
- (c) the proposed programme of work including the type and the duration of work to be carried out and the likely adverse effect on the land or the owner or occupier of the land;
- (d) the compensation and safeguards against any likely adverse affects proposed;
- (e) the type of licence held or applied for by the applicant;
- (f) details of any planning permission applied for or obtained by the applicant or any other person in relation to any of the work referred to in (c), including any planning permission obtained in relation to the construction of any road or other access way or in relation to the construction of any buildings, pipes, cables or other works ; and
- (g) any matter in relation to a request for an ancillary rights agreement of which the applicant is required to give notice by regulations.

Grant of ancillary rights by agreement

42.—(1) An ancillary rights agreement in relation to land reached by negotiation between the parties shall encompass such of the matters mentioned in subsection (2) as —

- (a) are relevant in the circumstances of the case;
- (b) are agreed between the parties; or
- (c) one of the parties requests shall be included in it.

(2) The matters referred to in subsection (1) are —

- (a) the period or periods during which the licensee is to be permitted access, to erect lay and construct and maintain buildings, pipes cables or other works;
- (b) the route or routes over which and the means by which the licensee is to be permitted access to lay and construct pipes or cables;
- (c) the siting of any roads or access ways, buildings, pipes, cables, drainage or other works;

- (d) the part or parts of the land on or in which the licensee may explore, prospect or mine;
 - (e) the kinds of prospecting, exploration or mining operation that may be carried out on or in land;
 - (f) any obligations of the licensee in relation to the protection of the environment while having access or erecting or maintaining any building laying or maintaining any pipe or laying erecting or maintaining any cable or other works under the ancillary rights agreement and prospecting, exploring or mining in or on the land;
 - (g) any compensation payable by the licensee as a consequence of prospecting, exploring or mining on the land;
 - (h) the manner of resolving any dispute arising in connection with the agreement;
 - (i) the manner of varying the agreement.
- (3) An ancillary rights agreement may deal with such other matters, not mentioned in subsection (2), as the parties may agree.
- (4) In this section “licensee” means the applicant, and where the relevant licence has been granted, includes the person who for the time being holds that licence, if that person is not the applicant.

Ancillary rights arrangements in relation to Crown land

43.—(1) The Governor may, by agreement, enter into an ancillary rights agreement in respect of Crown land, including Crown land forming part of a national park.

(2) In considering whether to enter into an ancillary rights agreement in relation to Crown land, the Governor shall have regard to —

- (a) the purpose for which the land is held and the purpose for which the land is presently used (if there is no identifiable purpose for which the land is held);
- (b) any policy statement or management plan of the Crown in relation to the land;
- (c) the safeguards against potential adverse environmental effects of carrying out the proposed programme of work,

and the Governor may have regard to any other matter he considers relevant.

(3) Before deciding to enter into an ancillary rights agreement in relation to any Crown land the Governor must consult to the extent it is reasonably practicable to do so those persons he believes to be representative of interests likely to be substantially affected by the ancillary rights agreement and must consult the Planning and Building Committee, whether or not the

implementation of the ancillary rights agreement, if made, would involve the doing of anything by the grantee which would constitute development requiring planning permission.

Application for a declaration that a compulsory rights order would be in public interest

44.—(1) If the owner or occupier of any land in respect of which a licence has been granted under section 11 fails or refuses within 60 days of the service of a notice upon him under section 41(2) to enter into an ancillary rights agreement with the applicant, the applicant may apply in writing to the Director for a declaration by the Governor that the making of a compulsory rights order would be in the public interest.

(2) The application for a declaration shall set out the circumstances alleged to justify the making of a compulsory rights order, and shall be in such form and accompanied by such information as the Director may require.

(3) On receiving an application under subsection (1) the Director shall forward it to the Governor together with a statement of the Director's view as to whether the making of a compulsory rights order would be in the public interest and shall serve a copy of the application and such statement on every owner or occupier of land served with the notice under section 41(2) and notice of the effect of subsection (4).

(4) Before deciding whether or not to make a declaration that the making of a compulsory rights order would be in the public interest the Governor shall consider any written representations he may receive from any owner or occupier of the land affected within 30 days of the service by the Director of notice under subsection (3).

(5) If the Governor is minded, after considering any such written representations, to make a declaration that the making of a compulsory rights order would be in the public interest he shall so advise the Legislative Council and if the Legislative Council, on considering the Governor's advice so agrees and informs the Governor accordingly, the Governor may serve notice to that effect, stating the reasons for making a declaration on every owner or occupier affected and every such owner or occupier may, within 21 days of the service of that notice, apply by petition to the Supreme Court for an order that no such declaration be made.

(6) The Supreme Court, on hearing any such petition, may —

(a) dismiss the petition;

(b) order that the Governor shall not make a declaration that the making of a compulsory rights order would be in the public interest;

(c) make any other order, including an order as to costs, it considers necessary or expedient in the circumstances of the case,

but the Supreme Court shall dismiss the petition unless it is satisfied that the making of a compulsory rights order would not be in the public interest.

(7) The Governor, the applicant and the owner and occupier of the land affected shall be entitled to be heard personally or by legal practitioner on the hearing of the petition.

(8) In this and the following section, "the applicant" has the same meaning as it has in section 41.

Declaration that a compulsory rights order would be in public interest: publication, etc

45.—(1) The Governor may make a declaration that a compulsory rights order would be in the public interest if, after he has complied with section 44(4) and (5) in relation to an application for such a declaration, he is of the view that such a declaration would be in the public interest and either —

(a) no person has, within the time limited by section 44(5), petitioned the Supreme Court for an order that no such declaration shall be made; or

(b) the Supreme Court has dismissed any such petition or petitions affecting the land the subject of the application.

(2) Any such declaration shall be by Notice published in the *Gazette* and a copy of the Notice shall be sent to the Magistrate's Court, the applicant and the owner and any occupier of the land affected.

(3) A Notice under subsection (2) shall have effect to refer to the Magistrate's Court for determination the question as to whether a compulsory rights order should be made in favour of the applicant against the owner and any occupier of any land affected.

Fixing time and place for conducting hearing

46.—(1) The Magistrate's Court shall as soon as possible after appointment pursuant to the preceding section —

(a) fix a time and place for conducting a hearing into the question of ancillary rights in or over the land concerned;

(b) cause notice of the time and place fixed for conducting the hearing to be given to the person desiring access and to each of the owners and occupiers of the land.

(2) The court may, by further notice served on the person desiring access and on each of the owners and occupiers of the land concerned (whether on the application of the person seeking the compulsory rights order or of any owner or occupier of that land or otherwise) vary the time and place fixed for conducting the hearing.

(3) The court shall, at the time and place fixed under this section, conduct a hearing into the question of whether a compulsory rights order should be made.

Further provisions as to determination

47.—(1) The court shall not make a compulsory rights order until it has brought, or used its best endeavours to bring, the parties to a settlement acceptable to them but if the parties come to such a settlement, the court shall make an order which gives effect to that settlement.

(2) At any hearing by the court into the question of the making of a compulsory rights order, a person desiring ancillary rights to the land concerned, and each of the owners and occupiers of that land are entitled to appear and be heard either personally or by a person representing him.

(3) Except as otherwise provided by this Ordinance, the procedure at a hearing shall be as determined by the court.

(4) The court shall act according to equity, good conscience and the substantial merits of the case without regard for legal technicalities or forms.

(5) The court may conduct a hearing even though one or more of the parties to the hearing fails to attend the hearing and may from time to time adjourn a hearing to a date time and place fixed by him.

(6) The costs of all parties to the proceedings shall be borne by the person desiring the grant of the compulsory rights order and, if not agreed, shall be fixed by the court on the application of the person desiring that order.

(7) The parties may, at any time before the conclusion of the hearing, terminate the hearing by notice in writing, signed by all of the parties, delivered to the court, but the delivery of such a notice shall not affect the liability under subsection (6) of the person desiring the compulsory rights order to bear the costs of all parties thereto to the proceedings.

Making of compulsory rights order, etc.

48.—(1) As soon as practicable after concluding the hearing, subject to section 49, the court shall make a compulsory rights order in respect of the land concerned giving such ancillary rights as it considers necessary on such terms and subject to such conditions, and for such period, as the court thinks fit and on such a determination being made the court shall reduce it to writing and serve a copy of it on each of the parties.

(2) In determining the duration of any right to be granted the court shall have regard to the time reasonably necessary to enable the minerals to be fully worked, and shall have regard to the duration of the applicant's licence, if already granted.

(3) Such a determination must specify the compensation as assessed by the court, to which each owner or occupier of the land is entitled under this Part.

(4) Where the person desiring access has not obtained the required licence under this Ordinance at the time of the making of the compulsory rights order, the court shall specify the compensation, as assessed by the court, to which each owner and occupier would be entitled under this Part if the person desiring access had obtained the required licence; and in any such

case the obligation to pay compensation shall be conditional upon the person desiring access obtaining the required licence.

Limitation on grant of rights

49.—(1) The court shall not make a compulsory rights order under section 48 unless it is satisfied

(a) that the arrangement is expedient in the public interest;

(b) that it is not reasonably practicable to obtain the right by private arrangement for any of the following reasons —

(i) that the persons with power to grant the right are numerous or have conflicting interests;

(ii) that the persons from whom the right must be obtained, or any of them, have not the necessary powers of disposition, whether by reason of defect of title, legal disability or otherwise; or

(iii) that the person with power to grant the right unreasonably refuses to grant it or demands terms which, having regard to the circumstances, are unreasonable.

(2) An appeal lies to the Supreme Court at the instance of the Governor or the applicant from and against any refusal by the Magistrate's Court to make an order under section 48 on the ground that it is not satisfied that to do so is expedient in the public interest.

Effect of compulsory rights order

50. Subject to section 52(4), rights granted by an order under section 48 —

(a) take effect when a copy of the order has been served on each of the parties and the person desiring access has complied with any condition imposed under section 52(4) if that section is applicable;

(b) subject to the order having been registered in the Land Charges Register, have effect as if its terms were embodied in a deed that had been duly executed by each of the parties; and

(c) run with the land affected and bind all subsequent owners and occupiers.

Variation of compulsory rights order

51.—(1) Rights conferred by an order under section 48 may be varied by the court with the consent of all the parties to the proceedings, or their successors.

(2) Subsection (1) has effect without prejudice to any other power the court has to vary the order.

Compensation: general

52.—(1) Where an order is made under section 48 or any restriction is imposed under section 61, the court shall determine the amount or nature of compensation or consideration to be paid or

given at the time when it decides whether to make the order or whether the restrictions should be imposed.

(2) The compensation or consideration in respect of any right, including a right to enforce restrictions and any compensation payable by reason of injurious affectation occasioned by the exercise of any right, shall be assessed by the court on the basis of what would be fair and reasonable between a willing grantor and a willing grantee, having regard to the conditions subject to which the compulsory rights order is made or restriction is imposed, and the subsequent provisions of this section and the provisions of sections 53 to 59, where applicable, have effect subject to that over-riding principle.

(3) In assessing compensation or consideration under that subsection in relation to the determination of an ancillary rights arrangement, the court shall have regard —

(a) not only to the value of the land taken or occupied by the ancillary rights but also to the damage, if any, to be sustained by the owner or occupier of the land by reason of the severing of the land from the other land of the owner or occupier or otherwise injuriously affecting such other land by the grant of the compulsory rights order ; and also

(b) to any monetary or non-monetary compensation offered to the owner or occupier of the land by the person desiring ancillary rights.

(4) Without prejudice to sections 53 to 59, the court may impose as a condition on the determination of any ancillary rights arrangement or the imposition of any restriction that any compensation or consideration payable in respect thereof shall be paid, or that security to the satisfaction of the court shall be given, before any right under the arrangement is commenced to be exercised or the restriction is enforced.

Compensation in respect of agricultural land

General provision as to annual compensation

53.—(1) For the purposes of this Part, where land immediately before an order under section 48 comes into effect —

(a) was occupied as a unit, and

(b) was so occupied wholly or mainly for the purposes of agriculture carried on by way of a trade or business,

the entirety of that land (excluding Crown minerals) shall be taken for those purposes to constitute a holding to which this section applies.

(2) Where an order under section 48 affects the whole or part of such a holding, unless the court orders to the contrary, compensation shall be payable in respect of that holding —

(a) for each year beginning with the operative date, and

(b) for each subsequent year which begins with the anniversary of that date and falls wholly or partly within the period of occupation.

(3) Subject to subsection (4), the person entitled to any compensation payable for any year by virtue of this section in respect of a holding shall be the person who —

(a) in respect of so much (if any) of the holding as is not affected by the order is for the time being entitled to occupy the holding, and

(b) in respect of so much of the holding as is affected by the order, would be entitled for the time being to occupy it if the order had not been made.

Calculation of compensation under section 53

54.—(1) The compensation payable for any year in respect of a holding to which section 53 applies shall, subject to any determination to the contrary of the Supreme Court on appeal under section 62, be a sum equal to the annual borrowing cost for that year of the value of the rights conferred by the compulsory rights order in relation to the holding.

(2) For the purposes of this section, the value is such amount as would be fair and reasonable between a willing grantor and a willing grantee having regard to the conditions subject to the conditions contained in or referred to in the order.

(3) For the purposes of subsection (1), the annual borrowing cost for any year of any amount (“the value”) is the aggregate sum which would fall to be paid in that year by way of payments of interest and repayments of capital if the value had been borrowed on the date on which the ancillary rights arrangement was made on terms which —

(a) required interest to be paid and capital to be repaid by way of the relevant number of equal annual instalments; and

(b) provided for interest on outstanding capital to become due immediately before the time for payment of each instalment, at an annual rate equal at that date to three per cent per annum above the minimum lending rate of Standard Chartered Bank Stanley branch at the date on which the compulsory rights order was made;

and in this subsection “the relevant number” means the number of years for which, when it was determined, the ancillary rights arrangement was to have effect.

Terminal compensation

55.—(1) Where an order under section 48 relates to the whole or part of a holding to which this section applies, the provisions of this section and of sections 56 and 57 have effect as to the compensation payable in respect of that holding by the person who immediately before the period of occupation is the person entitled to the rights conferred by the order.

(2) Section 53(1) has effect in relation to this section as it has in relation to that section, and references to a holding to which this section applies shall be construed accordingly.

(3) Compensation payable in respect of a holding under the provisions referred to in subsection (1) of this section shall consist of either or both of the following —

- (a) compensation by way of payment of cost of works, and
- (b) compensation by reference to the diminution in value of the holding.

Compensation by way of payment of cost of works

56.—(1) Subject to the following provisions of this section, compensation by way of the cost of works shall, in the case of an order under section 48, be payable in respect of a holding to which section 55 applies if —

- (a) at the end of the period of occupation, any land forming part of the holding and comprised in the arrangement has not been restored to the condition in which it was immediately before the date of entry, and
- (b) after the end of the period of occupation, expenses are reasonably incurred by any person in respect of work carried out (over and above the ordinary use and maintenance of land) for the purpose of further restoring that land to or towards that condition or a condition substantially similar thereto.

(2) Where in accordance with subsection (1) compensation by way of payment of cost of works is payable —

- (a) the person entitled thereto shall be the person by whom the expenses in question are incurred; and
- (b) the compensation shall be payable from time to time as the expenses are incurred and shall be of an amount equal to the amount of the expenses.

(3) The provisions of Schedule 1 to this Ordinance have effect with respect to compensation by way of payment of cost of works under this section.

Compensation by reference to the diminution in value of a holding

57.—(1) Compensation by reference to a diminution in value of a holding to which section 55 applies shall be payable to the owner if the value of a freehold interest in the holding, computed in accordance with paragraph (a) of subsection (2), or in accordance with paragraph (b) of that subsection, as the case may be, but (in either case) with the benefit of any prospective right to compensation by way of payment of cost of works in respect of the holding, is less than the value of such an interest computed in accordance with paragraph (c) of that subsection.

(2) For the purposes of subsection (1) there shall be computed the following values —

- (a) where the entirety of the holding is affected by the order under section 48, the value at the end of the period of occupation of a freehold interest in the holding;

(b) where part of the holding is not affected by the order, the value which a freehold interest in the holding would have at the end of the period of occupation if that part of the holding were in the state in which it was immediately before the date of entry, the remainder of the holding being taken to be in the state in which it was at the end of the period of occupation;

(c) in either case, the value which a freehold interest in the holding would have at the end of the period of occupation if that part of the holding were in the state in which it was immediately before the date of entry.

(3) Where in accordance with subsection (1) compensation by reference to the diminution in value of a holding is payable, the amount of the compensation shall be the difference between the values mentioned in that subsection, and the person entitled to that compensation shall be the person who at the end of the period of occupation is the owner of the holding.

(4) In computing value as mentioned in any of paragraphs (a), (b) and (c) of subsection (2), it shall be assumed that a freehold interest in the holding is, in the circumstances mentioned in the paragraph in question, being offered for sale on the open market by a willing seller immediately after the end of the period of occupation, with vacant possession of the holding and free from incumbrances, other than any easement or similar right, any right restrictive of the use of the land and any licence under this Ordinance conferring working rights, affecting the holding or any part thereof at that time.

Additional compensation on re-occupation

58.—(1) Subject to the following provisions of this section, with a view to furthering the resumption of agriculture on land formerly affected by an order under section 49, a person shall be entitled to compensation by virtue of this section in respect of a holding to which section 55 applies if he is in occupation of the holding at the end of the period of occupation or if he enters into occupation of the holding at or after the end of that period, provided that he is occupying the holding or (as the case may be) he enters into occupation of the holding wholly or mainly for the purposes of agriculture carried on by way of trade or business.

(2) No compensation shall be payable by a person by virtue of this section unless he is either the person who, immediately before the order under section 49, was entitled to occupy the holding (in this subsection called “the original occupier”) or a person who, before the end of the period of occupation, became entitled to the relevant interest in the holding in accordance with the disposition of the original occupier’s estate effected by his will, or the law relating to intestacy, or the combination of his will and that law.

(3) In subsection (2) —

(a) “the relevant interest”, in relation to any person, means the interest by virtue of which he became entitled to occupy the holding (or would have become entitled to occupy the holding (or would have become so entitled if the compulsory rights order had not been made); and

(b) “will” includes codicil.

(4) The compensation payable in respect of a holding by virtue of this section shall be payable by the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the ancillary rights arrangement and, subject to the following provisions of this section, shall be an amount equal to the compensation payable in respect of that holding under section 53 for the last twelve months of the period of occupation.

(5) Subject to the following provisions of this section, in any case where the compensation payable in respect of a holding under section 53 was in fact payable by reference to a period of less than twelve months, the compensation payable in respect of that holding by virtue of this section shall be an amount equal to the compensation which was so payable under section 53, multiplied by the fraction of which the denominator is 365 and the numerator is the number of days in the period by reference to which the compensation was so payable under that section.

(6) Where the person entitled, immediately after the end of the period of occupation, to occupy the holding concerned ceases, before he enters into occupation, to be entitled to occupy some part of it then, subject to subsection (7) —

(a) his entry into occupation of the part which he remains entitled to occupy shall be treated for the purposes of subsection (1) as entry into occupation of the holding; but

(b) the compensation payable to him by virtue of this section shall be such proportion of the compensation which would have been so payable had he remained entitled to enter into occupation of the whole of the holding as properly attributable to the part of the holding which he remains entitled to occupy.

(7) If, immediately before the end of the period of occupation, only part of the holding concerned (in this subsection referred to as “the compensatable portion”) was comprised in the ancillary rights arrangement and (after the end of the period of occupation) subsection (6) applies, then —

(a) if the holding which the person concerned ceased to be entitled to occupy comprises the whole of the compensatable portion, no compensation shall be payable to him by virtue of this section,

(b) if the person concerned remains entitled to occupy the whole of the compensatable portion, the compensation so payable to him shall not be reduced under paragraph (b) of subsection (6) above; and

(c) in any other case, for the purpose of determining the proportion of the compensation properly attributable to any part of the holding under paragraph (b) of subsection (6), the holding shall be treated as consisting of the compensatable portion only.

Compensation in respect of other matters

Compensation in respect of easements and other rights

59.—(1) The provisions of this section shall have effect where, by reason of an order under section 48 or anything done in the exercise of rights conferred thereby, the exercise of an easement or similar right over any land comprised in the arrangement, or any right restrictive of the use of any such land, is prevented or injuriously affected.

(2) For the year beginning with the date on which the rights under the order took effect, and for each subsequent year which begins with the anniversary of that date and falls wholly or partly within the period of occupation, the person for the time being entitled to the easement or right in question shall be entitled to compensation of an amount equal to the loss (if any) suffered by him by reason that the exercise of the easement or right is prevented or injuriously affected as mentioned in the preceding subsection.

(3) The liability to pay compensation under subsection (2) falls upon the person who, for the whole or any part of the year in question, has been entitled to the rights conferred by the order.

(4) Where, after the end of the period of occupation, the exercise of the easement or right continues to be prevented or injuriously affected by reason of anything done during that period in the exercise of the rights conferred by the compulsory rights order —

(a) if that easement or right is appurtenant to, or the benefit of it is in any other way annexed to, any land, the person who, at the end of the period of occupation, is the owner of that land shall be entitled to compensation from the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order if an amount equal to the diminution (if any) in the value of that land, in so far as any such diminution is attributable to the fact that the exercise of the easement or right is so prevented or injuriously affected;

(b) in any other case, the person who at the end of the period of occupation is entitled to the right in question shall be entitled to compensation from the person who immediately before the end of the period of occupation is the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order of an amount equal to the market value which the right would then have if its exercise were not so prevented or affected, reduced by the amount of any market value which the right actually has at the end of that period.

(5) For the purposes of paragraph (a) of subsection (4) the value of the land in question shall be taken to have been diminished if (and to the extent to which) the value of the freehold interest in that land at the end of the period of occupation is less than the value which such interest would then have if the land affected by the order, over which the easement or right is exercisable, were in the state in which it was immediately before the date of entry; and for the purpose of computing those values the provisions of section 57(4) shall apply as they apply for the purposes of section 57(2), but with the substitution, for the references to the holding, of references to the land to which the benefit of the easement or right is annexed.

Unknown owner of land

60.—(1) Where an owner or occupier of land with whom a person desiring access wishes to enter into an access arrangement under this Part is unknown or of unknown whereabouts and cannot after reasonable enquiry be discovered or found, the person desiring access may by originating application in the Supreme Court to which the Attorney General shall be the respondent apply for the appointment by the court of a fit and proper person authorised to act on behalf of the owner or occupier as if he had been duly appointed by power of attorney to do so, and the court may, if it thinks fit, by order appoint such a person.

(2) The court, whether or not it appoints such a person, shall order the applicant to bear the Attorney General's costs of the application which, if not agreed, shall be assessed by the court.

(3) If the court appoints a person in exercise of its powers under subsection (1), that person shall for the purposes of this Part have and may exercise all the powers of the owner or occupier in respect of whom he was appointed and may, in particular, enter into an access arrangement on his behalf.

(4) Any compensation payable under an access arrangement to an owner or occupier in respect of whom an order under subsection (1) applies shall be paid into court and held by the court upon trust for the owner or occupier concerned.

(5) Where any doubt or dispute arises in relation to the right of any person to receive any compensation paid into court in accordance with subsection (4), the Supreme Court may, upon the application of any interested person, make such order in relation thereto as it thinks fit.

Restrictions on working minerals required for support

61.—(1) If any person having an interest in land is not entitled to support or sufficient support, whether vertical or lateral, for any buildings or works, whether on or below the surface, and alleges that it is not reasonably practicable to obtain a right to such support by private arrangement for any of the reasons mentioned in section 49(3), he may apply to the Magistrate's Court for such restrictions to be imposed on the working of the minerals under that land and the land adjacent thereto as he may consider necessary to secure sufficient support to the building or works.

(2) An application under this section shall set out the circumstances alleged to justify the imposition of the restrictions, and shall be in such form, and accompanied by such information, as may be required by rules of court.

(3) Where any application is made to the Magistrate's Court under subsection (1), the court if satisfied that the requirements of this section are complied with in the case of the applicant and that it is expedient in the public interest that restrictions should be imposed, may, by order, impose such restrictions, on such terms and subject to such conditions and for such period as it may think just, and upon such order being made the right to enforce the restriction imposed by the order shall, subject to the following provisions, vest in the applicant.

(4) Where restrictions are imposed, such compensation or consideration as in default of agreement may be determined by the court shall be paid or given by the applicant in respect of the imposition of the restrictions to such persons as the court may determine to be entitled hereto.

(5) The restrictions may be either on the quantity or position of the minerals to be worked, or on the methods of working or packing, or otherwise as may be necessary to secure adequate support of the buildings or works or to prevent or minimise damage to them.

(6) In determining whether restrictions should be imposed the court shall have regard to the value of the buildings or works or the cost of repairing damage likely to be caused to them by subsidence, as compared with the value of the minerals, or to the importance in the public interest of the erection or preservation of the buildings or works, as compared with the importance in the public interest of the working of the minerals.

Appeal to Supreme Court against determination

62.—(1) Subject to subsection (2), an appeal lies to the Supreme Court at the instance of a person aggrieved against any order made by the Magistrate's Court under section 48 or grant of a restriction under section 61. Any such appeal must be commenced by notice in writing lodged in the Supreme Court within 21 days of the service upon the person aggrieved of the copy of the order made under section 48 or 61, as the case may be, and the notice must specify the ground or grounds on which the appellant is aggrieved by the Magistrate's Court's determination.

(2) No appeal to the Supreme Court lies against the making of an order under section 47(1) (order giving effect to settlement agreed between the parties).

(3) Any person appealing pursuant to subsection (1) must serve a copy of the notice lodged under that subsection upon every other party to the access arrangement or the person or persons affected by the restriction, as the case may be.

(4) When an appeal is lodged under subsection (1), the access arrangement or restriction shall not take effect, unless otherwise ordered by the Supreme Court, until the appeal is determined and shall then take effect as confirmed or varied by the Supreme Court.

(5) Except as otherwise provided by this Ordinance and by any rules of court made for the purpose, the procedure in and relating to appeals under this section shall be such as the Supreme Court may determine.

(6) In relation to an appeal under this section, the Supreme Court —

(a) shall have and may exercise all or any of the powers of the Magistrate's Court under any of the previous provisions of this Part;

(b) may vary the determination of the Magistrate's Court in such manner as it thinks fit or quash it and proceed to determine the matter (including any compensation payable) afresh; and

(c) may order the costs of and relating to the appeal to be borne by such of the parties and in such proportions as it thinks fit.

(7) No further appeal shall lie at the instance of any person to any tribunal or authority from and against a determination by the Supreme Court of an appeal under this section.

*Notification to Registrar General of grants of a licence,
extensions of a licence, access arrangements etc*

Lodging and registration of licences

63.—(1) When a licence is granted the Director shall forthwith send four copies of the licence to the Registrar General, each of which copies shall have attached to or incorporated in it a plan identifying the land to which it relates and a schedule identifying the relevant Crown Grant number or numbers in relation to that land.

(2) On receipt of the documents referred to in subsection (1) and the prescribed fee the Registrar General shall —

(a) record and file one of the copies in the Register of Deeds;

(b) enter in the register of every Crown Grant affected by the licence particulars of the entry relating to it in the Register of Deeds and the nature of the licence and its date of expiry;

(c) return the remaining copies to the Director, endorsed with particulars of the registration of the licence in the Register of Deeds and the registers of Crown Grants.

(3) On the return to the Director in accordance with subsection (2)(c) of the copies of the licence the Director shall —

(a) file one copy in the Director's records of licences granted;

(b) send one copy to the Attorney General; and

(c) send the remaining copy to the licensee.

(4) The Director may recover from the licensee the amount of any prescribed fee paid by the Director to the Registrar General on or in connection with the lodging of copies of a licence under this section.

(5) For the purposes of subsection (2), the prescribed fee is £200 or such higher fee as is prescribed by regulations under this Ordinance.

Lodging of certificates of extension

64. Section 63 applies to the extension of land to which a licence relates as if the granting of the extension were the granting of a licence in respect of the land subject to the extension and, except where the context otherwise requires, every reference in section 63 to "licence" shall, in the case of an extension of land to which the licence relates, be deemed to be a reference to the certificate of extension.

Notification of access rights

65.—(1) If he enters into an access arrangement which is of more than 6 months in duration, or of indefinite duration, from its date of commencement, the licensee or applicant for a licence who entered into the arrangement shall forthwith lodge with the Registrar General four copies of a notice of the arrangement or, in the case of a compulsory rights order made by the court under section 49, of the order together with the prescribed fee.

(2) On receipt of the documents referred to in subsection (1) and the prescribed fee the Registrar General shall —

- (a) record and file one of the copies in the Register of Deeds;
- (b) enter in the register of every Crown Grant affected by the access arrangement particulars of the entry relating to it in the Register of Deeds and the nature of the licence and its date of expiry;
- (c) register notice of the arrangement as such class of in the Land Charges Register as may be prescribed under the Land Charges Ordinance 1996;
- (d) return one of the remaining copies to the licensee or applicant for a licence, endorsed with particulars of the registration of the access arrangement in the Register of Deeds and the registers of Crown Grants.
- (e) send one copy so endorsed to the Director for the Director to retain with the Director's records of licences;
- (f) send one copy so endorsed to the Attorney General; and
- (g) retain the last copy with his own records.

Entry of licences and access arrangements to be notice only

66.—(1) The entry by the Registrar General in any register in his custody of the particulars of a licence or access arrangement operates only as notice of the licence or access arrangement and does not create any estate or interest in land whatsoever and, accordingly, nothing in the Land (Non-residents) Ordinance applies thereto.

(2) Nothing in the Lands Ordinance or any statute of or having effect in the Falkland Islands in relation to land shall have effect in any way to limit or affect any right title or interest held under a licence, access arrangement compulsory rights order or order under section 61 which has been recorded or entered in any register by the Registrar General under the provisions of section 64 or section 65.

Certified copies of licences, certificates and other documents to be evidence

67.—(1) The Registrar General shall on payment of any fee prescribed under this or any other Ordinance provide to any person applying for it a certified copy of any licence or other document recorded or registered by the Registrar General under this Part.

(2) Any such certified copy which is signed by the Registrar General and sealed with his seal shall be received in evidence for all purposes for which the original licence or other document might be received in evidence.

Recorded documents to be open to search

68. Any person may, on payment of any fee prescribed under this or any other Ordinance, inspect and take copies of any document recorded or registered by the Registrar General under any provision of this Part.

Revision of records and registers

69. The Registrar General shall, on receiving any notice of revocation of a licence or surrender of a licence, discharge the record or registration of the licence, and note the particulars of the notice in his records, or, as the case may be, registers.

Register of licences

70.—(1) The Director shall keep a register of licences in such form as the Governor may approve in which there shall be entered brief particulars of all licences issued under this Ordinance and all assignments of licences.

(2) There shall be open to public inspection at the office of the Director, during the hours that office is open for business and on payment of such fee as may be prescribed by regulations —

(a) a copy of every licence granted under this Ordinance or continuing to have effect as if granted under this Ordinance;

(b) the register kept under subsection (1);

(c) such other documents as may from time be prescribed by regulations.

(3) A certificate under the hand of the Director as to —

(a) the contents of the register maintained under subsection (1); or

(b) that on the date specified in the certificate the name of any person did not appear in the register as the holder of any licence

shall, in the absence of proof to the contrary, be sufficient evidence in accordance with its tenor.

PART IV

HEALTH AND SAFETY AT WORK AND PROTECTION OF THE ENVIRONMENT

Health and safety at work

Application of Health and Safety at Work etc. Act 1974

71.—(1) The Governor may by an Order under this subsection apply the provisions of Part I of the Health and Safety at Work etc Act 1974 and any regulations made under section 15(1) of that Act, with such modifications and exceptions as may be stated in the Order —

(a) to mines and quarries in the Falkland Islands and any plant or machinery used thereat or in connection therewith;

(b) to operations specified in such an Order undertaken or carried out in connection with the construction, operation, maintenance, repair, dismantling or decommissioning of mines and quarries in the Falkland Islands and any plant or machinery used thereat or in connection therewith;

(c) to the maintenance in a safe state of any former mine or quarry;

(d) to the processing, refining, smelting or treatment in any manner whatsoever of any ore or rock obtained from any mine or quarry in the Falkland Islands;

(e) to operations specified in such an Order undertaken or carried out in connection with the construction, operation, maintenance, repair of any plant or machinery used in or in connection with the processing, refining, smelting of any ore or rock obtained from any mine or quarry in the Falkland Islands; and

(f) without prejudice to the generality of the preceding paragraphs, to any premises, apparatus, equipment, or machinery used in or in connection with the supply of power to any premises, apparatus, equipment plant, machinery comprised within the foregoing paragraphs.

(2) If an Order has been or is about to be made under subsection (1) the Governor may —

(a) enter into an agreement or arrangement with the Health and Safety Executive for and relating to the exercise on behalf of the Crown in the Falkland Islands of the like functions in the application of Part I of that Act under subsection (1) as it has under that Part in the United Kingdom;

(b) make such Order as it appears to him necessary or convenient to make to give effect in the law of the Falkland Islands to any such agreement or arrangement.

(3) Where any person has a right of action arising out of the act or default of the Health and Safety Executive in the performance or purported performance of any function under and by virtue of any such agreement or arrangement as is referred to in subsection (2), that right of action shall lie against Her Majesty in right of Her Government of the Falkland Islands and not (except so far as may be required by or under the law of the United Kingdom) against Her Majesty in right of Her Government of the United Kingdom.

Civil liability for breach of statutory duty

72.—(1) Breach of a duty imposed on a person by virtue of the application by an Order under section 71(1) of this Ordinance of Part I of the Health and Safety at Work etc Act 1974 or of any

regulations made thereunder shall be actionable so far, and only so far, as the breach causes personal injury, and references in Part I of the Fatal Accidents Act 1846 in its application to the Falkland Islands to a wrongful act, neglect or default shall include references to any such breach which is so actionable.

(2) Nothing in subsection (1) of this section precludes any action which lies apart from the provisions of that subsection.

Environmental protection

73.—(1) The Governor may by Order under this subsection apply any provisions specified in that Order of the Environmental Protection Act 1990, as amended from time to time, and any regulations made under that Act, subject to such modifications and exceptions to that Act or those regulations as are stated in that Order to and in respect of the like premises, operations, matters and things as an Order under section 71(1) may be made.

(2) If an Order has been or is about to be made under subsection (1) the Governor may —

(a) enter into an agreement or arrangement with the Environment Agency for and relating to the exercise on behalf of the Crown in the Falkland Islands of the like functions in the application of that Act and those regulations under subsection (1) as it has in the United Kingdom;

(b) make such Order as it appears to him necessary or convenient to make to give effect in the law of the Falkland Islands to any such agreement or arrangement.

(3) Where any person has a right of action arising out of the act or default of the Environment Agency in the performance or purported performance of any function under and by virtue of any such agreement or arrangement as is referred to in subsection (2), that right of action shall lie against Her Majesty in right of Her Government of the Falkland Islands and not (except so far as may be required by or under the law of the United Kingdom) against Her Majesty in right of Her Government of the United Kingdom.

PART V MISCELLANEOUS

Miscellaneous provisions as to licences and access arrangements

Consent required for assignment of licences

74.—(1) A licence may not be assigned without the consent of the Governor in writing.

(2) For the purposes of this Ordinance, a licence is assigned if —

(a) the licensee does anything whereby under the law (including the rules of equity) of the Falkland Islands or of the law of the place of incorporation of the licensee, any right granted by the licence or derived from a right so granted (other than by sale in the course of business of any mineral extracted under the licence) becomes exercisable by or for the benefit or partly for the benefit of or in accordance with the directions of another person; or

(b) the control of the licensee becomes vested in a person or persons different from the person or persons stated in the application for the licence to control the applicant.

(3) If without the consent of the Governor the holder of a licence does anything which by virtue of subsection (2) is for the purposes of this Ordinance an assignment of that licence —

(a) the Governor may terminate that licence by notice in writing served upon the holder of the licence;

(b) the transaction amounting to an assignment of the licence has no effect whatsoever (except to enable the Governor to terminate the licence) until and unless the Governor consents in writing to that assignment of the licence.

Licences and access arrangements not to confer estate or interest in land

75.—(1) Neither a licence nor an access arrangement confers on a licensee or applicant for a licence an estate or interest in the land to which it relates.

(2) A right of access obtained by a licensee, whether before or after the licence was granted, may, subject to the terms of the access arrangement, be enjoyed by the holder for the time being of the licence.

Notices

76.—(1) Any notice or other communication authorised or required to be given by any provision of this Ordinance may be sent —

(a) by post;

(b) by electronic mail;

(c) by facsimile transmission; or

(d) delivered to the addressee.

(2) Subject to subsection (6), any notice or other communication sent by post within the Falkland Islands to an addressee in the Falkland Islands shall be deemed to be received by the addressee, unless the contrary is proved, on the third business day following the day on which it is proved to have been posted.

(3) Subject to subsection (6), any notice or other communication sent by post where either the sender or addressee are not within Stanley shall be deemed to be received by the addressee,

unless the contrary is proved on the tenth business day following the day on which it is proved to have been posted.

(4) Any notice or other communication sent by electronic mail shall be deemed to have been received by the addressee at nine in the morning on the business day following the day on which it is proved to have been received by the addressee's receiving equipment or, if earlier acknowledged by or on behalf of the addressee, at the time on the day the sender of the notice or communication received the acknowledgement.

(5) Where under the provisions of section 77(1)(a) or of regulations made under section 77(1)(b) an agent has been appointed and a notice or other communication has been posted, sent by electronic mail or facsimile transmission or delivered to that agent on account or in respect of the person appointing him, that person shall be deemed to have received that notice or communication at the same time as he would, in accordance with the foregoing provisions of this section be taken to have received it if he himself were the agent he has appointed.

(6) Subsections (2) and (3) shall not operate in favour of the sender of a notice or communication unless the notice or other communication is shown to be correctly addressed, and the same applies in respect of a notice or communication to an agent sent by post to an agent (to which subsection (5) applies).

Appointment of person to receive notices

77.—(1) The Governor may

(a) by a condition of a licence granted under this Ordinance; or

(b) by regulations under this subsection,

require any licence or permit holder who is not —

(i) a living person ordinarily resident in the Falkland Islands;

(ii) a company incorporated under the laws of the Falkland Islands and having a usual place of business in Stanley; or

(iii) an overseas company registered under Part X of the Companies Act 1948 in its application to the Falkland Islands;

to appoint a person of a kind mentioned in sub-paragraph (i) as his or its agent and so often as may be necessary to appoint another such person in place of the first-mentioned person.

(2) Where a company has —

(i) pursuant to Part X of Companies Act 1948;

(ii) pursuant to a condition of a licence granted to it under this Ordinance; or

(iii) pursuant to regulations made under subsection (1) of this section,

appointed a person for the purpose of accepting or receiving service of any notice or proceedings which might otherwise have been given or served upon the licensee or permit holder, any notice or communication under this Ordinance or process civil or criminal shall for all purposes be taken to have been duly served or given to the company if it is shown to have been served upon or given to the person appointed as mentioned in this subsection.

Offences and criminal proceedings

Obstruction etc.

78. A person commits an offence who wilfully obstructs, hinders, resists, or deceives any person in the execution of any powers conferred on that person by or under this Ordinance.

Liability of principal for acts of agents, corporate liability, liability of directors etc.

79.—(1) Where an offence under this Ordinance is committed by any person acting as the agent or employee of another person, that other person is, without prejudice to the liability of the first-mentioned person and subject to subsection (2) of this section, liable in the same manner and to the same extent as if he had personally committed that offence.

(2) It is a defence to any prosecution brought by virtue of subsection (1) for the defendant to prove —

(a) if the defendant is a natural person —

(i) that he did not know and could not reasonably have been expected to know that the offence was to be or was being committed; and

(ii) that he took all steps which he reasonably could have taken to prevent the commission of the offence or stop it;

(b) if the defendant is a body corporate —

(i) that neither the directors nor any person involved in the management of the body corporate knew or could reasonably be expected to have known that the offence was to be or was being committed; and

(ii) that the body corporate took all steps it reasonably could have taken to prevent the commission of the offence.

(3) Where a body corporate is convicted of an offence against any provision of this Ordinance, every director and every person concerned in the management of the body corporate has committed and is liable to be convicted of the like offence if it is proved —

(a) that the act that constituted the offence took place with his authority, permission or consent; or

(b) that he knew or could reasonably be expected to have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent it or stop it.

Penalties

80.—(1) A person who is convicted of an offence of contravening section 5(1) of this Ordinance (prospecting, exploring or mining without a licence) is liable to imprisonment for a term not exceeding 2 years and to a fine not exceeding the maximum of level 12 on the standard scale and, if the offence is a continuing one, to a further fine of £25,000 for every day or part of a day during which the offence continues.

(2) A person who is convicted of an offence against any other provision of this Ordinance is liable to imprisonment for a term not exceeding six months and to a fine not exceeding the maximum of level 8 on the standard scale and, if the offence is a continuing one, to a further fine not exceeding £5,000 for every day or part of a day during which the offence continues.

(3) The continued existence of anything which constitutes an offence against any provision of this Ordinance or the intermittent repetition of any action which constitutes an offence against any provision of this Ordinance shall for the purposes of subsections (1) and (2) of this section be deemed to be a continuing offence.

Strict liability

81.—(1) In any prosecution for any offence of contravening any provision of this Ordinance, it is not necessary to prove that the defendant intended to do the act or acts or make the omission or omissions, or both such act or acts and omission or omissions, as constitute the offence.

(2) Subject to subsection (3), it is a defence to such a prosecution if the defendant proves —

(a) —

(i) that the action or event to which the prosecution relates was necessary for the purpose of saving or protecting life or health, or preventing serious damage to property or avoiding an actual or likely serious adverse effect on the environment;

(ii) that the conduct of the defendant was reasonable in the circumstances; and

(iii) that the effects of the action or event were as far as they reasonably could have been adequately mitigated by the defendant after it occurred; or

(b) that the action or event to which the prosecution relates was due to an event beyond the control of the defendant, including natural disaster, mechanical failure, or sabotage and, in each case —

(i) that the action or event could not reasonably have been foreseen or provided against by the defendant; and

(ii) that the effects of the action or event were as far as they reasonably could have been adequately mitigated by the defendant after it occurred.

(3) Except with the leave of the court, the defendant shall not be permitted to rely upon a defence afforded by subsection (2) of this section unless within 10 days after the service of the summons or such further time as the Court may within 10 days thereafter upon application to it allow the defendant delivers to the prosecutor a written notice specifying —

(a) the defence under subsection (2) of this section upon which the defendant intends to rely; and

(b) the facts alleged by the defendant to support that defence.

Time limit and authority for bringing proceedings

82.—(1) Notwithstanding any provision of the law of the Falkland Islands which has effect to the contrary a prosecution under this Ordinance may be brought at any time within 12 months after the time when the contravention giving rise to the prosecution became known, or should have become known, to the Director.

(2) No prosecution for an offence under this Ordinance shall be commenced except by or with the consent of the Attorney General.

Jurisdiction to try offences

83. All offences under this Ordinance shall be tried summarily by the Magistrate's Court which has power on conviction of any person for such an offence to impose any sentence which this Ordinance provides may be imposed on that person.

Regulations

Power to make Regulations

84.—(1) The Governor may, without prejudice to any power under any antecedent provision of this Ordinance to make regulations, make regulations —

(a) prescribing or making provision for forms of applications, licences, permits, notices and other documents for the purposes of this Ordinance;

(b) prescribing the information to be provided with applications for licences;

(c) prescribing conditions on which licences may be applied for, granted, changed or extended;

(d) prescribing the manner in which licences may be surrendered;

(e) prescribing registers to be kept under this Ordinance, the form of such registers, the matters to be entered therein and the means whereby entries shall be verified;

(f) providing for the keeping and provision of records, returns, reports and information by licensees for any of the purposes of this Ordinance;

(g) providing for the keeping by a holder of a licence of cores, specimens or samples obtained in the course of activities carried out under the licence;

(h) prescribing matters in relation to which fees are to be payable under this Ordinance, the amount of the fees, the time and manner of their payment, and the persons liable to pay them, and providing for charges for late payment of fees;

(i) providing for a contravention of any provision of the regulations specified for the purpose to constitute a criminal offence punishable in such manner as is prescribed not exceeding a maximum term of imprisonment of three months or a fine not exceeding the maximum of level 5 on the standard scale or both such imprisonment and such fine;

(j) providing for or prescribing any other matter or thing necessary or convenient to be prescribed for the purposes of this Ordinance.

(2) Any regulations made under subsection (1) may provide for different regulations to apply to different types of licence, licensees or activities or in respect of the same type of licence, licensees or activities in different circumstances.

Repeal

85. The Mining Ordinance (Title 53.2) is repealed.

SCHEDULE

(section 56)

PROVISIONS AS TO COMPENSATION BY WAY OF PAYMENT OF COST OF WORKS

1. In this Schedule —

“compensation” means compensation under section 56 of this Ordinance;

“final operator” means the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order;

“former use”, in relation to any land, means the use for which it was used immediately before the operative date of the order in question;

“proper cost”, in relation to any work, means such cost as is reasonable, having regard to the prices of materials and rates of remuneration for services current at the time when the work is carried out.

2.—(1) The final operator shall not be required to pay compensation in respect of expenses incurred in carrying out any work unless —

(a) not less than the prescribed length of time before the work was begun, the person incurring the expenses gave to the final operator in the prescribed manner, notice in writing containing adequate particulars of the work, together with a statement of the time when it was proposed to carry out the work and estimate of the cost of the work, and

(b) at all reasonable times after the service of that notice, that person afforded to the final operator reasonable facilities to inspect the land to which the notice related, in so far as he was in a position to afford such facilities.

(2) In the following provisions of this Schedule “the applicant”, in relation to a notice under this paragraph, means a person who gave that notice.

3. Where a notice has been given under the last preceding paragraph the final operator within the prescribed time after the giving of that notice, may serve on the applicant a counter-notice, stating —

(a) that the final operator objects to the work specified in the applicant’s notice, or to such one or more items thereof as may be specified in the counter-notice, and

(b) that the final operator objects thereto on such one or more grounds as may be specified in the counter-notice, being one or more of the grounds mentioned in the next following paragraph.

4. Subject to the next following paragraph, the said grounds, in relation to any work specified in a notice under paragraph 2 of this Schedule, are the following, that is to say —

(a) that the work could not reasonably be regarded as work falling within section 56(1)(b) of this Ordinance;

(b) that the work is likely to be ineffective, or is by its nature unsuitable to the land in question, or is proposed to be carried out in an unsuitable way;

(c) that the estimated cost of the work is grossly disproportionate to any prospective increase attributable to the work in the value of the land;

(d) that the work, in a case where the former use of the land in question was agricultural, would not be appropriate to the use of that land for agriculture, or, in any other case, would not be appropriate to the use of that land for its former use;

(e) that the work would not be required but for dilapidation, deterioration or damage which has occurred since the end of the period of occupation and is attributable to default on the part of the owner or of an occupier of the land;

(f) that the work if carried out at the time specified in the applicant’s notice, would be premature;

(g) that the work, if carried out at the time specified in the applicant's notice, would not have been carried out at the first reasonable opportunity after the end of the period of occupation, or within a reasonable time after that opportunity arose.

5.—(1) In so far as a notice given under paragraph 2 of this Schedule (in this paragraph referred to as “the current notice”) specifies any work (in this paragraph referred to as “the new work”) in a case where the applicant has previously given one or more notices under that paragraph specifying similar work which he proposed to carry out in respect of the same land, the last preceding paragraph shall apply in relation to the new work with the substitution, for sub-paragraph (c) of that paragraph, of the following sub-paragraph (in this paragraph referred to as “as the substituted sub-paragraph (c)”) —

“(c) that the aggregate cost of that work and of all relevant work specified in previous notices relating to the same land is grossly disproportionate to the aggregate increase attributable to all such work in the value of the land.”

(2) In the substituted sub-paragraph (c) the reference to the aggregate cost of the new work and of all other relevant work specified in previous notices relating to the same land is a reference to the aggregate of —

(a) the estimated cost of the new work, and

(b) the estimated cost of any similar work specified in any previous notice given by the applicant which is still outstanding on the relevant date, and

(c) the proper cost of any similar work specified in any previous notice given by the applicant in respect of which a claim for compensation has been allowed before the relevant date or is still outstanding on that date.

(3) In the substituted sub-paragraph (c) the reference to the aggregate increase attributable to all such work as is therein mentioned in the value of the land is a reference to the aggregate of —

(a) the prospective increase in that value attributable to the new work, and

(b) the prospective increase in that value attributable to any similar work specified in any previous notice given by the applicant which is still outstanding on the relevant date, and

(c) the increase in that value attributable to any similar work specified in any compensation has been allowed before the relevant date or is still outstanding on that date.

(4) For the purposes of sub-paragraphs (2) and (3) of this paragraph —

(a) a previous notice specifying similar work shall be taken to be outstanding on the relevant date if —

(i) such a notice has been given before the relevant date and has not been withdrawn, and

(ii) either the final operator has not before that date served a counter-notice objecting to that work, or, if the final operator has served such a counter-notice, that objection has before that date been withdrawn or determined by the Court not to be well-founded, and

(iii) no claim for compensation has before the relevant date been made in respect of expenses incurred in carrying out that work;

(b) a claim for compensation in respect of any work shall be taken to have been allowed before the relevant date if before that date —

(i) a claim for compensation has been made in respect of expenses incurred in carrying out that work, and

(ii) it has been agreed by the final operator, or determined by the Court, that compensation is payable in respect of those expenses, whether the amount of compensation so agreed or determined to be payable was the amount claimed or a different amount;

(c) a claim for compensation in respect of any work shall be taken to be still outstanding on the relevant date if at that date —

(i) a claim for compensation has been made in respect of expenses incurred in carrying out that work, and

(ii) that claim has not been withdrawn, and it has not been determined by the Court that no compensation is payable in respect of those expenses, but

(iii) it has not been agreed by the final operator, or determined by the Court, that compensation is payable in respect of those expenses.

(5) In this paragraph “similar work”, in relation to the new work, means work directed to the same aspect of restoration as the new work; “previous notice”, in relation to the current notice, means a notice given under paragraph 2 of this Schedule before the date on which the current notice was given; and “the relevant date”, in relation to the current notice, means the date on which the final operator serves a counter-notice objecting to the new work, or the date on which the time for serving such a counter-notice expires, whichever is the earlier.

(6) In the following provisions of this Schedule (except where the contrary is expressly provided) any reference to sub-paragraph (c) of the last preceding paragraph, in relation to work to which that paragraph applies in accordance with sub-paragraph (1) of this paragraph, shall be construed as a reference to the substituted sub-paragraph (c), and any reference in this Schedule to the grounds mentioned in the last preceding paragraph shall be construed accordingly.

6. For the purpose of determining whether an objection on the grounds mentioned in sub-paragraph (c) of paragraph 4 of this Schedule is well-founded, the estimated cost of any work shall be taken to be such amount as may be agreed, or determined by the court, to be a fair estimate of the cost of the work, whether the amount is equal to, or greater or less than, the estimated cost of the work as stated in the applicant's notice specifying that work.

7.—(1) In sub-paragraph (e) of paragraph 4 of this Schedule, the reference to default on the part of the owner or of an occupier of the land shall be construed in accordance with the following provisions of this paragraph.

(2) In relation to agricultural land, the reference to default on the part of the owner shall be construed as a reference to failure on his part to manage the land in accordance with the rules of good estate management, and the reference to default on the part of an occupier of the land shall be construed as a reference to failure on the part of such an occupier to fulfil his responsibilities to farm the land in accordance with the rules of good husbandry.

(3) In relation to any other land, the reference to default on the part of the owner shall be construed as a reference to failure on his part to deal with the land in a proper and due course of arrangement, and the reference to default on the part of an occupier of the land shall be construed as a reference to failure on the part of such an occupier to maintain and use the land in a reasonable manner.

8. Where a notice has been given under paragraph 2 of this Schedule, and the applicant has incurred expenses in carrying out any of the work specified in that notice, and claims compensation in respect of those expenses —

(a) if the final operator has not served a counter-notice under paragraph 3 of this Schedule in respect of that notice, he shall not be entitled to object to that claim on any of the grounds mentioned in paragraph 4 of this Schedule;

(b) if the final operator has served such a counter-notice, he shall not be entitled to object to that claim on any of the grounds mentioned in paragraph 4 of this Schedule, except in so far as the claim relates to items which were specified in the counter-notice and the objection is on grounds which were so specified in relation to those items.

9.—(1) Where a notice has been given under paragraph 2 of this Schedule, and the final operator has served a counter-notice objecting to the work specified in the notice, or to one or more items thereof, the applicant, before beginning to carry out any item to which such an objection relates, may require the question whether the objection is well-founded to be referred to the Magistrate's Court.

(2) If on such a reference the Court determines that the objection is not well-founded, and the applicant incurs expenses in carrying out any of the work to which the objection relates and claims compensation in respect of those expenses, then (in addition to any grounds on which the final operator is precluded by the last preceding paragraph from objecting to that claim) the final

operator shall not be entitled to object to that claim on any of the grounds which were the grounds of that objection.

(3) If on such a reference the Court determines that the objection is well-founded, and the applicant incurs expenses in carrying out any of the work to which the objection relates, and claims compensation in respect of those expenses —

(a) if the objection was on the grounds mentioned in any of sub-paragraphs (a), (b), (c), (d) and (e) of paragraph 4 of this Schedule, no compensation shall be payable in respect of those expenses;

(b) if the objection was on the grounds mentioned in sub-paragraph (f) of the said paragraph 4, no compensation shall be payable in respect of those expenses by virtue of the notice referred to in sub-paragraph (1) of this paragraph, but without prejudice to the service of a further notice under paragraph 2 of this Schedule in respect of the work in question;

(c) if the objection was on the grounds mentioned in sub-paragraph (g) of the said paragraph 4, the expenses shall be disallowed by virtue of this sub-paragraph in so far as (but no further than) they were greater than they would have been if the work to which the objection related had been carried out at the first reasonable opportunity after the end of the period of occupation.

10.—(1) If, in a case where a notice has been given under paragraph 2 of this Schedule, and the final operator has served a counter-notice objecting to the work specified in the notice, or to one of more items thereof —

(a) the applicant incurs expenses in carrying out work to which the objection relates, without having required the question whether the objection is well-founded to be referred to the Magistrate's Court, and claims compensation in respect of those expenses;

(b) on a reference to the Magistrate's Court with respect to that claim the final operator maintains the objection; and

(c) on that reference the Court determines that the objection is well-founded,

the provisions of heads (a) to (c) of sub-paragraph (3) of the last preceding paragraph shall apply (subject to the following provisions of this paragraph) as they apply in the circumstances mentioned in that sub-paragraph.

(2) Where the objection was on the grounds mentioned in sub-paragraph (c) of paragraph 4 of this Schedule (otherwise than in a case falling within paragraph 5 of this Schedule) so much of the preceding sub-paragraph as relates to the maintenance of the objection, and to a determination that the objection is well-founded, shall apply as if, in the said sub-paragraph (c), the reference to the estimated cost of the work were a reference to the proper cost of the work.

(3) Where the objection was on the grounds mentioned in the substituted sub-paragraph (c), within the meaning of paragraph 5 of this Schedule, so much of sub-paragraph (1) of this paragraph as relates to the maintenance of the objection, and to a determination that the objection is well-founded, shall apply as if, in the said paragraph 5, any reference to the relevant date were a reference to the date on which the question whether compensation is payable in respect of expenses incurred in carrying out the new work (within the meaning of that paragraph) falls to be determined by the Court, and the objection had been formulated accordingly.

11.—(1) Subject to the next following sub-paragraph, expenses incurred in carrying out any work shall not be treated as having been reasonably incurred as mentioned in paragraph (b) of subsection (1) of section 22 of this Ordinance, if the work was begun more than fifteen years after the end of the period of occupation.

(2) The preceding sub-paragraph shall not apply to any work required for making good damage caused by the settlement of soil replaced in the course of restoring the land or any other damage to the land caused by subsidence which is attributable to anything done in the exercise of rights conferred by the compulsory rights order in question.

12. Where it is shown that the expenses incurred in carrying out any work exceeded the proper cost of the work, any claim for compensation in respect of those expenses shall (without prejudice to any other grounds on which the claim may be liable to be disallowed, wholly or in part) be disallowed to the extent of the excess.

13.—(1) Except in so far as objection is made to any work on the grounds mentioned in sub-paragraph (c) of paragraph 4 of this Schedule, and subject to the provisions of this Schedule relating to any such objection, expenses incurred in carrying out any work shall not be disallowed (wholly or in part) on the grounds that the proper cost of that work (or of that work together with any other work) is greater than any increase attributable thereto in the value of the land.

(2) Subject to the preceding sub-paragraph, nothing in the preceding provisions of this Schedule shall be construed as precluding the final operator from maintaining any objection to a claim for compensation, in so far the objection is on any grounds other than those mentioned in paragraph 4 of this Schedule.



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Planning (Amendment) Bill 2005.

EXPLANATORY MEMORANDUM

Planning (Amendment) Bill 2005

Introductory

1. The Planning Ordinance 1991 ("the 1991 Ordinance") was drafted in 1989-1990 and was largely based on the provisions of the Town and Country Planning Act 1971. That Act ("the 1971 Act") was repealed by the Planning (Consequential Provisions) Act 1990 and replaced by the Town and Country Planning Act 1990 ("the 1990 Act"), the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990. In combination, these Acts have updated and improved English planning law, eliminating a number of defects. In the light of them, and additionally because of the possible advent of marine farming and commercial mining, this Bill proposes amending Falkland Islands law to incorporate some of the changes made in planning law in England. The Bill also proposes amendments the need for which has been identified in the operation of the 1991 Ordinance. Many of the provisions of the 1971 Act were re-enacted without amendment, many more were re-enacted with significant amendment in the Town and Country Planning Act 1990 which was heavily amended in relation to provisions dealing with breaches of planning control by the Planning and Compensation Act 1991.

Summary

2. In summary the present Bill seeks to:-

- (a) amend the 1991 Ordinance so as to clarify certain of its provisions;
- (b) insert in the 1991 Ordinance provisions at present appearing in the Highway (Building Lines) Ordinance, and to repeal that Ordinance;
- (c) make new provision in relation to the assessment of environmental effects and environmental impact statements; and
- (d) enable certain applications for planning permission to be dealt with by the planning officer;
- (e) amend the 1991 Ordinance so as to give effect to recommendations made by the English Law Commission and given effect to in England by the Town and Country Planning Act 1990; and
- (f) amend the provisions of the 1991 Ordinance as to breach of planning control to accord with the recommendations of the Carnwath Report (Robert Carnwath QC, Enforcing Planning Control, HMSO, February 1989).

General amendments

3. **Clause 1** would enable the whole Bill, if enacted, to be brought into force at one time or in stages.

4. **Clause 2(2)** would:-

(a) **amend section 3 of the Planning Ordinance 1991** by replacing the definition of "building operations".

Clause 2(2) replicates an amendment made to section 55 of the Town and Country Planning Act 1990 by section 13(1) of the Planning and Compensation Act 1991. That amendment resulted from problems which arose in a High Court case in England earlier in 1991. It had always been accepted that partial demolition was "development" (i.e. required planning permission) since it was likely to be a material alteration to the external appearance of the building. However, whether total demolition was "development" requiring planning permission was not so clear. In a case in 1953 the English Court of Appeal suggested that demolition was not development per se but accepted that it could be if it was part of a more extensive building operation i.e. demolition in order to erect something else. In another case in 1969 the House of Lords refused to lay down a general rule but accepted that on the particular facts the demolition of a blast wall was an "engineering operation" requiring planning permission. There followed yet another case in 1974 when the Court of Appeal refused to accept that the demolition of nissen huts and a lean-to workshop was "development" requiring planning permission. The law was thus confusing: while it was accepted that demolition could be "development" by virtue of being an "engineering operation", it was not clear whether lesser demolition fell within the system of control. The new definition of "building operations" overcomes the legal problem just mentioned. It will be necessary, in due course, to consider amending the provisions of the General Development Order as to "permitted development" so as to bring certain minor demolitions within "permitted development" (in other words they will not require a specific grant of planning permission). An example might perhaps be the demolition of garden sheds and such like which do not usually require the grant of planning permission for their erection in the first place.

(b) **insert a definition of "curtilage"**. This was inserted at the request of the Planning Committee which was not certain as to what the meaning of the word was. Similarly a definition has been inserted in clause 2(2) so as to define "dwelling house".

(c) **define "kelp" so as to make operations for the removal of kelp ones requiring planning consent as well as a licence under the Control of Kelp Ordinance**. This is so that, where necessary, an environmental impact statement can be required under the later provisions of the Planning Ordinance, as amended by the Bill. Lastly the definition of "land" has been extended so as to make it clear that it includes any building or other structure fixed to the land.

5. **Clause 3** would amend section 5(5) of the Planning Ordinance by inserting a new clause 5(5A) so as to define "other personal interest" in the provisions of section 5 relating to the requirement for a member of the Committee to declare his interest where necessary.

6. **Clause 4** would insert a new section 25A clarifying the official status of the Development Plan.

7. **Clause 5** of the Bill would amend section 26 of the Planning Ordinance. This section defines what is meant by "development" and it is "development" in respect of which planning permission is required. Clause 5 would add a further subparagraph to section 26(2) which deals with exceptions from "development". The effect of the amendment would be that the demolition of any description of building specified in a development order as not requiring planning permission would not amount to "development". Clause 5 would also add a new subsection (2A) so as to render building, engineering, mining or other operations within five metres of the boundary of any road "development" requiring planning permission. This is so as to enable the requirements of the Highways (Building Lines) Ordinance to be replaced by requirements of a Planning Ordinance requiring planning permission. Clause 5 would amend section 26(3) of the 1991 Ordinance by inserting a new paragraph (f) so as to render the collection of kelp (other than that stranded upon the shore) development requiring planning permission. Lastly clause 5 would add a new subsection (6) to section 26. This would render fish farming development requiring planning permission whether or not the fish tanks are attached to the land. The visual and environmental impact is likely to be the same whether the fish tanks are attached to the land or not.

8. **Clause 6** would repeal section 33 of the 1991 Ordinance and replace it by a new section making provision for the assessment of environmental effects. Section 33 of the 1991 Ordinance is at present inadequate to deal, for example, with potential forthcoming developments in marine farming and possible mining operations. The proposed new section 33 would give power to make regulations about the consideration to be given before planning permission is granted to the likely environmental effects of the proposed development. The kinds of development to which the regulations could relate would be governed by the new section 33(2). The effect of the new section 33(2) would be to enable regulations to be made as to consideration of environmental effects in any circumstances in which it is necessary to consider environmental effects in the United Kingdom by reason of the directives referred to in the new section 33(2). These directives are reproduced, because they define the scope of the potential regulations, in the proposed new Schedule A1 to the present Ordinance. The new section 33(2) does not, it must be emphasised, apply the directives to the Falkland Islands. If they were to be applied it would be compulsory to consider environmental effects in relation to any matter to which they relate. It will only be compulsory in the Falkland Islands to consider environmental effects if regulations made under section 33(1) so provide. The new section 33 would also assist the Falkland Islands to adhere to the Aarhus Convention (public participation in environmental matters).

9. **Clause 7** would repeal and replace the existing section 36 with a new section 36. The new section 36 would enable regulations to be made authorising the Planning Officer to deal with applications for planning permission of any class or descriptions specified in the regulations and the new section 36(3) would provide that any planning permission granted by the planning officer would be deemed to have been granted by the Committee.

10. **Clause 8** would insert a new section 36A in the present Ordinance. It is modelled on section 70A of the Planning Act 1990, which was inserted by section 17 of the Planning and Compensation Act 1991. The reason for inserting the new section is that, under the present law, as was the case in England, an applicant can submit any number of planning applications for the same, or substantially similar, development on the same site, despite the fact that earlier

applications have been refused by the Committee and by the Governor on appeal. While the applicant can submit modified applications which might be acceptable, such repeat applications have to be considered on their merits even if no significant modifications have been made. Because this is so, the system can be abused by persons who exert pressure on the Committee by wearing it, and objectors to the proposals, down by repeated applications. These waste the time and resources of the Planning Officer and the Committee and can cause uncertainty and anxiety to people who have objected to previous applications. It is intended that the Committee should use the power which would be conferred by the new section only where it believes that the applicant is intending to exert pressure by submitting repeated similar applications. It is not intended to be used where an applicant has revised an application in a genuine attempt to take account of objections to an earlier proposal.

The new enforcement powers

11. **Clause 9** of the Bill would insert a new Part VIA (sections 79A and 79B) in the 1991 Ordinance. The new sections would establish a new device within the enforcement process, known as a "planning contravention notice". This would implement, in respect of the Falkland Islands, recommendation 2 of the Carnwath Report, referred to earlier in this explanatory memorandum, which saw the new procedure as providing an optional procedure by which planning authorities could achieve speedier resolution of some enforcement issues, without recourse to the more lengthy enforcement notice procedure. The new procedure is intended to enable the Committee to deal more effectively than at present with the situation where there is a suspected breach of planning control but reliable evidence as to the facts is unobtainable. Another effect of the new notice is to encourage the owner or occupier of the premises to discuss the matter with the planning officer.

12. The new power has three aims to:-

- (a) act as a formal warning of the prospect of an enforcement or stop notice and enables the Committee to respond immediately to complaints from the public of contravention of planning control without undermining the policy of using enforcement only as a "last resort";
- (b) require the recipient of the notice to confirm at an early stage not only the facts as to activity on the land, but also the legal justification, if any. This would provide an improved method of obtaining the information tailored to the needs of the enforcement process, rather than relying on the general powers to obtain information;
- (c) allow the Committee the opportunity of encouraging the submission of an application or the making of an agreement.

13. **Clause 10** would repeal **sections 80 to 92** of the principal Ordinance and replace them with the new sections **80 to 92U** set out in the Bill. The new section 80 would establish the meaning of important terms used in connection with enforcement in the planning legislation.

14. The new **section 81** would implement recommendation 3 of the Carnwath Report, which advocated that the general period of immunity from enforcement should be amended to a period of ten years prior to the issue of an enforcement or contravention notice except in the

circumstances covered by subsections (1) and (2) of the new **section 81**, when the time limit would remain as it is at present. The reason for the change is that the period of four years is often too short especially where breaches of conditions on a planning consent are concerned. Further it would overcome difficulties caused by the special rules relating to mining, by which "each shovel full" was regarded as a separate breach and difficulties caused by the rule that breaches of conditions can only be proceeded against within four years from the date on which non-compliance has come to the knowledge of the authorities.

15. The new **sections 82, 83 and 84** aim to make the use of enforcement powers more flexible and reduce technicality. Their general purpose is to make it easier to take effective enforcement action by reducing the legal complexity of the provisions relating to drafting, issue and service of enforcement notices. The new **section 85** is intended to simply the present provisions as to appeals against enforcement notices. This section should be read with the new sections 86 to 88 which make further provision in relation to enforcement notices. The new section 89 amends the power under which the Crown can undertake work required by an enforcement notice which is available where other methods, including prosecution, have failed to persuade the owner or occupier to carry out the steps required by the enforcement notice. The existing power is not available for steps related to the discontinuance of use, or steps required to alleviate injury to amenity.

16. The new **section 90** (offence where enforcement notice not complied with) implements proposals made in the Carnwath Report which reflected concern over the perceived "lack of teeth" in the enforcement system and, in particular, the new section requires any financial benefit which is accrued or appears likely to accrue in consequence of the offence to be taken into account when determining the amount of any fine imposed under this section.

17. The new **section 91** replicates section 180 of the Planning Act 1990, as replaced under section 32 and Schedule 7 paragraphs 8 and 26 of the Planning and Compensation Act 1991. There is no equivalent provision in the 1991 Ordinance, so **section 91** makes entirely new provision. (For breach of condition notices, see the new **section 92G**).

18. The new **section 91A** replaces section 89 of the 1991 Ordinance with slight changes in wording which do to alter the present law.

19. The new **section 91B** is entirely new and confers power on the Governor after consulting Executive Council to issue an enforcement notice.

20. The new **sections 91C, 91D and 92G** which replace section 85 of the 1991 Ordinance (based on the corresponding provision of the 1971 Act) with a provision based on section 183, 184, 186 and 187 of the 1990 Act and which is very largely to the same effect, but replacing "twelve months in the present section 85(2) with "four years" in the new **section 91C(5)**.

21. The new **section 91E** confers power on the Governor to serve a stop notice and is entirely new. So is the new section 91F which, in certain circumstances would confer a right to compensation on a person on whom a compensation notice is served.

22. **Section 91H** (Enforcement of conditions) is entirely new, and is based on section 187A of the 1990 Act, which was inserted by section 2 of the 1991 Act. The Carnwath Report considered that the procedure provided for by that section would provide a more appropriate means of remedying breaches of certain conditions:- e.g. as to the period of construction of a project in relation to noise or working hours, and fencing conditions. The section is vital, e.g., in relation to the conditions attaching to a mining permission (e.g. as to fencing).

23. **Section 91I**, is also entirely new, and represents a local equivalent of section 187B of the 1990 Act which was inserted by section 3 of the 1991 Act. It enables an injunction to be obtained in respect of an actual or threatened breach of planning control when it is not by virtue of non-compliance with a valid enforcement notice, a criminal offence. The section was recommended by the Carnwath Report.

24. **Section 91J** (Register of enforcement and stop notices) contains provision found in section 188 of the 1990 Act and **sections 91K and 91L** are local equivalents of sections 189 and 190 of the 1990 Act as slightly amended by the 1991 Act. There are no corresponding provisions in the 1991 Ordinance.

25. **Sections 91M, 91N, 91O, 91P, 91Q and 91R** represent local equivalents of sections 191 to 196 of the 1990 Act as amended by the 1991 Act. They represent new provision since they provide for, and for matters connected with, certificates of lawfulness of an existing use or development and replace section 61 of the 1991 Ordinance (application as to whether planning permission is required).

26. **Sections 91S to 91U** represent local equivalents of sections 196A, 196B and 196C of the 1990 Act, which were inserted by section 11(1) of the 1991 Act and were recommended by the Carnwath Report as being necessary for the proper enforcement of planning control.

27. **Clause 11** of the Bill could insert the new Schedule A1 (referred to in the new section 33 inserted by **clause 6**).

28. **Clause 12** of the Bill would make the minor amendments set out in the Schedule to the Bill and **clause 13** would repeal the Highways (Building Lines) Ordinance and section 61 of the 1991 Ordinance (see paragraph 24 above).

Planning (Amendment) Bill 2005

(No: of 2005)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title and commencement
2. Interpretation
3. Amendment of section 5 of principal Ordinance
4. Insertion of section 5A in principal Ordinance
5. Amendment of section 26 of principal Ordinance
6. Assessment of environmental effects
7. Replacement of section 36 of principal Ordinance
8. Insertion of section 36A in principal Ordinance
9. Insertion of new section in principal Ordinance
10. Repeal of sections 80 to 92
11. Insertion of Schedule A1 in principal Ordinance

The Schedule

PLANNING (AMENDMENT) BILL 2005

A BILL

for

AN ORDINANCE

(No: of 2005)

(assented to: 2005)
(commencement: in accordance with section 1)
(published: 2005)

To amend the Planning Ordinance (Title 55.3).

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title and commencement

1. This Ordinance may be cited as the Planning (Amendment) Ordinance 2005 and comes into force on such date as the Governor may appoint by notice published in the *Gazette* but different dates may be so appointed for the purposes of different provisions of this Ordinance.

Interpretation

2.—(1) In this Ordinance, “the principal Ordinance” means the Planning Ordinance (Title 53.3).

(2) Section 3 of the principal Ordinance is amended —

(a) by replacing the definition of “building operations” with the following definition —

“building operations” includes —

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by persons carrying on business as a builder;"

(b) by inserting the following definition after the definition of “Committee” —

“ ‘curtilage’ means, in relation to a dwellinghouse, land, including land covered by buildings structures or water, in the same ownership as the dwellinghouse and intimately connected with it, whether or not separated from it by a road, track or highway or by water of any kind, which is used and enjoyed with the dwellinghouse so as to augment

the amenities of the dwellinghouse and not for any separate commercial purpose of any kind;"

(c) by inserting the following definition immediately after the definition of "disposal" —

"dwellinghouse" —

(a) means a permanent building adapted for, and capable of, being dwelt in, in which the owner, tenant or occupier of it, or any member of the owner or tenant's family, habitually sleeps at night;

(b) includes any part of such a building where that part is separately used as a dwelling and any buildings or;

(c) notwithstanding (a) and (b) does not include any building the larger part of which is used for any business purpose;

(d) by inserting the following definition immediately after the definition of "functions" —

"'kelp" has the same meaning as it has under section 2 of the Control of Kelp Ordinance (Title 4.2);"

(e) by inserting the following words after the word "water" in the definition of "land" —

"and any corporeal hereditament, including a building".

Amendment of section 5 of principal Ordinance

3. Section 5 of the principal Ordinance is amended by inserting the following subsection after subsection (5) —

"(5A) In subsection (5) "other personal interest" means any interest, other than a financial interest, such as relationship or marriage or a relationship analogous to marriage to an applicant for planning permission or a person who might be affected adversely or beneficially by the decision of the Committee in respect of the application or other matter before the Committee, or employment by or partnership with any such person (but not political, religious or other beliefs, age, gender, ethnic origin or nationality, education, wealth, poverty or position in society or any other like factor), and which reasonable person, possessed of all the facts known to the member, might consider likely to render the member predisposed, regardless of the merits of the application or matter, to decide the application or matter in a particular way."

Insertion of section 25A in principal Ordinance

4. Part IV of the principal Ordinance is amended by the insertion of the following cross-heading and section immediately after the cross-heading "PART IV: GENERAL PLANNING CONTROL" —

"Primacy of development plan

Status of development plan

25A. Where, in making any determination under this Ordinance, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise."

Amendment of section 26 of principal Ordinance

5. Section 26 of the principal Ordinance is amended —

(a) in subsection (2) —

(i) by inserting in subsection (2) the words "to subsection (2A) and" after the word "Subject";

(ii) by inserting the following paragraph after paragraph (f) —

"(g) the demolition of any description of building specified in a Development Order as not requiring planning permission";

(b) by inserting the following subsection after subsection (2) —

"(2A) notwithstanding subsection (2)(a) and the provisions of any development order, the carrying out of building, engineering, mining or other operations in on or over land other than those mentioned in subsection (2)(b) and (c) within five metres of the boundary of any road shall be taken to constitute development of land for which planning permission granted by the Committee or the Governor is required."

(b) in subsection (3) —

(i) by replacing the comma at the end paragraph (e)(iii) with a semicolon and the word "and"; and

(ii) by inserting immediately thereafter the following new paragraph —

"(f) the collection, otherwise than of that stranded upon the shore by the action of the elements, or harvesting of kelp," and

(c) by the addition of the following subsection —

"(6) Where the placing or assembly of any tank, cage, frame, rope, sparring line, float, buoy or other apparatus or structure of any kind whatsoever in any part of the sea or in any part of the inland waters for the purpose of fish farming there would not, apart from this subsection, involve development of the land below, this Ordinance shall have effect as if the tank, cage, frame, rope, sparring line, float, buoy or other apparatus or structure resulted from carrying out engineering operations over that land; and in this subsection—

“fish farming” means the breeding, rearing, or keeping of fish or shellfish (which includes any kind of crustacean or mollusc);

“inland waters” means waters which do not form part of the sea or of any creek, bay or estuary of any river as far as the tide flows;

“sea” means the territorial sea, any creek, bay or estuary of any river as far as the tide flows and any other part of the sea lying to landward of the baselines from which the territorial sea is measured.”

Assessment of environmental effects

6. Section 33 of the principal Ordinance is repealed and replaced by the following section —

“Assessment of environmental effects

33.—(1) The Governor may by regulations make provision about the consideration to be given, before planning permission for development of any class specified in the regulations is granted, to the likely environmental effects of the proposed development.

(2) The Directive of the Council of the European Economic Community 85/337 on the Assessment of the Effects of Certain Public and Private Projects on the Environment, as amended and supplemented by the Directive of the Council of the European Union 97/11 (together called “the Directives”) is reproduced, as so amended, in Schedule A1 to this Ordinance. Regulations under subsection (1) —

(a) may make the same provision as, or provision similar or corresponding to, any provision of the Directives; and

(b) may make different provision for different classes of development.”

Replacement of section 36 of principal Ordinance

7. Section 36 of the principal Ordinance is repealed and replaced by the following section —

“Determination of applications

36.—(1) Subject to subsection (2), applications for planning permission shall be determined by the Committee, except where sections 37 to 39 or a development order requires that the application be referred to the Governor for determination, when the application shall be determined by the Governor.

(2) Regulations made under this subsection may authorise applications for planning permission of any class or description specified in those regulations to be approved, whether or not subject to conditions, by the Planning Officer, but shall not authorise him —

(a) to refuse any such application;

(b) to grant any application if, in his opinion, the application is in conflict with the development plan.

(3) For the purposes of —

(a) section 28(2)(b) (provisions of development order providing for the granting of planning permission by the Committee); and

(b) the subsequent provisions of this Ordinance relating to appeals from decisions to impose conditions on the grant of planning applications,

any planning permission granted by the Planning Officer shall be deemed to have been granted by the Committee.

(4) The Planning Officer shall give notice of the decision, whether by the Governor, the Committee or by the Planning Officer, on any application for planning permission to every person who made representations in relation to it under section 30(1)."

Insertion of section 36A in principal Ordinance

8. The principal Ordinance is amended by inserting the following section immediately following section 36 —

"Power of Committee to decline to determine applications

36A.—(1) The Committee may decline to determine an application for planning permission for the development of any land if —

(a) within the period of two years ending with the date on which the application is received, the Governor has refused a similar application referred to him under section 37 or has dismissed an appeal against the refusal of a similar application; and

(b) in the opinion of the Committee there has been no significant change since the refusal or, as the case may be, dismissal mentioned in paragraph (a) in the development plan, so far as is material to the application, or in any material considerations.

(2) For the purposes of this section an application for planning permission for the development of any land shall only be taken to be similar to a later application if the development and the land to which the applications relate are in the opinion of the Committee the same or substantially the same.

(3) The reference in subsection (1)(a) to an appeal against the refusal of an application includes an appeal under section 48(1)."

Insertion of new section in principal Ordinance

9.—(1) The principal Ordinance is amended by inserting the following Part immediately preceding Part VII —

**"PART VIA
"PLANNING CONTRAVENTION NOTICES**

Power to require information about activities on land

79A.—(1) Where it appears to the Planning Officer that there may have been a breach of planning control in respect of any land, he may serve notice to that effect (in this Ordinance called a "planning contravention notice") on any person who —

(a) is the owner or occupier of the land or has any other interest in it;

(b) is carrying out operations on the land or is using it for any purpose.

(2) Planning contravention notice may require the person on whom it is served to give such information as to —

(a) any operations being carried out on the land, any use of the land and any other activities being carried out on the land; and

(b) any matter relating to the conditions or limitations subject to which any planning permission in respect of the land has been granted,

as may be specified in the notice.

(3) Without prejudice to the generality of subsection (2), the notice may require the person on whom it is served, so far as he is able —

(a) to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried on the land;

(b) to state when any use, operations or activities began;

(c) to give the name and address of any person known to him to use or have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;

(d) to give any information he holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operations;

(e) to state the nature of his interest (if any) in the land and the name and address of any other person known to him to have an interest in the land.

(4) A planning contravention notice may give notice of a time and place at which —

(a) any offer which the person on whom the notice is served may wish to make to apply for planning permission, to refrain from carrying out any operations or activities or to undertake remedial works; and

(b) any representations which he may wish to make about the notice,

will be considered by the Committee, and the Committee shall give him an opportunity to make in person any such offer or representations at that time and place.

(5) A planning contravention notice must inform the person on whom it is served —

(a) of the likely consequences of his failing to respond to the notice and, in particular, that enforcement action may be taken; and

(b) of the effect of section 91F(5).

(6) Any requirement of a planning contravention notice shall be complied with by giving information in writing to the Planning Officer.

(7) The service of a planning contravention notice does not affect any other power exercisable in respect of a breach of planning control.

(8) In this section references to operations or activities on land include operations or activities in, under or over the land.

Penalties for non-compliance with planning contravention notice

79B.—(1) A person commits an offence if, at any time after the end of the period of 21 days beginning with the day on which a planning contravention notice has been served on him, he has not complied with any requirement of the notice.

(2) An offence under subsection (1) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction for such an offence.

(3) It shall be a defence for a person charged with an offence under subsection (1) to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) A person convicted of an offence under subsection (1) is liable to a fine not exceeding the maximum of level 3 on the standard scale.

(5) If any person —

(a) makes any statement purporting to comply with the requirement of a planning contravention notice which he knows to be false or misleading in a material particular; or

(b) recklessly makes such a statement which is false or misleading in a material particular,

he commits an offence.

(6) A person convicted of an offence under subsection (5) is liable to a fine not exceeding the maximum of level 5 on the standard scale.”

Repeal of sections 80 to 92

10.—(1) Sections 80 to 92 of the principal Ordinance are repealed.

(2) The following sections are inserted at the commencement of Part VII of the principal Ordinance preceding the existing section 93 of that Ordinance —

“Expressions used in connection with enforcement

80.—(1) For the purposes of this Ordinance —

(a) carrying out development without the required planning permission; or

(b) failing to comply with any condition or limitation subject to which planning permission has been granted,

constitutes a breach of planning control.

(2) For the purposes of this Ordinance —

(a) the issue of an enforcement notice (defined in section 82(1)); or

(b) the service of a breach of condition notice (defined in section 91H),

constitutes taking enforcement action.

Time limits for enforcement

Enforcement notices: time limits

81.—(1) Where there has been a breach of planning control consisting of the carrying out without planning permission of building, engineering, mining or other operations in, on over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent —

(a) the service of a breach of condition notice if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the Committee have taken or have purported to take enforcement action in respect of that breach.

Enforcement notices

Issue of enforcement notice

82.—(1) The Committee may issue a notice (in this Ordinance referred to as an “enforcement notice”) where it appears to the Committee —

(a) that there has been a breach of planning control; and

(b) that it is expedient to issue the notice, having regard to the provisions of the Development Plan and to any other material considerations.

(2) A copy of an enforcement notice shall be served —

(a) on the owner and on the occupier of the land to which it relates; and

(b) on any other person having an interest in the land being an interest which, in the opinion of the Committee, is materially affected by the notice.

(3) The service of the notice shall take place —

(a) not more than 28 days after its date of issue; and

(b) not less than 28 days before the date specified in it as the date on which it is to take effect.

Contents and effect of notice

83.—(1) An enforcement notice shall state —

(a) the matters which appear to the Committee to constitute the breach of planning control; and

(b) the paragraph of section 80(1) within which, in the opinion of the Committee, the breach falls.

(2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.

(3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.

(4) Those purposes are —

(a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or

(b) remedying any injury to amenity which has been caused by the breach.

(5) An enforcement notice may, for example, require —

(a) the alteration or removal of any buildings or works;

(b) the carrying out of any building or other operations;

(c) any activity on the land not to be carried on except to the extent specified in the notice; or

(d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.

(6) Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require the construction of a building (in this section referred to as a "replacement building") which, subject to subsection (7), is as similar as possible to the demolished building.

(7) A replacement building —

(a) must comply with any requirements imposed by any enactment applicable to the construction of buildings;

(b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;

(c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b)).

(8) An enforcement notice shall specify the date on which it is to take effect and, subject to section 86(2) and 107(3), shall take effect on that date.

(9) An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities and where different periods apply to different steps or activities references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are the period at the end of which the step is required to have been taken or the activity is required to have ceased.

(10) An enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under section 80 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 85.

(11) Where —

(a) an enforcement notice in respect of any breach of planning control could have required any building or works to be removed or any activity to cease, but does not do so; and

(b) all the requirements of the notice have been complied with,

then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 44 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

(12) Where —

(a) an enforcement notice requires the construction of a replacement building; and

(b) all the requirements of the notice with respect to that construction have been complied with,

planning permission shall be treated as having been granted by virtue of section 44 in respect of development consisting of that construction.

Variation and withdrawal of enforcement notices

84.—(1) The Committee may —

(a) withdraw an enforcement notice issued by the Committee; or

(b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 83(9).

(2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

(3) The Committee shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

(4) The withdrawal of an enforcement notice does not affect the power of the Committee to issue the further enforcement notice.

Appeal against enforcement notice

85.—(1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Governor against the notice, whether or not a copy of it has been served on him.

(2) An appeal may be brought on any of the following grounds —

(a) that, in respect of any breach of planning control which may be constituted by the matter stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

(b) that those matters have not occurred;

(c) that those matters (if they occurred) do not constitute a breach of planning control;

(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the enforcement notice were not served as required by section 80;

(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

(g) that any period specified in the notice in accordance with section 83(9) falls short of what should reasonably be allowed.

(3) An appeal under this section shall be made either —

(a) by giving written notice of the appeal to the Governor before the date specified in the enforcement notice as the date on which it is to take effect; or

(b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.

(4) A person who gives notice under subsection (3) shall submit to the Governor, either when giving the notice or within the prescribed time, a statement in writing —

(a) specifying the grounds on which he is appealing against the enforcement notice; and

(b) giving such further information as may be prescribed.

(5) If, where more than one ground is specified in that statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Governor may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.

(6) In this section “relevant occupier” means a person who —

(a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence; and

(b) continues so to occupy the land when the appeal is brought.

Appeals against enforcement notices: general supplementary provisions

86.—(1) The Governor may by regulations prescribe the procedure which is to be followed on appeals under section 85, and in particular, but without prejudice to the generality of this subsection —

(a) may prescribe the time within which an appellant is to submit a statement under section 85(4) and the matters on which information is to be given in such a statement;

(b) may require the Planning Officer to submit, within such time as may be prescribed, a statement indicating the submissions which he proposes to put forward on behalf of the Committee on the appeal;

(c) may specify the matters to be included in such a statement;

(d) may require the Planning Officer or the appellant to give such notice of an appeal under section 85 as may be prescribed, being notice which in the opinion of the Governor is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated;

(e) may require the Planning Officer to send to the Governor, within such time from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.

(2) Where a appeal is brought under section 85 the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(3) Where any person has appealed to the Governor against an enforcement notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

(4) The Governor —

(a) may dismiss an appeal if the appellant fails to comply with section 85(4) within the time prescribed by regulations under subsection (1) of this section; and

(b) may allow an appeal and quash the enforcement notice if the Planning Officer fails to comply with any requirement of regulations made by virtue of subsection (1)(b), (c), (d) or (e) of this section within the period prescribed by the regulations.

(5) If —

(a) a statement under section 85(4) specifies more than one ground on which the appellant is appealing against an enforcement notice; but

(b) the appellant does not give information required under paragraph (b) of that provision in relation to each of the specified grounds within the time prescribed by regulations under subsection (1) of this section,

the Governor may determine the appeal without considering any of the specified grounds as to which the appellant has failed to give such information within that time.

General provisions relating to the determination of appeals

87.—(1) The Governor shall permit the Planning Officer on behalf of the Committee, the appellant and any other person wishing to do so to make representations to him in relation to the appeal and, if notice has been given under section 86(1)(d), shall not determine the appeal, except in accordance with section 86(4)(a), until at least 28 days have expired.

(2) On the determination of an appeal under section 85 the Governor may —

(a) correct any defect, error or misdescription in the enforcement notice; or

(b) vary the terms of the enforcement notice,

if he is satisfied that the correction or variation will not cause injustice to the appellant or to the Committee.

(3) Where the Governor determines to allow the appeal, he may quash the notice.

(4) The Governor shall give any directions necessary to give effect to his determination on the appeal.

(5) The Governor —

(a) may dismiss an appeal if the appellant fails to comply with section 85(4) within the prescribed time; and

(b) may allow an appeal and quash the enforcement notice if the Planning Officer fails to comply with any requirement of regulations made by virtue of paragraph (b), (d) or (e) of section 86(1) within the prescribed period.

(6) Where it would otherwise be a ground for determining an appeal under section 85 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Governor may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

Grant or modification of planning permission on appeals against enforcement notices

88.—(1) On the determination of an appeal under section 85, the Governor may —

(a) grant planning permission in respect of the matter stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;

(b) discharge any condition or limitation subject to which planning permission was granted;

(c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under section 91M.

(2) The provisions of sections 91M to 91P mentioned in subsection (3) apply for the purposes of subsection (1)(c) as they apply for the purposes of section 91M, but as if —

(a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and

(b) references to the Committee were references to the Governor.

(3) Those provisions are sections 91M(5) and (6), 91O(4), (so far as it relates to the form of the certificate), (6) and (7) and 91P.

(4) In considering whether to grant planning permission under subsection (1), the Governor shall have regard to the provisions of the Development Plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations.

(5) The planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part IV.

(6) Where under subsection (1) the Governor discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

(7) Where an appeal against an enforcement notice is brought under section 85, the appellant shall be deemed to have made an application for planning permission in respect of the matter stated in the enforcement notice as constituting a breach of planning control.

(8) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.

(9) In relation to a grant of planning permission or a determination under subsection (1) the Governor's decision shall be final.

(10) Fishing right the purposes of section 46 the Governor's decision shall be treated as having been given by him in dealing with an application for planning permission made to the Committee.

Execution and cost of works required by enforcement notice

89.—(1) Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the Crown may —

(a) enter the land and take the steps; and

(b) recover from the person who is then the owner of the land any expenses reasonably incurred by the Crown in doing so.

(2) Where a copy of an enforcement notice has been served in respect of any breach of planning control —

(a) any expenses incurred by the owner or occupier of any land for the purpose of complying with the notice, and

(b) any sums paid by the owner of any land under subsection (1) in respect of expenses incurred by the Crown in taking steps required by such a notice to be taken,

shall be deemed to be incurred or paid for the use and at the request of the person by whom the breach of planning control was committed.

(3) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) commits an offence and is liable to a fine not exceeding the maximum of level 3 on the standard scale.

Offence where enforcement notice not complied with

90.—(1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required

by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.

(2) Where the owner of the land is in breach of an enforcement notice he commits an offence.

(3) In proceedings against any person for an offence under subsection (2), it is a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.

(4) A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such activity to be carried on.

(5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) commits an offence.

(6) An offence under subsection (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.

(7) Where a person charged with an offence under this section has not been served with a copy of the enforcement notice it is a defence for him to show that he was not aware of the existence of the notice.

(8) A person convicted of an offence under this section is liable to a fine not exceeding the maximum of level 9 on the standard scale.

(9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

Effect of planning permission etc on enforcement or breach of condition notice

91.—(1) Where, after the service of —

(a) a copy of an enforcement notice; or

(b) a breach of condition notice,

planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

(2) Where after a breach of condition notice has been served any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.

(3) The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.

Enforcement notice to have effect against subsequent development

91A.—(1) Compliance with an enforcement notice, whether in respect of —

- (a) the completion, removal or alteration of any buildings or works;
- (b) the discontinuance of any use of land; or
- (c) any other requirements contained in the notice,

shall not discharge the notice.

(2) Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part IV; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.

(3) Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered; and, subject to subsection (4) the provisions of section 89(1) and (2) shall apply accordingly.

(4) Where, at any time after an enforcement notice takes effect —

- (a) any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with the notice; and
- (b) the Crown proposes, under section 89(1), to take any steps required by the enforcement notice for the removal or alteration of the buildings or works in consequence of the reinstatement or restoration,

the Crown shall, through the Committee, not less than 28 days before taking any such steps, serve on the owner and occupier of the land a notice of its intention to do so.

(5) Where without planning permission a person carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice —

(a) he commits an offence and is liable to a fine not exceeding the maximum of level 7 on the standard scale; and

(b) no person shall be liable under section 90(2) for failure to take any steps required to be taken by an enforcement notice by way of removal or alteration of what has been reinstated or restored.

Enforcement by the Governor

91B.—(1) If it appears to the Governor to be expedient that an enforcement notice should be issued in respect of any land, he may issue such a notice.

(2) An enforcement notice issued by the Governor shall have the same effect as a notice issued by the Committee.

Stop notices

Stop notices

91C.—(1) Where the Committee consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, the Committee may when the copy of the enforcement notice is served or afterwards, serve a notice (in this Ordinance referred to as a “stop notice”) prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of the land specified in the stop notice.

(2) In this section and sections 91D and 91F “relevant activity” means any activity specified in the enforcement notice as an activity which the Committee requires to cease and any activity carried out as part of that activity or associated with that activity.

(3) A stop notice may not be served where the enforcement notice has taken effect.

(4) A stop notice shall not prohibit the use of any building as a dwelling house.

(5) A stop notice shall not prohibit the carrying out of any activity if the activity has been carried out (whether continuously or not) for a period of more than four years ending with the service of the notice; and for the purposes of this subsection no account is to be taken of any period during which the activity was authorised by planning permission.

(6) Subsection (5) does not prevent a stop notice prohibiting any activity consisting of, or incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials.

(7) A stop notice may be served by the Committee on any person who appears to the Committee to have an interest in the land or to be engaged in any activity prohibited by the notice.

(8) The Committee may at any time withdraw a stop notice (without prejudice to the Committee's power to serve another) by serving notice to that effect on persons served with the stop notice.

Stop notices: supplementary provisions

91D.—(1) A stop notice must refer to the enforcement notice to which it relates and have a copy of that notice annexed to it.

(2) A stop notice must specify the date on which it will take effect (and it cannot be contravened until that date).

(3) That date —

(a) must not be earlier than three days after the date when the notice is served, unless the Committee considers that there are special reasons for specifying an earlier date and a statement of those reasons is served with the stop notice; and

(b) must not be later than 28 days from the date when the notice is first served on any person.

(4) A stop notice ceases to have effect when —

(a) the enforcement notice to which it relates is withdrawn or quashed;

(b) the period for compliance with the enforcement notice expires; or

(c) notice of the withdrawal of the stop notice is first served under section 91C(8).

(5) A stop notice shall also cease to have effect if or to the extent that the activities prohibited by it cease, on the variation of the enforcement notice, to be relevant activities.

(6) Where a stop notice has been served in respect of any land, the Planning Officer may display there a notice (in this section and section 99 referred to as a "site notice") —

(a) stating that a stop notice has been served and that any person contravening it may be prosecuted for an offence under section 99,

(b) giving the date when the stop notice takes effect, and

(c) indicating its requirements.

(7) If under section 91C(8) the Committee withdraws a stop notice in respect of which a site notice was displayed the Planning Officer must display a notice of the withdrawal in place of the site notice.

(8) A stop notice shall not be invalid by reason that a copy of the enforcement notice to which it relates was not served as required by section 82 if it is shown that the Committee took all such steps as were reasonably practicable to effect proper service.

Service stop notices by Governor

91E.—(1) If it appears to the Governor to be expedient that a stop notice should be served in respect of any land, he may himself serve such a notice.

(2) A notice served by the Governor under subsection (1) shall have the same effect as if it had been served by the Committee.

Compensation for loss due to stop notice

91F.—(1) Where a stop notice is served under section 91C compensation may be payable under this section in respect of a prohibition contained in the notice only if —

(a) the enforcement notice is quashed on grounds other than those mentioned in paragraph (a) of section 85(2);

(b) the enforcement notice is varied (otherwise than on the grounds mentioned in that paragraph) so that any activity the carrying out of which is prohibited by the stop notice ceases to be a relevant activity;

(c) the enforcement notice is withdrawn by the Committee otherwise than in consequence of the grant by the Committee of planning permission for the development to which the notice relates; or

(d) the stop notice is withdrawn.

(2) A person who, when the stop notice is first served, has an interest in or occupies the land to which the notice relates is entitled to be compensated by the Crown in respect of any loss or damage directly attributable to the prohibition contained in the notice or, in a case within subsection (1)(b) the prohibition of such of the activities prohibited by the stop notice have ceased to be relevant activities.

(3) A claim for compensation under this section shall be made to the Planning Officer within the prescribed time and in the prescribed manner.

(4) The loss or damage in respect of which compensation is payable under this section in respect of a prohibition shall include any sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition.

(5) No compensation is payable under this section in respect of the prohibition in a stop notice of any activity which at any time when the notice is in force, constitutes or contributes to a breach of planning control.

(6) Except insofar as may be otherwise provided by any regulations made under this Ordinance, any question of disputed compensation under this Part shall be referred to and determined by the Supreme Court.

Penalties for contravention of stop notice

91G.—(1) If any person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on him he commits an offence.

(2) An offence under this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.

(3) Reference in this section to contravening a stop notice include causing or permitting its contravention.

(4) A person convicted of an offence under this section is liable on conviction to a fine not exceeding the maximum of level 9 on the standard scale.

(5) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

(6) In proceedings for an offence under this section it is a defence for the accused to prove—

(a) that the stop notice was not served on him, and

(b) that he did not know, and could not reasonably have been expected to know, of its existence.

Breach of condition

Enforcement of conditions

91H.—(1) This section applies where planning permission for carrying out any development of land has been granted subject to conditions.

(2) The Committee may, if any of the conditions is not complied with, serve a notice (in this Ordinance referred to as a “breach of condition notice”) on —

(a) any person who is carrying out or has carried out the development; or

(b) any person having control of the land,

requiring him to secure compliance with such of the conditions as are specified in the notice.

(3) References in this section to the person responsible are to the person on whom the breach of condition notice has been served.

(4) The conditions which may be specified in a notice served by virtue of subsection (2)(b) are any of the conditions regulating the use of the land.

(5) A breach of condition notice shall specify the steps which the Committee consider ought to be taken, or the activities which the Committee consider ought to cease, to secure compliance with the conditions specified in the notice.

(6) The Committee may by notice served on the person responsible withdraw the breach of condition notice, but its withdrawal shall not affect the power to serve on him a further breach of condition notice in respect of the condition specified in the earlier notice or any other conditions.

(7) The period allowed for compliance with the notice is —

(a) such period of not less than 28 days beginning with the date of service of the notice as may be specified in the notice; or

(b) that period as extended by a further notice served by the Committee on the person responsible.

(8) If, at any time after the end of the period allowed for compliance with the notice —

(a) any of the conditions specified in the notice is not complied with; and

(b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,

the person responsible is in breach of the notice.

(9) If the person responsible is in breach of the notice he commits an offence.

(10) It is a defence for a person charged with an offence under subsection (9) to prove —

(a) that he took all reasonable measures to secure compliance with the conditions specified in the notice; or

(b) where the notice was served on him by virtue of subsection (2)(b) that he no longer had control of the land.

(11) A person who is convicted of an offence under subsection (9) is liable to a fine not exceeding the maximum of level 3 on the standard scale.

(12) In this section —

(a) “conditions” includes limitations; and

(b) references to carrying out any development include causing or permitting another to do so.

Injunctions

Injunctions restraining breaches of planning control

91I.—(1) The Attorney General if he is advised by the Committee that the Committee considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, apply to the Supreme Court for an injunction, whether or not the Committee has exercised or proposes to exercise any of its other powers under this Part.

(2) On an application under subsection (1) the Supreme Court may grant such an injunction as it thinks appropriate for the purpose of restraining the breach.

(3) Rules of Court may provide for such an injunction to be issued against a person whose identity is unknown.

Registers

Register of enforcement and stop notices

91J.—(1) The Planning Officer shall keep, in such manner as may be prescribed by a development order, a register containing such information as may be so prescribed with respect —

(a) to enforcement notices;

(b) to stop notices, and

(c) to breach of condition notices.

(2) A development order may make provision for the entry relating to any enforcement notice, stop notice or breach of condition notice, and everything relating to any such notice, to be removed from the register in such circumstances as may be specified in the order.

(3) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

Enforcement of orders for discontinuance of use etc

Penalties for contravention of orders under section 55

91K.—(1) Any person who without planning permission —

(a) uses land or causes or permits land to be used —

(i) for any purpose which an order under section 55 has required that its use shall be discontinued; or

(ii) in contravention of any condition imposed by such an order by virtue of subsection (1) of that section; or

(b) resumes, or causes or permits to be resumed development consisting of the winning and working of minerals or involving the depositing of mineral waste the resumption of which an order under section 56(1) has prohibited; or

(c) contravenes, or causes or permits to be contravened, any requirement referred to in section 56(3) imposed by an order under section 56(1),

commits an offence.

(2) Any person who contravenes any requirement of an order under section 57(1) or (5) commits an offence.

(3) A person convicted of an offence under this section is liable to a fine not exceeding the maximum of level 12 on the standard scale.

(4) It is a defence for a person charged with an offence under this section to prove that he took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.

(5) If in any case the defence provided by subsection (4) involves an allegation that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on the defence unless within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

Enforcement of orders under section 55

91L.—(1) This section applies where —

(a) any step required by an order under section 55 to be taken for the alteration or removal of any buildings or works or any plant or machinery; or

(b) any —

(i) for the removal or alleviation of any injury to amenity; or

(ii) (by virtue of section 55(3)(b)) for the alteration or removal of plant or machinery;
or

(c) any requirement by an order under section 57(1) for any step to be taken for the protection of the environment,

has not been taken within the period specified in the order, or within such extended period as the Committee or, as the case may be, the Governor may allow.

(2) Where this section applies the Crown may enter the land and take the required step.

(3) Where the Crown has exercised its power under subsection (2) it may recover from the person who is then the owner of the land any expenses reasonably incurred by the Crown in doing so.

Certificate of lawful use or development

Certificate of lawfulness of existing use or development

91M.—(1) If any person wishes to ascertain whether —

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the Committee specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Ordinance uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Ordinance any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if —

- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(4) If, on an application under this section, the Committee is provided with information satisfying it of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the Committee or a

description substituted by the Committee, the Planning Officer shall issue a certificate to that effect; and in any other case the Committee shall refuse the application.

(5) A certificate under this section shall —

- (a) specify the land to which it relates;
- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 26(2)(f), identifying it by reference to that class);
- (c) give the reasons for determining the use, operations or other matter to be lawful; and
- (d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which the certificate is in force under this section shall be conclusively presumed.

Certificate of lawfulness of proposed use or development

91N.—(1) If any person wishes to ascertain whether —

- (a) any proposed use of buildings or other land; or
- (b) any operations proposed to be carried out in, on, over or under land,

would be lawful, he may make an application for the purpose to the Committee specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the Committee is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, the Planning Officer shall issue a certificate to that effect; and in any other case the Committee shall refuse the application.

(3) A certificate under this section shall —

- (a) specify the land to which it relates;
- (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 26(2)(f), identifying it by reference to that class);
- (c) give the reasons for determining the use of operations to be lawful; and
- (d) specify the date of application for the certificate.

(4) The lawfulness of any use or operations for which the certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

Certificates under sections 91M and 91N: supplementary provisions

91O.—(1) An application for a certificate under section 91M or 91N shall be made in such manner as may be prescribed by a development order and shall include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order or by the Committee.

(2) Provision may be made by a development order for regulating the manner in which application for certificates under those sections are to be dealt with by the Committee.

(3) In particular, such an order may provide for requiring the Committee —

(a) to give to any applicant within such time as may be prescribed by the order such notice as may be so prescribed as to the manner in which his application has been dealt with; and

(b) to give to the Governor and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to such applications made to the Committee, including information as to the manner in which any application has been dealt with.

(4) A certificate under either of those sections may be issued —

(a) for the whole or part of the land specified in the application; and

(b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and shall be in such form as may be prescribed by a development order.

(5) A certificate under section 91M or 91N shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.

(6) In section 46 references to applications for planning permission shall include references to applications for certificates under section 91M or 91N.

(7) The Committee may revoke a certificate under either of those sections if, on the application for the certificate —

(a) a statement was made or document used which was false in a material particular; or

(b) any material information was withheld.

(8) Provision may be made by a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

Offences

91P.—(1) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under section 91M or 91N —

(a) knowingly or recklessly makes a statement which is false or misleading in a material particular;

(b) with intent to deceive, uses any document which is false or misleading in a material particular; or

(c) with intent to deceive, withholds any material information,

he commits an offence.

(2) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding two years or a fine not exceeding the maximum of level 7 on the standard scale.

Appeals against refusal or failure to give decision on application

91Q.—(1) Where an application is made to the Committee for a certificate under section 91M or 91N and —

(a) the application is refused or is refused in part, or

(b) the Committee does not give notice to the applicant of its decision on the application within such period as may be prescribed by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the Committee,

the applicant may by notice appeal to the Governor.

(2) On any such appeal, if and so far as the Governor is satisfied —

(a) in the case of an appeal under subsection (1)(a), that the Committee's refusal is not well-founded, or

(b) in the case of an appeal under subsection (1)(b), that if the Committee had refused the application its refusal would not have been well-founded,

he shall grant the applicant a certificate under section 91M or, as the case may be, 91N accordingly or, in the case of a refusal in part, modify the certificate granted by the Committee on the application.

(3) If and so far as the Governor is satisfied that the Committee's refusal is or, as the case may be, would have been well-founded, he shall dismiss the appeal.

(4) References in this section to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question.

Further provisions as to references and appeals to the Governor

91R.—(1) Before determining an appeal to him under section 91Q(1), the Governor shall permit the appellant and the Planning Officer if they so wish to make written representations to him in connection with the appeal and shall not determine such an appeal until at least 28 days after he has given notice in writing to them of such opportunity.

(2) Where the Governor grants a certificate under section 91M or 91N on such an appeal, he shall give notice to the Committee of that fact.

(3) The decision of the Governor on such an appeal shall be final.

(4) The information which may be prescribed as being required to be contained in a register kept under section 46 shall include information with respect to certificates under section 91M or 91N granted by the Governor.

Rights of entry for enforcement purposes

Rights to enter without warrant

91S.—(1) Any public officer duly authorised in writing by the Governor may, after having given seven days previous notice addressed to the owner or occupier of the land and left upon the land, enter that land at any reasonable hour during the seven days immediately following the expiration of that notice —

(a) to ascertain whether there is or has been any breach of planning control on the land or any other land;

(b) to determine whether any of the powers conferred on the Committee by this Part should be exercised in relation to the land or any other land;

(c) to determine how any such power should be exercised in relation to the land or any other land;

(d) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or any other land, if there are reasonable grounds for entering for the purpose in question.

(2) Admission to any building used as a dwelling house shall not be demanded as of right by virtue of subsection (1) unless, in addition to the notice under subsection (1), 24 hours notice at least of the date and time of the intended entry has been given to the occupier of the building.

Right to enter under warrant

91T.—(1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing —

(a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 91S(1); and

(b) that —

(i) admission to the land has been refused, or a refusal is reasonably apprehended; or

(ii) the case is one of urgency,

the justice may issue a warrant authorising the Planning Officer or any other public officer duly authorised in writing by the Governor to enter the land.

(2) For the purposes of subsection (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.

(3) A warrant authorises entry on one occasion only and that entry must be —

(a) within one month from the date of the issue of the warrant; and

(b) at a reasonable hour, unless the case is one of urgency.

Rights of entry: supplementary provisions

91U.—(1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 91S or 91T (referred to in this section as “a right of entry”) —

(a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering;

(b) may take with him such other persons as may be necessary; and

(c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.

(2) Any person who wilfully obstructs a person acting in the exercise of a right of entry commits an offence and is liable on conviction to a fine not exceeding the maximum of level 3 on the standard scale.

(3) If any damage is caused to land or chattels in the exercise of a right entry, compensation may be recovered by any person suffering the damage from the Crown.

(4) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he commits an offence.

(5) Subsection (4) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.

(6) A person who commits an offence under subsection (4) is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding the maximum of level 7 on the standard scale.

Insertion of Schedule A1 in principal Ordinance

11. The principal Ordinance is amended by the insertion of the following Schedule —

"SCHEDULE A1

The Directives (section 33)

COUNCIL DIRECTIVE OF JUNE 27, 1985 ON THE ASSESSMENT OF THE EFFECTS OF CERTAIN PUBLIC AND PRIVATE PROJECTS ON THE ENVIRONMENT (85/337/EEC) AS AMENDED BY COUNCIL DIRECTIVE 97/11/EC

The Council of the European Communities

having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 235 thereof,

having regard to the proposal from the Commission,

having regard to the opinion of the European Parliament,

having regard to the opinion of the Economic and Social Committee,

whereas the 1973 and 1977 action programmes of the European Communities on the environment, as well as the 1983 action programme, the main outlines of which have been approved by the Council of the European Communities and the representatives of the Governments of the Member States, stress that the best environmental policy consists in preventing the creation of pollution or nuisances at source, rather than subsequently trying to counteract their effects; whereas they affirm the need to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes; whereas to that end, they provide for the implementation of procedures to evaluate such effects;

whereas the disparities between the laws in force in the various Member States with regard to the assessment of the environmental effects of public and private projects may create unfavourable competitive conditions and thereby directly affect the functioning of the

common market; whereas, therefore, it is necessary to approximate national laws in this field pursuant to Article 100 of the Treaty;

whereas, in addition, it is necessary to achieve one of the Community's objectives in the sphere of the protection of the environment and the quality of life;

whereas, since the Treaty has not provided the powers required for this end, recourse should be had to Article 235 of the Treaty;

whereas general principles for the assessment of environmental effects should be introduced with a view to supplementing and co-ordinating development consent procedures governing public and private projects likely to have a major effect on the environment;

whereas development consent for public and private projects which are likely to have significant effects on the environment should be granted only after prior assessment of the likely significant environmental effects of these projects has been carried out; whereas this assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question;

whereas the principles of the assessment of environmental effects should be harmonised, in particular with reference to the projects which should be subject to assessment, the main obligations of the developers and the content of the assessment;

whereas projects belonging to certain types have significant effects on the environment and these projects must as a rule be subject to systematic assessment;

whereas projects of other types may not have significant effects on the environment in every case and whereas these projects should be assessed where the Member States consider that their characteristics so require;

whereas, for projects which are subject to assessment, a certain minimal amount of information must be supplied, concerning the project and its effects;

whereas the effects of a project on the environment must be assessed in order to take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life;

whereas, however, this Directive should not be applied to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process;

whereas, furthermore, it may be appropriate in exceptional cases to exempt a specific project from the assessment procedures laid down by this Directive, subject to appropriate information being supplied to the Commission;

has adopted this Directive:

ARTICLE 1

(1) This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

(2) For the purposes of this Directive:

“project” means:

- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

“developer” means:

the applicant for authorisation for a private project or the public authority which initiates a project;

“development consent” means:

the decision of the competent authority or authorities which entitles the developer to proceed with the project.

(3) The competent authority or authorities shall be that or those which the Member States designate as responsible for performing the duties arising from this Directive.

(4) Projects serving national defence purposes are not covered by this Directive.

(5) This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.

ARTICLE 2

[(1) Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.]

(2) The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

[(2a) Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Council Directive 96/61/E.C. of September 24, 1996 on integrated pollution prevention and control.¹]

[(3) Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.]

In this event, the Member States shall:

- (a) consider whether another form of assessment would be appropriate and whether the information thus collected should be made available to the public;
- (b) make available to the public concerned the information relating to the exemption and the reasons for granting it;
- (c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.

The Commission shall immediately forward the documents received to the other Member States.

The Commission shall report annually to the Council on the application of this paragraph.

ARTICLE 3

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with the Articles 4 to 11, the direct and indirect effects of a project on the following factors:

— human beings, fauna and flora,

¹ O.J. No. L257, 10.10.1996, p.26.

- soil, water, air, climate and the landscape,
- material assets and the cultural heritage;
- the interaction between the factors mentioned in the first, second and third indents.]

ARTICLE 4

(1) Subject to Article 2(3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

(2) Subject to Article 2(3), for projects listed in Annex II, the Member States shall determine through:

(a) a case-by-case examination,

or

(b) thresholds or criteria set by the Member State

whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.

Member States may decide to apply both procedures referred to in (a) and (b).

(3) When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.

(4) Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.]

ARTICLE 5

(1) In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;

(b) the Member States consider that a developer may reasonably be required to compile this information having regard *inter alia* to current knowledge and methods of assessment.

(2) Member States shall take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer in accordance with paragraph 1. The competent authority shall consult the developer and authorities referred to in Article 6(1) before it gives its opinion. The fact that the authority has given an opinion under this paragraph shall not preclude it from subsequently requiring the developer to submit further information.

Member States may require the competent authorities to give such an opinion, irrespective of whether the developer so requests.

(3) The information to be provided by the developer in accordance with paragraph 1 shall include at least:

- a description of the project comprising information on the site, design and size of the project,
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,
- the data required to identify and assess the main effects which the project is likely to have on the environment,
- an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects,
- a non-technical summary of the information mentioned in the previous indents.

(4) Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, shall make this information available to the developer.]

ARTICLE 6

[(1) Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. To this end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.]

[(2) Member States shall ensure that any request for development consent and any information gathered pursuant to Article 5 are made available to the public within a reasonable time in order to give the public concerned the opportunity to express an opinion before the development consent is granted.]

(3) The detailed arrangements for such information and consultation shall be determined by the Member States, which may in particular, depending on the particular characteristics of the projects or sites concerned:

- determine the public concerned,
- specify the places where the information can be consulted,
- specify the way in which the public may be informed, for example by bill-posting within a certain radius, publication in local newspapers, organisation of exhibitions with plans, drawings, tables, graphs, models,
- determine the manner in which the public is to be consulted, for example, by written submissions, by public enquiry,
- fix appropriate time limits for the various stages of the procedure in order to ensure that a decision is taken within a reasonable period.

ARTICLE 7

(1) Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, *inter alia*:

(a) a description of the project, together with any available information on its possible transboundary impact;

(b) information on the nature of the decision which may be taken, and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the Environmental Impact Assessment procedure, and may include the information referred to in paragraph 2.

2. If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the Environmental Impact Assessment procedure, the Member State in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected Member State the information gathered pursuant to Article 5 and relevant information regarding the said procedure, including the request for development consent.

3. The Member States concerned, each insofar as it is concerned, shall also:

- (a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6(1) and the public concerned in the territory of the Member State likely to be significantly affected; and
- (b) ensure that those authorities and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the Member State in whose territory the project is intended to be carried out.

(4) The Member States concerned shall enter into consultations regarding, *inter alia*, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame for the duration of the consultation period.

(5) The detailed arrangements for implementing the provisions of this Article may be determined by the Member States concerned.]

ARTICLE 8

[The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure.]

ARTICLE 9

(1) When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make available to the public the following information:

- the content of the decision and any conditions attached thereto,
- the main reasons and considerations on which the decision is based,
- a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.

(2) The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1.]

ARTICLE 10

The provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.

Where Article 7 applies, the transmission of information to another Member State and the receipt of information by another Member State shall be subject to the limitations in force in the Member State in which the project is proposed.]

ARTICLE 11

(1) The Member States and the Commission shall exchange information on the experience gained in applying this Directive.

[(2) In particular, Member States shall inform the Commission of any criteria and/or thresholds adopted for the selection of the projects in question, in accordance with Article 4(2).]

(3) Five years after notification of this Directive, the Commission shall send the European Parliament and the Council a report on its application and effectiveness. The report shall be based on the aforementioned exchange of information.

(4) On the basis of this exchange of information, the Commission shall submit to the Council additional proposals, should this be necessary, with a view to this Directive's being applied in a sufficiently co-ordinated manner.

ARTICLE 12

(1) Member States shall take the measures necessary to comply with this Directive within three years of its notification.

(2) Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

[...]

ARTICLE 14

This Directive is addressed to the Member States.

ANNEX I

Projects subject to Article 4(1)

(1) Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2.— Thermal power stations and other combustion installations with a heat output of 300 megawatts or more, and

— nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors* (except research installations

for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

*Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

3.(a) Installations for the reprocessing of irradiated nuclear fuel.

(b) Installations designed:

- for the production or enrichment of nuclear fuel,
 - for the processing of irradiated nuclear fuel or high-level radioactive waste,
 - for the final disposal of irradiated nuclear fuel,
 - solely for the final disposal of radioactive waste,
 - solely for the storage (planned for more than 10 years) or irradiated nuclear fuels or radioactive waste in a different site than the production site.
4. — Integrated works for the initial smelting of cast-iron and steel;
— Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.
5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20,000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilisation of more than 200 tonnes per year.
6. Integrated chemical installations, *i.e.* those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:
- (i) for the production of basic organic chemicals;
 - (ii) for the production of basic inorganic chemicals;
 - (iii) for the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers);
 - (iv) for the production of basic plant health products and of biocides;
 - (v) for the production of basic pharmaceutical products using a chemical or biological process;
 - (vi) for the production of explosives.
7. (a) Construction of lines for long-distance railway traffic and of airports¹ with a basic runway length of 2,100m or more;
- (b) Construction of motorways and express roads²;
- (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10km or more in continuous length.
8. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes;

¹ For the purposes of this Directive, "airport" means airports which comply with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

² For the purposes of the Directive, "express roads" means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

- (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.
 - 9. Waste disposal installations for the incineration, chemical treatment as defined in Annex 11A to Directive 75/442/EEC³ under heading D9, or landfill of hazardous waste (*i.e.* waste to which Directive 91/689/EEC⁴ applies).
 - 10. Waste disposal installations for the incineration or chemical treatment as defined in Annex 11A to Directive 75/442/EEC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day.
 - 11. Groundwater abstraction or artificial groundwater recharge scheme where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
 - 12. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year,
 - (b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres/year and where the amount of water transferred exceeds 5% of this flow.
- In both cases transfers of piped drinking water are excluded.
- 13. Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2 point (6) of Directive 91/271/EEC.⁵
 - 14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500,000 m³/day in the case of gas.
 - 15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
 - 16. Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800mm and a length of more than 40 km.
 - 17. Installations for the intensive rearing of poultry or pigs with more than:
 - (a) 85,000 places for broilers, 60,000 places for hens;
 - (b) 3,000 places for production pigs (over 30kg); or
 - (c) 900 places for sows.
 - 18. Industrial plants for the
 - (a) production of pulp from timber or similar fibrous materials;
 - (b) production of paper and board with a production capacity exceeding 200 tonnes per day.
 - 19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.
 - 20. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15km.

³ O.J.No.L194,25.7.1975, p.39. Directive as last amended by Commission Decision 94/3/E.C. (O.J.No.L5,7.1.1994, p.15).

⁴ O.J. No. L377,31.12.1991,p.20. Directive as last amended by Directive 94/31/E.C. (O.J.No.L168,2.7.1994,p.28).

⁵ O.J.No.L135,30.5.1991,p.40. Directive as last amended by the 1994 Act of Accession.

21. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200,000 tonnes or more.

ANNEX II

Projects subject to Article 4(2)

(1) *Agriculture, silviculture and aquaculture*

- (a) Projects for the restructuring of rural land holdings;
- (b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;
- (c) Water management projects for agriculture, including irrigation and land drainage projects;
- (d) Initial afforestation and deforestation for the purposes of conversion to another type of land use;
- (e) Intensive livestock installations (projects not included in Annex I);
- (f) Intensive fish farming;
- (g) Reclamation of land from the sea.

(2) *Extractive industry*

- (a) Quarries, open-cast mining and peat extraction (projects not included in Annex I);
- (b) Underground mining;
- (c) Extraction of minerals by marine or fluvial dredging;
- (d) Deep drillings, in particular:
 - geothermal drilling,
 - drilling for the storage of nuclear waste material,
 - drilling for water supplies,with the exception of drillings for investigating the stability of the soil;
- (e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

(3) *Energy industry*

- (a) Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I);
- (b) Industrial installations for carrying gas, steam and hot water, transmission of electrical energy by overhead cables (projects not included in Annex I);
- (c) Surface storage of natural gas;
- (d) Underground storage of combustible gases;
- (e) Surface storage of fossil fuels;
- (f) Industrial briquetting of coal and lignite;
- (g) Installations for the processing and storage of radioactive waste (unless included in Annex I);
- (h) Installations for hydroelectric energy production;
- (i) Installations for the harnessing of wind power for energy production (wind farms).

(4) *Production and processing of metals*

- (a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;
- (b) Installations for the processing of ferrous metals:
 - (i) hot-rolling mills;
 - (ii) smitheries with hammers;
 - (iii) application of protective fused metal coats;
- (c) Ferrous metal foundries;
- (d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining foundry casting, etc.);
- (e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;
- (f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;
- (g) Shipyards;
- (h) Installations for the construction and repair of aircraft;
- (i) Manufacture of railway equipment;
- (j) Swaging by explosives;
- (k) Installations for the roasting and sintering of metallic ores.

(5) *Mineral industry*

- (a) Coke ovens (dry coal distillation);
- (b) Installations for the manufacture of cement;
- (c) Installations for the production of asbestos and the manufacture of asbestos-products (products not included in Annex I);
- (d) Installations for the manufacture of glass including glass fibre;
- (e) Installations for smelting mineral substances including the production of mineral fibres;
- (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.

(6) *Chemical industry (Projects not included in Annex I)*

- (a) Treatment of intermediate products and production of chemicals;
- (b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;
- (c) Storage facilities for petroleum, petrochemical and chemical products.

(7) *Food industry*

- (a) Manufacture of vegetable and animal oils and fats;
- (b) Packing and canning of animal and vegetable products;
- (c) Manufacture of dairy products;
- (d) Brewing and malting;
- (e) Confectionery and syrup manufacture;
- (f) Installations for the slaughter of animals;
- (g) Industrial starch manufacturing installations;
- (h) Fish-meal and fish-oil factories;

(i) Sugar factories.

(8) *Textile, leather, wood and paper industries*

- (a) Industrial plants for the production of paper and board (projects not included in Annex I);
- (b) Plants for the pretreatment (operations such as washing, bleaching, mercerisation) or dyeing fibres or textiles;
- (c) Plants for the tanning of hides and skins;
- (d) Cellulose-processing and production installations.

(9) *Rubber industry*

Manufacture and treatment of elastomer-based products.

(10) *Infrastructure projects*

- (a) Industrial estate development projects;
- (b) Urban development projects, including the construction of shopping centres and car parks;
- (c) Construction of railways and intermodal transshipment facilities, and of intermodal terminals (projects not included in Annex I);
- (d) Construction of airfields (projects not included in Annex I);
- (e) Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);
- (f) Inland-waterway construction not included in Annex I, canalization and flood-relief works;
- (g) Dams and other installations designed to hold water or store it on a long-term basis (projects not included in Annex I);
- (h) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;
- (i) Oil and gas pipeline installations (projects not included in Annex I);
- (j) Installations of long-distance aqueducts;
- (k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;
- (l) Groundwater abstraction and artificial groundwater recharge schemes not included in Annex I;
- (m) Works for the transfer of water resources between river basins not included in Annex I.

(11) *Other projects*

- (a) Permanent racing and test tracks for motorized vehicles;
- (b) Installations for the disposal of waste (projects not included in Annex I);
- (c) Waste-water treatment plants (projects not included in Annex I);
- (d) Sludge-deposition sites;
- (e) Storage of scrap iron, including scrap vehicles;
- (f) Test benches for engines, turbines or reactors;

- (g) Installations for the manufacture of artificial mineral fibres;
- (h) Installations for the recovery or destruction of explosive substances;
- (i) Knackers' yards.
- (12) *Tourism and leisure*
 - (a) Ski-runs, ski-lifts and cable-cars and associate developments;
 - (b) Marinas;
 - (c) Holiday villages and hotel complexes outside urban areas and associated developments;
 - (d) Permanent camp sites and caravan sites;
 - (e) Theme parks.
- (13) — Any change or extension of projects listed in Annex I or Annex II, already authorized, executed or in the process of being executed, which may have significant adverse effects on the environment;
- Projects in Annex I, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.

ANNEX II

Selection Criteria Referred to in Article 4(3)

(1) *Characteristics of projects*

The characteristics of projects must be considered having regard, in particular, to:

- the size of the project,
- the cumulation with other projects,
- the use of natural resources,
- the production of waste,
- pollution and nuisances,
- the risk of accidents, having regard in particular to substances or technologies used.

(2) *Location of projects*

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to:

- the existing land use,
- the relative abundance, quality and regenerative capacity of natural resources in the area,
- the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (a) wetlands;
 - (b) coastal zones;
 - (c) mountain and forest areas;
 - (d) nature reserves and parks;
 - (e) areas classified or protected under Member States' legislation; special protection areas designated by Member States pursuant to Directive 79/409/EEC and 92/43/EEC;

- (f) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
- (g) densely populated areas;
- (h) landscapes of historical, cultural or archaeological significance.

(3) *Characteristics of the potential impact*

The potential significant effects of projects must be considered in relation to criteria set out under 1 and 2 above, and having regard in particular to:

- the extent of the impact (geographical area and size of the affected population),
- the transfrontier nature of the impact,
- the magnitude and complexity of the impact,
- the probability of the impact,
- the duration, frequency and reversibility of the impact.

ANNEX IV

Information Referred to in Article 5(1)

1. Description of the project, including in particular:

- a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases,
- a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used,
- an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.

2. An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description¹ of the likely significant effects of the proposed project on the environment resulting from:

- the existence of the project,
- the use of natural resources,
- emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the developer of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under the above headings.

¹ This description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

Minor amendments

12. The Schedule to this Ordinance has effect to make minor amendments to the principal Ordinance.

Repeals

13.—(1) The Highways (Building Lines) Ordinance is repealed.

(2) Section 61 of the principal Ordinance is repealed.

THE SCHEDULE

Minor amendments to the principal Ordinance

1. Section 7(3) is amended by adding, at the end of the subsection, the following sentence —

“If the Vice-Chairman is also absent from the Islands or unable to perform the Chairman’s functions under subsections (1) and (2), the Chief Executive shall do so.”

2. Section 13 is amended in subsection (2) by omitting the word “in” in the first line and in subsection (3)(b) by omitting the word “major”.

3. Section 16(2) is amended by omitting the word “forthwith” in the last sentence of the subsection.

4. Section 25(2) is amended by inserting after the words “Falkland Islands” the words “and may provide for the publication of structure plans, local plans and subject plans in computer-readable form (provided that a printed form of any of them shall be supplied to any person requesting one on payment of the prescribed cost, but any plans, diagrams and illustrations forming part thereof so supplied may be supplied in reduced size).”

5. Section 36(1) is amended by replacing the word “any” with the words “the development plan and any other”.

6. Section 40 is amended —

(a) in subsection (2) by inserting the words “, but this subsection does not apply to a planning permission for development to which section 40A(5) applies” immediately before the full stop at the end of the subsection;

(b) in subsection (3) —

(i) by replacing the full stop at the end of paragraph (b) with a comma; and

(ii) by removing the words “the commencement and carrying out of those operations do not constitute development for which that permission was granted” from that paragraph and placing them on the following line at the left hand margin of the section (and so as to show that they relate to paragraphs (a) and (b) read together).

7. Section 41 is amended —

(a) in subsections (1) and (2) by inserting the words “or involving the depositing of refuse or waste materials” after the words “winning and working of minerals” where they appear in those subsections; and

(b) in subsection (17) by inserting the words “ or deposited refuse or waste materials” after the words “on or under land”.

8. Section 43(1) is amended by inserting the words “,subject to subsection (4)” after the words “This section applies”.

9. Section 49 is amended by replacing subsection (1)(b) with —

“(b) such other period (whether longer or shorter) as the authority granting the planning permission determines after taking into account the development plan and any other material consideration.”

10. Sections 49(3)(c), 53(1), 55(4), 56(1)(a), 56(2) and 56(6)(b) are amended by inserting the words “or the deposit of refuse or waste materials” after the words “winning or working of minerals” wherever they appear in those provisions.



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 16

19th April 2005

No. 7

The following are published in this Supplement -

Coins (No 2) Order 2005 (S. R. & O. No: 7 of 2005);

Fishing Licences (Applications and Fees) Regulations Order 2005 (S. R. & O. No: 8 of 2005).

SUBSIDIARY LEGISLATION

CURRENCY

Coins (No 2) Order 2005

S. R. & O. No. 7 of 2005

Made: 6 April 2005

Published: 19 April 2005

Coming into force: in accordance with article 1

IN EXERCISE of my powers under section 22 of the Currency Ordinance 1987 (Title 25.1) ("the Ordinance") 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 Coins (No 2) Order 2005 and shall come into force upon publication in the *Gazette*.

New coins

2.—(1) The minting and issue of the coins described and specified in the Schedule to this Order are hereby authorised.

(2) The Schedule to this Order shall have effect so as to specify the denomination, fineness, weight, diameter, quality, shape, edge and number of the coins authorised by paragraph (1) of this article, the tolerance or remedy which may be permitted in respect of variations from the standard weight, diameter and fineness of the coins and the design of the obverse and reverse of the coins.

Deemed denomination of Crown coins and their value as legal tender

3. For all the purposes of the Ordinance —

(a) Cupro-Nickel Crown coins and Sterling Silver Crown coins authorised by this Order shall each be deemed to be of 25 pence denomination;

(b) Gold one fifth Crown coins authorised by this Order shall each be deemed to be of £1 denomination; and

(c) Gold one twenty-fifth Crown coins authorised by this Order shall each be deemed to be of 20 pence denomination,

and all those coins shall be legal tender in the Falkland Islands in the amount of their deemed denomination.

Made this 6th day of April 2005

H. J. S. Pearce C.V.O.,
Governor

SCHEDULE

Specifications of Falkland Islands coins to commemorate the Wedding of HRH The Prince of Wales and Mrs Parker Bowles

Type	Gold Proof	Gold Proof	Silver Proof	Cupro-nickel
Denomination	1/5 th Crown	1/25 th Crown	1 Crown	1 Crown
Weight (grams)	6.22	1.24	28.28	28.28
Diameter (millimetres)	22.00	13.92	38.60	38.60
Fineness	999.9 Gold	999.9 Gold	0.925 Sterling Silver	75% Cu 25% Ni
Quality	Proof	Proof	Proof	Brilliant Uncirculated
Shape	Round	Round	Round	Round
Edge	Milled	Milled	Milled	Milled
Edition Limit	2,000	5,000	10,000	Unlimited
Mint	Pobjoy Mint Ltd			
Remedy	Variations to be allowed of the amount permitted by the Pobjoy Mint Ltd			
Obverse Design	The uncouped portrait of Her Majesty the Queen by Raphael Maklouf surrounded by the inscription "QUEEN ELIZABETH II FALKLAND ISLANDS" and the date "2005" at the bottom.			
Reverse Design	Design depicts a bouquet of flowers, all of which are grown at the Duchy of Cornwall Nursery, except for four sprays of 'Pale Maiden' the national flower of the Falkland Islands. The inscription "The Wedding of H.R.H. The Prince of Wales and Mrs. Parker Bowles" appears in the surround of the coin with "April 9 th 2005" below and the denomination at the bottom.			

EXPLANATORY NOTE

(not forming part of the above Order)

This Order authorises the issue of cupro-nickel, silver and gold crown coins commemorating the marriage of His Royal Highness The Prince of Wales and Mrs Parker Bowles each of which is to be legal tender in the Falkland Islands in accordance with its deemed denomination stated in the Order.

SUBSIDIARY LEGISLATION

FISHERIES

Fishing Licences (Applications and Fees) Regulations Order 2005

S.R. & O. No: 8 of 2005

Made: 6 April 2005

Published: 19 April 2005

Coming into force: upon publication

IN EXERCISE of my powers under section 20 of the Fisheries (Conservation and Management) Ordinance 1986 (Title 39.1) I make the following Order —

Commencement and citation

1.—(1) This Order may be cited as the Fishing Licences (Applications and Fees) Regulations Order 2005 and shall come into operation on the date it is first published in the Gazette and cease to have effect on 31st December 2005.

(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.

Application

2. Nothing in these Regulations applies to licences for exploratory or scientific purposes or to fishing within the territorial sea or internal waters.

Interpretation

3. In these Regulations —

“exploratory or scientific purposes” means purposes related to the assessment of the commercial or practical viability of fishing for fish generally or for a particular species of fish or to the assessment or quantification of stocks of any species of fish or fish of any age, stage of maturity or size of a species of fish or the locations in which they or any species of fish or fish of any age, stage of maturity or size may be found;

“FICZ” means the interim conservation and management zone as defined in section 2 of the Fisheries (Conservation and Management) Ordinance 1986;

“FOCZ” means the outer conservation zone as defined in Proclamation 2 of 1990 as varied by Proclamation 1 of 1994;

“fishing licence” means a licence to catch or take fish within the fishing waters;

“the fishing season” means —

(a) in relation to an “L” licence a period commencing on 1st July 2005 and ending 31st December 2005;

(b) in relation to an “R” licence a period commencing on 1st July 2005 and ending on 31st December 2005;

(c) in relation to an “S” licence a period commencing on 1st July 2005 and ending 31st December 2005;

(d) in relation to an “X” licence a period commencing on 15th July 2005 and ending on 30th September 2005;

(e) in relation to a “Y” licence a period commencing on 1st July 2005 and ending on 31st December 2005;

(f) in relation to a “Z” licence a period commencing on 1st July 2005 and ending on 31st December 2005;

“the principal regulations” means the Fishing Regulations Order 1987.

Relationship with principal Regulations

4. For so long as these Regulations are in force such of the provisions of the principal Regulations as are inconsistent with these Regulations shall not be in force, but except as aforesaid the provisions of the principal Regulations remain in force and shall be complied with in addition to those of these Regulations.

Types of Licence

5.—(1) For the purpose of these Regulations there shall be the following categories of licence —

(a) an ‘L’ licence;

(b) an ‘R’ licence;

(c) an ‘S’ licence;

(d) an ‘X’ licence ;

(e) a ‘Y’ licence;

(f) a 'Z' licence.

(2) An 'L' licence issued under these Regulations shall permit the catching of Toothfish (*Dissostichus eleginoides*).

(3) An 'R' licence issued under these Regulations shall permit the catching or taking of all species of the family Skate (*Rajidae*) and shall not permit the taking of other species of finfish or squid of any kind.

(4) An 'S' licence issued under these Regulations shall permit the catching or taking of Blue Whiting (*Micromesistius australis*) and Hoki (*Macruronus magellanicus*).

(5) An 'X' licence issued under these Regulations shall authorise the catching or taking of squid of the species *Loligo gahi*.

(6) A 'Y' licence issued under these Regulations shall permit the catching or taking of any finfish, that is to say vertebrate fish having a dorsal fin, a ventral or pectoral fin and not in any case include Toothfish (*Dissostichus eleginoides*) or Skate (*Rajidae*) or squid of any kind.

(7) A 'Z' licence issued under these Regulations shall permit the catching or taking of any finfish except Hake (*Merluccius spp.*), Toothfish (*Dissostichus eleginoides*) or Skate (*Rajidae*) that is to say a vertebrate fish having a dorsal fin, a ventral or pectoral fin and not in any case including Hake (*Merluccius spp.*), Toothfish (*Dissostichus eleginoides*), Skate (*Rajidae*) or squid of any kind:

Provided that a "by-catch" which, in the reasonable opinion of the Director of Fisheries could not reasonably be avoided, shall not be deemed to have been caught or taken without the authority of a licence.

Applications for Licences

6.—(1) Applications for licences in respect of the whole or any part of any fishing season shall be made to the Director of Fisheries at the Falkland Islands Fisheries Department, P.O. Box 598, Stanley, Falkland Islands.

(2) Any application to which paragraph (1) of this regulation relates shall be made so as to be received there by Friday 15th April 2005.

(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 'L' licences.

- (2) Table 2 of the Schedule to these Regulations applies in respect of the fees payable for type 'R' licences.
- (3) Table 3 of the Schedule to these Regulations applies in respect of the fees payable for type 'S' licences.
- (4) Table 4 of the Schedule to these Regulations applies in respect of the fees payable for type 'X' licences.
- (5) Table 5 of the Schedule to these Regulations applies in respect of the fees payable for type 'Y' licences.
- (6) Table 6 of the Schedule to these Regulations applies in respect of the fees payable for type 'Z' licences.
- (7) All fees payable under this regulation shall be paid in pounds Sterling and in accordance with the principal Regulations.
- (8) 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.
- (9) Transhipping Licences: all fishing vessels licences will be endorsed as valid for transshipment operations on Berkeley Sound, i.e. vessels licensed to fish will also be permitted to tranship without further charge. Vessels not licensed to fish, including refrigerated cargo vessels, which wish to tranship (and vessels wishing to tranship before or after their allocated licence period) must obtain a Transshipment or Transport licence. Transshipment licences once issued will be strictly non-refundable even if the vessel requesting a licence does not arrive to use it. Where a fishing vessel is licenced to fish for 3 months or longer within the six-month season, the transshipment licence will be extended to apply to the full six months season. The fee for transshipment and export licences for the period 1st July 2005 to the 31st December 2005 shall be £150 per transshipment operation.

Made this 6th day of April 2005

H. J. S. Pearce C.V.O.,
Governor

THE SCHEDULE

PROVISION AS TO FISHING LICENCES IN RESPECT OF THE FISHING SEASON

TABLE 1

Toothfish - Type "L" 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 longliners licensed to take Toothfish (*Dissostichus eleginoides*) only.
3. The season for this type of licence commences on 1st July 2005 and ends on 31st December 2005.
4. Fees 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. A licence is not transferable.

FEE

Fee payable per licensed month is:

£24,244

TABLE 2

Skate - Type "R" Licences

(Explanatory notes :

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take Skate (*Rajidae*) only.
3. The season for this type of licence commences on 1st July 2005 and ends on 31st December 2005 and will be subject to a closed area and 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 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 licenced.

- B. A licence is not transferable.

FORMULA

Fee payable per licence month is the result of:

$$£(2.519 * GT) + 20344$$

TABLE 3

Finfish only -Species restricted - Type "S" Licence

(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 equipped with Surimi factories, licensed to take Blue Whiting (*Micromesistius australis*) and Hoki (*Macruronus magellanicus*).
3. The season for this type of licence commences on 1st July 2005 and ends on 31st December 2005 and will be subject to the Fishing (Nets and Supplementary Equipment) Regulations Order 1990.
4. Fees calculated by the Formula set out in this Table are payable in respect of the number of months for which the licence is valid.)

Effective text (of legislative effect)

A. In the following Formula, "GT" means gross tonnage as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules in respect of the vessel to be licensed.

B. A licence is not transferable.

FORMULA

Fee payable per licensed month is the result of:

$$£(18.189 \times GT) + 48416$$

TABLE 4

Squid - Type "X" Licences

(Explanatory notes :

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take squid of the species *Loligo gahi*.
3. The season for this type of licence commences on 15th July 2005 and ends on 30th September 2005 and is exempt from the Fishing (Nets and Supplementary Net Equipment) Regulations Order 1990.
4. Fees calculated by the Formula set out in this Table are for the full season.

Effective text (of legislative effect)

A. In the following Formula, "GT" means gross tonnage as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules.

B. A licence is not transferable.

FORMULA

Fee payable is the result of:

$$£(44.004 * GT) + 77996$$

TABLE 5

Finfish only - Type "Y" Licences

(Explanatory notes:

1. These notes are **not** of legislative effect but are for guidance only.
2. Fees calculated by the formula set in this Table apply to trawlers licensed to take finfish species with the exception of Toothfish (*Dissostichus eleginoides*), Skate (*Rajidae*) or squid.
3. The season for this type of licence commences on the 1st July 2005 and ends on 31st December 2005 and will be subject to a closed area and the Fishing (nets and Supplementary Equipment) regulations order 1990.
4. Fees calculated by the Formula set out in this table are payable in respect of the number of months for which the licence is valid.)

Effective text (of legislative effect)

A. In the following Formula, "GT" means 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 licenced.

B. A licence is not transferable.

FORMULA

The fee payable per licensed month of fishing is calculated by adding £5,000 to the relevant Finfish (Species Restricted) type "Z" licence fee, taking account of the GT of the vessel.

TABLE 6

Finfish Only - Species Restricted - Type "Z" Licences

(Explanatory notes:

1. These notes are **not** of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to Trawlers licensed to take all finfish species with the exception of Hake (*Merluccius spp.*), Toothfish (*Dissostichus eleginoides*) and Skate (*Rajidae*) or squid.
3. The season for this type of licence commences on 1st July 2005 and ends on the 31st December 2005 and will be subject to a closed area and the Fishing (Nets and supplementary Net Equipment) regulations order 1990.

4. Fees calculated by the Formula set out in this table are payable in respect of the number of months for which the licence is valid.)

Effective text (of legislative effect)

A. In the following Formula, "GT" means gross tonnage as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules in respect of the vessel to be licenced.

B. A licence is not transferable.

FORMULA

Fee payable per licensed month is the result of:

$$£(5.882 * GT) + 10333$$



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 16

13th May 2005

No. 8

The following are published in this Supplement -

Media Trust (Amendment) Bill 2005;

Sexual Offences Bill 2005.

Media Trust (Amendment) Bill 2005

(No: of 2005)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title, commencement and interpretation
2. Amendment of section 2 to the Media Trust Ordinance
3. Amendment of section 5 to the Media Trust Ordinance
4. Amendment of section 8 to the Media Trust Ordinance
5. Amendment of section 10 to the Media Trust Ordinance
6. Amendment of Schedule 1 to the Media Trust Ordinance

MEDIA TRUST (AMENDMENT) BILL 2005

(No: of 2005)

(assented to: 2005)
(commencement: in accordance with section 1)
(published: 2005)

A BILL

for

AN ORDINANCE

To amend the Media Trust Ordinance 1989 (Title 59.1)

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title, commencement and interpretation

1.—(1) This Ordinance may be cited as the Media Trust (Amendment) Ordinance 2005.

(2) This Ordinance shall come into force on 15th August 2005.

(3) Any reference in this Ordinance to the Media Trust Ordinance is a reference to the Media Trust Ordinance 1989.

Amendment of section 2 of the Media Trust Ordinance

2. Section 2 of the Media Trust Ordinance is amended by insertion of the following interpretation provisions after the word and symbols “requires—” —

“ “broadcasting service” has the meaning provided for in section 5(1)(aa) of this Ordinance;

“for general reception” means capable of being received free of charge and without payment;

“wireless telegraphy” has the same meaning as under the Wireless Telegraphy Ordinance 1994(a);”.

Amendment of section 5 of the Media Trust Ordinance

3. Section 5 of the Media Trust Ordinance is amended as follows —

(a) the following subsection is inserted after subsection 5(1)(a) —

“(aa) with effect from 15th August 2005, to provide as a public service a broadcasting service by wireless telegraphy by transmission of a minimum of one sound programme service consisting of programmes for information, education and entertainment for general reception in the Falkland Islands.”,

(b) in section 5(1)(b) by deleting the word “station” and replacing it with the word “service”;

(c) in section 5(1)(c) by deleting the word “station” and replacing it with the word “service”;

(d) in section 5(1)(d) by deleting the words “broadcasting station” and replacing them with the words “Trust in its provision of the broadcasting service”;

(e) by deleting section 5(5) and replacing it with the following section —

“(5) The Trust may delegate to a manager of a broadcasting service the day to day performance of its duties under subsection (1) above so far as they affect a broadcasting service, but the Trustees shall nonetheless continue to be responsible for the performance of the same.”;

(f) by insertion of the following new section after section 5 —

“Transfer of broadcasting service to the Trust

5A. On a transfer from the Government to the Trust of the provision of a broadcasting service with effect from 15th August 2005 —

(a) No 22 of 1994

(a) all real and personal property at that date known as and forming part of the broadcasting station, to include but not limited to the building, transmitters, studio equipment and copyright materials, shall remain property of the Government unless the said property is acquired in accordance with the provisions of paragraphs 4 or 5 of Schedule 1 to the Ordinance with the agreement of the Government;

(b) the contracts of employment of persons employed by the Government at the broadcasting station shall not be deemed to be transferred to the Trust, although the Trust may agree to employ under new contracts of employment any of those Government employees and may agree to benefit any such employee from any accrued entitlement existing under a contract of employment with the Government at the date of the transfer of the provision of the service."

Amendment of section 8 of the Media Trust Ordinance

4. Section 8(1) of the Media Trust Ordinance is amended by inserting the words "and broadcasting service" between the words "newspaper" and "keep".

Amendment of section 10 of the Media Trust Ordinance

5. Section 10(1)(a) of the Media Trust Ordinance is amended by deleting the words "advertising space" and replacing them with the words "and newspaper advertising space and the broadcast of announcements and advertisements".

Amendment of Schedule 1 of the Media Trust Ordinance

6. Schedule 1 of the Media Trust Ordinance is amended by inserting the following paragraph after paragraph 1 —

"1A. To provide a broadcasting service and subject to such restrictions and conditions as may be notified by the Governor, to carry on the business of a broadcasting corporation and any matters incidental thereto."

OBJECTS AND REASONS

This is a Bill to amend the Media Trust Ordinance 1989 to enable the Falkland Islands Media Trust, with effect from 15th August 2005, to take on the responsibility of providing a public service wireless telegraphy broadcasting service. The Bill makes provision for the Trust to take on this responsibility by supplementing the duties of the Trust in section 5 and adding to the powers of the Trust by reference to Schedule 1 to the Ordinance. The Bill also provides that the Trust may delegate day to day performance of its duties to a broadcasting manager and makes provision for the Trust to agree with the Government to lease, borrow or buy the property currently known as the broadcasting station for the purposes of provision of the broadcasting service.

Sexual Offences Bill 2005

(No: of 2005)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title
2. Application of provisions of the Sexual Offences Act 2003
3. Replacement of sections 27 and 28 of the Criminal Justice Ordinance
4. Adoption of English legislation as to indecent photographs of children

Schedule

SEXUAL OFFENCES BILL 2005

(No: of 2005)

(assented to: 2005)
(commencement: 2005)
(published: 2005)

A BILL

for

AN ORDINANCE

To apply the Sexual Offenders Act 2003 to the Falkland Islands with exceptions and modifications

BE IT ENACTED by the Legislature of the Falkland Islands as follows—

Short title

1. This Ordinance may be cited as the Sexual Offences Ordinance 2003.

Application of provisions of the Sexual Offences Act 2003

2. From and after the commencement of this Ordinance, the Sexual Offences Act 2003 shall apply to and have effect in the Falkland Islands with the exceptions and modifications specified in the Schedule to this Ordinance but without prejudice to the previous application of any provision of that Act under any provision of Part X of the Interpretation and General Clauses Ordinance (Title 67.2).

Replacement of sections 27 and 28 of Criminal Justice Ordinance

3. Sections 27 and 28 of the Criminal Justice Ordinance are repealed.

Adoption of English legislation as to indecent photographs of children

4.—(1) The Protection of Children Act 1978 (which makes provision about indecent photographs of children), as amended by section 45(1) to (3) of the Sexual Offences Act 2003, shall apply to and have effect in the Falkland Islands.

(2) Sections 160 and 160A of the Criminal Justice Act 1988 (the latter section having been inserted by section 45(4) of the Sexual Offences Act 2003) except —

(a) section 160(3); and

(b) the words “on indictment” in section 160(2A),

shall apply to and have effect in the Falkland Islands.

SCHEDULE

General

1. In this Schedule —

(a) every reference to a section is a reference to the section so numbered of the Sexual Offences Act 2003 (“the Act”);

(b) every provision of the Act which relates only to Northern Ireland or Scotland or both is omitted in the application of the Act to the Falkland Islands.

Modifications of Part I of the Act

1. Section 1(4) is modified by replacing the words “, on conviction on indictment,” to “on conviction”.

2. Section 2(4) is modified by replacing the words “, on conviction on indictment,” to “on conviction”.

3. Section 3(4) is replaced with the following —

“(4) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 10 years”.

4. Section 4 is modified —

(a) in subsection (4) by replacing the words “, on conviction on indictment,” with the words “on conviction”; and

(b) by replacing subsection (5) with the following —

“(5) Unless subsection (4) applies, a person convicted of an offence under this section is liable to imprisonment for a term not exceeding 10 years.”.

5. Sections 5(2) and 6(2) are modified by replacing the words “,on conviction on indictment,” with the words “on conviction”.

6. Section 7(2) is replaced with the following —

“(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 14 years.”.

7. Section 8 is modified —

(a) in subsection (2) by replacing the words “, on conviction on indictment,” with the words “on conviction”;

(b) by replacing subsection (3) with the following —

“(3) Unless subsection (2) applies, a person convicted of an offence under this section is liable to imprisonment for a term not exceeding 14 years.”.

8. Sections 9 and 10 are each modified —

(a) in subsection (2) by replacing the words “, on conviction on indictment,” with the words “on indictment”; and

(b) by replacing subsection (3) with the following —

“(3) Unless subsection (2) applies a person convicted of an offence under this section is liable to imprisonment for a term not exceeding 14 years.”.

9. Sections 11(2) and 12(2) are each replaced with the following —

“(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 10 years.”

10. Section 13(2) is replaced with the following —

“(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 5 years.”

11. Section 14(4) is replaced with the following —

“(4) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 14 years.”

12. Section 15(2)(b)(iii) is replaced with the following —

“(iii) anything done outside the Falkland Islands which is not an offence within sub-paragraph (i) or (ii) but would be an offence within sub-paragraph (i) if done in the Falkland Islands.”.

13. Section 15(4) is replaced with the following —

“(4) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 10 years.”.

14. Section 16(5), section 17(5), section 18(5) and section 19(5) are each replaced with the following —

“(5) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 5 years.”.

15. Section 21 is replaced with the following —

“Positions of trust

21.—(1) For the purposes of sections 16 to 19, a person (A) is in a position of trust in relation to another person (B) if A has attained the age of 18 years and B has not and —

(a) any of the following subsections applies; or

(b) any condition specified in an Order made by the Governor applies.

(2) This subsection applies if A looks after persons under 18 who are detained in an institution by virtue of a court order or under an enactment, and B is so detained in that institution.

(3) This subsection applies if A looks after persons under 18 who are resident in a home or other place in which —

(a) accommodation and maintenance are provided by the Crown or by an authority under any legislation relating to children and young persons; or

(b) accommodation is provided by a voluntary organisation under any such legislation,

and B is resident, and is so provided with accommodation and maintenance or accommodation, in that place.

(4) This subsection applies if A looks after persons under the age of 18 who are accommodated and cared for in one of the following institutions —

- (a) a hospital;
- (b) an independent clinic;
- (c) a care home; or
- (d) a community home,

and B is accommodated and cared for in that institution.

(5) This subsection applies if A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution.

(6) This subsection applies if A regularly has unsupervised contact with B (whether face to face or by any other means) in the exercise of the functions of the Crown under the Children Ordinance 1994.

(7) This subsection applies if A, as a person who is to report to the court under the provisions of any law on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means).

(8) This subsection applies if A is a personal adviser appointed for B under any provision of any law relating to persons under the age of 18 and in that capacity looks after B on an individual basis.

(9) This subsection applies if —

- (a) B is subject to a care order or a supervision order, and
- (b) in the exercise of the functions conferred by virtue of the order on the Crown or on any other authority or person designated by the order, A looks after B on an individual basis.

(10) This subsection applies if A is appointed a children's guardian or guardian ad litem of B under any provision of any rules relating to adoption proceedings or family proceedings and in that capacity regularly has unsupervised contact with B (whether face to face or by any other means).

(11) This subsection applies if —

(a) B is subject to requirements imposed by or under an enactment on his release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings, and

(b) A looks after B on an individual basis in pursuance of the requirements.”

16. Section 22 is modified —

(a) by replacing subsection (5) with the following —

“(5) In section 21 —

“care home” means an establishment which provides accommodation, together with nursing or personal care for any of the following persons —

- (a) persons who are or have been ill;
- (b) persons who have or have had a mental disorder;
- (c) persons who are disabled or infirm; or
- (d) persons who are or have been dependent on alcohol or drugs,

but an establishment is not a care home if it is a hospital, an independent clinic or a children’s home or it is of a description specified by regulations;

“care order” has the same meaning as in the Children Ordinance 1994;

“children’s home”, subject to subsection (6) of this section, means an establishment which provides care and accommodation wholly or mainly for children;

“community home” means a home provided by the Crown —

- (a) for the care and accommodation of children looked after by the Crown; or
- (b) for purposes connected with the welfare of children, (whether or not looked after by the Crown);

“hospital” means the King Edward VII Memorial Hospital Stanley and any other establishment the main purpose of which is provide medical or psychiatric treatment for illness or mental illness or palliative care;

“independent clinic” means an establishment of a prescribed kind (not being a hospital) in which services are provided by a medical practitioner (whether or not any services are also provided for the purposes of the establishment elsewhere);

(b) by adding the following subsections —

“(6) An establishment is not a children’s home —

(a) merely because a child is cared for and accommodated there by a parent or relative of his or by a foster parent;

(b) if it is—

(i) a hospital;

(ii) an independent clinic;

(iii) a school unless at any time accommodation is provided for children at the school either —

(aa) in each year that fell within the period of two years ending at that time, accommodation was provided for children, either at the school or under arrangements made by the proprietor of the school, for more than 295 days, or

(bb) it is intended to provide accommodation for children, either at the school or under arrangements made by the proprietor of the school, for more than 295 days in any year.

(7) For the purposes of subsection (6) —

(a) a person is a foster parent in relation to a child if he fosters that child in pursuance of arrangements made with him by the Crown or he fosters the child privately;

(b) “year” means a period of twelve months;

(c) accommodation shall not be regarded as provided to children for a number of days unless there is at least one child to whom it is provided for that number of days, and subsection (6)(b)(iii)(bb) shall be construed accordingly.”.

17. Sections 25 and 26 are modified —

(a) by replacing subsections (4) and (5) of each of those sections with the following —

“(4) A person convicted of an offence under this section, if aged 18 or over at the time of the offence, is liable to imprisonment for a term not exceeding 14 years.

(5) A person convicted of an offence under this section if aged under 18 at the time of the offence is liable to imprisonment for a term not exceeding 5 years.”.

18. Section 27 is modified by replacing subsection (5)(c) with the following —

“(c) a person is a child’s foster parent if, by virtue of section 22(7), he would be that child’s foster parent for the purposes of section 22(6).”.

19. Sections 30 and 31 are each modified —

(a) in subsection (3) by replacing the words “, on conviction on indictment,” with the words “on conviction”; and

(b) by replacing subsection (4) with the following —

“(4) Unless subsection (3) applies, a person convicted of an offence under this section is liable to imprisonment for a term not exceeding 14 years.”

20. Section 32(3) and section 33(3) are each replaced with the following —

“(3) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 10 years.”.

21. Sections 34 and 35 are each modified —

(a) in subsection (2) by replacing the words “, on conviction on indictment” with the words “on conviction”; and

(b) by replacing subsection (3) with the following —

“(3) Unless subsection (2) applies, a person convicted of an offence under this section is liable to imprisonment for a term not exceeding 14 years.”.

22. Section 36(2) and section 37(2) are each replaced with the following —

“(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 10 years.”

23. Sections 38 and 39 are each modified —

(a) in subsection (3) by replacing the words “, on conviction on indictment,” with the words “on conviction”;

(b) by replacing subsection (4) with the following —

“(4) Unless subsection (3) applies, a person convicted of an offence under this section is liable to imprisonment for a term not exceeding 10 years.”

24. Section 40(3) and section 41(3) are each replaced with the following —

“(3) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 7 years.”

25. Section 42 is modified —

(a) in subsection (3) —

(i) by replacing paragraph (a) with the following —

“(a) by the Crown, or”

(ii) by replacing the words “body or agency” with the words “the Crown”.

(b) by replacing subsection (5) with the following —

“(5) In this section —

“care home”, “ children’s home” and “community home” each have the same meaning as they have under section 22(5);

“employment” means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship or under a contract for services or otherwise than under a contract and includes service under the Crown;

“independent clinic” has the same meaning as it has under section 22(5);

“independent hospital” means a hospital which is not a hospital operated by the Crown;

“voluntary home” means a children’s home which is operated by a voluntary organisation which is not a community home.

26. Section 47 is modified in subsection (3) by replacing the words “on conviction on indictment” with the words “on conviction”.

27. Sections 48, 49 and 50 are modified by replacing subsection (2) with —

“(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 14 years.”.

28. Sections 52 and 53 are modified by replacing subsection (2) with —

“(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 7 years.”.

29. Section 55 is modified in subsection (2) by replacing subsection (3) of section 33A of the Sexual Offences Act 1956 (which it inserts in that Act) with —

“(3) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 7 years.”.

30. Sections 57, 58 and 59 are modified —

(a) in subsection (1) by replacing the words “United Kingdom” with the words “Falkland Islands”; and

(b) by replacing subsection (2) with —

“(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 14 years.”.

31. Section 60 is modified by replacing subsections (1) and (2) with the following —

“(1) In sections 57 to 59, “relevant offence” means —

(a) an offence under this Part;

(b) an offence under section 1(1)(a) of the Protection of Children Act 1978;

(c) anything which if done outside the Falkland Islands which is not an offence under paragraphs (a) and (b) but would be if done in the Falkland Islands.

(2) Sections 57 to 59 apply to anything done —

(a) in the Falkland Islands; or

(b) outside the Falkland Islands, by a body incorporated in the Falkland Islands or an individual to whom subsection (3) applies.”.

32. Section 61 is modified by replacing subsection (2) with the following —

“(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 10 years.”.

33. Section 62 is modified —

(a) in subsection (3) by replacing the words “on conviction on indictment” with the words “on conviction”; and

(b) by replacing subsection (4) with the following —

“(4) Unless subsection (3) applies, a person convicted of an offence under this section is liable to imprisonment for a term not exceeding 10 years.”.

34. Section 63 is modified by replacing subsection (3) with the following —

“(3) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 10 years.”.

35. Sections 64 and 65 are modified by replacing subsection (5) with —

“(5) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 2 years.”

36. Section 66 is modified by replacing subsection (2) with —

“(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 2 years.”.

37. Section 67 is modified by replacing subsection (5) with —

“(5) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 2 years.”.

38. Section 69 is modified by replacing subsection (3) with —

“(3) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 2 years.”.

39. Section 70 is modified by replacing subsection (2) with —

“(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 2 years.”

40. Section 72 is modified —

(a) by replacing subsection (1) with the following —

“(1) Subject to subsection (2), any act done by a person in a country or territory outside the Falkland Islands which —

(a) constituted an offence under the law of that country or territory, and

(b) would constitute an offence to which this section applies if it had been done in the Falkland Islands,

constitutes an offence under the law of the Falkland Islands.”;

(b) by replacing the words “United Kingdom” in subsection (2) with the words “Falkland Islands”; and

(c) by replacing subsection (6) with —

“(6) On a trial on indictment in the Supreme Court the question as to whether the condition is met is to be decided by the judge alone.”

Modification of Part 2 of the Act

41. Section 80 is modified in subsection (1) by omitting the words “in England and Wales or Northern Ireland” in paragraph (d).

42. Section 81 is modified —

(a) in subsection (1) by omitting the words “in England and Wales and Northern Ireland” in paragraph (d); and

(b) in subsection (8) —

(i) by omitting the words “(sex offender orders made in England and Wales)” in paragraph (b); and

(ii) by omitting the words “(interim orders in England and Wales)” in paragraph (c).

43. Section 83 is modified in subsections (6) and (7) by replacing the words “United Kingdom”, wherever they appear, with the words “Falkland Islands”.

44. Section 84(1)(c) is modified by replacing the words “United Kingdom” with the words “Falkland Islands”.

45. Section 85(4)(d) is modified by replacing the words “United Kingdom” with the words “Falkland Islands”.

46. Section 86 is modified —

(a) by replacing the words “United Kingdom”, wherever they appear, with the words “Falkland Islands; and

(b) by replacing the words “Secretary of State” in subsection (1) with the word “Governor”.

47. Section 87 is modified —

(a) by replacing subsection (1) with the following —

“(1) A person gives a notification under section 83(1), 84(1) or 85(1) by —

(a) attending at Stanley police station and giving an oral notification to any police officer or to any person authorised by the chief police officer; or

(b) giving a notification to such person in such manner and at such place as the chief police officer may approve.”

(b) by omitting subsections (2) and (6); and

(c) by replacing the words “Secretary of State” in subsection (3) with the word “Governor”.

48. Section 88 is modified by omitting subsection (3).

49. Section 89 is modified by replacing subsection (4) with the following —

“(4) The chief police officer may by complaint to the Magistrate’s Court or to the Summary Court apply for a direction under subsection (1) in respect of a relevant offender (“the defendant”) who the chief police officer believes is under the age of 18.”

50. Section 90 is modified —

(a) in subsection (2) —

(i) by replacing paragraph (c) with —

“(c) the chief police officer”; and

(ii) by omitting paragraphs (d) to (g).

(b) by replacing subsection (3) with —

“(3) An application under subsection (1) may be made —

(a) where the appropriate court is the Supreme Court, in accordance with rules of court;

(b) in any other case, by complaint.”; and

(c) by replacing subsection (5) with the following —

“(5) In this section, “the appropriate court” means —

(a) where the Court of Appeal made the order, the Supreme Court;

(b) in any other case, the court that made the order under section 89(1).”

51. Section 91 is modified —

(a) by replacing subsection (2) with —

“(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 5 years.”; and

(b) by omitting subsection (4).

52. Section 92 is modified —

(a) by replacing subsection (2) with the following —

“(2) If the court by or before which the person is so convicted or found certifies (whether at the time of conviction or subsequently) that he was so convicted or found, the certificate is, for the purposes of this Part, evidence of those facts.”;

(b) in subsection (3) by replacing the words “England and Wales or Northern Ireland” with the words “the Falkland Islands”; and

(c) in subsection (4) —

(i) by replacing the word “constable” with the words “police officer”; and

(ii) by replacing paragraph (b) with—

“(b) certifies those facts, whether at the time or subsequently, in such form as the Governor may approve.”

53. Section 94 is modified —

(a) in subsection (2) by replacing the words “A person within subsection (3)” with the words “The chief police officer”;

(b) by omitting subsection (3).

54. Section 95 is omitted.

55. Section 96 is modified in subsection (2) by replacing the words “the Secretary of State” with the words “the Governor”.

56. Section 97 is modified —

(a) by replacing subsection (1) with the following —

“(1) The chief police officer may, by complaint to the Magistrate’s Court, apply for an order under this section (“a notification order”) in respect of a person (“the defendant”) if—

(a) the following three conditions are met with respect to the defendant, and

(b) the defendant is in, or is intending to come to, the Falkland Islands.”; and

(b) in subsection (2), by replacing the words “the United Kingdom” with the words “the Falkland Islands”.

57. Section 99 is modified in subsection (2) by replacing the words “the United Kingdom” with the words “the Falkland Islands”.

58. Section 101 is modified by replacing the words “the Crown Court” with the words “the Supreme Court”.

59. Section 104 is modified —

(a) by replacing subsection (5) with the following —

“(5) The Attorney General may by complaint to the Magistrate’s Court or to the Summary Court apply for an order under this section in respect of a person who resides in the Falkland Islands or who the Attorney General believes is in, or is intending to come to the Falkland Islands if the Attorney General believes that —

(a) the person is a qualifying offender, and either

(b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made; or

(c) it is necessary to make such an order for the purpose of protecting the public or particular members of the public from serious sexual harm from that person.”; and

(b) by omitting subsection (6).

60. Section 106 is modified —

(a) by replacing the words “United Kingdom” wherever they appear with the words “Falkland Islands”;

(b) by omitting the words “in England and Wales or Northern Ireland” in subsection (6)(d).

61. Section 108 is modified —

(a) by replacing subsection (2) with the following —

“(2) The persons are —

(a) the defendant;

(b) the Attorney General.”;

(b) in paragraph (a) of subsection (3) by replacing the words "the Crown Court" with the words "the Supreme Court";

(c) by replacing subsection (6) with the following —

"(6) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made without the consent of the defendant and of the Attorney General."; and

(d) by replacing subsection (7) with the following —

"(7) In this section "the appropriate court" means —

(a) where the Supreme Court or the Court of Appeal made the sexual offences prevention order, the Supreme Court;

(b) in any other case, the court which made the order."

62. Section 109 is modified in paragraph (b) of subsection (2) by replacing the words "the person who has made that application" with the words "the Attorney General."

63. Section 110 is modified —

(a) by replacing the words "the Crown Court" wherever they appear with the words "the Supreme Court"; and

(b) in subsection (5), by replacing the words "magistrate's court" with the words "by the court which heard it".

64. Section 113 is modified —

(a) in subsection (1) by omitting the words "(sex offender orders made in England and Wales and in Scotland)" in paragraph (d); and

(b) by replacing subsection (2) with the following —

"(2) A person convicted of an offence under this section is liable on conviction to imprisonment for a term not exceeding 5 years."

65. Section 114 is modified —

(a) by replacing subsection (1) with the following —

"(1) The Attorney General may by complaint to the Magistrate's Court apply for an order under this section ("a foreign travel order") in respect of a person ("the defendant") who resides in the Falkland Islands if it appears to the Attorney General that —

(a) the defendant is a qualifying offender, and

(b) the defendant has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.”;

(b) by omitting subsection (2); and

(c) in subsection (3), by replacing the words “the United Kingdom” with the words “the Falkland Islands”.

66. Section 115 is modified by replacing the words “the United Kingdom”, wherever they appear, with the words “the Falkland Islands”.

67. Section 116 is modified —

(a) in subsection (1) by replacing the words “England and Wales and Northern Ireland” by the words “the Falkland Islands”;

(b) in subsections (4) and (5) by replacing the words “the United Kingdom” with the words “the Falkland Islands”; and

(c) in subsections (6) and (7) by replacing the words “the applicant” with the words “the Attorney General”.

68. Section 117 is modified by replacing the words “the United Kingdom”, wherever they appear, with the words “the Falkland Islands”.

69. Section 118 is modified —

(a) by replacing subsection (2) with the following —

“(2) The persons are —

(a) the defendant;

(b) the Attorney General.”;

(b) in subsection (4), by replacing the words “the United Kingdom” with the words “the Falkland Islands”; and

(c) by replacing subsection (5) with the following —

“(5) In this section “the appropriate court” means the court which made the foreign travel order.”.

70. Section 119 is modified —

(a) by replacing the words “the Crown Court”, wherever they appear, with the words “the Supreme Court”;

(b) in subsection (3) by replacing the words “a magistrates’ court” with the words “the Magistrate’s Court”.

71. Section 122 is modified by replacing subsection (2) with the following —

“(2) A person convicted of an offence against this section is liable to imprisonment for a term not exceeding 5 years.”

72. Section 123 is modified by replacing subsection (1) with the following —

“(1) The Attorney General may by complaint to the Magistrate’s Court or to the Summary Court apply for an order under this section (“a risk of serious harm order”) in respect of a person aged 18 or over (“the defendant”) who resides in the Falkland Islands or who the Attorney General believes is in, or is intending to come to, the Falkland Islands if it appears to the Attorney General that —

(a) the defendant has on at least two occasions, whether before or after the commencement of this Part, done an act within subsection (3), and

(b) as a result of those acts, there is reasonable cause to believe that it is necessary for such an order to be made.”.

73. Section 125 is modified —

(a) by replacing subsection (2) with the following —

“(2) The persons are —

(a) the defendant;

(b) the Attorney General.”;

(b) by replacing subsection (5) with the following —

“(5) The court must not without the consent of the defendant and of the Attorney General discharge an order before the end of 2 years beginning with the day on which the order was made.”; and

(c) by replacing subsection (7) with the following —

“(7) In this section “the appropriate court” means —

(a) the court which made the risk of sexual harm order;

(b) the Magistrate's Court, if it is not that court."

74. Section 127 is modified by replacing the words "Crown Court", wherever they appear, with the words "Supreme Court".

75. Section 128 is modified by replacing subsection (2) with —

"(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding 5 years."

76. Section 131 is replaced by the following —

"131. This Part applies to any period of detention which a young offender is liable to serve under any order made by a court in criminal proceedings."

77. Section 132 is modified —

(a) in subsection (4), by replacing the words "the United Kingdom" in both places they occur with the words "the Falkland Islands"; and

(b) in subsection (7) by replacing the words "UK offence" with the words "Falkland Islands offence".

78. Section 133(1) is to be construed, wherever it is appropriate to do so, as if the references to the legislation referred to in the definitions of "admitted to hospital", "detained in hospital", "guardianship order" "order for conditional discharge", "parental responsibility", "period of conditional discharge" and "restriction order" included a reference to the provision of Falkland Islands law for the time being in force corresponding to the provision of legislation in force in England referred to in those definitions.

79. Section 133(2) is omitted.

80. Section 134 is modified in paragraph (a) of subsection (1) by the addition at the end of the paragraph of the words "or any corresponding provision of the law of the Falkland Islands".

81. Section 135 is modified by the addition of the following subsection —

"(5) The reference in this section to a provision of law mentioned in —

(a) paragraph (a) of subsection (2); or

(b) paragraph (a) of subsection (4),

shall be deemed to include a reference to any corresponding provision of the law of the Falkland Islands for the time being in force."

82. Section 138 is omitted.

83. Section 141 is replaced by the following —

“141. Without prejudice to the application of this Act to the Falkland Islands under the provisions of Part X of the Interpretation and General Clauses (Title 67.2) of the Falkland Islands prior to the commencement of the Sexual Offences Ordinance 2005, this Act (including the Schedules thereto) shall from and after the commencement of the latter Ordinance apply and have effect in the Falkland Islands in accordance only with the provisions of that Ordinance.”.

84. Section 142 is omitted.



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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No. 9

The following are published in this Supplement -

Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004, (SI 2004/3101), Commencement in the Falkland Islands;

Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004, (2004 No. 3101);

Trade in Goods, (Control) (Overseas Territories) Order 2004, (SI 2004/3102), Commencement in the Falkland Islands;

Trade in Goods (Control) (Overseas Territories) Order 2004, (2004 No. 3102);

Trade in Controlled Goods (Embargoed Destinations) (Overseas Territories) Order 2004 (SI 2004/3103), Commencement in the Falkland Islands;

Trade in Controlled Goods (Embargoed Destinations) (Overseas Territories) Order 2004, (2004 No. 3103).

**Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control)
(Overseas Territories) Order 2004 (SI 2004/3101)**

Commencement in the Falkland Islands

Pursuant to paragraph 1 of Schedule 2 to this Order **I APPOINT** the date of publication of the Order in the Gazette as the date on which it shall be extended to the Falkland Islands.

Pursuant to paragraph 23 of Schedule 2 to this Order the address for delivery of notices under the Order is to His Excellency the Governor, Government House, Stanley, Falkland Islands.

Pursuant to article 6 of this Order I notify that copies of Schedules 1, 2 and 3, and Part 1 of Schedule 4, to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 ("the 2003 Order") (SI 2003/2764 as amended by SI 2004/1050, SI 2004/2561 and SI 2004/2741) are available on request from the Attorney General's Chambers, Cable Cottage, Thatcher Drive, Stanley, Falkland Islands. Alternatively, they may be downloaded free of charge from the HMSO internet website at www.hmso.gov.uk.

Pursuant to section 9 of the Export Control Act 2002 ("the Act") in its application to the Falkland Islands under article 4 of and Schedule 3 to this Order I notify that copies of guidance given or published by the Secretary of State for Trade and Industry under section 9 of the Act as it applies in the United Kingdom may be obtained on application from the Attorney General's Chambers, Thatcher Drive, Stanley, Falkland Islands. Alternatively it may be downloaded free of charge from the DTI Export Control Organisation internet website at www.dti.gov.uk/export.control/publications.htm. All such guidance shall be modified in its application to the Falkland Islands in the same way as would be required in relation to an adopted English statute by section 78 of the Interpretation and General Clauses Ordinance.

Pursuant to article 7 of this Order the documents therein stated may be obtained on application from the Attorney General's Chambers, Thatcher Drive, Stanley, Falkland Islands. Interested persons are advised that all EC Regulations in force, and all amendments to them, are published on the internet on the Eur-Lex website at www.europa.eu.int/eur-lex/en/search/search_lif.html and may be downloaded free of charge from that site.

Dated this third day of May 2005

H. Hall,
Acting Governor

2004 No. 3101

OVERSEAS TERRITORIES

**Export of Goods, Transfer of Technology and Provision of
Technical Assistance (Control) (Overseas Territories) Order
2004**

Made - - - - - *16th December 2004*

At the Court at Buckingham Palace, the 16th day of December 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 16(5) of the Export Control Act 2002(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows: —

Citation

1. This Order may be cited as the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004.

Extent and interpretation

2.—(1) This Order shall extend to the territories listed in Schedule 1.

(2) In the application of this Order to any of the said territories —

- (a) “the Territory” means that territory;
- (b) any reference to “the Governor” means the Governor or other officer administering the Government of that territory; and
- (c) any reference to the official gazette of a Territory includes a reference to any form in which official information is normally made available in that Territory.

(3) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to the sums expressed in sterling in Schedule 2 or, as applicable, in Schedule 4.

Extension of Order to territories

3. The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(a) (the "UK Order"), as modified in Schedule 2, extends to the territories listed in Schedule 1.

Guidance about the exercise of functions under this Order

4. Section 9 of the Export Control Act 2002 (guidance about the exercise of functions under control orders), as modified in Schedule 3, extends to the territories listed in Schedule 1.

Application to the Sovereign Base Areas of Akrotiri and Dhekelia of provisions relating to penalties for offences and proceedings

5. Schedule 4 shall have effect for the application of articles 16, 17, 18 and 19 of the UK Order, as modified in Schedule 2, to the Sovereign Base Areas of Akrotiri and Dhekelia.

Duty to make available Schedules

6. The Governor shall make available to persons in the Territory, in such manner as he may think fit, the provisions of Schedules 1, 2 and 3, and Part 1 of Schedule 4, to the UK Order as from time to time in force in the law of the United Kingdom.

European Community matters

7.—(1) The Governor shall make available to persons in the Territory, in such manner as he may think fit —

- (a) the text of Council Regulation (EC) No. 1334/2000 of 22nd June 2000(b), together with the text of any amending Council Regulations, whether those Regulations were made before or after the coming into force of this Order in the Territory;
- (b) a list of those countries which are for the time being Member States of the European Community; and
- (c) a list of the competent authorities empowered by each member state to authorise exports under Council Regulation (EC) No. 1334/2000 of 22nd June 2000.

(2) A certificate given by or on behalf of the Governor in pursuance of sub-paragraph (1)(a), (b) or (c), or as to whether a place is within or outside the European Community, shall be conclusive evidence of the matters stated therein for the purposes of this Order, and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Exercise of powers of the Governor

8. The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate, or authorise the delegation of, any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

A.K. Galloway
Clerk of the Privy Council

(a) S.I. 2003/2764 as amended by S.I. 2004/1050, 2004/2561 and 2004/2741.
(b) OJ No L 159, 30.06.2000, p1.

SCHEDULE 1

Article 2(1)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla
Bermuda
Cayman Islands
Falklands Islands
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St Helena and Dependencies
South Georgia and the South Sandwich Islands
The Sovereign Base Areas of Akrotiri and Dhekelia
Turks and Caicos Islands
Virgin Islands

SCHEDULE 2

Article 3

PROVISIONS OF THE EXPORT OF GOODS, TRANSFER OF TECHNOLOGY AND PROVISION OF TECHNICAL ASSISTANCE (CONTROL) ORDER 2003 AS EXTENDED TO THE OVERSEAS TERRITORIES LISTED IN SCHEDULE 1

Commencement

1. This Order shall be extended to each Territory listed in Schedule 1 on such day as the Governor may by order, published in the official gazette of the Territory, appoint.

Interpretation

2.—(1) In this Order the following expressions have the meanings given to them below, save where an expression is also defined in a Schedule where it has, for the purposes of that Schedule, that meaning —

“the Act” means the Export Control Act 2002(a);

“aircraft” means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing airborne vehicle or helicopter;

“competent authority” means in respect of any territory to which this Order applies, the Governor, in respect of the United Kingdom, the Secretary of State, and, in respect of any other Member State, any authority empowered by that Member State to grant “exportation” or “transfer” authorisation under “the Regulation”;

“country” includes territory;

(a) 2002 c. 28.

"customs authorities" means the authorities which, under the law of the territory, have responsibility for the control of imports and exports;

"dual-use" in relation to "goods" or "technology", means "goods" or "technology" which can be used for both civil and military purposes, and includes any "goods" or "technology" which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;

"the European Community" means the customs territory of the European Community as defined in article 3(3) of Council Regulation (EEC) No 2913/92 of 12th November 1992(a);

"exportation" includes "shipment" as "stores" and, unless the context otherwise requires, means exportation from the Territory to any destination outside the Territory, except "export" in relation to the exportation from the Territory of "dual-use" "goods", "software" and "technology" which has the same meaning that it would have in article 2(b) of "the Regulation" if the Territory were a Member State of the European Community;

"exporter" and other cognate expressions shall be construed accordingly;

"goods" means tangible goods, both used and unused and includes any goods on which "software" or "technology" is recorded;

"goods in transit" means any "goods" imported into the Territory (which for this purpose shall be treated as a Member State of the European Community) for "transit or transshipment";

"importation" and "exportation" in relation to a "vessel", "vehicle", submersible vehicle or "aircraft" include the taking into or out of the Territory of the "vessel", "vehicle", submersible vehicle or "aircraft", notwithstanding that the "vessel", "vehicle", submersible vehicle or "aircraft" is conveying "goods" or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

"microprogramme" means a sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register;

"normal commercial journey" means a journey providing transport services in the ordinary course of business;

"programme" means a sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer;

"in the public domain" means available without restriction upon further dissemination (no account being taken of restrictions arising solely from copyright);

"the Regulation" means Council Regulation (EC) No. 1334/2000 of 22nd June 2000(b) as amended from time to time (whether the amendments were made before or after the coming into force of this Order in the Territory);

"any relevant use" means use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;

"scheduled journey" means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such manner that its benefits are available to members of the public from time to time seeking to take advantage of it;

"shipment" (and cognate expressions) and "stores" have the same meanings as in the laws of the Territory relating to customs and excise;

(a) OJ No L 302, 19.10.92, p1 as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ No L 236, 23.9.2003, p33).

(b) OJ No L159, 30.06.2000, p1.

"software" means one or more "programmes" or "microprogrammes" fixed in any tangible medium of expression;

"surface effect vehicle" means any air cushion "vehicle" (whether side wall or skirted) and any "vehicle" using the wing-in-ground effect for positive lift;

"technical assistance" means any technical support related to repairs, development, manufacture, assembly, testing, "use", maintenance or any other technical service;

"technology" means information (including but not limited to information comprised in software and documents such as blueprints, manuals, diagrams and designs) that is capable of use in connection with the development, production or use of any goods;

"transfer", in relation to any "software" or "technology", means the "transfer by any electronic means" or "transfer by non-electronic means" (or any combination of electronic and non-electronic means) from a person or place within the Territory;

"transferor" and other cognate expressions shall be construed accordingly (except that where the transfer is to a destination outside "the European Community", "transferor" has the same meaning as "exporter" in the definition in article 2(c) of "the Regulation" to the extent that that definition applies);

"transfer by any electronic means", in relation to any "software" or "technology", means a transmission of "software" or "technology" by facsimile, telephone or other electronic media (except that oral transmission of "technology" by telephone is included only where the "technology" is contained in a document the relevant part of which is read out over the telephone, or is described over the telephone in such a way as to achieve substantially the same result as if it had been so read);

"transfer by any non-electronic means", in relation to any "software" or "technology", means a disclosure of "software" or "technology" by any means (or combination of means), including oral communication, other than as the "exportation" of "goods" or the "transfer by any electronic means";

"transit or transshipment" means transit through the Territory or transshipment with a view to re-exportation of the "goods" in question or transshipment of those "goods" for use as "stores";

"United Kingdom person" means a United Kingdom national or a body incorporated or constituted under the law of the Territory; and for the purposes of this definition, a United Kingdom national is an individual who is ordinarily resident in the Territory and is a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a person who under the British Nationality Act 1981(a) is a British subject or a British protected person within the meaning of that Act;

"vehicle" includes a railway carriage; and

"vessel" includes any ship, "surface effect vehicle", vessel of small waterplane area or hydrofoil and the hull or part of the hull of a vessel.

(2) Any reference in this Order to time after an event is a reference to a period of that length of time beginning on the day after that event.

(3) Except where this Order otherwise provides, expressions used in the Regulation which are also used in this Order have the same meaning in this Order as they have in the Regulation.

(a) 1981 c.61.

PART I

CONTROL ON THE EXPORT OF GOODS

Export of military and certain other goods

3.—(1) Subject to the provisions of this Order, goods of a description specified in Schedule 1 to the UK Order are prohibited to be exported to any destination.

(2) Sub-paragraph (1) does not prohibit the exportation of any goods in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

(3) Subject to the provisions of this Order, or any contrary provisions in a licence, a licence granted by the Governor in relation to any goods specified in Schedule 1 to the UK Order shall also authorise the exportation or transfer of the minimum technology required for the installation, operation, maintenance and repair of the goods to the same destination as the goods.

Export of dual-use goods and end-use control

4.—(1) Subject to the provisions of this Order, goods of a description specified in Schedule 2 to the UK Order are prohibited to be exported to the destinations specified in that Schedule as being prohibited destinations in relation to those goods.

(2) Subject to the provisions of this Order, articles 3 and 4 of the Regulation shall have effect in the Territory so as to prohibit the exportation of dual-use goods to any destination outside the European Community as if the Territory were a Member State of the European Community and the Regulation were a law of the Territory.

(3) Subject to the provisions of this Order —

- (a) goods specified in Annex I but not in Annex IV to the Regulation;
- (b) goods of a description specified in Schedule 2 to the UK Order; or
- (c) goods not specified in Annex I to the Regulation or Schedule 2 to the UK Order but for the exportation of which from the Territory or the European Community an authorisation is, or in accordance with sub-paragraph (2) would be, required pursuant to:
 - (i) article 4(1) of the Regulation; or
 - (ii) article 4(2), (3) or (4) of the Regulation,

are prohibited to be exported to any destination in any Member State where the exporter knows at the time of exportation that the final destination of such goods is outside the Territory or the European Community and no processing or working is to be performed on those goods in any Member State to which they are to be exported.

(4) Subject to the provisions of this Order, dual-use goods not listed in Annex I to the Regulation, which the exporter has grounds for suspecting are or may be intended, in their entirety or in part, for any relevant use, are prohibited to be exported to any destination outside the Territory or the European Community, unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used.

(5) Subject to the provisions of this Order, goods of a description specified in Annex I to the Regulation, which are goods in transit, are prohibited to be exported to any destination.

(6) Subject to the provisions of this Order, sub-paragraphs (1), (2), (3), (4) and (5) do not prohibit the exportation of any goods in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

End-use control and goods in transit

5.—(1) Subject to the provisions of this Order, goods which are goods in transit are prohibited to be exported to any destination where —

- (a) the exporter (or, if the exporter is not within the Territory, any agent of the exporter within the Territory concerned in the exportation or intended exportation) has been informed by a competent authority that such goods are or may be intended, in their entirety or in part, for any relevant use; or
- (b) the exporter is aware that such goods are intended, in their entirety or in part, for any relevant use; or
- (c) the exporter has grounds for suspecting that such goods are or may be intended, in their entirety or in part, for any relevant use, unless the exporter has made all reasonable enquires as to their proposed use and is satisfied that they will not be so used.

(2) Subject to the provisions of this Order, sub-paragraph (1) does not prohibit the exportation of any goods in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

PART II

CONTROLS ON THE TRANSFER OF TECHNOLOGY

Electronic transfer of controlled military and certain other technology

6.—(1) Subject to the provisions of this Order, no person shall transfer by any electronic means to a person or place outside the Territory any software or technology of a description specified in Schedule 1 to the UK Order.

(2) Subject to the provisions of this Order, sub-paragraph (1) does not prohibit the transfer of any software or technology of a description specified in Schedule 1 to the UK Order in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

Electronic transfer of controlled dual-use technology and software and end-use controls

7.—(1) Subject to the provisions of this Order, no person shall transfer by any electronic means any dual-use software or technology of a description specified in Schedule 2 to the UK Order, where the transfer is to a person or place in any destination specified in that Schedule as being a prohibited destination in relation to that software or technology.

(2) Subject to the provisions of this Order, articles 3 and 4 of the Regulation shall have effect in the Territory so as to prohibit the transfer by electronic means of any dual-use technology or software to a person or place outside the European Community as if the Territory were a Member State of the European Community and the Regulation were a law of the Territory.

(3) Subject to the provisions of this Order, no person shall transfer by any electronic means to a person or place in any Member State any dual-use software or technology that is either —

- (a) specified in Annex I but not in Annex IV to the Regulation;
- (b) specified in Schedule 2 to the UK Order; or
- (c) not specified in Annex I to the Regulation or Schedule 2 to the UK Order but for the transfer of which from the Territory or the European Community an authorisation is, or in accordance with sub-paragraph (2) would be, required pursuant to —
 - (i) article 4(1) of the Regulation; or
 - (ii) article 4(2), (3) or (4) of the Regulation,

if he knows at the time of the transfer that such software or technology is intended for use otherwise than within the Territory or the European Community and no processing or working is transferred.

(4) Subject to the provisions of this Order, no person shall transfer by any electronic means any dual-use software or technology not listed in Annex I to the Regulation to a person or place not within the Territory or the European Community where he has grounds for suspecting that such software or technology is or may be intended, in its entirety or in part, for any relevant use, unless he has made all reasonable enquiries as to its proposed use and is satisfied that it will not be so used.

(5) Subject to the provisions of this Order, sub-paragraphs (1), (2), (3) and (4) do not prohibit the transfer of any dual-use software or technology in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

Electronic transfer of all software and technology and end-use controls

8.—(1) Subject to the provisions of this Order, no person shall transfer by any electronic means any software or technology to a person or place within the Territory, where —

- (a) he has been informed by the Governor or the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used otherwise than within the Territory or the European Community.

(2) Subject to the provisions of this Order and where sub-paragraph (3) applies, no United Kingdom person shall transfer by any electronic means any software or technology from any place not within the Territory or the European Community to —

- (a) a person or place not within the Territory or the European Community; or
- (b) a person or place within the Territory or any Member State if he knows at the time of transfer that such software or technology is intended for use otherwise than within the Territory or the European Community and no processing or working is to be performed on that software or technology in the Territory or in any Member State to which it is to be transferred.

(3) This sub-paragraph applies where —

- (a) the United Kingdom person has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) the United Kingdom person is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(4) Subject to the provisions of this Order, no United Kingdom person shall transfer by any electronic means any software or technology from any place not within the Territory or the European Community to a person or place within the Territory or the European Community where —

- (a) he has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used otherwise than within the Territory or the European Community.

(5) For the purposes of sub-paragraphs (1) and (4) a person has reason to believe that software or technology may be used otherwise than within the Territory or the European Community if he knows that it may be or is intended to be so used or if he has been informed by the Governor or the Secretary of State that it may be or is intended to be so used.

(6) Nothing in sub-paragraph (1), (2) or (4) shall be taken to prohibit the transfer of any software or technology in the public domain.

(7) Sub-paragraphs (1), (2) and (4) do not prohibit the transfer of any software or technology in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

Non-electronic transfer of all software and technology and end-use controls

9.—(1) Subject to the provisions of this Order, and where sub-paragraph (2) applies, no person ('the person concerned') shall transfer by any non-electronic means any software or technology to —

- (a) a person or place not within the Territory or the European Community; or
- (b) a person or place within the Territory or any Member State if he knows at the time of transfer that such software or technology is intended for use otherwise than within the Territory or the European Community and no processing or working is to be performed on that software or technology in the Territory or any Member State to which it is to be transferred.

(2) This sub-paragraph applies where —

- (a) the person concerned has been informed by the Governor or the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) the person concerned is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(3) Subject to the provisions of this Order, articles 3 and 4 of the Regulation shall have effect in the Territory so as to prohibit the transfer by any non-electronic means of dual-use software and technology to any person or place not within the territory or the European Community as if the Territory were a Member State of the European Community and the Regulation were a law of the Territory.

(4) Subject to the provisions of this Order, no person shall transfer by any non-electronic means any software or technology to a person or place within the Territory where —

- (a) he has been informed by the Governor or the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used otherwise than within the Territory or the European Community.

(5) Subject to the provisions of this Order and where sub-paragraph (6) applies, no United Kingdom person shall transfer by any non-electronic means any software or technology from any place not within the Territory or the European Community to —

- (a) a person or place not within the Territory or the European Community; or
- (b) a person or place within the Territory or any Member State if he knows at the time of transfer that such software or technology is intended for use otherwise than within the Territory or the European Community and no processing or working is to be performed on that software or technology in the Territory or the Member State to which it is to be transferred.

(6) This sub-paragraph applies where —

- (a) the United Kingdom person has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) the United Kingdom person is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(7) For the purposes of sub-paragraph (4) a person has reason to believe that software or technology may be used otherwise than within the Territory or the European Community if he knows that it may be or is intended to be so used or if he has been informed by the Governor or the Secretary of State that it may be or is intended to be so used.

(8) Nothing in sub-paragraph (1), (3), (4) or (5) shall be taken to prohibit the transfer of any software or technology in the public domain.

(9) Sub-paragraphs (1), (3), (4) and (5) do not prohibit the transfer of any software or technology in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

PART III

CONTROL ON THE PROVISIONS OF TECHNICAL ASSISTANCE

End-use control on technical assistance

10.—(1) Subject to sub-paragraphs (3) and (4), no person shall directly or indirectly provide to a person or place not within the Territory or the European Community any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which —

- (a) he has been informed by the Governor is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware is intended, in its entirety or in part, for any relevant use.

(2) Subject to sub-paragraphs (3) and (4), no United Kingdom person shall directly or indirectly provide from a place not within the Territory or the European Community to any person or place not within the Territory or the European Community any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which —

- (a) he has been informed by the Governor is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware is intended, in its entirety or in part, for any relevant use.

(3) For the purposes of sub-paragraphs (1) and (2) —

- (a) a person directly provides technical assistance if in particular he provides technical assistance or agrees to do so; and
- (b) a person indirectly provides technical assistance if in particular he makes arrangements under which another person provides technical assistance or agrees to do so.

(4) Sub-paragraphs (1) and (2) do not prohibit the provision of any technical assistance in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

PART IV

EXCEPTIONS TO THE CONTROLS IN PARTS I, II AND III

Aircraft, vessels, firearms and ammunition and goods transit

11.—(1) Nothing in paragraph 4 shall be taken to prohibit the exportation of any aircraft the immediately preceding importation of which was on a scheduled journey and which is intended for further scheduled journeys.

(2) Nothing in paragraph 3 shall be taken to prohibit the exportation of any aircraft which is being exported (except to Iran or a country or destination specified in Schedule 3 to the UK Order) after temporary importation into the Territory provided there has been no change of ownership or

registration since such importation and that no goods of a description specified in Schedule 1 to the UK Order have been incorporated into the aircraft since such importation other than by way of replacement for a component essential for the departure of the aircraft.

(3) Nothing in paragraph 4 shall be taken to prohibit the exportation of any aircraft on a scheduled journey.

(4) Nothing in paragraph 3 or 4 shall be taken to prohibit the exportation of any aircraft which is departing temporarily from the Territory on trials.

(5) Nothing in paragraph 3 or 4 shall be taken to prohibit the exportation of any vessel which is departing temporarily from the Territory on trials.

(6) Nothing in paragraph 3 shall be taken to prohibit the exportation of any vessel registered or constructed outside the Territory which is being exported (except to Iran or a country or destination specified in Schedule 3 to the UK Order) after temporary importation into the Territory provided that no goods of a description specified in Schedule 1 to the UK Order have been incorporated into the vessel since such importation other than by way of replacement for a component essential for the departure of the vessel.

(7) Nothing in paragraph 4 shall be taken to prohibit the exportation of any vessel proceeding on a normal commercial journey.

(8) [omitted]

(9) Nothing in paragraph 3 shall be taken to prohibit the exportation of any firearm authorised to be possessed or, as the case may be, purchased or acquired by a valid certificate, licence or other authority under the law of the Territory, related ammunition and sight using non-electronic image enhancement for use therewith —

- (a) to any destination in a Member State by the holder of a certificate, licence or other authority in respect of that firearm granted under the law of the Territory, or
- (b) to any other destination other than to Iran or a country or destination specified in Schedule 3 to the UK Order,

provided that the firearm, related ammunition and sight using non-electronic image enhancement form part of the personal effects of the holder of the authority and, in a case to which sub-paragraph (b) applies, the authority is produced by the holder, or his duly authorised agent, with the firearm and ammunition to the customs authorities at the place of exportation.

(10) Subject to paragraph 5 and sub-paragraph (11) below, nothing in paragraph 3, 4(1), 4(2), 4(3)(a), (b), (c)(ii) or (5) shall be taken to prohibit the exportation of any goods which are goods in transit provided that the conditions in sub-paragraph (12) below are met.

(11) Sub-paragraph (10) does not apply to —

- (a) anti-personnel landmines;
- (b) any goods falling within paragraph c. or g. of entry PL5001 in Part I of Schedule 1 to the UK Order;
- (c) components specially designed for goods falling within sub-paragraph (a);
- (d) equipment, software or technology falling within entry ML18, ML21 or ML22 in Part 1 of Schedule 1 to the UK Order specifically related to goods falling within sub-paragraph (a) or (b);
- (e) any goods being exported to Iran or North Korea; or
- (f) any goods of a description specified in Schedule 1 to the UK Order being exported to any country or destination specified in Schedule 3 to the UK Order.

(12) The conditions are that —

- (a) the goods remain on board a vessel or aircraft for the entire period that they remain in the Territory or are goods on a through bill of lading or through air waybill and in any event are exported within 30 days of their importation;
- (b) the destination of those goods following exportation from the Territory has been determined in the country from which they were originally exported prior to their original

- exportation in connection with the transaction which has given rise to transit or transshipment and has not been changed prior to their exportation from the Territory, or the goods are being returned to that country; and
- (c) the goods in question were exported from that country in accordance with any laws or regulations relating to the exportation of goods applying therein at the time of exportation of those goods.

PART V

LICENCES

Licences

12.—(1) The Governor may grant licences.

(2) [omitted]

(3) [omitted]

(4) Any licence granted or issued by the Governor in pursuance of this Order may be —

- (a) either general or individual;
- (b) limited so as to expire on a specified date unless renewed; and
- (c) subject to, or without, conditions and any such condition may require any act or omission before or after the doing of the act authorised under that licence.

(5) Any licence granted under this Order may be amended, suspended or revoked by the Governor at any time and in such circumstances and on such terms as he thinks fit by serving notice to that effect on the holder of the licence.

Registration with the Governor

13.—(1) Not later than 30 days after any person first does any act under the authority of —

- (a) any general licence granted by the Governor that does not provide otherwise,
- (b) any individual licence granted under paragraph 4 or 5 by the Governor that does not provide otherwise,

the person in question shall give to the Governor written notice of his name and the address at which copies of the records referred to in paragraph 14(1) may be inspected by any person authorised by the Governor or the customs authorities under paragraph 14(4).

(2) A person who has given to the Governor written notice of particulars under sub-paragraph (1) shall, not later than 30 days after any change in those particulars, give to the Governor written notice of the changed particulars.

Record keeping and inspection

14.—(1) Any person acting under the authority of any general licence granted under this Order shall keep detailed registers or records.

(2) The registers or records shall contain sufficient detail as may be necessary to allow the following information, where appropriate, to be identified —

- (a) a description of the goods that have been exported or the software or technology that has been transferred;
- (b) the date of the exportation or transfer;
- (c) the quantity of the goods;
- (d) the name and address of the person referred to in sub-paragraph (1);
- (e) the name and address of any consignee of the goods;

- (f) in so far as it is known to the person referred to in sub-paragraph (1) the name and address of the end-user of the goods, software or technology; and
- (g) any further information required to be kept by the competent authority who has authorised the exportation or transfer.

(3) [omitted]

(4) The register or records referred to in sub-paragraph (1) shall be kept for at least 3 years from the end of the calendar year in which the authorised act took place, and the person referred to in sub-paragraph (1) shall permit any such registers or records to be inspected and copied by any person authorised by the Governor or the customs authorities.

(5) [omitted]

(6) Any person authorised by the Governor or the customs authorities shall have the right, on producing, if required to do so, a duly authenticated document showing his authority, at any reasonable hour to enter for the purpose of sub-paragraph (4) the premises of the address which has most recently been notified to the Governor under paragraph 13.

(7) Where the registers or records required to be maintained under this paragraph are kept in a form which is not legible the exporter or transferor shall, at the request of the person authorised by the Governor or the customs authorities, reproduce such registers or records in a legible form.

(8) [omitted]

(9) Any person who exports or transfers to any Member State any goods, software or technology listed in Part 2 of category 5 in Annex I to the Regulation but not listed in Annex IV to the Regulation shall maintain registers or records in relation to each such exportation or transfer that contain such of the information specified in Part II of Schedule 4 to the UK Order as he can reasonably be expected to obtain and such other of that information as comes into his possession. These registers or records shall be kept for at least 3 years from the end of the calendar year in which the authorised act took place, and he shall permit any such registers or records to be inspected and copied by any person authorised by the Governor or the customs authorities. Sub-paragraphs (6) and (7), and the provision in sub-paragraph (4) relating to inspection and copying, shall apply to the production of such documents or records as they apply in respect of registers or records referred to in sub-paragraph (4) or (as the case may be) in respect of entry into premises for the purpose of sub-paragraph (4).

Licence refusals etc. and appeals

15.—(1) In the event that the Governor decides not to grant a licence under this Order to any person who has applied for a licence, he shall be provided with a written notification setting out the reason or reasons for the decision.

(2) In the event that the Governor decides to suspend a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the terms of the suspension and the reason or reasons for the decision.

(3) In the event that the Governor decides to revoke a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the reason or reasons for the decision.

(4) Any person who has a licence application refused under this Order or who has a licence suspended or revoked under paragraph 12 shall have 28 calendar days from the date of the written notification in which to submit an appeal in writing to the Governor.

(5) Any appeal submitted under sub-paragraph (4) shall specify the grounds on which that appeal is made and may provide further information or arguments in support of the appeal.

(6) Pending determination of any appeal submitted under sub-paragraph (4), any decision taken by the Governor shall continue to have effect.

PART VI

GENERAL

Offences and penalties

16.—(1) Any person who contravenes a prohibition or restriction in —

- (a) paragraph 6, 7(1), 7(3)(a), 7(3)(b) or 7(3)(c)(ii); or
- (b) article 3(1), 4(2) or 4(3) of the Regulation,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5000 or the equivalent.

(2) Any person who contravenes a prohibition or restriction in —

- (a) paragraph 4(3)(c)(i), 4(4) or 5;
- (b) paragraph 7(3)(c)(i), 7(4), 8(2), 8(4), 9(1), 10(1) or 10(2);
- (c) paragraph 8(1) or 9(4); or
- (d) article 4(1) of the Regulation,

shall be guilty of an offence and may be arrested.

(3) A person guilty of an offence under sub-paragraph (2) shall be liable: —

- (a) on summary conviction to a fine not exceeding £5000 or the equivalent or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment, to a fine of any amount or to imprisonment for a term not exceeding two years, or to both.

(4) Any person knowingly concerned in the exportation of any good or the transfer of software or technology, or in the attempted exportation of any good or the attempted transfer of software or technology, with intent to evade any prohibition or restriction in —

- (a) paragraph 6, 7(1), 7(3), 7(4), 8(2), 8(4), 9(1) or 9(5);
- (b) paragraph 8(1) or 9(4); or
- (c) article 3(1), 4(1), 4(2) or 4(3) of the Regulation,

shall be guilty of an offence.

(5) Any person knowingly concerned in the provision, or attempted provision, of technical assistance related to the supply, delivery, manufacture, maintenance or use of anything, with intent to evade any prohibition or restriction in paragraph 10, shall be guilty of an offence.

(6) A person guilty of an offence under sub-paragraph (4) or (5) shall be liable: —

- (a) on summary conviction to a fine not exceeding £5000 or the equivalent or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding ten years, or to both.

(7) Any person who fails to comply with the requirement in article 4(4) of the Regulation shall be guilty of an offence and liable: —

- (a) on summary conviction to a fine not exceeding £5000 or the equivalent;
- (b) on conviction on indictment, to a fine of any amount or to imprisonment for a term not exceeding two years, or to both.

(8) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(9) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(10) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction where that person is for the time being.

(11) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings has not been obtained.

Misleading applications for licences

17.—(1) Where for the purpose of obtaining any licence under this Order any person either —

- (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular; or
- (b) recklessly makes any statement or furnishes any document or information which is false in a material particular,

he shall be guilty of an offence.

(2) A person guilty of an offence under sub-paragraph (1) shall be liable —

- (a) on summary conviction to a fine not exceeding £5000 or the equivalent; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or to both,

and any licence which may have been granted by the Governor in connection with the application for which the false statement was made or the false document or information was furnished shall be void as from the time it was granted.

Failure to comply with licence conditions

18.—(1) Subject to the provisions of sub-paragraph (3), any person who —

- (a) has done any act under the authority of a licence granted by the Governor under this Order; and
- (b) fails to comply with any conditions attaching to that licence,

shall be guilty of an offence.

(2) A person guilty of an offence under sub-paragraph (1) shall be liable —

- (a) on summary conviction to a fine not exceeding £5000 or the equivalent; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or to both.

(3) No person shall be guilty of an offence under sub-paragraph (1) where —

- (a) the condition in question had been previously modified by the Governor;
- (b) the alleged failure to comply would not have been a failure had the licence not been so modified; and
- (c) the condition with which he failed to comply was modified after the doing of the act authorised by the licence.

Customs powers to require evidence of destination

19.—(1) Any person who exports or ships any goods subject to controls by the Act shall, if so required by the customs authorities, provide within such time as they may determine evidence of

the destination to which the goods were delivered and, if he fails to do so, he shall be guilty of an offence.

(2) Any person guilty of an offence under sub-paragraph (1) shall be liable on summary conviction to a fine not exceeding £5000 or the equivalent.

Customs powers

20. Goods which are brought to any place in the Territory for the purpose of being exported may be detained by the customs authorities as if they were liable to forfeiture, if and so long as they have reason to believe that the Governor (after, if necessary, having had the impending exportation brought to his attention) might inform the exporter as provided in article 4(1), (2) or (3) of the Regulation or paragraph 5.

Application of customs and excise laws

21.—(1) It shall be the duty of the customs authorities to take such action as they consider appropriate to secure the enforcement of the provisions of this Order described in sub-paragraph (3).

(2) [omitted]

(3) The provisions referred to in sub-paragraph (1) are paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 17, 18 and 19 but excluding paragraphs 8(1) and 9(4). Paragraph 14 shall be enforced only insofar as the obligation relates to the powers of the customs authorities.

(4) The provisions of the laws of the Territory relating to customs and excise relating to proceedings for offences, mitigation of penalties, proof and other matters apply in relation to offences and penalties created by this Order and proceedings for such offences as they apply in relation to offences and penalties and proceedings for offences under those laws.

(5) For the purposes of this Order, offences other than those in respect of which a duty is imposed upon the customs authorities by virtue of sub-paragraph (3) shall not be offences for which, under any provision of the laws of the Territory, proceedings may only be instituted by those authorities.

(6) In any case where a person would, apart from this sub-paragraph, be guilty of —

- (a) an offence under the provisions of the laws of the Territory relating to the import or export of goods; and
- (b) a corresponding offence under this Order,

he shall not be guilty of the offence mentioned in sub-paragraph (a) of this sub-paragraph.

(7) Sub-paragraph (6) does not apply in respect of prohibitions or restrictions on the exportation of firearms falling within any description of weapons subject under the law of the Territory to a general prohibition on their possession, purchase, acquisition, manufacture, sale or transfer without the permission of the Governor.

Use and disclosure of information

22.—(1) This paragraph applies to information which is held by —

- (a) the Governor, or
- (b) the customs authorities,

in connection with the operation of controls imposed by this Order on the exportation of goods, the transfer of technology or participation in the provision of services connected with the development, production or use of goods or technology.

(2) Information to which this paragraph applies may be used for the purposes of, or for any purposes connected with —

- (a) the exercise of functions in relation to any control imposed by this Order or by any other order made under the Act;

- (b) giving effect to any European Community or other international obligation of the United Kingdom;
- (c) facilitating the exercise by an authority or international organisation outside the Territory of functions which correspond to functions conferred by or in connection with any activity subject to control by this Order or any other order made under the Act; and

may be disclosed to any person for use for these purposes.

(3) No disclosure of information shall be made by virtue of this paragraph unless the making of the disclosure is proportionate to the object of the disclosure.

(4) For the purposes of this paragraph "information" is any information that relates to a particular business or other activity carried on by a person.

(5) Nothing in this paragraph shall be taken to affect any power to disclose information that exists apart from this paragraph.

(6) The information that may be disclosed by virtue of this paragraph includes information obtained before the commencement of this Order.

Service of notices

23. Any notice to be given to the Governor by a person under this Order may be given by an agent of his, and shall be sent by post or delivered to the Governor at an address specified in the official gazette of the Territory.

Repeals and revocations

24. [omitted]

Transitional arrangements

25.—(1) Licences issued by the Governor of a territory to which this Order applies before the date of the coming into force of this Order in that Territory ("the relevant date") permitting anything to be done or omitted to be done for which, apart from this paragraph, a licence under this Order would be required on or after the relevant date shall continue to have effect for the period for which they were issued, and any such licence shall be deemed to have been issued under this Order.

(2) The provisions of the law of the Territory in force before the relevant date shall continue to apply in relation to any export for which such a licence was required before that date which has occurred before that date and to any export which takes place on or after the relevant date in respect of which such a licence has been issued before that date.

SCHEDULE 3

Article 4

SECTION 9 OF EXPORT CONTROL ACT 2002 AS EXTENDED TO THE OVERSEAS TERRITORIES LISTED IN SCHEDULE 1

Section 9 of the Export Control Act 2002 extends to each of the territories listed in Schedule 1, modified as follows:

"9.—(1) This section applies to licensing powers and other functions conferred on any person by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004 in the territories to which that Order extends.

(2) The Governor shall publish in such manner as he may think fit any guidance given and published (or treated as given and published) by the Secretary of State under this section as it applies in the United Kingdom relevant to the exercise of the powers and other

functions to which this section applies in the Territory, with such exceptions and modifications as appear to the Governor to be appropriate.

(3) Any person exercising a licensing power or other function to which this section applies shall have regard to any guidance which relates to that power or other function.

(4) In application of this section to any of the said territories the expression "the Territory" means that territory and "the Governor" means the Governor or other person administering the Government of that territory."

SCHEDULE 4

Article 5

APPLICATION TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA OF PROVISIONS RELATING TO PENALTIES FOR OFFENCES AND PROCEEDINGS

1. Any person who commits an offence under paragraph 16(1) or 19(1) of Schedule 2 is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or its equivalent.

2. Any person who commits an offence under paragraph 16(2) of Schedule 2 shall be liable on conviction—

(1) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both;

(2) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

3. Any person who commits an offence under paragraph 16(4) or (5) of Schedule 2 shall be liable on conviction—

(1) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding ten years, or to a fine of any amount, or to both;

(2) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

4. Any person who commits an offence under paragraph 16(7), 17(1) or 18(1) of Schedule 2 is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both.

5. Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

6. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the territory after committing the offence.

7. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the territory having jurisdiction where that person is for the time being.

8. No proceedings for an offence under this Order shall be instituted in the territory except by or with the consent of the principal public officer of the territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings has not been obtained.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Export Control Act 2002, extends with modifications the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (S.I. 2003/2764 amended by S.I. 2004/1050, 2004/2561 and 2004/2741) (the UK Order) to the territories listed in Schedule 1. The Order establishes a new framework for the control of strategic goods, software and technology. This Order brings together controls on the export or transfer of military and dual-use goods, software and technology, controls on goods, software and technology related to weapons of mass destruction (WMD) and the provision of WMD-related technical assistance. The controls in this Order apply to persons in the territories listed in Schedule 1 and in respect of certain provisions, to United Kingdom persons ordinarily resident in those territories anywhere in the world.

This Order gives effect in the territories to Council Regulation (EC) No. 1334/2000 of 22 June 2000 (O.J. No. L 159, 30.06.2000 p.1.) setting up a regime for the control of exports of dual-use items and technology (the Regulation), as if the territories were part of the European Community. Military and para-military goods, software and technology whose export or transfer is controlled are specified in Schedule 1 to the UK Order. Dual-use goods, software and technology, the export or transfer of which are controlled, in addition to those set out in the Annexes to the Regulation, are specified in Schedule 2 to the UK Order.

This Order imposes WMD end-use controls on "any relevant use" in connection with WMD. A relevant use is any use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons.

The Order also introduces controls on:

(a) the transfer by electronic means of listed military technology in Schedule 1 to the UK Order. Electronic transfer includes transfers by fax, e-mail or telephone;

(b) the transfer by any means of technology intended for use in connection with WMD or a related missile programme. This supplements the end-use controls on the physical export of goods, software and technology and the electronic transfer of technology contained in the Regulation. This control will apply to anyone in the territories or any United Kingdom person ordinarily resident in a territory wherever located who communicates technology which the provider knows, or has been informed by a competent authority, is or might be intended for use outside the European Community and the territories in connection with WMD or missiles capable of delivering WMD; and

(c) the provision of technical assistance in relation to WMD. This control will apply to anyone in the territories or any United Kingdom person ordinarily resident in a territory wherever located who provides or facilitates the provision of technical assistance outside the territories where he knows, or is informed by a competent authority, that it is or may be intended for use in connection with WMD or missiles capable of delivering WMD. This control, together with the WMD transfer controls, implements the European Joint Action of 22 June 2000 concerning the control of technical assistance related to certain military end-uses (2000/401/CFSP).

The UK Order, as extended to the territories, is divided into six parts:

Part I deals with controls on the export of military goods, dual-use goods and goods in transit with a WMD end-use;

Part II deals with controls on the electronic transfer of military and dual-use technology and the transfer of technology with a WMD end-use by both electronic and non- electronic means;

Part III deals with controls on the provision of WMD technical assistance;

Part IV sets out exceptions to the controls in Parts I, II and III;

Part V provides for the granting of licences, record keeping and appeals. Paragraph 15 sets out the procedure for appealing against any decision of the Governor to refuse, suspend or revoke any licence issued under the Order. Appeals must be made within 28 days of the date of the written notification recording the Governor's decision; and

Part VI sets out the penalties and means of enforcement for breach of the controls in the Regulation and Parts I, II and III. In paragraph 16 the maximum penalty for the intentional breach of controls on exports, transfer of technology and technical assistance is set at ten years, the maximum penalty permitted under section 7(1) of the Export Control Act 2002.

Schedule 3 extends with modifications the provisions of section 9 of the Export Control Act 2002 to the territories listed in Schedule 1.

Schedule 4 provides for offences, enforcement and penalties for breach of the controls in Schedule 2 in respect of the Sovereign Base Areas of Akrotiri and Dhekelia.

Trade in Goods (Control) (Overseas Territories) Order 2004 (SI 2004/3102)

Commencement in the Falkland Islands

Pursuant to paragraph 1 of Schedule 2 to this Order **I APPOINT** the date of publication of the Order in the Gazette as the date on which it shall be extended to the Falkland Islands.

Pursuant to paragraph 14 of Schedule 2 to this Order the address for delivery of notices under the Order is to His Excellency the Governor, Government House, Stanley, Falkland Islands.

Pursuant to section 9 of the Export Control Act 2002 ("the Act") in its application to the Falkland Islands under article 4 of and Schedule 3 to this Order I notify that copies of guidance given or published by the Secretary of State for Trade and Industry under section 9 of the Act as it applies in the United Kingdom may be obtained on application from the Attorney General's Chambers, Thatcher Drive, Stanley, Falkland Islands. Alternatively it may be downloaded free of charge from the DTI Export Control Organisation website at www.dti.gov.uk/export.control/publications.htm. All such guidance shall be modified in its application to the Falkland Islands in the same way as would be required in relation to an adopted English statute by section 78 of the Interpretation and General Clauses Ordinance.

Dated this third day of May 2005

H. Hall,
Acting Governor

2004 No. 3102

OVERSEAS TERRITORIES

Trade in Goods (Control) (Overseas Territories) Order 2004

Made - - - -

16th December 2004

At the Court at Buckingham Palace, the 16th day of December 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 16(5) of the Export Control Act 2002(a) is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows: —

Citation

1. This Order may be cited as the Trade in Goods (Control) (Overseas Territories) Order 2004.

Extent and interpretation

- 2.—(1) This Order shall extend to the territories listed in Schedule 1.

- (2) In the application of this Order to any of the said territories —

- (a) the expression “the Territory” means that territory;
- (b) any reference to “the Governor” means the Governor or other officer administering the Government of that territory; and
- (c) any reference to the official gazette of a Territory includes a reference to any form in which official information is normally made available in that Territory.

- (3) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to sums expressed in sterling in Schedule 2 or, as applicable, in Schedule 5.

Extension of Order to territories

3. The Trade in Goods (Control) Order 2003(b) (the “UK Order”), as modified in Schedule 2, extends to the territories listed in Schedule 1.

(a) 2002 c.28.
(b) S.I. 2003/2765.

Guidance about the exercise of functions under this Order

4. Section 9 of the Export Control Act 2002 (guidance about the exercise of functions under control orders), as modified in Schedule 3, extends to the territories listed in Schedule 1.

Modification of Schedule 4 (Restricted Goods)

5.—(1) Where any modification is made to the Schedule to the UK Order, whether before or after the coming into force of this Order in the Territory, the Governor shall, by order published in the official gazette of the Territory, make the like modification to Schedule 4.

(2) An order under paragraph (1) may make transitional provisions in connection with any modification made by the order.

Application to the Sovereign Base Areas of Akrotiri and Dhekelia of provisions relating to penalties for offences and proceedings

6. Schedule 5 shall have effect for the application of articles 9, 10 and 11 of the UK Order, as modified in Schedule 2, to the Sovereign Base Areas of Akrotiri and Dhekelia.

Exercise of powers of the Governor

7. The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate, or authorise the delegation of, any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

A. K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 2(1)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla

Bermuda

Cayman Islands

Falkland Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St Helena and Dependencies

South Georgia and the South Sandwich Islands

The Sovereign Base Areas of Akrotiri and Dhekelia

Turks and Caicos Islands

Virgin Islands

PROVISIONS OF THE TRADE IN GOODS (CONTROL) ORDER
2003 AS EXTENDED TO THE OVERSEAS TERRITORIES LISTED
IN SCHEDULE 1

Commencement and application

1.—(1) This Order shall be extended to each Territory listed in Schedule 1 on such day as the Governor may by order, published in the official gazette of the Territory, appoint.

(2) Paragraphs 3(1) and 4 apply to any person within a Territory and paragraph 3(2) applies to any person elsewhere who is a United Kingdom person.

Interpretation

2.—(1) In this Order: —

“to acquire” in relation to “controlled goods”, means to buy, hire, borrow or to accept them as a gift, and cognate expressions shall be construed accordingly;

“the Act” means the Export Control Act 2002(a);

“controlled goods” means goods used and unused, for the time being listed in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(b) as extended to the Territory by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control)(Overseas Territories) Order 2004(c), the transfer, acquisition or disposal of which are prohibited by this Order, but does not include goods which are “restricted goods”. For the avoidance of doubt, “controlled goods” does not include software and technology;

“country” includes territory;

“customs authorities” means the authorities which, under the law of the Territory, have responsibility for the control of imports and exports;

“to dispose of” in relation to “controlled goods”, means to sell, let on hire, lend or to give them as a gift, and cognate expressions shall be construed accordingly;

“goods in transit” means any controlled goods imported into the Territory for transit or transshipment;

“restricted goods” means goods, both used and unused, specified in Schedule 4 which would otherwise be “controlled goods”, the supply and delivery of which are prohibited by this Order;

“a third country” means any country that is not the Territory;

“transfer” means to move “controlled goods” over which one has rights of disposal from one third country to another third country;

“the UK Order” means the Trade in Goods (Control) Order 2003(d); and

“United Kingdom person” means a United Kingdom national or a body incorporated or constituted under the law of the Territory, and, for the purposes of this definition, a United Kingdom national is an individual who is ordinarily resident in the Territory and is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National

(a) 2002 c. 28.

(b) S.I. 2003/2764, as amended by S.I. 2004/1050, 2004/2561 and 2004/2741.

(c) S.I. 2004/3101.

(d) S.I. 2003/2765.

(Overseas), a person who under the British Nationality Act 1981(a) is a British subject, or a British protected person within the meaning of that Act.

(2) Any reference in this Order to time after an event is a reference to a period of that length of time beginning on the day after that event.

Supply and delivery of restricted goods

3.—(1) Subject to the provisions of this Order, no person shall directly or indirectly —

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of,

any restricted goods, where that person knows or has reason to believe that his action or actions will, or may, result in the removal of those goods from one third country to another third country.

(2) Subject to the provisions of this Order, no United Kingdom person shall directly or indirectly —

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of,

any restricted goods, where that person knows or has reason to believe that his action or actions will, or may, result in the removal of those goods from one third country to another third country.

(3) Sub-paragraph (1) applies to any act, or any part of any act, done in the Territory.

(4) Sub-paragraph (2) applies to any act, or any part of any act, done outside the Territory.

(5) Sub-paragraphs (1) and (2) do not apply to any restricted goods that are present in the Territory unless they are goods in transit.

(6) For the purpose of sub-paragraphs (1) and (2), restricted goods that are goods in transit shall be considered to be located in a third country.

(7) Nothing in sub-paragraph (1) or (2) shall be taken to prohibit any activities authorised by a licence in writing granted under this Order or under any other order made under the Act, provided that all the conditions attaching to the licence are complied with.

(8) Nothing in sub-paragraph (1)(b) or (c) or (2)(b) or (c) shall apply where the supply or delivery of the restricted goods to the person or place concerned is authorised by a licence in writing granted under this Order or under any other order made under the Act.

Transfer, acquisition or disposal of controlled goods

4.—(1) Subject to the provisions of this Order, no person shall —

- (a) arrange the transfer of controlled goods from one third country to another third country; or
- (b) acquire or dispose, or agree to acquire or dispose, of any controlled goods, where that person knows or has reason to believe that such an acquisition or disposal will or may result in the removal of those goods from one third country to another third country.

(2) Subject to the provisions of this Order, no person shall —

- (a) arrange or negotiate; or
- (b) agree to arrange or negotiate,

(a) 1981 c. 61.

a contract for the acquisition or disposal of any controlled goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(3) Subject to the provisions of this Order, no person shall in return for a fee, commission or other consideration —

- (a) do any act; or
- (b) agree to do any act,

calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(4) Sub-paragraphs (1), (2) and (3) apply to any act, or any part of any act, done in the Territory.

(5) Sub-paragraphs (1), (2) and (3) shall not apply to any person whose sole involvement in relation to the transfer, acquisition or disposal of any controlled goods is to provide or agree to provide —

- (a) transportation services,
- (b) financing or financial services,
- (c) insurance or reinsurance services, or
- (d) general advertising or promotion services.

(6) Sub-paragraphs (1), (2) and (3) do not apply to controlled goods that are present in the Territory unless they are goods in transit.

(7) For the purposes of sub-paragraphs (1), (2) and (3), controlled goods that are goods in transit shall be considered to be located in a third country.

(8) Nothing in sub-paragraph (1), (2) or (3) shall be taken to prohibit any activities authorised by a licence in writing granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

LICENCES

Granting and revocation of licences etc

5.—(1) The Governor may grant licences authorising any act that would otherwise be prohibited under this Order.

(2) Any licence granted by the Governor in pursuance of this Order may be —

- (a) either general or individual;
- (b) limited so as to expire on a specified date unless renewed; and
- (c) subject to, or without, conditions and any such condition may require any act or omission before or after the doing of the act authorised under that licence.

(3) Any licence granted under this Order shall be in writing and may be amended, suspended or revoked by the Governor at any time and in such circumstances and on such terms as he thinks fit by serving a notice to that effect on the holder of the licence.

Registration with the Governor

6.—(1) Not later than 30 days after any person first does any act under the authority of any general licence granted by the Governor that does not provide otherwise, that person shall give to the Governor written notice of his name and the address at which copies of the records referred to in paragraph 7(1) may be inspected by any person authorised by the Governor or the customs authorities under paragraph 7(4).

(2) A person who has given to the Governor written notice of particulars under sub-paragraph (1) shall, not later than 30 days after any change in those particulars, give to the Governor written notice of the changed particulars.

Record keeping and inspection

7.—(1) Any person who does any act under the authority of any general licence under this Order shall keep registers or records in accordance with this paragraph.

(2) The registers or records shall contain sufficient detail as may be necessary to allow the following information to be identified —

- (a) a description of the restricted or controlled goods that have been supplied, delivered, transferred, acquired or disposed of, or for which arrangements or negotiations for their acquisition or disposal have been made or entered into;
- (b) the date or the period of time over which the relevant activities relating to the supply, delivery, transfer, acquisition or disposal of the restricted or controlled goods were carried out;
- (c) the quantity of the restricted or controlled goods;
- (d) the name and address of the end-user of the restricted or controlled goods;
- (e) the name and address of the supplier of the restricted or controlled goods; and
- (f) any further information required to be kept by the Governor.

(3) The registers or records referred to in sub-paragraph (1) shall be kept for at least 4 years from the end of the calendar year in which the authorised act took place.

(4) The person referred to in sub-paragraph (1) shall permit any such records to be inspected and copied by any person authorised by the Governor or the customs authorities.

(5) Any person authorised by the Governor or the customs authorities shall have the right, on producing, if required to do so, a duly authenticated document showing his authority, at any reasonable hour to enter for the purpose of sub-paragraph (4) the premises, the address of which has been most recently notified to the Governor under paragraph 6.

(6) Where the registers or records required to be maintained under this paragraph are kept in a form which is not legible the person required under sub-paragraph (1) to maintain such records shall at the request of the person authorised by the Governor or the customs authorities, as the case may be, reproduce such registers or records in a legible form.

Licence refusals etc. and appeals

8.—(1) In the event that the Governor decides not to grant a licence under this Order to any person who has applied for a licence, that person shall be provided with a written notification setting out the reason or reasons for the decision.

(2) In the event that the Governor decides to suspend a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the terms of the suspension and the reason or reasons for the decision.

(3) In the event that the Governor decides to revoke a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the reason or reasons for the decision.

(4) Any person who has had a licence application refused under paragraph 5 or who has had a licence suspended or revoked under that paragraph shall have 28 calendar days from the date of the written notification in which to submit an appeal in writing to the Governor.

(5) Any appeal submitted under sub-paragraph (4) shall specify the grounds on which that appeal is made and may provide further information or arguments in support of the appeal.

(6) Pending determination of any appeal submitted under sub-paragraph (4), any decision taken by the Governor shall continue to have effect.

GENERAL

Offences and penalties

9.—(1) Any person who contravenes a prohibition in paragraph 3 or 4 shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 or the equivalent.

(2) Any person knowingly concerned in the supply, delivery, transfer, acquisition or disposal of any restricted or controlled goods with intent to evade any prohibition or restriction in paragraph 3(1) or 4 shall be guilty of an offence.

(3) Any person knowingly concerned in the supply or delivery of any restricted goods with intent to evade any prohibition or restriction in paragraph 3(2) shall be guilty of an offence.

(4) A person guilty of an offence under sub-paragraph (2) or (3) shall be liable —

- (a) on summary conviction to a fine not exceeding £5,000 or the equivalent or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding ten years, or to both.

(5) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(6) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(7) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction where that person is for the time being.

(8) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings has not been obtained.

Misleading applications for licences etc.

10.—(1) Where for the purpose of obtaining a licence under this Order any person either —

- (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular; or
- (b) recklessly makes any statement or furnishes any document or information which is false in a material particular,

he shall be guilty of an offence.

(2) A person guilty of an offence under sub-paragraph (1) shall be liable —

- (a) on summary conviction to a fine not exceeding £5,000 or the equivalent; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or to both,

and any licence which may have been granted by the Governor in connection with the application for which the false statement was made or the false document or information was furnished shall be void as from the time it was granted.

Failure to comply with licence conditions

11.—(1) Subject to sub-paragraph (3), any person who —

- (a) has done any act under the authority of a licence granted by the Governor under this Order, and
- (b) fails to comply with —
 - (i) any conditions attaching to that licence;
 - (ii) any obligation under paragraph 6; or
 - (iii) any obligation under paragraph 7,

shall be guilty of an offence.

(2) A person guilty of an offence under sub-paragraph (1) shall be liable —

- (a) on summary conviction to a fine not exceeding £5,000 or the equivalent; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or to both.

(3) No person shall be guilty of an offence under sub-paragraph (1) where —

- (a) the licence condition in question had been previously modified by the Governor; and
- (b) the alleged failure to comply would not have been a failure had the licence not been so modified; and
- (c) the condition with which he failed to comply was modified by the Governor after the doing of the act authorised by the licence.

Application of customs and excise law

12.—(1) It shall be the duty of the customs authorities to take such action as they consider appropriate to secure the enforcement of paragraphs 3, 4, 10 and 11 and any obligation arising under paragraph 7 insofar as the obligation relates to the powers of the customs authorities.

(2) The provisions of the law of the Territory relating to proceedings for offences, mitigation of penalties, proof and other matters in respect of the control of imports and exports apply in relation to offences and penalties under this Order, and proceedings for such offences, as they apply in relation to offences and penalties and proceedings for offences under those provisions.

(3) For the purposes of this Order, offences other than those in respect of which a duty is imposed upon the customs authorities by virtue of sub-paragraph (1) shall not be offences in respect of which, under any law of the Territory relating to the control of imports and exports, proceedings may be taken only by, or by order of, the customs authorities.

Use and disclosure of information

13.—(1) This paragraph applies to information which is held by —

- (a) the Governor; or
- (b) the customs authorities,

in connection with the operation of controls imposed by this Order, on activities which facilitate or are otherwise connected with the supply or delivery of restricted goods or the transfer, acquisition or disposal of controlled goods.

(2) Information to which this paragraph applies may be used for the purposes of, or for any purposes connected with —

- (a) the exercise of functions in relation to any control imposed by this Order or by any other order made under the Act;
- (b) giving effect to any European Community or other international obligation of the United Kingdom;

- (c) facilitating the exercise by an authority or international organisation outside the Territory of functions which correspond to functions conferred by or in connection with any activity subject to control by this Order or any other order made under the Act; and

may be disclosed to any person for use for these purposes.

(3) No disclosure of information shall be made by virtue of this paragraph unless the making of the disclosure is proportionate to the object of the disclosure.

(4) For the purposes of this paragraph, "information" is any information that relates to a particular business or other activity carried on by a person.

(5) Nothing in this paragraph shall be taken to affect any power to disclose information that exists apart from this paragraph.

(6) The information that may be disclosed by virtue of this paragraph includes information obtained before the commencement of this Order.

Service of notices

14. Any notice to be given by any person under this Order may be given by an agent of that person and shall be sent by post or delivered to the Governor at an address specified in the official gazette of the Territory.

SCHEDULE 3

Article 4

SECTION 9 OF THE EXPORT CONTROL ACT 2002 AS EXTENDED TO THE OVERSEAS TERRITORIES LISTED IN SCHEDULE 1

Section 9 of the Export Control Act 2002 extends to each of the territories listed in Schedule 1, modified as follows:

"9.—(1) This section applies to licensing powers and other functions conferred on any person by the Trade in Goods (Control) (Overseas Territories) Order 2004 in the territories to which that Order extends.

(2) The Governor shall publish in such manner as he may think fit any guidance given and published (or treated as given and published) by the Secretary of State under this section as it applies in the United Kingdom relevant to the exercise of the powers and other functions to which this section applies in the Territory, with such exceptions and modifications as appear to the Governor to be appropriate.

(3) Any person exercising a licensing power or other function to which this section applies shall have regard to any guidance which relates to that power or other function.

(4) In the application of this section to any of the said territories, "the Territory" means that territory and "the Governor" means the Governor or other officer administering the Government of that territory."

SCHEDULE 4

Article 5

RESTRICTED GOODS

The following are restricted goods for the purposes of this Order:

Certain Security and Para-Military Police Equipment

1. Any good falling within paragraph c. or g. of PL5001 in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(a) as extended to the Territory by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004(b).

Certain Missiles

2. Missiles capable of a range of 300km or more, and specially designed components therefor.

SCHEDULE 5

Article 6

APPLICATION TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA OF PROVISIONS RELATING TO PENALTIES FOR OFFENCES AND PROCEEDINGS

1. Any person who commits an offence under paragraph 9(1) of Schedule 2 is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or the equivalent.

2. Any person who commits an offence under paragraph 9(2) or (3) of Schedule 2 shall be liable on conviction –

(1) if tried on information before the Senior Judge's Court, to a fine of any amount, or to imprisonment for a term not exceeding ten years, or to both;

(2) if tried before the Judge's Court, to a fine not exceeding £5,000 or the equivalent, or to imprisonment for a term not exceeding six months, or to both.

3. Any person who commits an offence under paragraph 10(1) or 11(1) of Schedule 2 is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine of any amount.

4. Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly

5. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

6. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction where that person is for the time being.

7. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings has not been obtained.

(a) S.I. 2003/2764 as amended by S.I. 2004/1050, 2004/2561 and 2004/2741.

(b) S.I. 2004/3101.

**Trade in Controlled Goods (Embargoed Destinations) (Overseas Territories) Order 2004
(SI 2004/3103)**

Commencement in the Falkland Islands

Pursuant to paragraph 1 of Schedule 2 to this Order I **APPOINT** the date of publication of the Order in the Gazette as the date on which it shall be extended to the Falkland Islands.

Pursuant to paragraph 13 of Schedule 2 to this Order the address for delivery of notices under the Order is to His Excellency the Governor, Government House, Stanley, Falkland Islands.

Pursuant to section 9 of the Export Control Act 2002 ("the Act") in its application to the Falkland Islands under article 4 of and Schedule 3 to this Order, I notify that copies of guidance given or published by the Secretary of State for Trade and Industry under section 9 of the Act as it applies in the United Kingdom may be obtained on application from the Attorney General's Chambers, Thatcher Drive, Stanley, Falkland Islands. Alternatively it may be downloaded free of charge from the DTI Export Control Organisation website at www.dti.gov.uk/export.control/publications.htm. All such guidance shall be modified in its application to the Falkland Islands in the same way as would be required in relation to an adopted English statute by section 78 of the Interpretation and General Clauses Ordinance.

Dated this third day of May 2005

H. Hall,
Acting Governor

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Export Control Act 2002 (2002 c. 28) (the Act), extends with modifications the Trade in Goods (Control) Order 2003 (S.I. 2003/2765) (the UK Order) to the territories listed in Schedule 1. It controls the trade between one overseas country and another of military and para-military goods and specified missiles for the time being listed in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (S.I. 2003/2764, as amended by S.I. 2004/1050, 2004/2561 and 2004/2741) as extended to those overseas territories by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004 (S.I. 2004/3101). In this Order these goods are referred to as "controlled goods". Further controls are imposed on "restricted goods" as listed in Schedule 4. The controls in this Order do not apply to software or technology or to activities connected to trade in controlled goods that are situated in a territory (with the exception of goods in transit via the territory).

In relation to restricted goods, paragraph 3 of Schedule 2 prohibits any person within a territory, or a United Kingdom person (as defined in the Order) elsewhere, from supplying or delivering, or doing any act calculated to promote the supply or delivery of, restricted goods without a licence from the Governor (or a licence granted under any other order made under the Act).

In relation to controlled goods, paragraph 4 of Schedule 2 prohibits any person in a territory from transferring, acquiring or disposing, or arranging or negotiating a contract for the acquisition or disposal, of controlled goods without a licence from the Governor (or a licence granted under any other order made under the Act). In addition, the provisions on controlled goods prohibit any person in a territory in return for a fee, commission or other consideration from doing any act or agreeing to do any act, without a licence, which would promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods where that person knows or has reason to believe that the goods will be moved from one third country to another third country.

Schedule 2 exempts persons whose sole involvement in the movement of controlled goods from one overseas country to another is to provide transport, finance, insurance or general advertising or promotion services.

The remaining paragraphs in Schedule 2 do the following:

Paragraphs 5-7 provide for the issuing of licences by the Governor, registration, record keeping and inspection and licence refusals and appeals;

Paragraphs 8-12 provide for offences, enforcement and penalties for the breach of the controls;

Paragraph 13 sets out the purposes for which information obtained by the Governor, or the customs authorities, can be disclosed; and

Paragraph 14 states the address where notices to be given by any person under this Order are to be sent.

Schedule 3 extends with modifications the provisions of section 9 of the Export Control Act 2002 to the territories listed in Schedule 1.

Schedule 4 to this Order sets out the goods which are restricted under this Order and article 5 provides for the Governor to make modifications to Schedule 4 in the event of modifications to the Schedule to the UK Order.

Schedule 5 provides for offences, enforcement and penalties for the breach of the controls in respect of the Sovereign Base Areas of Akrotiri and Dhekelia.

2004 No. 3103

OVERSEAS TERRITORIES

Trade in Controlled Goods (Embargoed Destinations) (Overseas Territories) Order 2004

Made

16th December 2004

At the Court at Buckingham Palace, the 16th day of December 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 16(5) of the Export Control Act 2002(a) is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows: —

Citation

1. This Order may be cited as the Trade in Controlled Goods (Embargoed Destinations) (Overseas Territories) Order 2004.

Extent and interpretation

2.—(1) This Order shall extend to the territories listed in Schedule 1.

(2) In the application of this Order to any of the said territories —

- (a) the expression “the Territory” means that territory;
- (b) any reference to “the Governor” means the Governor or other officer administering the Government of that Territory; and
- (c) any reference to the official gazette of a Territory includes a reference to any form in which official information is normally made available in that Territory.

(3) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to sums expressed in sterling in Schedule 2 or, as applicable, in Schedule 5.

Extension of Order to territories

3. The Trade in Controlled Goods (Embargoed Destinations) Order 2004(b) (the “UK Order”), as modified in Schedule 2, extends to the territories listed in Schedule 1.

(a) 2002 c. 28.

(b) S.I. 2004/318 as amended by S.I. 2004/1049 and 2004/2741.

Guidance about the exercise of functions under this Order

4. Section 9 of the Export Control Act 2002 (guidance about the exercise of functions under control orders), as modified in Schedule 3, extends to the territories listed in Schedule 1.

Modification of Schedule 4 (Embargoed Destinations)

5.—(1) Where any modification is made to the Schedule to the UK Order, whether before or after the coming into force of this Order in the territory, the Governor shall, by order published in the official gazette of the Territory, make the like modification to Schedule 4.

(2) An order under paragraph (1) may make transitional provisions in connection with any modification made by such order.

Application to the Sovereign Base Areas of Akrotiri and Dhekelia of provisions relating to penalties for offences and proceedings

6. Schedule 5 shall have effect for the application of articles 8, 9 and 10 of the UK Order, as modified in Schedule 2, to the Sovereign Base Areas of Akrotiri and Dhekelia.

Exercise of powers of the Governor

7. The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate, or authorise the delegation of, any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 2(1)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla

Bermuda

Cayman Islands

Falkland Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St Helena and Dependencies

South Georgia and the South Sandwich Islands

The Sovereign Base Areas of Akrotiri and Dhekelia

Turks and Caicos Islands

Virgin Islands

**PROVISIONS OF THE TRADE IN CONTROLLED GOODS
(EMBARGOED DESTINATIONS) ORDER 2004 AS EXTENDED TO
THE OVERSEAS TERRITORIES LISTED IN SCHEDULE 1**

Commencement

1. This Order shall come into force in each Territory listed in Schedule 1 on such day as the Governor may by order, published in the official gazette of the Territory, appoint.

Interpretation

2.—(1) In this Order: —

“the Act” means the Export Control Act 2002(a);

“controlled goods” means goods used and unused, specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(b) as extended to certain territories by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004(c), the supply and delivery of which are prohibited by this Order. For the avoidance of doubt “controlled goods” does not include software and technology;

“country” includes territory;

“customs authorities” means the authorities which, under the law of the Territory, have responsibility for the control of imports and exports;

“embargoed destination” means a country listed in Schedule 4;

“goods in transit” means any controlled goods imported into the Territory for transit or transshipment; and

“United Kingdom person” means a United Kingdom national or a body incorporated or constituted under the law of the Territory, and, for the purposes of this definition, a United Kingdom national is an individual who is ordinarily resident in the Territory and is a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a person who under the British Nationality Act 1981(d) is a British subject or a British protected person within the meaning of that Act.

(2) Any reference in this Order to time after an event is a reference to a period of that length of time beginning on the day after that event.

CONTROLS ON TRADE IN CONTROLLED GOODS

Supply and delivery of controlled goods

3.—(1) Subject to the provisions of this Order, no person shall directly or indirectly —

(a) supply or deliver;

(b) agree to supply or deliver; or

(c) do any act calculated to promote the supply or delivery of,

any controlled goods to any person or place in an embargoed destination.

(a) 2002 c. 28.

(b) S.I. 2003/2764 as amended by S.I. 2004/1050, 2004/2561 and 2004/2741.

(c) S.I. 2004/3101.

(d) 1981 c. 61.

(2) Subject to the provisions of this Order, no United Kingdom person shall directly or indirectly —

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of,

any controlled goods to any person or place in an embargoed destination.

(3) Sub-paragraph (1) applies to any act, or any part of any act, done in the Territory.

(4) Sub-paragraph (2) applies to any act, or any part of any act, done outside the Territory.

(5) Sub-paragraphs (1) and (2) do not apply to any controlled goods that are present in the Territory unless they are goods in transit.

(6) For the purposes of sub-paragraphs (1) and (2), controlled goods that are goods in transit shall be considered to be located in a place outside the Territory.

(7) Nothing in sub-paragraph (1) or (2) shall be taken to prohibit any activities authorised by a licence granted by the Governor under this Order or any other order made under the Act, provided that all the conditions attaching to the licence are complied with.

(8) Nothing in sub-paragraph (1)(b) or (c) or (2)(b) or (c) shall apply where the supply or delivery of the controlled goods to the person or place concerned is authorised by a licence granted by the Governor under this Order or any other order made under the Act.

LICENCES

Granting and revocation of licences etc.

4.—(1) The Governor may grant licences authorising any act that would otherwise be prohibited under this Order.

(2) Any licence granted by the Governor in pursuance of this Order may be —

- (a) either general or individual;
- (b) limited so as to expire on a specified date unless renewed; and
- (c) subject to, or without, conditions and any such condition may require any act or omission before or after the doing of the act authorised under that licence.

(3) Any licence granted under this Order shall be in writing and may be amended, suspended or revoked by the Governor at any time and in such circumstances and on such terms as he thinks fit by serving a notice to that effect on the holder of the licence.

Registration with the Governor

5.—(1) Not later than 30 days after any person first does any act under the authority of any general licence granted by the Governor that does not provide otherwise, that person shall give to the Governor written notice of his name and the address at which copies of the records referred to in paragraph 6(1) may be inspected by any person authorised by the Governor or the customs authorities under paragraph 6(4).

(2) A person who has given to the Governor written notice of particulars under sub-paragraph (1) shall, not later than 30 days after any change in those particulars, give to the Governor written notice of the changed particulars.

Record keeping and inspection

6.—(1) Any person who does any act under the authority of any general licence under this Order shall keep registers or records in accordance with this paragraph.

(2) The registers or records shall contain sufficient detail as may be necessary to allow the following information to be identified —

- (a) a description of the controlled goods that have been supplied or delivered, or for which arrangements for their supply or delivery have been made;
- (b) the date or the period of time over which the goods were supplied or delivered or activities relating to the supply or delivery of controlled goods were carried out;
- (c) the quantity of the controlled goods;
- (d) the name and address of the end-user of the controlled goods;
- (e) the name and address of the supplier of the controlled goods; and
- (f) any further information required to be kept by the Governor.

(3) The registers or records referred to in sub-paragraph (1) shall be kept for at least 4 years from the end of the calendar year in which the authorised act took place.

(4) The person referred to in sub-paragraph (1) shall permit any such records to be inspected and copied by any person authorised by the Governor or the customs authorities.

(5) Any person authorised by the Governor or the customs authorities shall have the right, on producing, if required to do so, a duly authenticated document showing his authority, at any reasonable hour to enter for the purpose of sub-paragraph (4) the premises, the address of which has been most recently notified to the Governor under paragraph 5.

(6) Where the registers or records required to be maintained under this paragraph are kept in a form which is not legible the person required under sub-paragraph (1) to maintain such records shall at the request of the person authorised by the Governor or the customs authorities, as the case may be, reproduce such registers or records in a legible form.

Licence refusals etc. and appeals

7.—(1) In the event that the Governor decides not to grant a licence under this Order to any person who has applied for a licence, that person shall be provided with a written notification setting out the reason or reasons for the decision.

(2) In the event that the Governor decides to suspend a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the terms of the suspension and the reason or reasons for the decision.

(3) In the event that the Governor decides to revoke a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the reason or reasons for the decision.

(4) Any person who has had a licence application refused under paragraph 4 or who has had a licence suspended or revoked under that paragraph shall have 28 calendar days from the date of the written notification in which to submit an appeal in writing to the Governor.

(5) Any appeal submitted under sub-paragraph (4) shall specify the grounds on which that appeal is made and may provide further information or arguments in support of the appeal.

(6) Pending determination of any appeal submitted under sub-paragraph (4), any decision taken by the Governor shall continue to have effect.

GENERAL

Offences and penalties

8.—(1) Any person who contravenes a prohibition or restriction in paragraph 3 shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 or the equivalent.

(2) Any person who knowingly contravenes any prohibition or restriction in paragraph 3 shall be guilty of an offence and may be arrested.

(3) A person guilty of an offence under sub-paragraph (2) shall be liable —

- (a) on summary conviction to a fine not exceeding £5,000 or the equivalent or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding ten years, or to both.

(4) No person shall be guilty of an offence under sub-paragraph (1) if he is able to show that he did not know, and had no reason to suppose, that the goods were destined for an embargoed destination.

(5) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(6) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(7) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction where that person is for the time being.

(8) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings has not been obtained.

Misleading applications for licences etc.

9.—(1) Where for the purpose of obtaining a licence under this Order any person either —

- (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular; or
- (b) recklessly makes any statement or furnishes any document or information which is false in a material particular;

he shall be guilty of an offence.

(2) A person guilty of an offence under sub-paragraph (1) shall be liable —

- (a) on summary conviction to a fine not exceeding £5,000 or the equivalent; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or to both,

and any licence which may have been granted by the Governor in connection with the application for which the false statement was made or the false document or information was furnished shall be void as from the time it was granted.

Failure to comply with licence conditions

10.—(1) Subject to sub-paragraph (3), any person who —

- (a) has done any act under the authority of a licence granted by the Governor under this Order, and
- (b) fails to comply with —
 - (i) any conditions attaching to that licence;
 - (ii) any obligation under paragraph 5; or

- (iii) any obligation under paragraph 6,
shall be guilty of an offence.
- (2) A person guilty of an offence under sub-paragraph (1) shall be liable —
- (a) on summary conviction to a fine of not exceeding £5,000 or the equivalent; or
 - (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or both.
- (3) No person shall be guilty of an offence under sub-paragraph (1) where —
- (a) the licence condition in question had been previously modified by the Governor; and
 - (b) the alleged failure to comply would not have been a failure had the licence not been so modified; and
 - (c) the condition with which he failed to comply was modified by the Governor after the doing of the act authorised by the licence.

Application of customs and excise laws

11.—(1) It shall be the duty of the customs authorities to take such action as they consider appropriate to secure the enforcement of paragraphs 3, 9 and 10(1)(b)(i), or any obligation arising under paragraph 6 insofar as the obligation relates to the powers of the customs authorities.

(2) The provisions of the law of the Territory relating to proceedings for offences, mitigation of penalties, proof and other matters in respect of the import and export of goods apply in relation to offences and penalties under this Order, and proceedings for such offences, as they apply in relation to offences and penalties and proceedings for offences under those provisions.

(3) For the purposes of this Order, offences other than those in respect of which a duty is imposed upon the customs authorities by virtue of sub-paragraph (1) shall not be offences in respect of which under any law of the Territory relating to customs and excise proceedings may be taken only by, or by order of, the customs authorities.

Use and disclosure of information

12.—(1) This paragraph applies to information which is held by —

- (a) the Governor, or
- (b) the customs authorities,

in connection with the operation of controls imposed by this Order on activities which facilitate or are otherwise connected with the supply or delivery of controlled goods.

(2) Information to which this paragraph applies may be used for the purposes of, or for any purposes connected with —

- (a) the exercise of functions in relation to any control imposed by this Order or by any other order made under the Act;
- (b) giving effect to any European Community or other international obligation of the United Kingdom;
- (c) facilitating the exercise by an authority or international organisation outside the Territory of functions which correspond to functions conferred by or in connection with any activity subject to control by this Order or any other order made under the Act; and

may be disclosed to any person for use for these purposes.

(3) No disclosure of information shall be made by virtue of this paragraph unless the making of the disclosure is proportionate to the object of the disclosure.

(4) For the purposes of this paragraph "information" is any information that relates to a particular business or other activity carried on by a person.

(5) Nothing in this paragraph shall be taken to affect any power to disclose information that exists apart from this paragraph.

(6) The information that may be disclosed by virtue of this paragraph includes information obtained before the commencement of this Order.

Service of Notices

13. Any notice to be given by any person under this Order may be given by an agent of that person and shall be sent by post or delivered to the Governor at an address to be specified in the official gazette of the Territory.

SCHEDULE 3

Article 4

SECTION 9 OF THE EXPORT CONTROL ACT 2002 AS EXTENDED TO THE OVERSEAS TERRITORIES LISTED IN SCHEDULE 1

Section 9 of the Export Control Act 2002 extends to each of the territories listed in Schedule 1, modified as follows:

“9.—(1) This section applies to licensing powers and other functions conferred on any person by the Trade in Controlled Goods (Embargoed Destinations)(Overseas Territories) Order 2004 in the territories to which that Order extends.

(2) The Governor shall publish in such manner as he may think fit any guidance given and published (or treated as given and published) by the Secretary of State under this section as it applies in the United Kingdom relevant to the exercise of the powers and other functions to which this section applies in the Territory, with such exceptions and modifications as appear to the Governor to be appropriate.

(3) Any person exercising a licensing power or other function to which this section applies shall have regard to any guidance which relates to that power or other function.

(4) In the application of this section to any of the said territories, “the Territory” means that territory and “the Governor” means the Governor or other officer administering the Government of that territory.”.

SCHEDULE 4

Article 5

EMBARGOED DESTINATIONS

Armenia

Azerbaijan

Bosnia and Herzegovina

Burma (Myanmar)

Democratic Republic of the Congo

Iran

Ivory Coast (Côte d'Ivoire)

Sudan

SCHEDULE 5

Article 6

APPLICATION TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA OF PROVISIONS RELATING TO PENALTIES FOR OFFENCES AND PROCEEDINGS

1. Any person who commits an offence under paragraph 8(1) of Schedule 2 shall be guilty of a misdemeanour and liable on conviction to a fine not exceeding £5,000 or the equivalent.

2. Any person who commits an offence under paragraph 8(2) of Schedule 2 shall be liable on conviction —

(1) if tried on information before the Senior Judge's Court, to a fine of any amount, or to imprisonment for a term not exceeding ten years, or to both;

(2) if tried before the Judge's Court, to a fine not exceeding £5,000 or the equivalent, or to imprisonment for a term not exceeding six months, or to both.

3. Any person who commits an offence under paragraph 9(1) or 10(1) of Schedule 2 shall be guilty of a misdemeanour and liable on conviction to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both.

4. Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly

5. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

6. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction where that person is for the time being.

7. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings has not been obtained.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Export Control Act 2002 (the Act), extends with modifications the Trade in Controlled Goods (Embargoed Destinations) Order 2004 (S.I. 2004/318 as amended by S.I. 2004/1049 and 2004/2741) (the UK Order) to the territories listed in Schedule 1. It prohibits trade in certain goods between any overseas country and the embargoed destinations listed in Schedule 4. In this Order, these goods are referred to as "controlled goods", and are found in part 1 of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (S.I. 2003/2764, as amended by S.I. 2004/1049, 2004/2561 and 2004/2741) as extended to the overseas territories by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004 (SI

2004/3101). The controls in this Order do not apply to software and technology or to activities connected to trade in controlled goods that are situated in a territory to which it applies (with the exception of goods in transit via the territory).

In relation to controlled goods, paragraph 3 of Schedule 2 prohibits any person within a listed territory, or a United Kingdom person (as defined in the Order) elsewhere, from supplying or delivering, agreeing to supply or deliver, or doing any act calculated to promote the supply or delivery of, controlled goods to any embargoed destination listed in Schedule 4, without a licence from the Governor (or a licence granted under any other order made under the Act).

The remaining paragraphs in Schedule 2 do the following:

Paragraphs 4-7 provide for the issuing and revocation of licences granted by the Governor, registration, record keeping and inspection and licence refusals and appeals;

Paragraphs 8-11 provide for offences, enforcement and penalties for the breach of the controls;

Paragraph 12 sets out the purposes for which information obtained by the Governor or customs authorities of a territory can be disclosed; and

Paragraph 13 states the address where notices are to be sent.

Schedule 3 extends with modifications the provisions of section 9 of the Export Control Act 2002 to the territories listed in Schedule 1.

Schedule 4 sets out the embargoed destinations under this Order, and article 5 provides for the Governor to make modifications to Schedule 4 in the event of modifications to the Schedule to the UK Order.

Schedule 5 provides for offences, enforcement and penalties for the breach of the controls in Schedule 2 in respect of the Sovereign Base Areas of Akrotiri and Dhekelia.



THE FALKLAND ISLANDS GAZETTE Supplement

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The following are published in this Supplement -

**The Ivory Coast (Restrictive Measures) (Overseas Territories) Order 2005,
(2005 No. 242);**

**The Commonwealth Countries and Ireland (Immunities and Privileges) (Amendment)
Order 2005, (2005 No. 246);**

The Chemical Weapons (Overseas Territories) Order 2005, (2005 No. 854);

STATUTORY INSTRUMENTS

2005 No. 242

OVERSEAS TERRITORIES

The Ivory Coast (Restrictive Measures) (Overseas Territories) Order 2005

<i>Made</i>	<i>9th February 2005</i>
<i>Laid before Parliament</i>	<i>10th February 2005</i>
<i>Coming into force</i>	<i>11th February 2005</i>

At the Court at Buckingham Palace, the 9th day of February 2005

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833(a), the British Settlements Acts 1887 and 1945(b), 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, commencement, extent and application

1. - (1) This Order may be cited as the Ivory Coast (Restrictive Measures) (Overseas Territories) Order 2005 and shall come into force on 11th February 2005.

(2) This Order shall extend to the territories listed in Schedule 1.

(3) Article 19 shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.

(4) In the application of this Order to any of the said territories, the expression "the Territory" in this Order means that territory, and references to the official gazette of a Territory include a reference to any form in which official information is normally made available in that Territory.

(5) Articles 3, 4, 5, 7, 8 and 9 shall apply to any person within the Territory and any person elsewhere who is -

(a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person and is ordinarily resident in the Territory; or

(b) a body incorporated or constituted under the law of the Territory.

(a) 1833 c.85.

(b) 1887 c.54 and 1945 c.7.

2. - (1) In this Order the following expressions have the meanings hereby respectively assigned to them, that is to say -

"aircraft" means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing airborne vehicle or helicopter;

"assistance" means any form of assistance including technical assistance, services, financing and financial assistance;

"commander", in relation to an "aircraft", means the member of the flight crew designated as commander of the "aircraft" by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the "aircraft";

"designated person" means an individual, designated by the Committee established pursuant to paragraph 14 of resolution 1572 (2004) adopted by the Security Council of the United Nations on 15 November 2004, as constituting a threat to the peace and national reconciliation process in Côte d'Ivoire for the purposes of that resolution;

"document" includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"export" includes "shipment" as "stores";

"exportation" in relation to any "ship", submersible vehicle or "aircraft", includes the taking out of the Territory of the "ship", submersible vehicle or "aircraft" notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

"funds" means financial assets, economic benefits and economic resources of any kind, including (but not limited to) gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders and other payment instruments, deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts); interest, dividends or other income on or value accruing from or generated by assets; credit, rights of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export financing;;

"Governor" means the Governor or other officer administering the Government of the Territory;

"Ivory Coast" means the Republic of Côte d'Ivoire;

"master", in relation to a "ship", includes any person (other than a pilot) for the time being in charge of the "ship";

"operator", in relation to an "aircraft" or "vehicle", means the person for the time being having the management of the "aircraft" or "vehicle";

"owner", in relation to a "ship", where the owner is not the "operator", means the "operator" and any person to whom it is chartered;

"relevant institution" means -

(a) the person or body responsible for carrying out in the Territory the functions of a monetary authority;

(b) any person who may lawfully accept deposits in or from within the Territory by way of business; and

(c) any society established lawfully in the Territory whose principal purpose is the making of loans secured on residential property where such loans are funded substantially by its members;

"restricted goods" means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(a) made under the Export Control Act 2002(b), as extended to the territories listed in Schedule 1 thereto by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004(c), and equipment that might be used for internal repression as listed in Schedule 3;

"ship" includes every description of vessel used in navigation;

"shipment" includes loading into an "aircraft";

"stores" means goods for use in a "ship" or "aircraft" and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting, but excludes any goods for use in a "ship" or "aircraft" as merchandise for sale by retail to persons carried therein; and

"vehicle" means a land transport vehicle.

(2) For the purpose of the definition of "relevant institution" in paragraph (1) -

(a) the activity of accepting deposits has the meaning given in any relevant order made under section 22 of the Financial Services and Markets Act 2000(d); and

(b) a person is not regarded as accepting deposits by way of business if -

(i) he does not hold himself out as accepting deposits on a day to day basis, and

(ii) any deposits which he accepts are accepted only on particular occasions, whether or not involving the issue of any securities.

(c) In determining for the purposes of sub-paragraph (b)(ii) whether deposits are accepted only on particular occasions, regard is to be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(3) For the purposes of identifying "designated persons" referred to in paragraph (1), the Governor shall cause a notice containing the names and other particulars of such designated persons to be published in the official gazette of the Territory as necessary from time to time.

RESTRICTED GOODS, ASSISTANCE AND TRAINING

Supply of restricted goods

3. - (1) Any person who, except under the authority of a licence granted by the Governor under this article or article 4 -

(a) supplies or delivers;

(b) agrees to supply or deliver; or

(c) does any act calculated to promote the supply or delivery of,

restricted goods to any person in Ivory Coast shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to a person in Ivory Coast.

(a) S.I. 2003/2764 as amended by S.I. 2004/1050, 2004/2561 and 2004/2741.

(b) 2002 c.28.

(c) S.I. 2004/3101.

(d) 2002 c.8.

(2) Nothing in paragraph (1)(b) or (c) shall apply where the supply or delivery of the goods to the person concerned is authorised by a licence granted by the Governor under this article.

Exportation of restricted goods to Ivory Coast

4. - (1) Except under the authority of a licence granted by the Governor under this article, restricted goods are prohibited to be exported from the Territory to any destination in Ivory Coast or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Ivory Coast.

(2) Any restricted goods which are exported or attempted to be exported shall be liable to forfeiture.

(3) Any person knowingly concerned in the exportation or attempted exportation of such goods shall be guilty of an offence under this Order.

(4) In any case where a person would, apart from this paragraph, be guilty of an offence under paragraph (3) above and of an offence under article 3(1), he shall not be guilty of the offence under paragraph (3) above.

Provision of assistance, advice or training related to military activities and provision, manufacture, maintenance or use of restricted goods

5. Any person who, except under the authority of a licence granted by the Governor under this article, directly or indirectly provides to any person, entity or body in, or for use in, Ivory Coast any assistance, advice or training related to military activities or to the provision, manufacture, maintenance or use of restricted goods shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the assistance, advice or training in question was to be provided to a person, entity or body in, or for use in, Ivory Coast.

Use of ships, aircraft and vehicles: restricted goods

6. - (1) Without prejudice to the generality of article 3, and except under the authority of a licence granted by the Governor under article 3 or 4, no ship or aircraft to which this article applies, and no vehicle within the Territory, shall be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside Ivory Coast to any destination therein.

(2) This article applies to ships registered in the Territory, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person who is -

(a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas), or a British protected person and is ordinarily resident in the Territory; or

(b) a body incorporated or constituted under the law of the Territory.

(3) If any ship, aircraft or vehicle is used in contravention of paragraph (1) then -

(a) in the case of a ship registered in the Territory or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in paragraph (2)(a) or (b), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(c) in the case of a vehicle, the operator of the vehicle,

shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the carriage of the goods in question was, or formed part of, carriage from any place outside Ivory Coast to any destination therein.

(4) Nothing in paragraph (1) shall apply where the supply or delivery or exportation from the Territory of the goods concerned to Ivory Coast was authorised by a licence granted by the Governor under article 3 or 4.

(5) Nothing in this article shall be construed so as to prejudice any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

MAKING FUNDS AVAILABLE AND FREEZING OF FUNDS

Making funds available to designated persons

7. Any person who, except under the authority of a licence granted by the Governor under this article, makes any funds available to or for the benefit of any designated person or any person acting on behalf of a designated person shall be guilty of an offence under this Order.

Freezing of funds

8. - (1) Where the Governor has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be a designated person or a person acting on behalf of a designated person, the Governor may by notice direct that those funds are not to be made available to that person except under the authority of a licence granted by the Governor under article 7.

(2) A direction given under paragraph (1) shall specify either -

(a) the period for which it is to have effect; or

(b) that the direction is to have effect until it is revoked by notice under paragraph (3).

(3) The Governor may by notice revoke a direction given under paragraph (1) at any time.

(4) The expiry or revocation of a direction shall not affect the application of article 7 in respect of the funds in question.

(5) A notice under paragraph (1) or (3) shall be given in writing to the person holding the funds in question ("the recipient"), and shall require the recipient to send a copy of the notice without delay to the person whose funds they are, or on whose behalf they are held ("the owner").

(6) A recipient shall be treated as complying with the requirement under paragraph (5) if, without delay, he sends a copy of the notice to the owner at his last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.

(7) Where a direction has been given under paragraph (1), any person by, for or on behalf of whom those funds are held may apply to the Supreme Court for the direction to be set aside, and on such application the court may set aside the direction.

(8) A person who makes an application under paragraph (7) shall give a copy of the application and any witness statement or affidavit in support to the Governor (and to any other person by, for or on behalf of whom those funds are held), not later than seven days before the date fixed for the hearing of the application.

(9) Any person who contravenes a direction under paragraph (1) is guilty of an offence under this Order.

(10) A recipient who fails to comply with a requirement under paragraph (5) is guilty of an offence under this Order.

Facilitation of activities prohibited under article 7 or 8(9)

9. Any person who knowingly and intentionally engages in any activities the object or effect of which is to enable or facilitate the commission (by that person or another) of an offence under article 7 or 8(9) is guilty of an offence under this Order.

Failure to disclose knowledge or suspicion of measures

10. - (1) A relevant institution is guilty of an offence if -

(a) it knows or suspects that a person who is, or has been at any time since the coming into force of this Order, a customer of the institution, or is a person with whom the institution has had dealings in the course of its business since that time -

(i) is a designated person; or

(ii) has committed an offence under article 7, 8(9), 9 or 17(2); and

(b) it does not disclose to the Governor the information or other matter on which the knowledge or suspicion is based as soon as is reasonably practicable after that information or other matter comes to its attention.

(2) Where a relevant institution discloses to the Governor -

(a) its knowledge or suspicion that a person is a designated person, a person acting on behalf of a designated person, or a person who has committed an offence under article 7, 8(9), 9 or 17(2), or

(b) any information or other matter on which that knowledge or suspicion is based, the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

CUSTOMS POWERS AND INVESTIGATIONS

Customs powers to demand evidence of destination which goods reach

11. Any exporter or any shipper of restricted goods which have been exported from the Territory shall, if so required by the Governor, furnish within such time as the Governor may allow proof to the Governor's satisfaction that the goods have reached either -

(a) a destination to which they were authorised to be exported by a licence granted under this Order; or

(b) a destination to which their exportation was not prohibited by this Order,

and, if he fails to do so, he shall be guilty of an offence under this Order, unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

Declaration as to goods: powers of search

12. - (1) Any person who is about to leave the Territory shall, if he is required to do so by an officer authorised for the purpose by the Governor -

(a) declare whether or not he has with him any restricted goods which are destined for Ivory Coast or for delivery, directly or indirectly, to or to the order of any person in Ivory Coast; and

(b) produce any such goods as aforesaid which he has with him.

(2) Any such officer, and any person acting under his direction, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid, provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

(3) Any person who without reasonable excuse refuses to make a declaration, or fails to produce any goods, or refuses to allow himself to be searched in accordance with the foregoing provisions of this article, shall be guilty of an offence under this Order.

(4) Any person who under the provisions of this article makes a declaration which to his knowledge is false in a material particular, or recklessly makes any declaration which is false in a material particular, shall be guilty of an offence under this Order.

Investigation, etc. of suspected ships

13. - (1) Where any authorised officer has reason to suspect that any ship to which article 6 applies has been or is being or is about to be used in contravention of paragraph (1) of that article -

(a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 6, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2).

(2) The further action referred to in paragraph (1)(c) is either -

(a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or

(b) to request the master of the ship to take any one or more of the following steps -

(i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;

(ii) if the ship is then in port in the Territory, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;

(iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii); and

(iv) to take her to any other destination that may be specified by the officer in agreement with the master.

(3) Without prejudice to the provisions of article 16(3), where -

(a) a master refuses or fails to comply with a request made under paragraph (2)(b); or

(b) an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with,

any authorised officer may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.

(4) Before or on exercising any power conferred by this article, an authorised officer shall, if requested to do so, produce evidence of his authority.

(5) In this article "authorised officer" means -

(a) any commissioned naval or military officer;

(b) any British consular officer;

(c) any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected aircraft

14. - (1) Where any authorised person has reason to suspect that any aircraft to which article 6 applies has been or is being or is about to be used in contravention of paragraph (1) of that article -

(a) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) if the aircraft is then in the Territory, any authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)) further request the charterer, the operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the Territory until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 16(3), where an authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

(a) enter, or authorise entry, upon any land and upon that aircraft;

(b) detain, or authorise the detention of, that aircraft and any of its cargo; and

(c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article, "authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected vehicles

15. - (1) Where any authorised person has reason to suspect that any vehicle in the Territory has been or is being or is about to be used in contravention of paragraph (1) of article 6 -

(a) he may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the operator and the driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his inspection such documents so relating and such goods as he may specify;

(c) any authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (b)) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in the Territory until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 16(3), where any authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

(a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;

(b) detain, or authorise the detention of, that vehicle and any goods contained in it; and

(c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article, "authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 13 to 15

16. - (1) No information furnished or document produced by any person in pursuance of a request made under article 13, 14 or 15 shall be disclosed except -

(a) with the consent of the person by whom the information was furnished or the document was produced, provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

(b) to any person who would have been empowered under article 13, 14 or 15 to request that it be furnished or produced or to any person holding or acting in any office under or in the service of -

(i) the Crown in respect of the Government of the United Kingdom;

(ii) the Government of the Isle of Man;

(iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;

(iv) the State of Jersey; or

(v) the Government of any British overseas territory;

(c) on the authority of the Governor, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to Ivory Coast decided upon by the Security Council of the United Nations or the Council of the European Union; or

(d) with a view to the institution of, or otherwise for the purposes of, any proceedings -

(i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

(2) Any power conferred by article 13, 14 or 15 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether the information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.

(3) Each of the following persons shall be guilty of an offence under this Order, that is to say -

(a) a master of a ship who disobeys any direction given under article 13(2)(a);

(b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who -

(i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 13, 14 or 15 by any person empowered to make it, or

(ii) furnishes any document or information which to his knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular, to such a person in response to such a request;

(c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under article 13, 14 or 15.

(4) Nothing in articles 13 to 15 or this article shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

GENERAL

Offences in connection with applications for licences, conditions attaching to licences, etc.

17. - (1) If, for the purposes of obtaining any licence under this Order, any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, he shall be guilty of an offence under this Order.

(2) Any person who has done any act under the authority of a licence granted by the Governor under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order.

(3) No person shall be guilty of an offence under paragraph (2) where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, after the doing of the act authorised by the licence.

Obtaining of evidence and information

18. Schedule 4 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor -

(a) of evidence and information for the purpose of securing compliance with or detecting evasion of -

(i) this Order in the Territory; or

(ii) any law making provision with respect to any of the matters regulated by this Order that is in force in the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory; and

(b) of evidence of the commission of -

(i) in the Territory, an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs; or

(ii) with respect to any of the matters regulated by this Order, an offence under the law of the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory.

Penalties and proceedings

19. - (1) Any person guilty of an offence under article 3(1), 4(3), 5, 6(3), 7, 8(9), 9 or 11 shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine of any amount or to both; or

(b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(2) Any person guilty of an offence under article 16(3)(b)(ii) or paragraph 5(b) or 5(d) of Schedule 4 shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine of any amount or to both; or

(b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(3) Any person guilty of an offence under article 8(10), 10(1), 12(4), 17(1) or 17(2) shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine of any amount or to both;

(b) on summary conviction to a fine not exceeding £5,000 or its equivalent.

(4) Any person guilty of an offence under article 16(3)(a), 16(3)(b)(i), 16(3)(c), or paragraph 5(a) or 5(c) of Schedule 4 shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(5) Any person guilty of an offence under article 12(3) shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.

(6) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

(7) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be commenced at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(8) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

(9) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions; but this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

Exercise of powers of the Governor

20. - (1) The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order (other than the power to give authority under Schedule 4 to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

(2) Any licences granted under this Order shall be in writing and may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by at any time by written notice given by the Governor to each recipient of the licence.

(3) A notice under paragraph (2) may be given by post, and shall be deemed to have been given to a person if it is

sent to him at his last known address.

(4) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to sums expressed in sterling in this Order.

Miscellaneous

21. - (1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done anywhere other than the Territory provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 1(2)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St. Helena and Dependencies

South Georgia and South Sandwich Islands

The Sovereign Base Areas of Akrotiri and Dhekelia

Turks and Caicos Islands

Virgin Islands

SCHEDULE 2

Article 1(3)

APPLICATION OF ARTICLE 19 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA

1. Any person who commits an offence under article 3(1), 4(3), 5, 6(3), 7, 8(9), 9 or 11 shall be liable on conviction -

(a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine of any amount, or to both;

(b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

2. Any person who commits an offence under 16(3)(b)(ii), or paragraph 5(b) or 5(d) of Schedule 4, shall be liable on conviction -

(a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both;

(b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

3. Any person who commits an offence under article 8(10), 10(1), 12(4), 17(1) or 17(2) is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both.

4. Any person who commits an offence under article 16(3)(a), 16(3)(b)(i) or 16(3)(c), or paragraph 5(a) or 5(c) of Schedule 4, is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

5. Any person who commits an offence under article 12(3) is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or its equivalent.

6. Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

7. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

8. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

9. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

SCHEDULE 3

Article 2(1)

EQUIPMENT THAT MIGHT BE USED FOR INTERNAL REPRESSION

1. Helmets providing ballistic protection, anti-riot helmets, anti-riot shields and ballistic shields and specially designed components therefor.

2. Specially designed fingerprint equipment.

3. Power controlled searchlights.

4. Construction equipment provided with ballistic protection.

5. Hunting knives.
6. Specially designed production equipment to make shotguns.
7. Ammunition hand-loading equipment.
8. Communications intercept devices.
9. Solid-state optical detectors.
10. Image-intensifier tubes.
11. Telescopic weapon sights.
12. Smooth-bore weapons and related ammunition, other than those specially designed for military use, and specially designed components therefor; except:
 - (1) signal pistols;
 - (2) air- and cartridge-powered guns designed as industrial tools or humane animal stunners.
13. Simulators for training in the use of firearms and specially designed or modified components and accessories therefor.
14. Bombs and grenades, other than those specially designed for military use, and specially designed components therefor.
15. Body armour, other than those manufactured to military standards or specifications, and specially designed components therefor.
16. All-wheel-drive utility vehicles capable of off-road use that have been manufactured or fitted with ballistic protection, and profiled armour for such vehicles.
17. Water cannon and specially designed or modified components therefor.
18. Vehicles equipped with a water cannon.
19. Vehicles specially designed or modified to be electrified to repel boarders and components therefor specially designed or modified for that purpose.
20. Acoustic devices represented by the manufacturer or supplier as suitable for riot-control purposes, and specially designed components therefor.
21. Leg-irons, gang-chains, shackles and electric-shock belts, specially designed for restraining human beings; except:
 - (1) handcuffs for which the maximum overall dimension including chain does not exceed 240 mm when locked.
22. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating substance (such as tear gas or pepper sprays), and specially designed components therefor.
23. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (including electric-shock batons, electric shock shields, stun guns and electric shock dart guns (tasers)) and components therefor specially designed or modified for that purpose.
24. Electronic equipment capable of detecting concealed explosives and specially designed components therefor;

except:

(1) TV or X-ray inspection equipment.

25. Electronic jamming equipment specially designed to prevent the detonation by radio remote control of improvised devices and specially designed components therefor.

26. Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except:

(1) those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflators, electric-surge arresters or fire sprinkler actuators).

27. Equipment and devices designed for explosive ordnance disposal; except:

(1) bomb blankets;

(2) containers designed for folding objects known to be, or suspected of being improvised explosive devices.

28. Night vision and thermal imaging equipment and image intensifier tubes or solid state sensors therefor.

29. Software specially designed and technology required for all listed items.

30. Linear cutting explosive charges.

31. Explosives and related substances as follows:

(1) amatol,

(2) nitrocellulose (containing more than 12,5 % nitrogen),

(3) nitroglycol,

(4) pentaerythritol tetranitrate (PETN),

(5) picryl chloride,

(6) tinitorphenylmethylnitramine (tetryl),

(7) 2,4,6-trinitrotoluene (TNT)

32. Software specially designed and technology required for all listed items.

SCHEDULE 4

Article 18

EVIDENCE AND INFORMATION

1. - (1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor may request any person in or resident in the Territory to furnish to him any information in his possession or control, or to produce to him any document in his possession or control, which he may require for the purpose of securing compliance with or detecting evasion of this Order; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in sub-paragraph (1) shall be taken to require any person who has acted as counsel or solicitor for any person to furnish or produce any privileged information or document in his possession in that capacity.

(3) Where a person is convicted under paragraph 5(a) of this Schedule of failing to furnish information or produce a document when requested so to do, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

(5) The furnishing of any information or the production of any document under this paragraph shall not be treated as a breach of any restriction imposed by statute or otherwise.

2. - (1) If any justice of the peace is satisfied by information on oath given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case -

(a) that there is reasonable ground for suspecting that an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified; or

(b) that any documents which ought to have been produced under paragraph 1 and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorising any police officer or constable, together with any other persons named in the warrant and any other police officers or constables, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or, as the case may be, the vehicle, ship or aircraft.

(2) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) may do any or all of the following things -

(a) inspect and search those premises or the vehicle, ship or aircraft for any material which he has reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;

(b) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;

(c) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds to believe are required to be produced in accordance with paragraph 1; or

(d) seize anything that is necessary to be seized in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Any information required in accordance with sub-paragraph (2) which is contained in a computer and is accessible from the premises or from any vehicle, ship or aircraft must be produced in a form in which it can be taken away and in which it is visible and legible.

(4) A police officer or constable lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) may:

(a) search any person whom he has reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and

(b) seize anything he finds in a search referred to in paragraph (a) if he has reasonable grounds for believing that it is evidence of an offence referred to in this paragraph;

but no person shall be searched in pursuance of this sub-paragraph except by a person of the same sex.

(5) Where, by virtue of this paragraph, a person is empowered to enter any premises, vehicle, ship or aircraft he may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such an offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

(7) In the application of this paragraph to the Sovereign Base Areas of Akrotiri and Dhekelia any reference to a justice of the peace includes a reference to a judge or associate judge.

3. A person authorised by the Governor to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of his authority before exercising that power.

4. No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request made under this Schedule and no document seized under paragraph 2(2) shall be disclosed except -

(a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized, provided that a person who has obtained information or is in possession of a document only in his capacity as a servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may be given by any person who is entitled to that information or to the possession of that document in his own right; or

(b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or to any person holding or acting in any office under or in the service of -

(i) the Crown in respect of the Government of the United Kingdom;

(ii) the Government of the Isle of Man;

(iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;

(iv) the States of Jersey; or

(v) the Government of any British overseas territory;

(c) on the authority of the Governor, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to Ivory Coast decided upon by the Security Council of the United Nations or the Council of the European Union; or

(d) with a view to the institution of, or otherwise for the purposes of, any proceedings -

(i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under the law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

5. Any person who -

(a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it; or

(b) furnishes any information or produces any document which to his knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular, to such a person in response to such a request; or

(c) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule; or

(d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies to each of the territories specified in Schedule 1. This instrument gives effect to certain measures in resolution 1572 adopted by the Security Council of the United Nations on 15 November 2004, as implemented in the EU. UNSCR 1572 (2004) amongst other things imposes an arms embargo, with certain exemptions, on Ivory Coast with immediate effect; and provided for an assets freeze and travel ban against certain persons to come into effect on 15 December 2004. The targeted persons will be those designated by the Sanctions Committee as constituting a threat to the peace and national reconciliation process in Ivory Coast. These measures are implemented in the EU by Common Position CSFP/852/2004 adopted on 13 December 2004, which extends the arms embargo to equipment which might be used for internal repression and bans financial assistance related to military activities subject to the embargo. Aspects of the sanctions falling within Community competence will be implemented in two EC Regulations.

STATUTORY INSTRUMENTS

2005 No. 246

INTERNATIONAL IMMUNITIES AND PRIVILEGES

The Commonwealth Countries and Ireland (Immunities and Privileges)
(Amendment) Order 2005

Made
Laid before Parliament
Coming into force

9th February 2005
21st February 2005
1st April 2005

At the Court at Buckingham Palace, the 9th day of February 2005

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 12(1) of the Consular Relations Act 1968(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as the Commonwealth Countries and Ireland (Immunities and Privileges) (Amendment) Order 2005 and shall come into force on 1st April 2005.

2. Article 9 of the Commonwealth Countries and Republic of Ireland (Immunities and Privileges) Order 1985(b) is revoked and replaced by the following Article -

" 9. The like relief from general rates as is accorded under Article 32 in Schedule 1 to the Act to consular premises and to the residence of the career head of a consular post shall be extended to the office and the residence respectively of the Falkland Islands Government Representative in London, of the Cayman Islands Government Representative in London, of the Gibraltar Government Representative in London and of the British Virgin Islands Government Representative in London."

A K Galloway
Clerk of the Privy Council

(a) 1968 c. 18. Section 12 was amended by section 4 of the Diplomatic and other Privileges Act 1971 (c.64).
(b) S.I. 1985/1983.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, pursuant to section 12 of the Consular Relations Act 1968, affords partial relief from general rates to the offices and residences of the Gibraltar Government Representative in London and the British Virgin Islands Government Representative in London. Similar relief is already granted to the offices and residences of the Falkland Islands Government Representative in London and the Cayman Islands Government Representative in London. These offices perform functions broadly in line with those of a consular post of a foreign country.

The Order also deletes references to Hong Kong, which is no longer part of the Commonwealth. Privileges and immunities have been afforded to the Hong Kong Economic and Trade Office under the Hong Kong Economic and Trade Office Act 1996.

STATUTORY INSTRUMENTS

2005 No. 854

CHEMICAL WEAPONS

The Chemical Weapons (Overseas Territories) Order 2005

<i>Made</i>	<i>22nd March 2005</i>
<i>Coming into force</i>	<i>22nd April 2005</i>

At the Court at Buckingham Palace, the 22nd day of March 2005

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 39(3) of the Chemical Weapons Act 1996(a) and section 57 of the Anti-terrorism, Crime and Security Act 2001(b), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows -

Citation and commencement

1. This Order may be cited as the Chemical Weapons (Overseas Territories) Order 2005 and shall come into force on 22nd April 2005.

Extent and construction

2. - (1) The provisions of the Chemical Weapons Act 1996, excepted, adapted and modified as in Schedule 1 to this Order, shall extend to the territories listed in Schedule 3 to this Order.

(2) The provisions of the Chemical Weapons Act 1996, as so excepted, adapted and modified, shall -

(a) in their application to the British Antarctic Territory and the British Indian Ocean Territory, be subject to the further exceptions, adaptations and modifications set out in Schedule 4 to this Order;

(b) in their application to Pitcairn, Henderson, Ducie and Oeno Islands, be subject to the further adaptations and modifications set out in Schedule 5 to this Order;

(c) in their application to Bermuda, be subject to the further adaptations and modifications set out in Schedule 6 to this Order;

(d) in their application to the Turks and Caicos Islands, be subject to the further adaptations and modifications set out in Schedule 7 to this Order;

(e) in their application to the Sovereign Base Areas of Akrotiri and Dhekelia, be subject to the further exceptions, adaptations and modifications set out in Schedule 8 to this Order.

(a) 1996 c.6.

(b) 2001 c.24.

3. - (1) Sections 50 to 56 of the Anti-terrorism, Crime and Security Act 2001, excepted and modified as in Schedule 2 to this Order, shall extend to the territories listed in Schedule 3 to this Order.

(2) Sections 50 to 56 of the Anti-terrorism, Crime and Security Act 2001, as so excepted and modified, shall -

(a) in their application to the British Antarctic Territory and the British Indian Ocean Territory, be subject to the further modification set out in Schedule 4A to this Order;

(b) in their application to Pitcairn, Henderson, Ducie and Oeno Islands, be subject to the further modification set out in Schedule 5A to this Order;

(c) in their application to the Sovereign Base Areas of Akrotiri and Dhekelia, be subject to the further modification set out in Schedule 8A to this Order.

Interpretation

4. - (1) Except as otherwise provided, in the application of each Act to any of the territories to which it is extended, the expression "the Territory" means that territory.

(2) In each Act, "Governor" means the Governor or other officer administering the government of the Territory.

(3) In each Act, "justice of the peace" means a justice of the peace or a magistrate.

(4) In each Act, "Attorney General" means the Attorney General of the Territory or, in his absence, any other person for the time being discharging his functions.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 2

PROVISIONS OF THE CHEMICAL WEAPONS ACT 1996 AS EXCEPTED, ADAPTED AND MODIFIED AND EXTENDED TO THE TERRITORIES LISTED IN SCHEDULE 3

Introduction

General interpretation

1. - (1) Chemical weapons are -

(a) toxic chemicals and their precursors;

(b) munitions and other devices designed to cause death or harm through the toxic properties of toxic chemicals released by them;

(c) equipment designed for use in connection with munitions and devices falling within paragraph (b).

(2) Subsection (1) is subject to sections 2(2) and (3), 10(1) and 11(2) (by virtue of which an object is not a chemical weapon if the use or intended use is only for permitted purposes).

(3) Permitted purposes are -

- (a) peaceful purposes;
- (b) purposes related to protection against toxic chemicals;
- (c) legitimate military purposes;
- (d) purposes of enforcing the law.

(4) Legitimate military purposes are all military purposes except those which depend on the use of the toxic properties of chemicals as a method of warfare in circumstances where the main object is to cause death, permanent harm or temporary incapacity to humans or animals.

(5) A toxic chemical is a chemical which through its chemical action on life processes can cause death, permanent harm or temporary incapacity to humans or animals; and the origin, method of production and place of production are immaterial.

(6) A precursor is a chemical reactant which takes part at any stage in the production (by whatever method) of a toxic chemical.

(7) References to an object include references to a substance.

(8) The Convention is the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed at Paris on 13 to 15 January 1993(a).

(9) This section applies for the purposes of this Act.

Chemical Weapons

Use etc of chemical weapons

2. - (1) No person shall -

- (a) use a chemical weapon;
- (b) develop or produce a chemical weapon;
- (c) have a chemical weapon in his possession;
- (d) participate in the transfer of a chemical weapon;
- (e) engage in military preparations, or in preparations of a military nature, intending to use a chemical weapon.

(2) For the purposes of subsection (1)(a) an object is not a chemical weapon if the person uses the object for permitted purposes; and in deciding whether permitted purposes are intended the types and quantities of objects shall be taken into account.

(3) For the purposes of subsection (1)(b), (c), (d) or (e) an object is not a chemical weapon if the person does the act there mentioned with the intention that the object will be used only for permitted purposes; and in deciding whether permitted purposes are intended the types and quantities of objects shall be taken into account.

(a) Miscellaneous No.21 (1993) Cm.2331.

(4) For the purposes of subsection (1)(d) a person participates in the transfer of an object if -

(a) he acquires or disposes of the object or enters into a contract to acquire or dispose of it, or

(b) he makes arrangements under which another person acquires or disposes of the object or another person enters into a contract to acquire or dispose of it.

(5) For the purposes of subsection (4) -

(a) to acquire an object is to buy it, hire it, borrow it or accept it as a gift;

(b) to dispose of an object is to sell it, let it on hire, lend it or give it.

(6) In proceedings for an offence under subsection (1)(a), (c) or (d) relating to an object it is a defence for the accused to prove -

(a) that he neither knew nor suspected nor had reason to suspect that the object was a chemical weapon, or

(b) that he knew or suspected it to be a chemical weapon and as soon as reasonably practicable after he first so knew or suspected he took all reasonable steps to inform the Governor or a police officer of his knowledge or suspicion.

(7) Nothing in subsection (6) prejudices any defence which it is open to a person charged with an offence under this section to raise apart from that subsection.

(8) A person contravening this section is guilty of an offence and liable on conviction on indictment to imprisonment for life.

Application of section 2

3. - (1) Section 2 applies to acts done in the Territory or elsewhere.

(2) So far as it applies to acts done outside the Territory, section 2 applies to United Kingdom nationals, and bodies incorporated under the law of the Territory.

(3) For the purposes of this section a United Kingdom national is an individual who is -

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981(a) is a British subject, or

(c) a British protected person within the meaning of that Act.

(4) Proceedings for an offence committed under section 2 outside the Territory may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the Territory.

Suspicious objects

4. - (1) If -

(a) the Governor has grounds to suspect that an object is a chemical weapon, and

(a) 1981 c.61.

(b) at least one person falls within subsection (2),

the Governor may serve on any person falling within that subsection a copy of a notice falling within subsection (3).

(2) The persons falling within this subsection are -

(a) any person who appears to the Governor to have the object in his possession, and

(b) any person not falling within paragraph (a) and who appears to the Governor to have an interest which the Governor believes is materially affected by the notice.

(3) A notice falling within this subsection is a notice which -

(a) describes the object and states its location;

(b) states that the Governor suspects that the object is a chemical weapon and gives the reasons for his suspicion;

(c) states that he is considering whether to secure its destruction under sections 5 to 7;

(d) states that any person may make representations that the object is not a chemical weapon;

(e) states that a person on whom the notice is served and who has the object in his possession must not relinquish possession before a date specified in the notice.

Power to remove or immobilise objects

5. - (1) If the Governor has reasonable cause to believe that -

(a) an object is on premises to which the public has access or which are occupied by a person who consents to action being taken under this subsection, and

(b) the object is a chemical weapon,

the Governor may authorise a person to enter the premises and to search them.

(2) If a justice of the peace is satisfied on information on oath that there is reasonable cause to believe that an object is on premises (of whatever nature) and that it is a chemical weapon, he may issue a warrant in writing authorising a person acting under the authority of the Governor to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them.

(3) A person who acts under an authorisation given under subsection (1) or (2) may take with him such other persons and such equipment as appear to him to be necessary.

(4) If a person enters premises under an authorisation given under subsection (1) or (2) and the object is found there he may make the object safe and -

(a) he may seize and remove it if it is reasonably practicable to do so, or

(b) he may in any other case affix a warning to the object or to something in a conspicuous position

near the object, stating that the object is not to be moved or interfered with before a date specified in the warning.

(5) For the purposes of subsection (4) an object is made safe if, without being destroyed, it is prevented from being an immediate danger (as where a fuse is neutralised or the object is smothered in foam).

(6) The powers conferred on an authorised person under this section shall only be exercisable, if the authorisation under subsection (1) or the warrant so provides, in the presence of a police officer.

(7) This section applies whether or not any copy of a notice has been served under section 4.

Power to destroy removed objects

6. - (1) This section applies if an object is removed from premises under section 5, and for the purposes of this section -

(a) the first six-month period is the period of six months beginning with the day after the removal;

(b) the second six-month period is the period of six months beginning with the day after the first six-month period ends.

(2) If at any time in the second six-month period the Governor decides that the object should be destroyed he may authorise a person to destroy it; but this is subject to subsections (3) to (5).

(3) If at any time in the first six-month period -

(a) any person appears to the Governor to have had the object in his possession immediately before its removal, or

(b) any person not falling within paragraph (a) appears to the Governor to have an interest which the Governor believes would be materially affected by the object's destruction,

the Governor must serve on such a person a copy of a notice falling within subsection (4).

(4) A notice falling within this subsection is a notice which -

(a) describes the object and states its location;

(b) states that the Governor proposes to secure its destruction and gives the reasons for his proposal;

(c) states that the person on whom the copy of the notice is served may object to the Governor's proposal;

(d) states that an objection (if made) must be made in writing to the Governor before such date as is specified in the notice and must state why the object should not be destroyed.

(5) Before he reaches a decision under subsection (2) the Governor must -

(a) allow any person on whom a copy of a notice has been served under subsection (3) time to respond, and

(b) take into account any objections to the object's proposed destruction (whether made in response to a notice or otherwise).

(6) If an object is removed from premises under section 5 and destroyed under this section the Governor may recover from a responsible person any costs reasonably incurred by the Governor in connection with the removal and destruction; and a responsible person is any person who had possession of the object immediately before its removal.

(7) If -

(a) an object is removed from premises under section 5,

(b) at the end of the second six-month period the Governor has not authorised the destruction of the object, and

(c) a person had possession of the object immediately before its removal,

the Governor must return the object to the person mentioned in paragraph (c) or, if there is more than one, to such of them as the Governor thinks appropriate.

Power to enter premises and destroy objects

7. - (1) This section applies if a warning has been affixed under section 5, and for the purposes of this section -

(a) the first six-month period is the period of six months beginning with the day after the warning was affixed;

(b) the second six-month period is the period of six months beginning with the day after the first six-month period ends.

(2) If at any time in the second six-month period the Governor decides that the object should be destroyed it may be destroyed as provided by subsections (6) to (9); but this is subject to subsections (3) to (5).

(3) If at any time in the first six-month period -

(a) any person appears to the Governor to have had the object in his possession immediately before the warning was affixed, or

(b) any person not falling within paragraph (a) appears to the Governor to have an interest which the Governor believes would be materially affected by the object's destruction,

the Governor must serve on such a person a copy of a notice falling within subsection (4).

(4) A notice falling within this subsection is a notice which -

(a) describes the object and states its location;

(b) states that the Governor proposes to secure its destruction and gives the reasons for his proposal;

(c) states that the person on whom the copy of the notice is served may object to the Governor's proposal;

(d) states that an objection (if made) must be made in writing to the Governor before such date as is specified in the notice and must state why the object should not be destroyed.

(5) Before he reaches a decision under subsection (2) the Governor must –

(a) allow any person on whom a copy of a notice has been served under subsection (3) time to respond, and

(b) take into account any objections to the object's proposed destruction (whether made in response to a notice or otherwise).

(6) If –

(a) at any time in the second six-month period the Governor decides that the object should be destroyed, and

(b) the object is on premises to which the public has access or which are occupied by a person who consents to action being taken under this subsection,

the Governor may authorise a person to enter the premises and to destroy the object if it is found there.

(7) If (whatever the nature of the premises concerned) a justice of the peace is satisfied on information on oath that a warning has been affixed under section 5, and that the Governor has decided at any time in the second six-month period that the object should be destroyed, he may issue a warrant in writing authorising a person acting under the authority of the Governor to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to destroy the object if it is found there.

(8) A person who acts under an authorisation given under subsection (6) or (7) may take with him such other persons and such equipment as appear to him to be necessary.

(9) The powers conferred on an authorised person under this section shall only be exercisable, if the authorisation under subsection (6) or the warrant so provides, in the presence of a police officer.

(10) Where an object is destroyed under this section the Governor may recover from a responsible person any costs reasonably incurred by the Governor in connection with the destruction; and a responsible person is any person who had possession of the object immediately before the warning was affixed under section 5.

Compensation for destruction

8. - (1) This section applies if a person claims that –

(a) an object has been destroyed under section 6 or 7,

(b) he had an interest which was materially affected by the destruction and he sustained loss as a result, and

(c) no copy of a notice was served on him under the section concerned (whether or not one was served on any other person).

(2) If the person concerned makes an application under this section to the supreme court of the Territory, and the court finds that his claim is justified, the court may order the Governor to pay to the applicant such amount (if any) by way of compensation as the court considers just.

(3) If the court believes that the object would have been destroyed even if a copy of a notice had been

served on the applicant under the section concerned the court must not order compensation to be paid under this section.

Offences relating to destruction etc

9. - (1) If -

- (a) a copy of a notice is served on a person under section 4,
- (b) the notice relates to an object in his possession at the time the copy is served,
- (c) he relinquishes possession before the date specified under section 4(3)(e), and
- (d) he has no reasonable excuse for so relinquishing possession, he is guilty of an offence.

(2) If a person wilfully obstructs a person in -

- (a) entering or searching premises under an authorisation given under section 5(1) or (2) or 7(6) or (7),
- (b) making an object safe, seizing or removing an object, or affixing a warning, under section 5(4),
- (c) destroying an object under an authorisation given under section 6(2) or 7(6) or (7), or
- (d) attempting to do anything mentioned in paragraphs (a) to (c),

the person so obstructing is guilty of an offence.

(3) If -

- (a) a warning is affixed under section 5(4),
- (b) a person interferes with the warning, or moves or interferes with the object before the date specified in the warning, and
- (c) he has no reasonable excuse for doing so,

he is guilty of an offence.

(4) A person guilty of an offence under any of the preceding provisions of this section is liable -

- (a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;
- (b) on conviction on indictment, to a fine.

(5) A person who knowingly makes a false or misleading statement in response to a copy of a notice served under section 4, 6 or 7 is guilty of an offence and liable -

- (a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Destruction etc: supplementary

10. - (1) If an object is in the possession of a person who intends that it will be used only for permitted purposes, it is not a chemical weapon for the purposes of sections 4(1) and (3) and 5(1) and (2); and in deciding whether permitted purposes are intended the types and quantities of objects shall be taken into account.

(2) For the purposes of sections 4 to 9 -

(a) to the extent that an object consists of a toxic chemical or precursor, it is destroyed if it is permanently prevented from being used other than for permitted purposes;

(b) to the extent that an object consists of a munition or other device designed to cause death or harm through toxic chemicals released by it, it is destroyed if it is permanently prevented from doing so;

(c) to the extent that an object consists of equipment designed for use in connection with a munition or other device, it is destroyed if it is permanently prevented from being so used.

(3) In sections 5 to 9 "premises" includes land (including buildings), moveable structures, vehicles, vessels, aircraft and hovercraft.

(4) Nothing in sections 4 to 7 affects any power arising otherwise than by virtue of those sections (such as a power to dispose of property in police possession in connection with the investigation of a suspected offence).

Premises for producing chemical weapons etc

Premises or equipment for producing chemical weapons

11. - (1) No person shall -

(a) construct premises he intends to be used to produce chemical weapons;

(b) alter premises in circumstances where he intends that they will be used to produce chemical weapons;

(c) install or construct equipment he intends to be used to produce chemical weapons;

(d) alter equipment in circumstances where he intends that it will be used to produce chemical weapons;

(e) permit the construction on land he occupies of premises he intends to be used to produce chemical weapons;

(f) permit premises on land he occupies to be altered in circumstances where he intends that they will be used to produce chemical weapons;

(g) permit the installation or construction on land he occupies of equipment he intends to be used to produce chemical weapons;

(h) permit equipment on land he occupies to be altered in circumstances where he intends that it will be used to produce chemical weapons.

(2) For the purposes of subsection (1) an object is not a chemical weapon if the person intends that the object will be used only for permitted purposes; and in deciding whether permitted purposes are intended

the types and quantities of objects shall be taken into account.

(3) A person contravening this section is guilty of an offence and liable on conviction on indictment to imprisonment for life.

Suspicious equipment or buildings

12. - (1) If -

(a) the Governor has grounds to suspect that any equipment or building is a chemical weapons production facility, and

(b) at least one person falls within subsection (2),

the Governor may serve on any person falling within that subsection a copy of a notice falling within subsection (3).

(2) The persons falling within this subsection are -

(a) any person who appears to the Governor to occupy the land on which the equipment or building is situated,

(b) if the Governor's suspicion relates to equipment, any person not falling within paragraph (a) and who appears to the Governor to have the equipment in his possession, and

(c) any person not falling within paragraph (a) or (b) and who appears to the Governor to have an interest which the Governor believes is materially affected by the notice.

(3) A notice falling within this subsection is a notice which -

(a) describes the equipment or building and states its location;

(b) states that the Governor suspects that the equipment or building is a chemical weapons production facility and gives the reasons for his suspicion;

(c) states that he is considering whether to require the equipment or building to be destroyed or altered;

(d) states that any person may make representations that the equipment or building is not a chemical weapons production facility.

(4) If the notice relates to equipment it must state that a person on whom the notice is served and who has the equipment in his possession must not relinquish possession of or alter or use, the equipment before a date specified in the notice.

Notice requiring destruction or alteration

13. - (1) If -

(a) the Governor has reasonable cause to believe that any equipment or building is a chemical weapons production facility, and

(b) at least one person falls within subsection (2),

the Governor may serve on each person falling within that subsection a copy of a notice falling within subsection (3).

(2) The persons falling within this subsection are -

- (a) any person who appears to the Governor to occupy the land on which the equipment or building is situated,
- (b) if the Governor's belief relates to equipment, any person not falling within paragraph (a) and who appears to the Governor to have the equipment in his possession, and
- (c) any person not falling within paragraph (a) or (b) and who appears to the Governor to have an interest which the Governor believes would be materially affected by the destruction or alteration of the equipment or building.

(3) A notice falling within this subsection is a notice which -

- (a) describes the equipment or building and states its location;
- (b) states that the Governor believes the equipment or building is a chemical weapons production facility;
- (c) requires the equipment or building to be destroyed or altered (as the case may be) in a manner, and before a date, specified in the notice.

(4) If a notice under this section requires any equipment or building to be altered, a further notice under this section may -

- (a) revoke the first notice, and
- (b) require the equipment or building to be destroyed;

and the preceding provisions of this section shall apply to the further notice accordingly.

(5) This section applies whether or not any copy of a notice has been served under section 12.

Power where notice not complied with

14. - (1) For the purposes of this section the qualifying condition is that -

- (a) a notice has been prepared under section 13,
- (b) the provisions of section 13(1) to (3) have been complied with in relation to the notice,
- (c) the notice has not been revoked, and
- (d) any requirement set out in the notice has not been complied with.

(2) If a justice of the peace is satisfied on information on oath that the qualifying condition is fulfilled, he may issue a warrant in writing authorising a person acting under the authority of the Governor to take remedial action under this section.

(3) If a person is authorised by a warrant to take remedial action under this section he may -

(a) enter the land on which the equipment or building is situated, if necessary by force;

(b) do whatever is required to secure that the equipment or building is destroyed or altered in a manner specified in the notice;

(c) take with him such other persons and such equipment as appear to him to be necessary to help him to exercise the powers mentioned in paragraphs (a) and (b).

(4) The powers conferred on an authorised person under this section shall only be exercisable, if the warrant so provides, in the presence of a police officer.

(5) If anything is done in exercise of the powers mentioned in this section, the Governor may recover from a responsible person any costs reasonably incurred by the Governor in connection with the exercise of those powers; and a responsible person is -

(a) in the case of equipment, any person in possession of the equipment at the time the land is entered;

(b) in the case of a building, any person occupying the land at the time it is entered.

Position where no notice can be served

15. - (1) For the purposes of this section the qualifying condition is that -

(a) the Governor has reasonable cause to believe that any equipment or building is a chemical weapons production facility,

(b) in the period of six months beginning with the day after he formed his belief it has not been possible to serve a copy of a notice under section 13 because of the circumstances mentioned in subsection (2), and

(c) the Governor has drawn up proposals for the destruction or alteration of the equipment or building in a manner specified in the proposals.

(2) The circumstances are that -

(a) no person appeared to the Governor to occupy the land on which the equipment or building is situated,

(b) if the Governor's belief relates to equipment, no person appeared to the Governor to have the equipment in his possession, and

(c) no person appeared to the Governor to have an interest which the Governor believed would be materially affected by the destruction or alteration of the equipment or building.

(3) If a justice of the peace is satisfied on information on oath that the qualifying condition is fulfilled, he may issue a warrant in writing authorising a person acting under the authority of the Governor to take remedial action under this section.

(4) If a person is authorised by a warrant to take remedial action under this section he may -

(a) enter the land on which the equipment or building is situated, if necessary by force;

(b) do whatever is required to secure that the equipment or building is destroyed or altered in a manner specified in the proposals drawn up by the Governor;

(c) take with him such other persons and such equipment as appear to him to be necessary to help him to exercise the powers mentioned in paragraphs (a) and (b).

(5) The powers conferred on an authorised person under this section shall only be exercisable, if the warrant so provides, in the presence of a police officer.

(6) If anything is done in exercise of the powers mentioned in this section, the Governor may recover from a responsible person any costs reasonably incurred by the Governor in connection with the exercise of those powers; and a responsible person is -

(a) in the case of equipment, any person in possession of the equipment at the time the land is entered;

(b) in the case of a building, any person occupying the land at the time it is entered.

Compensation for destruction or alteration

16. - (1) This section applies if a person claims that -

(a) any equipment or building has been destroyed or altered in compliance with a notice falling within section 13(3) or has been destroyed or altered under section 14,

(b) he had an interest which was materially affected by the destruction or alteration and he sustained loss as a result, and

(c) no copy of a notice was served on him under section 13.

(2) This section also applies if a person claims that -

(a) any equipment or building has been destroyed or altered under section 15, and

(b) he had an interest which was materially affected by the destruction or alteration and he sustained loss as a result.

(3) If the person concerned makes an application under this section to the supreme court of the Territory, and the court finds that his claim is justified, the court may order the Governor to pay to the applicant such amount (if any) by way of compensation as the court considers just.

(4) If the court believes that the equipment or building would have been destroyed or altered even if a copy of a notice had been served on the applicant under section 13 the court must not order compensation to be paid under this section.

Offences relating to destruction etc

17. - (1) If -

(a) a copy of a notice is served on a person under section 12,

(b) the notice relates to equipment in his possession at the time the copy is served,

(c) he relinquishes possession of, or alters or uses, the equipment before the date specified under

section 12(4), and

(d) he has no reasonable excuse for doing so,

he is guilty of an offence.

(2) If -

(a) a copy of a notice is served on a person under section 13,

(b) the notice relates to equipment in his possession at the time the copy is served or to a building situated on land he occupies at that time,

(c) any requirement set out in the notice is not fulfilled, and

(d) he has no reasonable excuse for the requirement not being fulfilled,

he is guilty of an offence.

(3) If a person wilfully obstructs -

(a) a person exercising, or attempting to exercise, the powers mentioned in section 14(3)(a) or (b) or 15(4)(a) or (b), or

(b) any other person taken with him as mentioned in section 14(3)(c) or 15(4)(c) and helping him, or attempting to help him, to exercise those powers,

the person so obstructing is guilty of an offence.

(4) A person guilty of an offence under any of the preceding provisions of this section is liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to a fine.

(5) A person who knowingly makes a false or misleading statement in response to a notice served under section 12 is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Destruction etc: supplementary

18. - (1) In sections 12 to 15 "chemical weapons production facility" has the meaning given by the definition of that expression in the Convention, and for this purpose -

(a) expressions used in the definition in the Convention shall be construed in accordance with the Convention, and

(b) section 1 shall be ignored.

(2) For the purposes of sections 12 to 16 "destroyed" and "destruction", in relation to a building, mean demolished and demolition.

(3) Nothing in sections 12 to 15 affects any power arising otherwise than by virtue of those sections (such as a power to dispose of property in police possession in connection with the investigation of a suspected offence).

Chemicals for permitted purposes

Restriction on use etc

19. - (1) Subject to section 20 (which relates to licences) no person shall -

(a) use a Schedule 1 toxic chemical or precursor for a permitted purpose, or

(b) produce or have in his possession a Schedule 1 toxic chemical or precursor with the intention that it will be used for a permitted purpose.

(2) A Schedule 1 toxic chemical or precursor is a toxic chemical or precursor listed in Schedule 1 to the annex on chemicals to the Convention; and for ease of reference that Schedule is set out in the Schedule to this Act.

(3) A person contravening this section is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to a fine.

Licences

20. - (1) Section 19 does not apply to anything done in accordance with the terms of a licence granted by the Governor and having effect at the time it is done.

(2) The Governor may -

(a) grant a licence in such circumstances and on such terms as he thinks fit;

(b) vary or revoke a licence by serving a notice to that effect on the person to whom the licence was granted.

(3) A variation or revocation shall take effect at such reasonable time as is specified in the notice served under subsection (2)(b).

(4) The Governor may by order make provision with respect to appealing against a refusal to grant, renew or vary a licence or against a variation or revocation of a licence.

(5) [omitted]

(6) A person who knowingly makes a false or misleading statement for the purpose of obtaining a licence or renewal or variation of a licence, or of opposing a variation or revocation of a licence, is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Information and records

Information for purposes of Act

21. - (1) If the Governor has grounds to suspect that a person is committing or has committed an offence under this Act the Governor may by notice served on the person require him to give in such form as is specified in the notice, and within such reasonable period as is so specified, such information as -

(a) the Governor has reasonable cause to believe will help to establish whether the person is committing or has committed such an offence, and

(b) is specified in the notice.

(2) A person who without reasonable excuse fails to comply with a notice served on him under subsection (1) is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to a fine.

(3) A person on whom a notice is served under subsection (1) and who knowingly makes a false or misleading statement in response to it is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Information and records for the purposes of Convention

22. - (1) The Governor may by notice served on any person require him to give in such form as is specified in the notice, and within such reasonable period as is so specified, such information as -

(a) the Governor has reasonable cause to believe is or will be needed in connection with anything to be done for the purposes of the Convention, and

(b) is specified in the notice;

and the information required by a notice may relate to a state of affairs subsisting before the coming into force of this Act or of the Convention.

(2) The Governor may by notice served on any person require him to keep such records as -

(a) the Governor has reasonable cause to believe will facilitate the giving of information the person may at any time be required to give under subsection (1), and

(b) are specified in the notice.

(3) A person who without reasonable excuse fails to comply with a notice served on him under subsection (1) or (2) is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to a fine.

(4) A person on whom a notice is served under subsection (1) and who knowingly makes a false or misleading statement in response to it is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Identifying persons who have information

23. - (1) The Governor may make regulations requiring persons of any description specified in the regulations to inform him that they are of such a description.

(2) Any such description must be so framed that persons within it are persons on whom the Governor is likely to want to serve a notice under section 22.

(3) If regulations are made under this section the Governor shall arrange for a statement of the fact that they have been made to be published in such manner as is likely to bring them to the attention of persons affected by them.

(4) A person who without reasonable excuse fails to comply with a requirement imposed by the regulations is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to a fine.

(5) A person who knowingly makes a false or misleading statement in response to a requirement imposed by the regulations is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(6) [omitted]

Inspections under Convention

Inspections: interpretation

24. For the purposes of sections 25 to 28 -

(a) the verification annex is the annex on implementation and verification to the Convention;

(b) a routine inspection is an inspection conducted pursuant to Parts II to IX of that annex;

(c) a challenge inspection is an inspection conducted pursuant to Parts II and X of that annex;

(d) an assistance inspection is an inspection conducted pursuant to Parts II and XI of that annex;

(e) "in-country escort", "inspector", "inspection team" and "observer" have the meanings given by Part I of that annex.

Rights of entry etc for purposes of inspections

25. - (1) If it is proposed to conduct a routine inspection, a challenge inspection or an assistance inspection in the Territory, the Governor may issue an authorisation under this section in respect of that inspection.

(2) An authorisation under this section shall -

(a) contain a description of the area (the specified area) in which the inspection is to be conducted,

(b) specify the type of inspection concerned,

(c) state the names of the members of the inspection team by whom the inspection is to be carried out, and

(d) in the case of a challenge inspection, state the name of any observer who may accompany the team.

(3) Such an authorisation shall have the effect of authorising the inspection team -

(a) to exercise within the specified area such rights of access, entry and unobstructed inspection as are conferred on them by the verification annex, and

(b) to do such other things within that area in connection with the inspection as they are entitled to do by virtue of the verification annex (including things concerning the maintenance, replacement or adjustment of any instrument or other object).

(4) Such an authorisation shall in addition have the effect of -

(a) authorising an in-country escort to accompany the inspection team in accordance with the provisions of the verification annex, and

(b) authorising any police officer to give such assistance as the in-country escort may request for the purpose of facilitating the conduct of the inspection in accordance with the verification annex;

and the name of the person in charge of the in-country escort shall be stated in the authorisation.

(5) An authorisation under this section in the case of a challenge inspection shall in addition have the effect of authorising the observer to exercise within the specified area such rights of access and entry as are conferred on him by the verification annex.

(6) Any police officer giving assistance in accordance with subsection (4)(b) may use such reasonable force as he considers necessary for the purpose mentioned in that provision.

(7) The occupier of any premises -

(a) in relation to which it is proposed to exercise a right of entry in reliance on an authorisation under this section, or

(b) on which an inspection is being carried out in reliance on such an authorisation,

or a person acting on behalf of the occupier of any such premises, shall be entitled to require a copy of the authorisation to be shown to him by a member of the in-country escort.

(8) The validity of any authorisation purporting to be issued under this section in respect of any inspection shall not be called in question in any court of law at any time before the conclusion of that inspection.

(9) Accordingly, where an authorisation purports to be issued under this section in respect of any inspection, no proceedings (of whatever nature) shall be brought at any time before the conclusion of the inspection if they would, if successful, have the effect of preventing, delaying or otherwise affecting the carrying out of the inspection.

(10) If in any proceedings any question arises whether a person at any time was or was not, in relation to any routine, challenge or assistance inspection, a member of the inspection team or a member of the in-country escort or the observer, a certificate issued by or under the authority of the Governor stating any fact relating to that question shall be conclusive evidence of that fact.

(11) If an authorisation is issued under this section the Governor may issue an amendment varying the specified area, and -

(a) from the time when the amendment is expressed to take effect this section shall apply as if the specified area were the area as varied;

(b) subsection (8) shall apply to the amendment as it applies to the authorisation;

(c) the Governor may issue further amendments varying the specified area and in such a case paragraphs (a) and (b) shall apply.

Offences in connection with inspections

26. - (1) If an authorisation has been issued under section 25 in respect of any inspection, a person is guilty of an offence if he -

(a) refuses without reasonable excuse to comply with any request made by a police officer or a member of the in-country escort for the purpose of facilitating the conduct of that inspection in accordance with the verification annex,

(b) interferes without reasonable excuse with any container, instrument or other object installed in the course of that inspection in accordance with the verification annex, or

(c) wilfully obstructs any member of the inspection team or of the in-country escort, or the observer, in the conduct of that inspection in accordance with the verification annex.

(2) Subsection (1)(b) applies to interference which occurs at any time while the container, instrument or other object is retained in accordance with the verification annex.

(3) A person guilty of an offence under this section is liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to a fine.

Privileges and immunities in connection with inspections

27. - (1) Members of inspection teams and observers shall enjoy the same privileges and immunities as are enjoyed by diplomatic agents in accordance with the following provisions of the 1961 Articles, namely -

- (a) Article 29,
- (b) paragraphs 1 and 2 of Article 30,
- (c) paragraphs 1, 2 and 3 of Article 31, and
- (d) Article 34.

(2) Such persons shall, in addition, enjoy the same privileges as are enjoyed by diplomatic agents in accordance with paragraph 1(b) of Article 36 of the 1961 Articles, except in relation to articles the importing or exporting of which is prohibited by law or controlled by the enactments relating to quarantine.

(3) Samples and approved equipment carried by members of an inspection team shall be inviolable and exempt from customs duties.

(4) The privileges and immunities accorded to members of inspection teams and observers by virtue of this section shall be enjoyed by them at any time when they are in the Territory -

- (a) in connection with the carrying out there of a routine inspection, a challenge inspection or an assistance inspection, or
- (b) while in transit to or from the territory of another party to the Convention in connection with the carrying out of such an inspection there.

(5) If -

- (a) immunity from jurisdiction of a member of an inspection team is waived in accordance with the verification annex, and
- (b) a notice made by the Governor and informing the member of the waiver is delivered to him in person,

then, from the time the notice is so delivered, this section shall not have effect to confer that immunity on the member.

(6) If in any proceedings any question arises whether a person is or is not entitled to any privilege or immunity by virtue of this section, a certificate issued by or under the authority of the Governor stating any fact relating to that question shall be conclusive evidence of that fact.

(7) In this section -

"the 1961 Articles" means the Articles which are set out in Schedule 1 to the Diplomatic Privileges Act 1964 (Articles of Vienna Convention on Diplomatic Relations of 1961 having force of law in United Kingdom)(a);

(a) 1964 c.81.

"approved equipment" and "samples" shall be construed in accordance with the verification annex;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978)(a).

Reimbursement of expenditure

28. The Governor may reimburse any person in respect of expenditure incurred in connection with a routine inspection, a challenge inspection or an assistance inspection.

Offences: miscellaneous

Power to search and obtain evidence

29. - (1) If a justice of the peace is satisfied on information on oath that there is reasonable ground for suspecting that an offence under this Act is being, has been or is about to be committed on any premises or that evidence of the commission of such an offence is to be found there, he may issue a warrant in writing authorising a person acting under the authority of the Governor to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them.

(2) A person who enters the premises under the authority of the warrant may -

(a) take with him such other persons and such equipment as appear to him to be necessary;

(b) inspect any document found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under this Act;

(c) take copies of, or seize and remove, any such document;

(d) inspect, seize and remove any device or equipment found on the premises which he has reasonable cause to believe may be required as such evidence;

(e) inspect, sample, seize and remove any substance found on the premises which he has reasonable cause to believe may be required as such evidence;

(f) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any document, device, equipment or substance;

but no woman or girl shall be searched except by a woman.

(3) The powers conferred by a warrant under this section shall only be exercisable, if the warrant so provides, in the presence of a police officer.

Forfeiture in case of conviction

30. - (1) The court by or before which a person is convicted of an offence under this Act may order that anything shown to the court's satisfaction to relate to the offence shall be forfeited, and either destroyed or otherwise dealt with in such manner as the court may order.

(2) In particular, the court may order the thing to be dealt with as the Governor may see fit; and in such a case the Governor may direct that it be destroyed or otherwise dealt with.

(3) Where -

(a) 1978 c.30.

(a) the court proposes to order anything to be forfeited under this section, and

(b) a person claiming to have an interest in it applies to be heard by the court,

the court must not order it to be forfeited unless he has been given an opportunity to show cause why the order should not be made.

30A. [omitted]

Offences: other provisions

31. - (1) Proceedings for an offence under section 2 or 11 shall not be instituted except by or with the consent of the Attorney General.

(2) Proceedings for an offence under any provision of this Act other than section 2 or 11 shall not be instituted except by or with the consent of the Governor.

(3) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) In subsection (3) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(5) [omitted]

Other miscellaneous provisions

Disclosure of information

32. - (1) This section applies to information if -

(a) it was obtained under, or in connection with anything done under, this Act or the Convention, and

(b) it relates to a particular business or other activity carried on by any person.

(2) So long as the business or activity continues to be carried on the information shall not be disclosed except -

(a) with the consent of the person for the time being carrying on the business or activity,

(b) in connection with anything done for the purposes of the Convention,

(c) in connection with anything done for the purposes of this Act,

(d) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings,

(e) in connection with the enforcement of any restriction on imports or exports,

(f) in dealing with an emergency involving danger to the public,

(g) with a view to ensuring the security of the Territory, or

(h) to the International Court of Justice for the purpose of enabling that Court to deal with any dispute referred to it under the Convention.

(3) [omitted]

(4) A person who discloses information in contravention of this section is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(5) Where a person proposes to disclose information to which this section applies in circumstances where the disclosure would by virtue of paragraphs (b) to (h) of subsection (2) not contravene this section, he may disclose the information notwithstanding any obligation not to disclose it that would otherwise apply.

33. [omitted]

Service of notices

34. A notice under any provision of this Act, or a copy of a notice under any such provision, may be served on a person -

(a) by delivering it to him in person,

(b) by sending it by post to him at his usual or last-known residence or place of business in the Territory, or

(c) in the case of a body corporate, by delivering it to the secretary or clerk of the body corporate at its registered or principal office or sending it by post to the secretary or clerk of that body corporate at that office.

35. [omitted]

36. [omitted]

The Crown

37. - (1) Subject to the following provisions of this section, this Act binds the Crown.

(2) No contravention by the Crown of a provision made by or under this Act shall make the Crown criminally liable; but the supreme court of the Territory may, on the application of a person appearing to the court to have an interest, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding subsection (2), the provisions made by or under this Act apply to persons in the public service of the Crown as they apply to other persons.

(4) Nothing in this section affects Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (meaning of Her Majesty in her private capacity)(a) were contained in this Act.

38. [omitted]

Citation

39. - (1) [omitted]

(2) [omitted]

(3) [omitted]

(4) This Act shall be cited as the Chemical Weapons Act 1996.

SCHEDULE TO THE ACT

Section 19

SCHEDULED TOXIC CHEMICALS AND PRECURSORS

(CAS registry number)

A. TOXIC CHEMICALS:

- | | | |
|-----|---|--|
| (1) | O-Alkyl (less than or equal to C ₁₀ , incl. cycloalkyl) alkyl
(Me, Et, n-Pr or i-Pr)-phosphonofluoridates
eg. Sarin: O-Isopropyl methylphosphonofluoridate (107-44-8)
Soman: O-Pinacolyl methylphosphonofluoridate (96-64-0) | |
| (2) | O-Alkyl (less than or equal to C ₁₀ , incl. cycloalkyl)
N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidocyanidates
eg. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate (77-81-6) | |
| (3) | O-Alkyl (H or less than or equal to C ₁₀ , incl. cycloalkyl)
S-2 dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me,
Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated
salts
eg. VX: O-Ethyl S-2-diisopropylaminoethyl methyl
phosphonothiolate (50782-69-9) | |
| (4) | Sulfur mustards:
2-Chloroethylchloromethylsulfide (2625-76-5)
Mustard gas: Bis (2-chloroethyl) sulfide (505-60-2)
Bis (2-chloroethylthio) methane (63869-13-6)
Sesquimustard: 1,2-Bis (2-chloroethylthio) ethane (3563-36-8)
1,3-Bis (2-chloroethylthio)-n-propane (63905-10-2)
1,4-Bis (2-chloroethylthio)-n-butane (142868-93-7)
1,5-Bis (2-chloroethylthio)-n-pentane (142868-94-8)
Bis (2-chloroethylthiomethyl) ether (63918-90-1)
O-Mustard: Bis (2-chloroethylthioethyl) ether (63918-89-8) | |
| (5) | Lewisites:
Lewisite 1: 2-Chlorovinylchloroarsine (541-25-3)
Lewisite 2: Bis (2-chlorovinyl) chloroarsine (40334-69-8)
Lewisite 3: Tris (2-chlorovinyl) arsine (40334-70-1) | |

(a) 1947 c.44.

- | | | |
|-----|--------------------------------------|--------------|
| (6) | Nitrogen mustards: | |
| | HN1: Bis (2-chloroethyl) ethylamine | (538-07-8) |
| | HN2: Bis (2-chloroethyl) methylamine | (51-75-2) |
| | HN3: Tris (2-chloroethyl) amine | (555-77-1) |
| (7) | Saxitoxin | (35523-89-8) |
| (8) | Ricin | (9009-86-3) |

B. PRECURSORS

- | | | |
|------|---|--------------|
| (9) | Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides
eg DF: Methylphosphonyldifluoride | (676-99-3) |
| (10) | O-Alkyl (H or less than or equal to C ₁₀ , incl. cycloalkyl)
O-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me,
Et, n-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts
eg QL: O-Ethyl O-2 diisopropylaminoethyl methylphosphonite | (57856-11-8) |
| (11) | Chlorosarin: O-Isopropyl methylphosphonochloridate | (1445-76-7) |
| (12) | Chlorosoman: O-Pinacolyl methylphosphonochloridate | (7040-57-5) |

Notes:

1. This Schedule sets out Schedule 1 to the annex on chemicals to the Convention as corrected.
2. In this Schedule the reference to the CAS registry is to the chemical abstract service registry.
3. This Schedule must be read subject to the following proposition, which is based on a note in the Convention: where reference is made to groups of dialkylated chemicals, followed by a list of alkyl groups in parentheses, all chemicals possible by all possible combinations of alkyl groups listed in the parentheses must be taken to be listed in the Schedule.

SCHEDULE 2

Article 3

SECTIONS 50 TO 56 OF THE ANTI-TERRORISM, CRIME AND SECURITY ACT 2001, AS EXCEPTED AND MODIFIED AND EXTENDED TO THE TERRITORIES LISTED IN SCHEDULE 3

Assisting or inducing weapons-related acts overseas

Assisting or inducing certain weapons-related acts overseas

50. - (1) A person who aids, abets, counsels or procures, or incites, a person who is not a United Kingdom person to do a relevant act outside the United Kingdom is guilty of an offence.

(2) For this purpose a relevant act is an act that, if done by a United Kingdom person, would contravene section 2 of the Chemical Weapons Act 1996 (offences relating to chemical weapons).

(3) [omitted]

(4) A person accused of an offence under this section in relation to a relevant act which would contravene section 2 of the Chemical Weapons Act 1996 may raise any defence which would be open to a person accused of the corresponding offence ancillary to an offence under that provision.

(5) A person accused of an offence under this section is liable on conviction on indictment to imprisonment for life.

(6) This section applies to acts done outside the Territory, but only if they are done by a United Kingdom person.

(7) Nothing in this section prejudices any criminal liability existing apart from this section.

Supplemental provisions relating to Section 50

Extraterritorial application

51. - (1) Proceedings for an offence committed under section 50 outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any part of the Territory.

(2) [omitted]

Powers of entry

52. - (1) If a justice of the peace is satisfied on information on oath that there are reasonable grounds for suspecting that evidence of the commission of an offence under section 50 is to be found on any premises, he may issue a warrant authorising an authorised officer to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them.

(2) The powers of a person who enters the premises under the authority of the warrant include power -

(a) to take with him such other persons and such equipment as appear to him to be necessary;

(b) to inspect, seize and retain any substance, equipment or document found on the premises;

(c) to require any document or other information which is held in electronic form and is accessible from the premises to be produced in a form -

(i) in which he can read and copy it; or

(ii) from which it can readily be produced in a form in which he can read and copy it;

(d) to copy any document which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under section 50.

(3) A police officer who enters premises under the authority of a warrant or by virtue of subsection (2)(a) may -

(a) give such assistance as an authorised officer may request for the purpose of facilitating the exercise of any power under this section; and

(b) search or cause to be searched any person on the premises who the constable has reasonable cause to believe may have in his possession any document or other thing which may be required as evidence for the purposes of proceedings in respect of an offence under section 50.

(4) No police officer shall search a person of the opposite sex.

(5) The powers conferred by a warrant under this section shall only be exercisable, if the warrant so provides, in the presence of a police officer.

(6) A person who -

(a) wilfully obstructs an authorised officer in the exercise of a power conferred by a warrant under this section; or

(b) fails without reasonable excuse to comply with a reasonable request made by an authorised officer or a police officer for the purpose of facilitating the exercise of such a power,

is guilty of an offence.

(7) A person guilty of an offence under subsection (6) is liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent; and

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

(8) In this section "authorised officer" means an officer acting under the authority of the Governor.

53. [omitted]

Offences

54. - (1) A person who knowingly or recklessly makes a false or misleading statement for the purpose of obtaining (or opposing the variation or withdrawal of) authorisation for the purposes of section 50 is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

(3) Where an offence under section 50 or subsection (1) above 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) a director, manager, secretary or other similar officer of the body corporate; or

(b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) In subsection (3) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Consent to prosecutions

55. Proceedings for an offence under section 50 shall not be instituted except by or with the consent of the Attorney General.

Interpretation

56. - (1) In the foregoing provisions "United Kingdom person" means a United Kingdom national or a

body incorporated under the law of the Territory.

(2) For this purpose a United Kingdom national is an individual who is -

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981(a) is a British subject; or
- (c) a British protected person within the meaning of that Act.

SCHEDULE 3

Articles 2 and 3

TERRITORIES TO WHICH THIS ORDER EXTENDS

Anguilla

Bermuda

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St Helena and Dependencies

South Georgia and the South Sandwich Islands

Turks and Caicos Islands

Virgin Islands

Sovereign Base Areas of Akrotiri and Dhekelia

(a) 1981 c.61.

SCHEDULE 4

Article 2

FURTHER EXCEPTIONS, ADAPTATIONS AND MODIFICATIONS TO THE CHEMICAL WEAPONS ACT 1996 IN RESPECT OF THE BRITISH ANTARCTIC TERRITORY AND THE BRITISH INDIAN OCEAN TERRITORY

1. The following provisions shall not extend to the British Antarctic Territory and the British Indian Ocean Territory:

section 5(6)
section 7(9)
section 9(4)(a)
section 9(5)(a)
section 14(4)
section 15(5)
section 17(4)(a)
section 17(5)(a)
section 19(3)(a)
section 20(5)(a)
section 21(2)(a)
section 21(3)(a)
section 22(3)(a)
section 22(4)(a)
section 23(4)(a)
section 23(5)(a)
section 25(4)(b)
section 25(6)
section 26(3)(a)
section 29(3)
section 32(4)(a)

2. In the application of sections 2(6)(b) and 26(1)(a) in the British Antarctic Territory and the British Indian Ocean Territory, the references therein to "a police officer" shall be omitted.

3. In the application of the following provisions in the British Antarctic Territory and the British Indian Ocean territory, the references therein to "conviction on indictment" shall be replaced by references to "conviction by the supreme court of the Territory":

section 2(8)
section 9(4)(b)
section 9(5)(b)
section 11(3)
section 17(4)(b)
section 17(5)(b)
section 19(3)(b)
section 20(6)(b)
section 21(2)(b)
section 21(3)(b)
section 22(3)(b)
section 22(4)(b)
section 23(4)(b)

section 23(5)(b)
section 26(3)(b)
section 32(4)(b)

4. In the application of section 31(1) in the British Antarctic Territory and the British Indian Ocean Territory, the reference therein to "the Attorney General" shall be replaced by a reference to "the Principal Legal Adviser of the Territory".

SCHEDULE 4A

Article 3

FURTHER MODIFICATION TO THE ANTI-TERRORISM, CRIME AND SECURITY ACT 2001 IN RESPECT OF THE BRITISH ANTARCTIC TERRITORY AND THE BRITISH INDIAN OCEAN TERRITORY

In the application of section 50(5) in the British Antarctic Territory and the British Indian Ocean Territory, the reference therein to "conviction on indictment" shall be replaced by a reference to "conviction by the supreme court of the Territory".

SCHEDULE 5

Article 2

FURTHER ADAPTATIONS AND MODIFICATIONS TO THE CHEMICAL WEAPONS ACT 1996 IN RESPECT OF PITCAIRN, HENDERSON, DUCIE AND OENO ISLANDS

1. In the application of the following sections in Pitcairn, Henderson, Ducie and Oeno Islands, the references therein to "summary conviction" shall be replaced by references to "conviction by the subordinate court of the Territory", and references to "conviction on indictment" shall be replaced by references to "conviction by the supreme court of the Territory":

section 2(8)
section 9(4)
section 9(5)
section 11(3)
section 17(4)
section 17(5)
section 19(3)
section 20(6)
section 21(2)
section 21(3)
section 22(3)
section 22(4)
section 23(4)
section 23(5)
section 26(3)
section 32(4)

2. In the application of section 31(1) in Pitcairn, Henderson, Ducie and Oeno Islands, the reference therein to "the Attorney General" shall be replaced by a reference to "the Legal Adviser".

3. In the application of the following sections in Pitcairn, Henderson, Ducie and Oeno Islands, the references therein to "a fine" shall be replaced by references to "a fine not exceeding £10,000 or its equivalent":

section 9(4)(b)
section 9(5)(b)
section 17(4)(b)
section 17(5)(b)
section 19(3)(b)
section 20(6)(b)
section 21(2)(b)
section 21(3)(b)
section 22(3)(b)
section 22(4)(b)
section 23(4)(b)
section 23(5)(b)
section 26(3)(b)
section 32(4)(b)

SCHEDULE 5A

Article 3

FURTHER MODIFICATION TO THE ANTI-TERRORISM, CRIME AND SECURITY ACT 2001 IN RESPECT OF PITCAIRN, HENDERSON, DUCIE AND OENO ISLANDS

In the application of section 50(5) in Pitcairn, Henderson, Ducie and Oeno Islands, the reference therein to "conviction on indictment" shall be replaced by a reference to "conviction by the supreme court of the Territory".

SCHEDULE 6

Article 2

FURTHER ADAPTATIONS AND MODIFICATIONS TO THE CHEMICAL WEAPONS ACT 1996 IN RESPECT OF BERMUDA

In the application of the following sections in Bermuda, the references therein to "a fine not exceeding £5,000 or its equivalent" shall be replaced by references to "a fine not exceeding \$8,500":

section 9(4)(a)
section 9(5)(a)
section 17(4)(a)
section 17(5)(a)
section 19(3)(a)
section 20(6)(a)
section 21(2)(a)
section 21(3)(a)
section 22(3)(a)

section 22(4)(a)
section 23(4)(a)
section 23(5)(a)
section 26(3)(a)
section 32(4)(a)

SCHEDULE 7

Article 2

FURTHER ADAPTATIONS AND MODIFICATIONS TO THE CHEMICAL WEAPONS ACT 1996 IN RESPECT OF THE TURKS AND CAICOS ISLANDS

1. In the application of the following sections in the Turks and Caicos Islands, the references therein to "a fine not exceeding £5,000 or its equivalent" shall be replaced by references to "a fine not exceeding \$8,500":

section 9(4)(a)
section 9(5)(a)
section 17(4)(a)
section 17(5)(a)
section 19(3)(a)
section 20(6)(a)
section 21(2)(a)
section 21(3)(a)
section 22(3)(a)
section 22(4)(a)
section 23(4)(a)
section 23(5)(a)
section 26(3)(a)
section 32(4)(a)

2. In the application of the following sections in the Turks and Caicos Islands, the references therein to "a fine" shall be replaced by references to "a fine not exceeding \$50,000":

section 9(4)(b)
section 9(5)(b)
section 17(4)(b)
section 17(5)(b)
section 19(3)(b)
section 20(6)(b)
section 21(2)(b)
section 21(3)(b)
section 22(3)(b)
section 22(4)(b)
section 23(4)(b)
section 23(5)(b)
section 26(3)(b)
section 32(4)(b)

SCHEDULE 8

Article 2

FURTHER EXCEPTIONS, ADAPTATIONS AND MODIFICATIONS TO THE CHEMICAL WEAPONS ACT 1996 IN RESPECT OF THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA

1. The following sections shall not extend to the Sovereign Base Areas of Akrotiri and Dhekelia:

section 9(4)(a)
section 9(5)(a)
section 17(4)(a)
section 17(5)(a)
section 19(3)(a)
section 20(5)(a)
section 21(2)(a)
section 21(3)(a)
section 22(3)(a)
section 22(4)(a)
section 23(4)(a)
section 23(5)(a)
section 26(3)(a)
section 32(4)(a)

2. In the application of the following sections in the Sovereign Base Areas of Akrotiri and Dhekelia the references therein to "conviction on indictment" shall be replaced by references to "conviction by the Judge's Court":

section 2(8)
section 9(4)(b)
section 9(5)(b)
section 11(3)
section 17(4)(b)
section 17(5)(b)
section 19(3)(b)
section 20(6)(b)
section 21(2)(b)
section 21(3)(b)
section 22(3)(b)
section 22(4)(b)
section 23(4)(b)
section 23(5)(b)
section 26(3)(b)
section 32(4)(b)

3. In the applications of sections 5(2), 7(7) and 29(1) in the Sovereign Base Areas of Akrotiri and Dhekelia, the references therein to "a justice of the peace" shall be replaced by references to "a judge".

FURTHER MODIFICATION TO THE ANTI-TERRORISM, CRIME AND SECURITY ACT 2001 IN
RESPECT OF THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA

In the application of section 50(5) in the Sovereign Base Areas of Akrotiri and Dhekelia the reference therein to "conviction on indictment" shall be replaced by a reference to "conviction by the Judge's Court".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Chemical Weapons Act 1996 and the Anti-terrorism, Crime and Security Act 2001, extends provisions of the two Acts, with exceptions, adaptations and modifications, to the territories listed in Schedule 3.



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 16

23rd May 2005

No. 11

The following are published in this Supplement -

Coins (No 3) Order 2005, (S. R. & O. No: 9 of 2005);

Coins (No 4) Order 2005, (S. R. & O. No: 10 of 2005);

Electoral (Amendment) Ordinance 2005 (Correction) Order 2005, (S. R. & O. No: 11 of 2005);

Capital Equalisation Fund Notice.

SUBSIDIARY LEGISLATION

CURRENCY

Coins (No 3) Order 2005

S. R. & O. No: 9 of 2005

Made:11 May 2005

Published: 23 May 2005

Coming into force: in accordance with article 1

IN EXERCISE of my powers under section 22 of the Currency Ordinance 1987 (Title 25.1) ("the Ordinance") 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 Coins (No 3) Order 2005 and shall come into force upon publication in the *Gazette*.

New coin

2.—(1) The minting and issue of the coin described and specified in the Schedule to this Order is hereby authorised.

(2) The Schedule to this Order shall have effect so as to specify the denomination, fineness, weight, diameter, quality, shape, edge and number of the coin authorised by paragraph (1) of this article, the tolerance or remedy which may be permitted in respect of variations from the standard weight, diameter and fineness of the coin and the design of the obverse and reverse of the coin.

Deemed denomination of Crown coin and value as legal tender

3. For all the purposes of the Ordinance the Gold Crown coin authorised by this Order shall be deemed to be of £5 denomination and shall be legal tender in the Falkland Islands in the amount of its deemed denomination.

Made this 11th day of May 2005

H. Hall,
Acting Governor

SCHEDULE

Specifications of Falkland Islands coins to commemorate the Wedding of HRH The Prince of Wales and Mrs Parker Bowles

Type	Gold Proof
Denomination	1 Crown
Weight (grams)	31.103
Diameter (millimetres)	38.60
Fineness	999.9 Gold
Quality	Proof
Shape	Round
Edge	Milled
Edition Limit	1,000
Mint	Pobjoy Mint Ltd
Remedy	Variation to be allowed of the amount permitted by the Pobjoy Mint Ltd.
Obverse Design	The uncouped portrait of Her Majesty the Queen by Raphael Maklouf surrounded by the inscription "QUEEN ELIZABETH II FALKLAND ISLANDS" and the date "2005" at the bottom.
Reverse Design	Design depicts a bouquet of flowers, all of which are grown at the Duchy of Cornwall Nursery, except for four sprays of 'Pale Maiden' the national flower of the Falkland Islands. The inscription "The Wedding of H.R.H. The Prince of Wales and Mrs. Parker Bowles" appears in the surround of the coin with "April 9 th 2005" below and the denomination at the bottom.

EXPLANATORY NOTE

(not forming part of the above Order)

This Order authorises the issue of a gold crown coin commemorating the marriage of His Royal Highness The Prince of Wales and Mrs Parker Bowles which is to be legal tender in the Falkland Islands in accordance with its deemed denomination stated in the Order.

SUBSIDIARY LEGISLATION

CURRENCY

Coins (No 4) Order 2005

S. R. & O. No: 10 of 2005

Made: 12 May 2005

Published:..... 23 May 2005

Coming into force: upon publication

IN EXERCISE of my powers under section 22 of the Currency Ordinance 1987 (Title 25.1) ("the Ordinance") 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 Coins (No 4) Order 2005 and shall come into force upon publication in the *Gazette*.

New coins

2.—(1) The minting and issue of the coins described and specified in Schedules 1 and 2 to this Order are hereby authorised.

(2) Schedules 1 and 2 to this Order shall have effect so as to specify the denomination, fineness, weight, diameter, quality, shape, edge and number of the coins authorised by paragraph (1) of this article, the tolerance or remedy which may be permitted in respect of variations from the standard weight, diameter and fineness of the coins and the design of the obverse and reverse of the coins.

Made this 12th day of May 2005

H. Hall
Acting Governor

Schedule 1

Specifications of Falkland Islands coins to commemorate the 60th Anniversary of the end of the Second World War

Type	Silver Proof	Cupro-nickel
Denomination	50 Pence	50 Pence
Weight (grams)	28.28	28.28
Diameter (millimetres)	38.61	38.61
Fineness	0.925 Sterling silver	75% Cu 25% Ni
Quality	Proof	Uncirculated
Shape	Round	Round
Edge	Milled	Milled
Edition Limit	10,000	Unlimited
Mint	Valcambi sa	
Remedy	Variations to be allowed of the tolerance permitted by the Valcambi sa Mint.	
Obverse design	The uncouped portrait of Her Majesty the Queen by Raphael Makloun in the centre surrounded by the inscription "QUEEN ELIZABETH II" the date "2005" and "FALKLAND ISLANDS" and the denomination "50 PENCE".	
Reverse design	In the foreground a returning soldier with his wife and son who are waving flags surrounded by a decorative border of bunting and the inscription "END OF WORLD WAR II – 60 TH ANNIVERSARY" and the dates "1945-2005".	
	The silver proof version to have coloured bunting in red, white and blue.	

Schedule 2

Specifications of Falkland Islands coins to commemorate the 40th Anniversary of the death of Sir Winston Churchill

Type	Silver Piedfort	Silver Proof	Cupro-nickel
Denomination	50 Pence	50 Pence	50 Pence
Diameter (millimetres)	38.61	38.61	38.61
Weight (grams)	56.56	28.28	28.28
Fineness	0.925 Sterling silver	0.925 Sterling silver	75% Cu 25% Ni
Quality	Proof	Proof	Uncirculated
Shape	Round	Round	Round
Edge	Milled	Milled	Milled
Edition Limit	500*	5,000*	Unlimited
Mint	Valcambi sa		
Remedy	Variations to be allowed of the tolerance permitted by the Valcambi sa Mint.		
Obverse design	The uncouped portrait of Her Majesty the Queen by Raphael Maklouf in the centre surrounded by the inscription "QUEEN ELIZABETH II" the date "2005" and "FALKLAND ISLANDS" and the denomination "50 PENCE".		
Reverse designs	A series of four designs for each type of coin as follows:		
Design 1	In the foreground a portrait of Churchill in Army uniform in South Africa at the time of the Boer War and a local soldier in the background surrounded by the inscription "CHURCHILL – MAN OF MANY PARTS" with the dates "1874" and "1965" separated by the word "SOLDIER".		
Design 2	In the foreground Winston Churchill painting while on holiday near the Sorgue river in Provence surrounded by the inscription "CHURCHILL – MAN OF MANY PARTS" with the dates "1874" and "1965" separated by the word "ARTIST".		
Design 3	In the foreground Winston Churchill writing at his desk at Chartwell surrounded by the inscription "CHURCHILL – MAN OF MANY PARTS" with the dates "1874" and "1965" separated by the word "AUTHOR".		

Design 4

In the foreground Winston Churchill addressing Congress in December 1941 during the "Arcadia" (Washington) conference which ran from 22 December 1941 to 14 January 1942, following the US declaration of War, surrounded by the inscription "CHURCHILL – MAN OF MANY PARTS" with the dates "1874" and "1965" separated by the word "STATESMAN".

*

The edition limits shall be as stated above for each of the four reverse designs

EXPLANATORY NOTE

(not forming part of the above Order)

This Order authorises the issue of cupro-nickel and silver crown size coins to commemorate the 60th Anniversary of the end of the Second World War and the 40th Anniversary of the death of Sir Winston Churchill each of which is to be legal tender in the Falkland Islands.

SUBSIDIARY LEGISLATION

ELECTIONS

Electoral (Amendment) Ordinance 2005 (Correction) Order 2005

S. R. & O. No. 11 of 2005

Made: 19 May 2005

Published: 23 May 2005

Coming into force: on publication

IN EXERCISE of my powers under section 93 of the Interpretation and General Clauses 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 Electoral (Amendment) Ordinance 2005 (Correction) Order 2005 and shall be deemed to have come into force on the same date as the Electoral (Amendment) Ordinance 2005.

Correction of Electoral (Amendment) Ordinance 2005

2. The Schedule to the Electoral (Amendment) Ordinance 2005(b) is corrected in paragraph 14(c) by deleting the words “and in the month” appearing therein.

Made this 19th day of May 2005

D. G. Lang Q.C.,
Attorney General

(a) Title 67.2

(b) No 1 of 2005

NOTICE

PURSUANT to section 4(5)(a) of the Finance Ordinance 2004, I HEREBY NOTIFY that the Secretary of State's concurrence to the establishment of the Capital Equalisation Fund was given on 30 November 2004.

Dated this 20th day of May 2005

D. G. Lang Q.C.,
Attorney General



THE FALKLAND ISLANDS GAZETTE Supplement

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31st May 2005

No. 12

The following are published in this Supplement -

Policy Memorandum, Fisheries (Conservation and Management) Bill 2005;

Explanatory Memorandum, Fisheries (Conservation and Management) Bill 2005;

Fisheries (Conservation and Management) Bill 2005.

POLICY MEMORANDUM

Fisheries (Conservation and Management) Bill 2005

Introduction:

1. The Fisheries (Conservation and Management) Bill 2005 if enacted, will introduce a major item of legislation. It achieves the following objectives:
 - a) It will give legislative effect to a major review of fisheries policy including the introduction of property rights.
 - b) the Bill provides the first comprehensive update of the Fisheries (Conservation and Management) Ordinance, since the introduction of the 1986 Ordinance which coincided with the creation of the Falkland Islands Interim Conservation and Management Zone.

Policy Review:

A major review of fisheries policy was undertaken during 2002. This was a far-reaching review. The review addressed fisheries policy, marine farming and port development. Whilst the fisheries policy review focused on fishery resource allocation issues, it also reviewed the mechanics of resource allocation together with other areas where the private sector interacts with the regulatory authority. The key outcome was the proposal to change from the current system of relatively short term licenses to introducing a system based on transferable property rights.

Consultation and Process:

The fisheries policy review process gave widespread opportunities for comment by the fishing industry and the public. The process started with a discussion with the fishing industry in early 2002 to gauge the direction which the review should take. A policy review group incorporating a number of representatives from the fisheries sector was set up. A discussion document together with recommendations on future fisheries policy was prepared in mid-2002 and released for comment by the industry and the public. The results of the public consultation were taken into account and policy recommendations were put forward to ExCo in March 2003. The policy proposals approved by ExCo have provided policy direction for part of the Fisheries (Conservation and Management) Bill 2005.

Executive Council Decisions:

Paper 86/03 This paper presented the policy review and policy recommendations to ExCo in March 2003. ExCo supported the principle of a move towards introducing a property rights system. It was also requested that further information be made available to the public. A further ExCo meeting to consider this major policy issue was scheduled.

- Paper 86/03 This paper returned to ExCo in May 2003. ExCo concluded that the Falkland Islands should move to a system based on property rights and that rights should be term rights of up to 25 years duration. ExCo set a number of other parameters in relation to the introduction of property rights.
- Paper 196/03 The purpose of this paper was to explore what, if any, charges should be made for the initial allocation of fishing rights. It was considered at ExCo in July 2003. ExCo indicated that the government should obtain some value from the sale of rights. Sale proceeds should appear as revenue in a company's profit and loss account and the tax system would collect any revenue due to the government.
- Paper 197/03 This paper made recommendations on the initial allocation of rights and was considered at ExCo in July 2003. ExCo concluded that each major fishery should be treated separately and that allocation would depend on the level of investment by Falkland Islands companies and the level of exploitation. Whether rights were allocated as transferable rights or provisional quota would depend on a company's level of involvement. Track record would be taken into account.
- Paper 290/03 This paper addressed the issue of 'Eligibility to hold fishing rights' and went to ExCo in October 2003. ExCo determined that companies eligible to hold property rights must generally be owned by shareholders with Falkland Islands' status and ordinarily resident in the Falkland Islands. The use of Eligibility and Ownership registers was approved. Tests relating to Effective Control, Active Involvement and Efficient Use were agreed.

The Introduction of Property Rights:

The most significant outcome of the fisheries policy review was the recommendation to introduce property rights in the fishery. The Falkland Islands has successfully met many challenges in the management and development of its fisheries resources over the last 20 years. To meet a new generation of challenges the current licensing system based on the allocation of non-transferable, variable duration licenses to individual vessels, is to be replaced by a system of long term individual transferable rights owned by Falkland Islanders. The anticipated gains are enhanced economic performance of the sector because fishing businesses have increased security and flexibility, rapid diversification from harvesting into value added activities and increased international competitiveness as poorly performing companies sell rights to well performing companies. Implementing a rights based regime in a small coastal state is challenging. Thin markets for rights, a desire to maintain local control of fishing rights, and a dependence on foreign direct investment in the fisheries sector are key considerations in the design of an effective and efficient management regime. Additional considerations include the trade-off between the economic efficiency gains derived from output-controlled fisheries and the relative administrative simplicity of input controlled fisheries. Under the rights based system monitoring of economic performance including the value of rights trades and rents generated will

be key performance indicators alongside traditional biological measures of management performance.

Falkland Islands expectations of the new regime are based on international experience with rights based systems over the last 30 years. These expectations help establish the basis for benchmarks against which the performance of the system can be judged. First, overall economic performance of the sector is expected to be enhanced, because fishing businesses have increased security of access to the resource and flexibility in the way they decide to structure activities to take advantage of the business opportunities. Second, diversification should occur in the industry as companies, no longer required to invest in vessels, look to invest in value-added activities such as processing and marketing. Third, seafood companies should invest more in research and development because long term rights mean that they will benefit from investments that have longer pay-off periods. Fourth, international competitiveness should also increase as poorly performing companies sell rights to better performing companies. No longer will they be forced to stay in a fishery, unable to exit without losing everything. Fifth, as the profitability of the domestic seafood sector increases, government income from personal and corporation tax and resource rents should increase.

Fisheries in the Falkland Islands have traditionally been managed using effort limitation. The Bill has been framed with the flexibility to allow fisheries to be declared either in terms of Total Allowable Effort (as now) or Total Allowable Catch. In the first instance, fisheries will continue to be managed using effort controls. The terminology of Individual Transferable Quota systems will be used, and whilst elsewhere these usually refer to catch, in the Falkland Islands the quota will refer to a unit of fishing effort. Companies awarded property rights or quota in a particular fishery will be awarded a proportion of the Total Allowable Effort declared for that fishery. In due course, total allowable catch could be used particularly for the longer lived fish species.

Property rights may be allocated either as Individual Transferable Quota or as Provisional Quota, the nature of the fishery will determine which type of right is used. This will be assessed taking into account the levels of biological exploitation and the level of local investment in each fishery. Both Individual Transferable Quota and Provisional Quota generate an annual or seasonal catch entitlement at the start of each season or year. Catch entitlements accommodate the joint venture arrangements which prevail in some of the fisheries but also serve to create a more robust market for trading rights. Catch entitlements are tradable but expire at the end of the fishing season or fishing year. Catch entitlements, rather than Individual Transferable Quota, or as now the fishing license, becomes the day to day currency of the rights based regime. Fishing vessels will still be required to have a fishing license. The fishing license is retained in the new management system to regulate fishing activity with respect to gear type and sizes and mitigation measures to limit the impact of fishing on dependent and associated fish stocks, marine mammals, seabirds and the marine environment.

Unlike Individual Transferable Quota, joint venture companies can own catch entitlements even if Falkland Islands' status holders have a minority shareholding. The threshold for local ownership may be set at different levels in different fisheries. This allows existing joint ventures to continue with minimal disruption and gives the security of short term access to

fisheries to foreign investors. It is also expected that local companies will be more willing to trade short duration Catch Entitlements rather than Individual Transferable Quota because this trade does not affect a company's long term access to the fishery. In time the Catch Entitlement mechanism should see a faster rationalization of the fishing fleet and effort than would have been the case if Individual Transferable Quotas alone were implemented.

The Fisheries Ordinance has always covered mainstream fisheries management and conservation. Whereas in the current system the issue of priority in license applications and long term licenses has been a matter of policy rather than legislation, the new Bill incorporates the issue of access to resources into the main item of Fisheries Legislation. There are still issues which will be the subject of policy decisions, however the process is set out much more tightly in the Bill.

The property rights system proposed entails significant change to the operating environment for the private sector. There are also significant changes in the administration of the fishery, particularly in relation to the process of creating, awarding and administering property rights. The new system does not alter the Falkland Islands Government's powers to manage the fishery to achieve conservation targets, if anything these provisions are strengthened. Similarly, the new system does not alter the Government's ability to raise revenue from the fishery. Fees for Individual Transferable Quota and Provisional Quota can be levied in much the same way as license fees are currently levied.

Property rights are not necessarily a panacea for fisheries development. Current fisheries policy or what might be more appropriately described as license allocation policy has served well. However, current policy had run its course and was in need of major revision and development. Whilst a range of options were available for policy development, the property rights route seemed apt at this point. A number of the features of property rights systems had been identified as desirable from previous policy reviews.

Modernisation:

The Bill represents the first major reform and re-statement of law relating to fisheries resources and fisheries management. The original Fisheries (Conservation and Management) Ordinance 1986 was introduced to coincide with the introduction of the Falklands' Interim Conservation and Management Zone. There have been significant developments in fisheries in the Falkland Islands in the intervening 19 years. Additionally, there have been a number of developments at the International level in that period. The Bill provides for updating the law to reflect these developments.

The preliminary part of the Bill (Part I) requires that in utilizing fisheries resources that due account be given to a range of environmental and information principles, together with specific sustainability measures. These reflect developments in International fisheries conservation agreements and law. One particular aspect is the extension of the provisions of the Conservation of Nature and Wildlife Ordinance 1999 to the fishing waters, so as to better protect seabirds.

International Co-operation:

The Bill makes provision for International co-operation in relation to information exchange and combating illegal, unregulated and unreported (IUU) fishing activities. The Bill formalises existing procedures whereby any fishing vessel officially 'blacklisted' by CCAMLR or other RFMO would not be authorised to fish in Falkland waters. Information including evidentiary material could be exchanged with other countries in support of the objectives of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (November 1993) and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea (December 1982) relating to the Conservation of Straddling Fish Stocks and Highly Migratory Fish Stocks (December 1995).

Disputes Commission:

Part V of the Bill provides for the establishment of a Disputes Commission. The purpose of the Disputes Commission is to review and adjudicate on certain matters which may be referred to the Commission. It provides a dispute resolution mechanism which can focus on fisheries issues and deal with them in an expeditious manner.

Industry Association:

The introduction of property rights is likely to see greater engagement between the government and industry on some fisheries management issues. Experience elsewhere suggests that strong and dynamic industry associations are likely to develop. The Bill provides for the establishment of a Falkland Islands' Fishing Companies Association. Additionally, provision is made for the application of a levy which may in turn fund the activities of the association.

Enforcement and Penalties:

The provisions in relation to enforcement and penalties are substantially overhauled. In the Bill the powers of Fishery Officers in relation to offending vessels are extended. The circumstances in which the Court may order forfeiture of a fishing vessel upon conviction for certain offences are also extended.

Overseas Master Fishing Licenses:

The Bill introduces the requirement that any overseas person in charge of a fishing vessel operating in Falkland Islands' fishing waters, must be in possession of an Overseas Master Fishing License. The license may be revoked if the holder is convicted of an offence under the Ordinance, or if the holder has been convicted of any offence involving violence towards or maltreatment of any member of the crew of a fishing vessel of which he was at the time an officer.

The Bill also provides that in the above circumstances a person may be prohibited from holding an Overseas Master Fishing License for a period of up to 5 years, with the prohibition being published in the Gazette.

Executive Council Review:

Provision is made in the Bill for an annual or more frequent review of the fisheries policy. The review provides the opportunity to examine whether objectives are being achieved in relation to the proper utilization, conservation and management of fisheries resources, and associated issues. The review provides an opportunity for ExCo to change any policies of the Falkland Islands in relation to fisheries resources and fisheries management, control and conservation.

EXPLANATORY MEMORANDUM

Fisheries (Conservation and Management) Bill 2005

A. Introductory

1. The Fisheries (Conservation and Management) Bill 2005 is described in its long title as “a Bill for an Ordinance to reform and restate the law relating to fisheries resources and fisheries management, control and conservation”. If enacted it would entirely repeal the Fisheries (Conservation and Management) Ordinance 1986, (as amended), the High Seas Fishing Ordinance 1995, the Fishing (CCAMLR) Ordinance 1999 and the Fishing (CCAMLR)(Amendment) Ordinance 2002. The Bill is divided into 8 Parts and has 224 clauses and 3 Schedules. It is an important, and complex, piece of draft legislation.

2. Part I (*clauses 1-12*) contains preliminary provisions. These include a statement of the purpose and principles in relation to the Bill and make provision also for sustainability measures and consultation with interested parties in relation to management and conservation issues.

3. Part II, which is divided into 2 Chapters, consists of *clauses 13-51*, and deals with the regulation of fishing.

4. Part III of the Bill contains provisions in relation to the registers which are to be maintained in relation to the property rights created under Part II (Individual Transferable Quota and Provisional Quota ownership rights and Catch Entitlements), dealings with those property rights, caveats, registration procedures and correction of registers, protection of purchasers of property rights and compensation for mistakes or wrongdoing in relation to the Individual Transferable Quota Ownership Register which is required to be kept.

5. Part IV of the Bill (*clauses 90-97*) deals with record-keeping, reporting, disposal of fish and also contains provisions relating to taking and possession of fish for the purpose of sale. Part V of the Bill (*clauses 98-125*) contains provisions in relation to the establishment of a Disputes Commission, its procedure and appeals from the Disputes Commission to the Supreme Court.

6. Part VI of the Bill deals with high seas fishing by Falkland Islands fishing vessels, licences in relation to such fishing, international co-operation, enforcement and offences in relation to high seas fishing. Part VI consists of *clauses 126-140*. The provisions contained in this Part replace the provisions of the High Seas Fishing Ordinance 1995. Part VII (*clauses 141-188*) deals with powers of surveillance and enforcement by fisheries officers and others and by the courts. Far more extensive powers would be conferred than exist under present law. Part VIII (*clauses 189-224*) contains a number of provisions in relation to offences and, in addition to that, contains provision for the imposition and collection of a levy from fisheries companies, the formation of a Falkland Islands Fisheries Companies Association, provisions as to administrative penalties, some administrative provisions, provision as to the making of regulations and for the repeal of the existing Ordinances mentioned earlier with savings of existing regulations made under those Ordinances until they are revoked. There follow three Schedules. Schedule 1 states the provisions of the Conservation of Wildlife and Nature Ordinance which would be applied to the

Falkland Islands, Schedule 2 specifies the various fisheries in relation to which property rights and licences could be granted under the provisions of the Bill if enacted and Schedule 3 specifies the manner in which offences under the Bill, if enacted, would be punishable.

The Bill in detail

B. Part I of the Bill

7. *Clause 1* (short title and commencement) would provide for the Bill to be cited, if enacted, as the Fisheries (Conservation and Management) Ordinance 2005 and for it to come into force on such date or dates to be appointed by the Governor by Notice published in the Gazette and provides that different dates might be so appointed by one or more such Notices for different provisions and different purposes.

8. *Clause 2* (interpretation) is a "dictionary clause" in which the meaning of some of the words and phrases listed in it appear with initial capital letters so that it is clear, in reading the later provisions of the Bill, that the meaning of the word or expression concerned has been defined in *clause 2(1)*.

9. By *clause 2(2)* "court" is defined as meaning, unless otherwise stated to the contrary, the Summary Court or the Magistrate's Court and any court on appeal, or further appeal, from a decision at first instance in the Summary Court or the Magistrate's Court and *clause 2(3)* provides that the Summary Court has the same jurisdiction as the Magistrate's Court in respect of penalties, offences and proceedings in criminal matters. However, civil jurisdiction conferred by the Bill is vested only in the Magistrate's Court and/or Supreme Court. The Ordinance would bind the Crown by virtue of *clause 2(4)*.

10. *Clause 3(1)* would state that the fishing waters of the Falkland Islands comprise the internal waters, the territorial sea, the interim fishery conservation management zone, the outer zone and any other marine waters over which exclusive rights of fishing or fisheries management are claimed by the Falkland Islands by proclamation, law or convention for the time being in force in the Falkland Islands. "Internal waters", "territorial sea", "Interim Fishery Conservation Management Zone" and "the Outer Zone" are all defined in *clause 2(1)*. *Clause 3(2)* would state that all fishing rights in relation to fish in the fishing waters are, at the commencement of the clause, vested in the Crown which may dispose of them in accordance with the Bill, if enacted and that the Crown also owns any fishing rights (defined in *clause 2(1)*) the grant of which is revoked or which are forfeited to the Crown under any provision of the Bill if enacted.

11. *Clause 4* would make provision in relation to the Director of Fisheries, Deputy Director of Fisheries, fisheries officers and examiners. Under *clause 4(1)* any person holding office as Director of Fisheries, Deputy Director of Fisheries or fisheries protection officer immediately before the commencement of the Ordinance under *clause 1* would hold office as if he had been appointed to that office under the relevant provisions of *clause 4*. By *clause 4(2)* the Governor would be obliged, subject to *clause 4(1)*, to appoint a public officer to be the Director of Fisheries and can appoint another public officer to be the Deputy Director of Fisheries who

would have powers subject to any directions of the Governor to the contrary, to exercise any function conferred upon the Director of Fisheries by or under the Ordinance. *Clause 4(3)* would enable the Governor to appoint any public officer to be an examiner to assist in the enforcement and administration of the Ordinance by examining and verifying the keeping of accounts, records, returns and information required to be kept or made under any provision of the Ordinance. The Director's responsibilities under the Ordinance would be stated by *clause 4(4)* to include the matters listed in it. *Clause 4(5)* would state that in carrying out his responsibilities in the performance of his functions under the Ordinance the Director is to act in accordance with any directions, not inconsistent with the Ordinance, which the Governor acting in his discretion may give to him. *Clause 4(6)* would enable the Governor to appoint any person to be a fisheries officer and would state that additionally persons appointed as examiner, every member of the Royal Falkland Islands Police, every customs officer and every commissioned officer of Her Majesty's Ships and persons in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force or of the Falkland Islands Government are fisheries officer.

12. *Clause 5* would provide for the issue of warrant cards to persons appointed as examiners or a fisheries officer. These are to be surrendered on the person ceasing to hold office as an examiner or fisheries officer and failure to do so will constitute an offence (*clause 5(3) and (4)*).

13. *Clause 6* provides for annual review of the attaining of the objectives set out in *clause 13* and of fisheries policy and fisheries law and policy by the Executive Council.

14. *Clause 7* would provide for a Fisheries Committee. By *clause 7(1)*, that committee would be constituted by two elected members of the Legislative Council selected by all the members of the Legislative Council, the Director of Fisheries and such other public officers as may be determined by the Governor and such number of representatives of fishing or other interests selected in such manner as the Governor may determine. The chairman of the committee, under *clause 7(2)* would be an elected member selected by Legislative Council. The other elected member who would be a member of the fisheries committee would be vice-chairman of that committee (*clause 7(2)*). The committee would not be required to transact any business when both the chairman and the vice-chairman of the committee are not present at the committee meeting. The function of the committee is stated by *clause 7(4)* to be to advise the Governor as to the exercise of his powers under the Ordinance and to such other matters on which he consults them.

15. *Clause 8(1)* of the Bill would state that the purposes of the Ordinance would be:-

(a) to provide for the utilisation of the fisheries resources of the Falkland Islands while ensuring sustainability; and

(b) to facilitate the compliance by the Falkland Islands with international obligations applying to the Falkland Islands relating to fishing, fishing vessels and the conservation and management of fish, and in particular the obligations of the United Nations Convention on the Law of the Sea of 10th December 1982 and the Agreements.

16. "Agreements" would be defined in *clause 2(1)* as meaning the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas adopted by the Conference of the United Nations Food and Agriculture Organisation on 24th November 1993 and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10th December 1982 relating to the Conservation of Straddling Fish Stocks and Highly Migratory Fish Stocks adopted in New York on 4th December 1995.

17. *Clause 8(2)* would define what "ensuring sustainability" and "utilisation" mean for the purposes of the Ordinance. *Clause 8(3)* states that fishing within the fishing waters would be prohibited unless it is undertaken:-

- (a) under a licence or permit granted under the Ordinance;
- (b) in accordance with the applicable provisions of this Ordinance; and
- (c) in accordance with the conditions of the licence or permit.

18. *Clause 9(1)* would require all persons exercising duties or powers under the Ordinance in relation to the utilisation of fisheries resources or ensuring sustainability to take into account the environmental principles which *clause 9(1)* states. *Clause 9(2)* would extend the provisions of the Conservation of Wildlife and Nature Ordinance 1999 specified in Schedule 1 so as to have effect in the fishing waters outside the territorial sea.

19. *Clause 10* would require all persons exercising or performing functions, duties or powers under the Ordinance in relation to the utilisation of fisheries resources or ensuring sustainability to take into account the information principles which are stated in *clause 10*.

20. *Clause 11(1)* would enable the Director of Fisheries from time to time to set or vary sustainability measures for one or more stocks after taking into account the matters set out in the subclause and *clause 11(2)* would provide that sustainability measures, without limiting the generality of *clause 11(1)* might relate to one or more of the matters set out in *clause 11(2)*. *Clause 12(1)* would require the Director, except in a case of urgency, so far as was reasonably practicable, to consult with the committee and such persons or organisations within the Falkland Islands as he considers it desirable to consult who are representative of persons having an interest in the stock or the effects of fishing on the marine environment and environmental interests before setting or varying any sustainability measure. That would not however (*clause 11(2)*) have effect so as to preclude the Director of Fisheries from consulting any other person or body. By *clause 12(3)* the Director of Fisheries would be required as soon as practicable to publish the reasons for setting or varying any sustainability measure.

C. Part II - Regulation of Fishing

21. *Clauses 13 to 15* of the Bill constitute Chapter 1 of Part II. *Clause 13* would require the Director of Fisheries, in performing his functions under Part II to pursue the five objectives it sets out. *Clause 14(1)*, without prejudice to *clause 15*, would prohibit the Director of Fisheries from

authorising the use of any Falkland Islands fishing vessel for fishing within the fishing waters on the high seas or in CCAMLR waters during the period specified in *clause 14(2)* if a court has convicted a person of an offence described in *clause 14(3)* involving the use of the fishing vessel and has ordered the person to pay a fine in respect of the offence. The object of the provision is to enable the Falkland Islands to play a proper part in international efforts to discourage illegal fishing. Under *clause 14(2)* the period is specified as starting when the person is ordered to pay the fine and as ending when one of the events mentioned in *clause 14(2)* occurs. *Clause 14(3)* states that *clause 14(1)* would limit authorisation of the use of a fishing vessel involved in any of the offences mentioned in *clause 11(3)*. (*Clause 11(4)* defines the meaning of "conserved fish stock" mentioned in *clause 13*).

22. *Clause 15(1)* would prohibit the Director from authorising the use of a fishing vessel for fishing in the fishing waters or a Falkland Islands fishing vessel for fishing in CCAMLR waters or on the high seas when he has been informed by the Governor in writing that under the CCAMLR Convention or any other convention or international agreement to which the provision had been applied under Order under *clause 15(2)* States Parties are required not to authorise fishing vessels to fish in the waters in question. *Clause 15(2)* would enable the Governor by Order to extend the application of *clause 15(1)* so as to apply additionally where there is a requirement of a kind referred to in that provision under a convention or international agreement specified in such an Order. *Clause 15(3)* would prohibit, subject to *clause 15(4)*, the authorisation under the Ordinance for the use of a fishing vessel within the fishing waters when:-

(a) another country's authorisation in respect of that vessel in relation to fishing on the high seas (including CCAMLR waters or waters to which any other international agreement relates) has been suspended or withdrawn, and

(b) the Director had been informed by the Governor in writing that the authorising country has either suspended its authorisation (and the suspension has not expired) or has withdrawn such authorisation within the three years preceding the application to the Director,

and in each case, because the fishing vessel has undermined the effectiveness of international conservation and management measures. However, under *clause 15(4)*, *clause 15(3)* would not apply if the Director had been informed in writing by the Governor, after taking into account all relevant facts, that the Governor was satisfied that the grant of authorisation in respect of the fishing vessel would not undermine the object and purpose of any of the international obligations referred to in *clause 8(1)(b)*.

23. Chapter 2 of Part II of the Bill deals with property rights. Chapter 2 consists of *clauses 16 to 51* of the Bill and the Chapter is divided into four divisions, the first of which, Division A (*clauses 16 - 36*) deals with Individual Transferable Quota and Provisional Quota.

24. Individual Transferable Quota and Provisional Quota are proprietary fishing rights which would be introduced into Falkland Islands legislation by the Bill if enacted. There is no provision for them under existing legislation. They would be "property rights" which could be

owned and disposed off in the much the same way as other property, other than land or rights in land. However, the right to dispose of Provisional Quota would be very limited.

25. Individual Transferable Quota could only be granted to an eligible company. Under *clause 17(3)* an eligible company would be one the name of which appears on the Individual Transferable Quota Eligibility Register for the fishery concerned. Except with the special permission of the Governor under *clause 25(4)*, only companies satisfying the following criteria could have their names registered on a Individual Transferable Quota Eligibility Register. These criteria are:-

- the company is incorporated in the Falkland Islands and has its principal place of business in the Falkland Islands;
- the Articles of Association of the company prohibit the issue of bearer stocks or shares and the issue of convertible debentures;
- the company is wholly owned by persons having Falkland Islands Status who are ordinarily resident in the Falkland Islands.

26. Individual Transferable Quotas and Provisional Quotas would be granted in respect of fisheries established under *clause 16*. The fisheries initially to be established are set out in *Schedule 2* to the Bill. Fisheries could be varied by Order made by the Governor.

27. *Clauses 17(1)* and *18(1)* respectively define what an Individual Transferable Quota and a Provisional Quota would be. They would be the right for the owner to take the fraction stated in the grant of the Quota concerned of the Total Allowable Effort or Total Allowable Catch declared by the Director of Fisheries under *clauses 36* or *37* in respect of the fishery to which the grant relates.

28. Under *clauses 36* and *37* the Director would be required to declare a Total Allowable Effort or Total Allowable Catch in respect of every fishery for every fishing season. By way of illustration, if an owner of Individual Transferable Quota owns $1/10^{\text{th}}$ of the Total Allowable Catch declared by the Director under *clause 36* he will, if the Director has declared a Total Allowable Catch of 10,000 tonnes in respect of the fishery in question for the relevant season, be able to take 1,000 tonnes of that fish in that season. The amount of fish the owner is allowed to take is called his "Catch Entitlement". It should be noted that the owner may have no Catch Entitlement in respect of the season if the Director decides to set the Total Allowable Effort or Total Allowable Catch in respect of that season at zero. Catch Entitlements are tradeable.

29. The essential difference between Individual Transferable Quota and Provisional Quota is that while Individual Transferable Quota can be transferred in whole or in part to a company the name of which appears on an Individual Transferable Quota Eligibility Register for the fishery in question, a grant of Provisional Quota is, under *clause 22(1)* not transferable in whole or in part, cannot be mortgaged and cannot have effect for a period exceeding five years. The period for which it is to have effect is to be stated in the grant.

30. Under *clause 19(1)* the Director would be required, before granting any Individual Transferable Quota or any Provisional Quota publish a notice stating that he intends to grant those fishing rights as specified in the notice in writing in relation to fishing in a specified fishery. Under *clause 19(2)* no notice under *clause 19(1)* could be published until three months after the opening of the Individual Transferable Quota Eligibility Register in respect of that fishery. Similar provision is made in relation to notices in respect of Provisional Quota.

31. Under *clause 19(3)* the notice would have to specify the criteria in relation to which the Director will assess applications for the grant of Individual Transferable Quota or, as the case may be, Provisional Quota, in response to the notice and the procedures which are to be followed when selecting the companies to which the grant will be made. In relation to grants of Individual Transferable Quota a history of fishing for the species concerned either directly or through an associated company may be a criterion. This is a policy matter for determination and is not specified by the Bill. In relation to Provisional Quota, the plans the applicant has for increasing ownership by Falkland Islands Status holders of the applicant and development of its presence in the fishery may be a criterion. Again that is a policy matter for determination and is not laid down in the Bill. The public notice must be published in the Gazette, in a newspaper circulating throughout the Falkland Islands and in such other newspaper or publication (if any) that appears to the Director to be appropriate in the circumstances.

32. Under *clause 20(1)* a decision as to the person or persons to whom a grant of an Individual Transferable Quota or Provisional Quota is made would be required to be provisional. The names of the companies to which the Individual Transferable Quota or Provisional Quota are to be granted and sufficient particulars to the rights to be granted are to be published. A refusal to grant those rights would also have to be published. Under *clause 20(2)* a person aggrieved by the decision to grant or refuse an application for grant of Individual Transferable Quota or Provisional Quota would under *clause 20(3)* have a right to apply to the Disputes Commission under *clause 108* for the Commission to review the matter. The grant could not, under *clause 20(4)*, be made before the end of the period within which an application to the Commission for review could be made or, if such an application is made, before the application is dealt with by the Commission or is otherwise disposed off. Nor could it be made at all if the Commission does not confirm the decision of the Director to grant the Individual Transferable Quota or Provisional Quota unless the decision of the Director is restored on appeal to the Supreme Court under *clause 124*.

33. *Clause 22* deals with grants of Provisional Quota. Under *clause 22(1)* a grant of Provisional Quota:-

- could only be made in respect of a fishery indicated in Schedule 2 as being one in respect of which such a grant may be made;
- would have to be in writing signed by the Director and state the fraction of Total Allowable Effort or Total Allowable Catch set in accordance with s.37 or s.38 in the fishery to which the Provisional Quota relates;

- would not be transferable in whole or in part and cannot be mortgaged or charged in any way;
- would have to state the date from which it takes effect;
- would have to state the period, which must not exceed five years, for which it is granted;
- would have to state that Catch Entitlement generated in relation to the Provisional Quota may only be taken by fishing vessels to which a fishing licence has been granted;
- that Catch Entitlement generated in relation to the Provisional Quota may only be granted to companies named in the grant.

34. It is a compulsory condition under *clause 22(2)* that the name of the applicant for conversion of Provisional Quota into Individual Transferable Quota appears on the Individual Transferable Quota Eligibility Register maintained in respect of the relevant fishery.

35. A purported transfer of Provisional Quota or Catch Entitlement generated by it to a company not named in the grant of Provisional Quota would be void and of no effect. The owner of Provisional Quota could at any time surrender to the Crown (*clause 22(4)*) and on granting any Provisional Quota the Director would be required to register sufficient particulars of it and of the grantee in the Provisional Quota Ownership Register.

36. *Clause 23* deals with the establishment of Individual Transferable Quota Eligibility Registers. There would be required to be such a Register in respect of every fishery. The Director would be required to place the name and principal place of business of every company which satisfies him on application under *clause 24(1)* that it is eligible to have its name placed on that Register or the name of which the Governor has authorised him under *clause 24(4)* to place upon that Register. The Director would have to strike out the name of any ineligible company on the Register but would be required not to do so until he has given at least 14 days prior notice in writing to the company concerned stating his intention to do so (*clause 23(3)*) and the Director would be required under *clause 23(4)* to give notice in writing of the effect of such striking out, which would be stated in *clause 23(4)*. Under *clause 23(5)* a company dissatisfied by a decision of the Director to strike its name from an Individual Transferable Quota Eligibility Register would be able to apply under *clause 108* for the Commission to review that decision.

37. Applications by companies for their names to be placed upon an Individual Transferable Quota Eligibility Register would be dealt with by *clause 24* which makes detailed provision in relation to such applications and the documents and information which have to be supplied in connection with them. A statutory declaration, documents and information would have to be supplied and the subclauses would make detailed provision in relation to that.

38. *Clause 25* deals with the determination by the Director of applications for the name of the company to be placed on an Individual Transferable Quota Eligibility Register. The Director

would be bound to consider any such application provided the prescribed fee, if any, has been paid (*clause 25(1)*). He would be required to not grant an application in the circumstances set out in *clause 25(2)*. *Clause 25(3)* sets out a further three circumstances in which he would be required to refuse any such application. *Clause 25(4)* would enable the Governor upon such conditions, if any, as he saw fit, to authorise the Director, subject to the Director being satisfied as to the matters referred to in *clause 25(3)*, to enter the name of the company upon an Individual Transferable Quota Eligibility Register notwithstanding that he would otherwise be bound to refuse the application. *Clause 25(5)* would require the Director to notify the applicant in writing of his decision on the application and, if he refuses it, to state why he has done so. If the Director were to refuse an application he would have to inform the applicant of its right under *clause 25(6)* to apply to the Disputes Commission to review the Director's decision.

39. Once a company's name is placed upon an Individual Transferable Quota Eligibility Register it will initially remain there for a period of 12 months from the date of its first registration. This period may be changed by order under *clause 26(1)*. Applications for renewal could be made under *clause 26(2)* and unless otherwise provided would need to be made annually by a company which wishes its name to remain upon the Register. The company would need under *clause 26(2)* to show that it continued to be eligible to have its name upon the Individual Transferable Quota Eligibility Register. If the Director refused an application for renewal, under *clause 26(5)* there would be a right for the company to apply to the Disputes Commission in the same way as if an application for initial registration had been refused.

40. Provisional Quota Eligibility Registers would be provided for by *clause 27*. The Director would be required to maintain such a Register in respect of every fishery in relation to which Provisional Quota may be granted. (*clause 27(1)*). *Clause 27* contains similar provisions in relation to Provisional Quota Eligibility Registers as are contained in *clause 23* in relation to Individual Transferable Quota Eligibility Registers.

41. Applications for names of companies to be placed upon Provisional Quota Eligibility Registers are dealt with by *clause 28* which contains broadly similar provisions to those contained in *clause 23* in relation to Individual Transferable Quota Eligibility Registers. The differences between the two provisions are dictated by the fact that, other than exceptionally with special permission from the Governor, a company owning Individual Transferable Quota must be wholly owned by persons having Falkland Islands Status who are ordinarily resident in the Falkland Islands. In respect of a company owning Provisional Quota the requirement would be for a minimum of 25.1% of its share capital to be so owned. (See *clause 29(2)(a)(ii)*).

42. *Clause 29* would make provision as to the determination by the Director of applications for the name of a company to be placed upon a Provisional Quota Eligibility Register. This clause also is in broadly similar terms to the equivalent clause in relation to the Individual Transferable Quota Registers (*clause 25*). As is the case in relation to a decision by the Director to refuse an application for a company's name to be placed on an Individual Transferable Quota Eligibility Register, a right of application for review of a decision to refuse an application for a company's name to be placed on a Provisional Quota Eligibility Register would lie to the Disputes

Commission under *clause 108*. Such an application would have to be made within 14 days of the notification of the Director's decision.

43. A company's name would remain upon a Provisional Quota Eligibility Register for a period of 12 months from the date it was first placed on the Register or the last preceding date from which the period of appearance of its name on the Register was renewed (*clause 30(1)*). Application for renewal could however be made under *clause 30(2)*. Such an application would have to be made not more than 56 days and not less than 28 days before the expiration of the registration (*clause 30(2)*). Under *clause 30(6)* the company concerned would be required to notify the Director, if it did not make application for renewal of its registration, that it wished to surrender the Provisional Quota it holds. If it did not do so, the company would commit an offence.

44. Under *clause 31(1)* and (2) a company which holds Individual Transferable Quota would have to forthwith notify the Director of Fisheries in writing if it became no longer eligible under *clause 25(3)* to be granted Individual Transferable Quota. Notification to the Director would have to give the Director full particulars of the event or events which have caused the company to be no longer qualified. It would then be required within 90 days thereafter or such greater period as the Director may allow under *clause 31(4)* do one of three things:-

(a) take action resulting in it within that period again becoming qualified to hold Individual Transferable Quota; or

(b) dispose of the Individual Transferable Quota to a company qualified to hold it, without contravening s.58; or

(c) surrender the Individual Transferable Quota to the Crown.

45. *Clause 31(3)* provides for the Director, on becoming aware that a company which holds Individual Transferable Quota was no longer qualified to hold it to serve notice on the company requiring it within 90 days of the service of that notice to do one or other of the things it would have been required to do had it itself served notice upon the Director notifying him that it was no longer qualified to hold Individual Transferable Quota. The company upon which such a notice is served could under *clause 31(5)* apply under *clause 108* to the Disputes Commission for it to review the service of the notice, but could only do so on the ground that at the time of the service of the notice it was qualified to hold Individual Transferable Quota.

46. Under *clause 31(6)* where a company which had given notice under *clause 31(2)* or had been served with notice under *clause 31(3)* fails within the period of 90 days or such further period as the Director may permit to do one or other of the things mentioned above that it was required to do, the Director would be required to revoke the grant of Individual Transferable Quota to the company and to give notice to the company of that. He would also be required to make an appropriate notation in the Individual Transferable Quota Eligibility Register and to remove the company's name from the Eligibility Register. He would however be prohibited from doing any of those things while any application to the Disputes Commission for review of the service of

notice under *clause 31(3)* remained undetermined. If the Director of Fisheries were to revoke the grant of Individual Transferable Quota, under *clause 31(8)*, *clause 34(8)* to *(10)* would be brought into play which means that the Director would be required to try to sell the Individual Transferable Quota concerned to another company.

47. Every company which owned Individual Transferable Quota or Provisional Quota would have an obligation under *clause 32* to provide documents and information to the Director. Subclause (1) deals with information and documents which the company would be required, in any event, supply to the Director. Subclause (2) deals with documents and information which the company is required to provide to the Director if he makes a written request.

48. *Clause 33* deals with the grounds on which grant of Individual Transferable Quota or of Provisional Quota which could be revoked. *Clause 33(1)* states that this could state that this would have effect without prejudice to the Director's powers under *clause 31(7)* (dealt with above) and the court's powers under *clause 173(1)(e)*. *Clause 33(2)* would state that the Director of Fisheries could revoke a grant of Individual Transferable Quota or Provisional Quota by serving a notice on one or more of both the grounds mentioned in the subclause and specified in the notice.

49. *Clause 34* would make provision supplementary to *clauses 31* and *33*.

50. *Clause 35* would enable fees to be charged in relation to Individual Transferable Quota and Provisional Quota and for different sums to be payable in respect of different established fisheries.

51. *Clause 36* would create offences in relation to applications provided for by previous clauses. The making by or on behalf of an applicant company of any statement which is false in any material particular or the supply to the Director of any document of any kind containing any statement which is false in any material particular would be an offence.

52. Division B of Part II (*clauses 37* to *40*) deals with catch entitlements.

53. *Clause 37* would require the Director, if he did not propose to set Total Allowable Catch under *clause 38*, to set in respect of every effort management stock in respect of which any Individual Transferable Quota has been granted a Total Allowable Effort. Total Allowable Effort would have to be set in terms of units of vessel Fishing Effort Value. In setting a Total Allowable Effort in relation to an effort management stock (e.g. illex squid) the Director of Fisheries will make a judgment as to how much fishing effort can be allowed to fish for illex in that season. He will do this in terms of Fishing Effort Value rather than in number of vessels because the "fishing power" of, for example, jiggers differs by reason of a number of factors.

54. Once the Total Allowance Effort had been set by the Director the Catch Entitlement available to each holding of Individual Transferable Quota would be calculated in accordance with the formula set out in *clause 37(5)*. Following that the Director would under *clause 37(6)*

have to notify every owner accordingly and enter the Catch Entitlement in the Catch Entitlement Register.

55. It is likely that for the foreseeable future the Director of Fisheries, at least in relation to the majority of established fisheries, would calculate Total Allowance Effort under *clause 37*. He could, however, if he saw fit decide to proceed under *clause 38* which deals with the assessment of Total Allowable Catch. Total Allowable Catch would be set in respect of every Quota Management Stock in respect of which any Individual Transferable Quota or Provisional Quota has been granted. If this were done, Catch Entitlement would be calculated in accordance with *clause 38(5)* and notified in accordance with *clause 38(6)* to the owners of Individual Transferable Quota and Provisional Quota.

56. *Clause 39* would make supplementary provision in relation to *clauses 37* and *38*.

57. *Clause 40* would only be applicable where Total Allowable Effort rather than Total Allowable Catch was being used. It sets out the manner in which Fishing Effort Value would be assessed in relation to fishing vessels.

58. Division C of Chapter 2 of Part II consists of *clauses 41* to *47* and deals with fishing licences, scientific permits, overseas masters of fishing licences, trans-shipment and export licences and fish receiver permits.

59. *Clause 41* provides for the issue of fishing licences, applications for the grant of such licences, the appointment of agents of the licensee for service of proceedings and provides that a fishing licence authorising the taking of any part of any Catch Entitlement generated by any Individual Transferable Quota could only be granted to a qualifying company. A qualifying company would be defined in *clause 41(14)* as being a company which is incorporated in the Falkland Islands and has its principal place of business in the Falkland Islands and in which at least 25.1% or such other percentage as may be specified by regulations of each class of the shares in the company carrying voting rights at general meetings of the company are owned by persons having Falkland Islands Status who are ordinarily resident in the Falkland Islands or by a company or companies incorporated in the Falkland Islands and wholly so owned.

60. Scientific permits are provided for by *clause 42* and would authorise the use of a fishing vessel for scientific research purposes in a specified area of the fishing waters or in a specified fishery. The Director of Fisheries could impose conditions specified in the permit on granting a permit under *clause 42(1)* in addition to any conditions which apply by reason of other provisions of the Ordinance (e.g. under *clause 42(4)*).

61. The Director would have power under *clause 43(1)* by written notice given to the holder of a fishing concession to suspend the operation of the concession if any fee, levy, charge or other money relating to the concession is not paid as it becomes due. "Fishing concession" is defined in *clause 2(1)*. The Director could revoke a suspension of a fishing concession and would have to do so upon payment of the money in relation to which the suspension was effected.

62. Under *clause 44(1)* an "overseas person" (defined in *clause 2(1)* as being a person who does not have Falkland Islands Status) is required to have an overseas master fishing licence to be in charge of a fishing vessel that is being used for fishing in the fishing waters. One of the purposes of this provision is that overseas persons who have committed offences in the fishing waters could not be granted an overseas fishing licence and another purpose is that such licences may be withheld if the applicant had been involved in violence towards or maltreatment of any member of the crew of the fishing vessel of which he was at the time a master or a mate or officer.

63. Related provision would be made by *clause 45* under which the Director could by written notice given to any person prohibit that person from being master of any Falkland Islands fishing vessel or from being in charge of fishing operations on that fishing vessel during any time a licence or permit under the Ordinance is held in respect of the fishing vessel. It should be noted that *clause 45* extends to persons who have Falkland Islands Status. The Director would also have power to prohibit any person being master or in charge of fishing operations on any non-Falkland Islands fishing vessel at any time it is within Falkland Islands fishing waters. These powers could only be exercised if the person prohibited had, at any time during the preceding five years, been convicted of an offence of violence towards or maltreatment of any member of the crew of a fishing vessel of which the person was master, mate or an officer at the time in question. A prohibition of this kind could only have effect for the period stated in the prohibition which could not be greater than five years from the happening of the thing in respect of which the prohibition was made.

64. *Clause 46* would provide for trans-shipment licences and export licences. A person who, except as may be provided by regulations under the Ordinance trans-ships or exports fish from the Falkland Islands without such a licence would commit an offence.

65. Fishing receiver permits would be provided for by *clause 47*. Subject to the provisions of the clause such permits would be required by persons in receipt of fish from any fishery. No permits would be required in respect of the receipt by any person on any one occasion of a quantity of not more than 30 kilograms of fish intended for consumption upon his own premises, in respect of fish purchased or received from a person who himself has a fish receiver licence or for the receipt of fish under a trans-shipment licence or export licence granted under *clause 46*. An offence would be committed by a person who received fish in contravention with the provisions of *clause 47*.

66. Division D of Chapter 2 of Part II (*clauses 48 and 51*) contains a number of miscellaneous provisions. *Clause 48* would provide that where a fishing vessel holds a fishing licence, high seas fishing licence or scientific permit such licence or permit authorises the use of any tender boat carried by the fishing vessel.

67. *Clause 49* would make provision in relation to the furnishing of returns by the holders of fishing concessions. *Clause 50* would make it a condition of a high seas fishing licence that the Falkland Islands fishing vessel concerned must facilitate boarding and co-operate with inspection of the fishing vessel by any official of the country acting in accordance with the revisions of an international agreement or convention which applies to the Falkland Islands. An exception

would be made where the Governor, acting in his discretion, authorises otherwise is provided for by the clause.

68. *Clause 51* would enable the Governor in emergencies, or in other circumstances where urgent action is required for purposes related to the management of a fishery or to ensure compliance by the Falkland Islands with an international agreement or convention applying to the Falkland Islands and relating to fishing or fish, to make a temporary order. Such an order would override any fishing concession while it was in force.

D. Part III of the Bill

69. Part III of the Bill consists of *clauses 52 to 89* and is entitled "Registers and Dealings". Division A (*clauses 52 to 56*) contains provisions in relation to Individual Transferable Quota Ownership Registers, Fishing Effort Value Registers and Catch Entitlement Registers.

70. Under *clause 52* there would be an Individual Transferable Quota Ownership Register in respect of every fishery in respect of which Individual Transferable Quota has been granted. *Clause 52* specifies what particulars would be required to be registered in those Registers. Similar provision would be made by *clause 53* requiring a Provisional Quota Ownership Register to be maintained for every fishery in respect of which Provisional Quota has been granted. *Clause 53* specifies what particulars are to be registered in that Register.

71. *Clause 54* deals with the Fishing Effort Value Register which the Director would be required to maintain to record all the Fishing Effort Values assigned to fishing vessels by him.

72. *Clause 55* would require the Director to maintain a Catch Entitlement Register in respect of every fishery in respect of which Individual Transferable Quota or Provisional Quota had been granted. The clause makes provision as to the particulars which are required to be recorded in Catch Entitlement Registers and further provision in relation to them.

73. *Clause 56* contains general provisions in relation to Registers and would require them to be kept, subject to any order under *clause 215* at the Department of Fisheries and enable the Director to delegate his functions in relation to Registers to any public officer in the Department of Fisheries. It also contains provisions which would enable a Register to be closed for not more than 72 hours, subject to public notice having been given and would make provision in relation to documents received for registration during a period in which the Register in which they are to be recorded was closed.

74. Division B of Part III of the Bill deals with transfers and mortgages of Individual Transferable Quota and enforcement of such mortgages.

75. *Clause 57* deals with the transfer of Individual Transferable Quota. There are six circumstances specified in *clause 57(1)* in which a transfer of Quota Shares would not be registered. *Clause 57(2)* provides that otherwise a transfer of part of an Individual Transferable Quota could be registered. Additional provision in relation to transfers of Individual Transferable Quota is made by the remaining provisions of *clause 57*.

76. One of the circumstances set out in *clause 57(1)* in which a transfer of Individual Transferable Quota could not be registered is if the transfer would cause a contravention of *clause 58*. That clause contains provisions intended to prevent the domination of the fishing sector by a person or associated or connected persons. It seeks to prevent more than a percentage to be prescribed by regulations of a fishing sector (for example the loligo fishery) being controlled by a person or associated or connected persons. Different prescribed percentages might be set for different fisheries.

77. *Clause 59* deals with registrations of caveats on behalf of the Crown. A caveat is a legal warning or notice placed in a register. *Clause 59(1)* would require a caveat to be entered if the Director were to revoke a grant of Individual Transferable Quota or Provisional Quota.

78. Mortgages of Individual Transferable Quota are dealt with by *clause 60*. Provisional Quota cannot be mortgaged because *clause 22(1)(b)(ii)* prohibits Provisional Quota being mortgaged). Certain forms of mortgage of Individual Transferable Quota would be prohibited by *clause 60(2)*. Mortgages could be assigned to another person but no assignment would have effect until it was registered in the Individual Transferable Quota Register (*clause 60(3)* and *(4)*). Under *clause 60(5)* a mortgagee of Individual Transferable Quota would have power in the event of default by the mortgagor to sell the Individual Transferable Quota in whole or in part.

79. *Clause 61* would provide that mortgages from Individual Transferable Quota could only effectively be made to a mortgagee whose name appears on the Approved Mortgagees Register which is required by the clause to be maintained. A mortgage to a person who is not a company the name of which appears on the approved Mortgagees Register would not have effect to confer any security upon the lender.

80. Restrictions on the exercise of a mortgagee's power of sale would be imposed by *clause 62*. Certain relaxations of the provisions of *clause 62* are provided for by *clause 63*, on an order being made by the Supreme Court on the application of the mortgagee. *Clause 64* would require notice of intention to exercise the power of sale under a mortgage of Individual Transferable Quota to be served upon any person who had guaranteed repayment of the borrowing. There would, however, be power under *clause 64(2)* for the Supreme Court to waive wholly or in part the notice which would otherwise have to be given under the clause.

81. *Clause 65* would state how the proceeds of any sale by a mortgagee of an Individual Transferable Quota are to be applied.

82. *Clause 66* contains provision giving effect to transfers by mortgagees of Individual Transferable Quota on the registration of such transfers and contains further provision in relation to them. *Clause 67* deals with discharges of mortgages.

83. Division C of Part III (*clauses 68 to 74*) contains provisions relating to caveats. *Clause 68* would state the types of caveat which could be entered and *clause 69* would state the effect of the entry of a caveat. Under *clause 69(1)*, while a caveat remains in force, no entry could be made on a Register which would have the effect of mortgaging or transferring whole or any part of the

Individual Transferable Quota or transferring the whole or any part of the Catch Entitlement to which the caveat relates. This would not apply to a transfer by a mortgagee on sale to enforce his mortgage of Individual Transferable Quota or where the mortgage or transfer is registered with the consent of the person responsible for the entry of the caveat or the transaction took one or other of the forms specified in *clause 69(2)*.

84. *Clause 70* would require the Director to enter a caveat in certain circumstances against an Individual Transferable Quota, Provisional Quota or Catch Entitlement but, under *clause 70(2)*, he could only enter such a caveat, unless otherwise provided by any provision, if the Individual Transferable Quota, Provisional Quota or Catch Entitlement was not already subject to any other registered caveat.

85. *Clause 71* would provide for the withdrawal of caveats. *Clause 72* would provide for the removal of caveats under an order of the Supreme Court but would not apply to Crown caveats registered under *clause 74*.

86. *Clause 73* would provide that the person entering or maintaining a caveat without due cause would be liable in damages.

87. *Clause 74* would enable a caveat to be entered by the Crown if a company had been charged with offences under certain provisions of the Ordinance in relation to which conviction might result in forfeiture of Quota or if the Director of Fisheries believed on reasonable grounds that any company had committed such an offence. The Supreme Court could, however, on application under *clause 74(2)* modify the effect of the caveat. Remaining provisions of *clause 74* would make further provision in relation to Crown caveats.

88. Division D of Part III of the Bill (*clauses 75 to 89*) would make provision in relation to registration procedure and correction of Registers.

89. *Clause 75* would provide that no transaction would have any effect for any of the purposes of the Ordinance until it was registered and *clause 76* would provide that a transaction registered would be deemed to have been registered at the time recorded in the Register as the time at which the transaction was registered. *Clause 77* describes how an application to register a transaction would be made. It would enable fees to be imposed for registration of transactions.

90. *Clause 78* deals with the priority of registration of instruments presented for registration and would state that the order of priority would be in accordance with the dates and times recorded by the Director or by a public officer charged by an order under *clause 215* with maintaining the Register as the date and time when the instruments were received. Regulations could be made prescribing when an instrument is to be treated as received for registration.

91. *Clause 79* would make provision in relation to registration procedure and *clause 80* would lay down the procedure in relation to defective applications for registration.

92. Applications to the Director of Fisheries to correct the record in relation to an instrument on the ground that the Register does not accurately record the particulars of that instrument or is incorrect for any other reason which would be provided for by *clause 82* and *clause 83* would enable the Director to correct the record and make additional provision in relation to the correction of the record by the Director. A right of an application to the Magistrates Court by a person aggrieved by a refusal of the Director to grant an application to correct the Register would be conferred by *clause 83(6)*.

93. *Clause 85* contains evidentiary provisions in relation to Registers and authenticated copies or extracts from Registers.

94. Immunity from personal liability would be conferred by *clause 85* upon the Director and other public officers in respect of acts or matters done in good faith or omitted to be done in the exercise or purported exercise of powers conferred by Part III. However, nothing in that provision would have effect in relation to proceedings for judicial review or an application for leave to bring proceedings for judicial review, except that no order could be made in such proceedings requiring the Director or any other public officer to pay any sum in respect of or arising out of any act or matter in good faith done or omitted to be done in the exercise or purported exercise of any power conferred by Part III. Where the Director or any other public officer would otherwise have been liable to pay any sum by reason of an order of the court in judicial review proceedings, the court would have power to order the Crown to pay that sum.

95. It would be an offence under *clause 86* to make or cause to be made or concur in making a false entry in a Register or to produce or tender in evidence a document falsely purporting to be an instrument or a copy of or an extract from an instrument lodged with the Director or should be a copy from an entry in a Register maintained under Part III.

96. *Clause 87* would make provision in relation to the keeping of Registers wholly or partly by means of a computer.

97. Bona fide purchasers and mortgagees would not, by virtue of *clause 88(1)* be bound to look into or find out the circumstances in which the consideration for which the previous owners or owner of the Individual Transferable Quota or any predecessor in title of the previous owner was or is registered or how the purchase value or any part of it was applied. Nor would a bona fide purchaser or bona fide mortgagee be affected by notice direct or constructive of any trust or unregistered interest. The bona fide purchaser or a bona fide mortgagee would, under *clause 88(2)* not be liable to any action or proceedings for recovery or damages or to be deprived of its rights on the ground that the person from whom he acquired the Individual Transferable Quota or took the mortgage was registered as owner through fraud or error or had directly or indirectly derived title from a person registered as owner through fraud or error or under any void or voidable instrument. A person who otherwise would have been able to claim against the bona fide owner or bona fide mortgagee would instead be able to claim against the Crown under *clause 89*.

E. Part IV of the Bill

98. Part IV of the Bill (*clauses 90 to 97*) contains provisions relating to record keeping, reporting, disposal of fish and to taking possession of fish for purpose of sale.

99. Under *clause 90(1)*, references to the weight of fish are to be taken to the reference to the green weight of the fish, that is to say that the weight of the fish when it was caught. However, under *clause 90(2)* the Director is empowered to publish conversion factors which are to be used to translate the processed weight of fish to the green weight. Additionally he would be able to make a special provision after consultation with the owner, charterer, operator or master of the fishing vessel in relation to the conversion factor to be used to determine the weight of any fish processed by that fishing vessel. Supplementary provision would be made by *clause 90(4)* and (5).

100. *Clause 91(1)* would require the persons listed in the subclause to keep such accounts and records and provide to the Director of Fisheries such returns and information as might be required by or under regulations made under the Ordinance.

101. Disposal of fish by commercial fishers is dealt with by *clause 92*. The clause contains a number of provisions in relation to the sale or other disposal of fish by commercial fishers. *Clause 93* contains restrictions on purchase or acquisition of fish commercial fishers who are not licensed fish receivers and on purchase or acquisition of fish by licensed fish receivers. Supplementary provision would be made by other provisions of *clause 93*.

102. Under *clause 94*, fish found in a premises owned or operated by any licensed fish receiver are, in the absence of evidence to the contrary, to be deemed to be possessed for the purposes of sale and the same would apply in relation to fish found in premises where food is sold, prepared for sale, stored, or processed.

103. Under *clause 95* a fish farmer would be prohibited from being in possession of fish for sale unless he had lawfully purchased or acquired it from another fish farmer or from a licensed fish receiver or has lawfully bred or cultivated it.

104. *Clause 96* would provide that any person in possession of fish exceeding 100 kilograms meat weight or green weight would, in the absence of proof to the contrary, be deemed to have acquired possession of that fish for the purposes of sale unless he shows it to have been taken by him as an amateur angler in inland waters or in a river, stream or lake. Nothing in the provision would prohibit the possession by an amateur fisher of a single fish exceeding that weight. *Clause 97* would exclude ornamental fish (fish not ordinarily found in the wild state in the fishing waters and which are kept in or kept for the purpose of sale to persons for keeping in, aquaria or ornamental pools or ponds) from the provisions of Part IV.

F. Part V of the Bill

105. Part V of the Bill (*clauses 98 to 124*) deals with review by the Disputes Commission.

106. The Disputes Commission would be established by *clause 98* and would consist of a Chairman appointed by the Governor under *clause 98(2)* and not more than seven persons appointed by the Governor under *clause 99(1)*. Members would be appointed for a period not exceeding four years as specified in their instrument of appointment but would be eligible for re-appointment.

107. *Clause 100(1)* would enable the Governor to appoint an Acting Chairman during a vacancy in the office of the Chairman or during any period, or during all periods, when the chairman was absent from duty or from the Falkland Islands or was, for any other reason, unable to perform the duties of the office of Chairman. Any remaining provisions of the clause would make supplementary provision in relation to an Acting Chairman.

108. *Clause 101* would require the Commission for the purpose of any review to be constituted by the Chairman or Acting Chairman and two members selected by the Chairman.

109. *Clause 102* would make provision for what is to happen if a member constituting the Commission for the purpose or review is unable for any reason to compete.

110. *Clause 103* provides that a member of the Commission holds office on such terms and conditions as may be prescribed by regulations under *clause 223*. Such regulations could not, however, provide for remuneration to be paid to any member of the Commission who is a fulltime public officer.

111. *Clause 104* contains provisions in relation to the disclosure of interests by members of the Commission and for exclusion of members of the Commission who have a conflict of interest which is defined as being any interest pecuniary or otherwise that could conflict with a proper performance of the members functions in relation to the review in question.

112. Resignation of determination of appointment of members of the Commission are dealt with by *clause 105*. *Clause 106* would provide that the Courts Administrator would be Registrar of the Commission and would have such duties, powers and functions as are provided by the Ordinance and the regulations made at the Ordinance and such other powers and functions as the Chairman directs.

113. The functions of the Commission would, under *clause 107*, be to review decision of the Director of a kind set out in that clause. An application for review of such a decision would, under *clause 108(1)* be required to be made within 14 days after the notification by the Director of the decision. Such an application would, under *clause 108(2)*, be required to include details of the decision in respect of which review was sought and the reasons why the review was sought. The Director of Fisheries would under *clause 109(1)* have to be notified as soon as practicable by the Registrar of the making of the application and he then would have 14 days after being so notified to send to the Registrar a statement of his reasons for the decision and a copy of each other document or part of a document in the possession or control of the Director which was considered by the Director of Fisheries to be relevant to the review of the decision.

Notice of the date, time and place of any hearing of an application for review would be required to be given by the Registrar to each party.

114. The Commission would have power under *clause 111(1)* to take evidence on oath or affirmation and to adjourn the review from time to time. It would be given additional powers by *clause 111(2)* and supplemental provision would be made by *clause 111(3) to 111(5)*.

115. Under *clause 112* in proceedings before the Commission the procedure to be followed would, subject to any provision made to the contrary by the Bill, be such as the Chairman might decide but the proceedings are to be conducted with as little formality and technicality and as quickly as the requirements of the Bill and a proper consideration of the matter by the Commission permit. The Commission would not be bound by any rules of evidence but might inform itself on any matter in any way it thinks appropriate and which is fair as between the parties. Further provision as to procedure in proceedings before the Commission would be made by the clause.

116. Under *clause 113* the Commission would be able, for the purpose of reviewing a decision, to exercise all the powers conferred by the Bill on the Director.

117. *Clause 114* would enable an applicant for review of a decision by written notice to withdraw that application at any time. It would also confer power for the Chairman to dismiss an application if he was satisfied that the applicant did not intend to proceed with it.

118. A refusal by a person without reasonable excuse either to comply with a requirement under *clause 111(1)* either to take an oath or make an affirmation, a failure by a person without reasonable excuse to fail to answer a question which he is required by the Disputes Commission to answer and the giving by any person of any false or misleading information either knowingly or recklessly would be an offence under *clause 115(1)*. It would be an offence under *clause 115(2)* without reasonable excuse to refuse or fail to produce a document required to be produced under *clause 111(2)*.

119. *Clause 117* would enable the Commission to restrict publication of evidence, information given to the Commission or the contents of any documents produced to the Commission if it was satisfied that it is in the public interest. Contravention of a direction by the Commission to that effect would be an offence.

120. An offence would be committed under *clause 118* by a person summoned to appear before the Commission to give evidence who failed to attend.

121. Under *clause 119* a member of the Commission would have in the performance of his duties as a member of the Commission the same protection and immunity as a Justice of the Peace has as a member of the Summary Court. Similarly, under *clause 120* witnesses before the Commission would have the same protection as a witness in proceedings before the Summary Court and the Magistrates Court.

122. *Clause 121* would make provision for fees to be payable to persons other than parties to proceedings before the Commission or public officers who are summoned to appear before the Commission to give evidence. Obstruction of the Commission or of a member of the Commission in a performance of the function of the Commission and disrupting the taking of evidence by the Commission would be an offence under *clause 122*.

123. Under *clause 123*, the Commission would be bound to prepare a written statement setting out the decision on the review and the reasons for it and the Registrar would have to send a copy of the statement to each party to the proceedings as soon as practicable after the decision is made.

124. An appeal would lie to the Supreme Court under *clause 124(1)* at the instance of any party to the proceedings on a point of law. Such an appeal would, under *clause 124(2)* have to be instituted within 28 days after the decision of the Commission was notified under *clause 123*. The Supreme Court on an appeal would have power to affirm or set aside the decision of the Commission and to substitute such decision as the Supreme Court think fits or to remit the matter to the Commission to be reviewed and decided afresh in accordance with the directions of the Supreme Court, and either with or without the taking of further evidence.

125. *Clause 125* would make provision in relation to the operation of decisions of the Disputes Commission which are the subject to an appeal to the Supreme Court and provision in relation to connected matters.

G. Part VI of the Bill

126. Part VI of the Bill consists of *clauses 126 to 130* and would replace with minor amendments the provisions of the High Seas Fishing Ordinance 1995 and the Fishing (CCAMLR) Ordinance 1999 (as amended).

127. *Clause 126* deals with the responsibilities of the Director, would enable the Governor himself to give or to authorise the Director to give such information and make such reports as might be necessary to enable the Falkland Islands to ensure compliance with obligations under the Agreements (defined in *clause 2(1)*). Under *clause 127(1)* it would be unlawful for a Falkland Islands fishing vessel to be used for fishing on the high seas except under the authority of a high seas fishing licence. Under *clause 128*, except where prohibited under *clause 14(1)(b)*, *clause 15(1)* or an Order under *clause 16(2)*, any Falkland Islands fishing vessel would be eligible for a high seas fishing licence. Applications for such licences are dealt with by *clause 129* and *clause 130* would deal with the grant of high seas fishing licences and conditions relating to such licences. Unless earlier revoked or suspended or the fishing vessel concerned ceases to be a Falkland Islands fishing vessel the high seas fishing licence would be valid for 12 months or such lesser period that might be specified in the licence.

128. *Clause 132(1)* would enable the Director to require any person holding a high seas fishing licence and any fisherman or person chartering or working on a Falkland Islands fishing vessel for the use of fishing on the high seas would provide the Director with information or make returns in such form and at such intervals as the Director may decide as to the matters specified

in the provision. Failure to make those returns without reasonable excuse or to provide the Director with any information he has required would be an offence under *clause 132(2)*.

129. *Clause 133* deals with exchange of information with other countries and would enable the Governor to authorise the Director to make arrangements enabling the Director to exchange information with other countries that are parties to the Agreements or either of them.

130. *Clause 134* would confer powers upon fisheries officers for the purposes of Part VI, the effect of which would be that fisheries officers would have the same powers in relation to a Falkland Islands fishing vessel on the high seas as they have in relation to such a fishing vessel within the fishing waters and *clause 135* would apply *clauses 141 to 161* (which are in Part VII and relate to Falkland Islands fishing waters) for the purposes of Part VI. *Clause 136* would make it an offence for a person to have fish on a Falkland Islands fishing vessel on the high seas. However it would be a defence for the person to show that the fish was lawfully taken within the fishing waters under the authority of the fishing licence or scientific permit or that the fish concerned was lawfully taken within the fishing waters of another country. Under *clause 137(1)* it would be an offence for the owner, charterer or master of a Falkland Islands fishing vessel if the fishing vessels was equipped with nets, traps or other equipment for fishing on the high seas but it would be a defence to show:-

- (a) that a high seas fishing licence authorising it was held; or
- (b) that all fishing equipment on board was so far as reasonably practicable stowed as not to be readily available for immediate fishing; or
- (c) that the fishing vessel was proceedings for the purposes of repair, alteration, survey, sale, charter, change of crew or disembarking of crew to a port outside the Falkland Islands; or
- (d) that the fishing vessel was engaged solely in the ordinary course of trade of carrying cargo between the Falkland Islands or the fishing waters to a port outside the Falkland Islands; or
- (e) that there was some other reasonable excuse for the fishing vessel being found in the position it was found equipped with the nets etc.

131. It would be an offence under *clause 138* for a person without authorisation from the overseas country concerned to use a Falkland Islands fishing vessel for fishing in the fishing waters or another country knowingly or recklessly when the person was required by the law of that country to have an authorisation given under its law. A person could not be convicted in the Falkland Islands of such an offence if he had been convicted in the other country of an offence involving the fishing in question.

132. *Clause 139* deals with visits of non-Falkland Islands fishing vessels or fish carriers to Falkland Islands internal waters, requires them to be notified and enables a visit by a particular vessel to be prohibited.

133. *Clause 140* would apply the previous provisions of Part VI to CCAMLR waters with modifications set out in a table appearing in the clause.

H. Part VII of the Bill

134. Part VII of the Bill consists of *clauses 141* to *188* and deals with surveillance and enforcement within the Falkland Islands fishing waters. The first group of clauses, *clauses 141* to *158* deals with the powers of fisheries officers and matters connected with that subject.

135. *Clause 141(1)* would provide that fisheries officers are in the exercise of their powers and performance of their functions subject to the directions of the Director. *Clause 141(2)* would confer a considerable number of powers upon fisheries officers in relation to the enforcement of the provisions of the Ordinance. The remaining subclauses of *clause 141* would make provision supplementary to the exercise by fisheries officers of their powers.

136. *Clause 142(1)* would enable a fisheries officer in exercising his powers to do so with the aid of persons he asks to assist him. *Clause 142(2)* would authorise a person who is called upon by a Fisheries Officer to assist him to do so. *Clause 142(3)* and *(4)* would make supplementary provision in relation to persons assisting Fisheries Officers.

137. *Clause 143* and *clause 144* would make provision in relation to search warrants and actions authorised by search warrants. *Clause 145* would enable a person executing a search warrant to be accompanied, to use such force as is reasonable in the circumstances. *Clause 146* would require a copy of the search warrant to be given to the occupier of the premises concerned or a person apparently representing him if either is present on the premises. *Clause 147* deals with powers available to a person executing a search warrant. *Clause 148* deals with the use of equipment to examine or process things found at the premises the subject of a search warrant and *clause 149* deals with the use of electronic equipment at such premises. If the electronic equipment is damaged then, under *clause 150* compensation would be payable to the owner of equipment.

138. Under *clause 151* copies of things seized under a search warrant would have to be provided by the person seizing them if requested to do so by the occupier of the premises or by another person who apparently represents him and who is present when the warrant is executed. However this would not apply in the circumstances mentioned in *clause 151(2)*.

139. The occupier of the premises or another person who apparently represents him if present at the premises at the time of the search would under *clause 152* be entitled to observe the search provided he does not impede the search.

140. *Clause 153* would require a receipt to be given for something seized under a search warrant.

141. *Clause 154* would make provision in relation to the release of persons detained by fisheries officers under their powers and *clause 155* would make provision in relation to searches. *Clause*

156 contains provisions in relation to the pursuit of vessels suspected of having committed offences.

142. The release of detained fishing vessels and other seized property is the subject of the provisions of *clause 157*.

143. *Clause 158* would protect a fisheries officer who does anything under the Ordinance or omits to do anything required by the Ordinance from civil or criminal liability as a result of that act or omission or want of jurisdiction or mistake of law or fact or on any other ground provided that the fisheries officer acted or omitted to act in good faith and with reasonable cause.

144. *Clause 166* would enable a court to prohibit the convicted person for a period not exceeding three years from being on a fishing vessel within the fishing waters with the intention of engaging in commercial fishing. Where an offence involved a Falkland Islands fishing vessel the court could prohibit the person from being on any Falkland Islands fishing vessel outside the fishing waters for the purpose of commercial fishing with a period not exceeding three years as well.

145. *Clause 167* would create an offence of using a fishing vessel for fishing in within the fishing waters regardless of whether the defendant knew that he was within the fishing waters or not. This is to be contrasted with *clause 168* which would create an offence of intentionally using a fishing vessel within the fishing waters at a time when it was used for fishing and the defendant either knew that it was being so used or was reckless as to that fact. No offence would be committed if a fishing licence or a scientific permit was in force authorising the use of the fishing vessel at the place in question. More severe penalties apply in respect of an offence under the convicting court is required to make an order for the forfeiture of the vessel.

146. Under *clause 169(1)* it would be an offence for a person to be at a place within the fishing waters having in his possession a fishing vessel, nets, traps or other equipment for fishing unless either the use or presence of the fishing vessel at the place it was found is authorised by a fishing licence or the use of the fishing vessel's nets, traps or other equipment are stowed in such manner that they are not readily available for fishing or in such manner as may be prescribed or the use of the fishing vessel for scientific research purposes in that area was authorised under a scientific permit or the fishing vessel, nets, traps or other equipment was or were being used for recreational fishing purposes. It would be a defence for the defendant to prove that the fishing vessel was at the time of the alleged offence transiting the fishing waters without fishing therein. It would not be an offence that the defendant did not know that he was at a place within the fishing waters or that he had no intention of fishing within the fishing waters. Fishing in the internal waters other than with a fishing vessel would be an offence under *clause 170(1)*. It would be a defence for the defendant to prove that the fishing was undertaken with a view to the catch being consumed only in the Falkland Islands. Similarly it would be an offence under *clause 171(1)* for a person other than as authorised by a fishing licence or scientific permit to have nets, traps or other equipment for fishing in its possession in the internal waters other than upon a fishing vessel and a defence to such a prosecution to show that the nets, traps or other equipment for fishing were in his possession with a view to the catch being consumed only in the

Falkland Islands or that the defendant had some reasonable excuse for being in possession of the nets, traps or other equipment for fishing at the time and place in question.

147. Under *clause 172* it would be an offence to use a vessel outside the fishing waters to support illegal fishing within the fishing waters. *Clause 173* would require a court convicting a person of certain serious fishing offences to order the forfeiture of any fishing vessel used in the commission of an offence, the nets, traps or equipment used in the commission of the offence fish on board the fishing vessel involved in the commission of the offence and the proceeds of sale of any such fish. *Clause 173(2)* would confer a discretionary power of forfeiture of nets, traps or equipment on board a fishing vessel or in possession convicted of an offence under *clause 171*, fish on board that fishing vessel at that time or location and the proceeds of sale of any such fish. *Clause 174* would make provision in relation to the disposal of a fishing vessel which was forfeited by order of the court.

148. *Clause 175* provides for the automatic forfeiture of nets, traps or equipment which were used in the commission of an offence under *clause 168* or *169* or were on board a fishing vessel used in an offence at the time of the commission of that offence and of any fish involved in the commission of an offence under *clause 168* or *169*.

149. *Clauses 176* to *181* deal with things which were forfeited by a fisheries officer under *clauses 134* and *141(2)(i)*. *Clause 177* deals with notice of seizure which must be given, *clause 178* provides that a thing is condemned as forfeited to the Crown 30 days after notice of seizure even though a notice of claim has been given and *clause 179* makes provision as to what FIG is to do if notice of claim is given. *Clause 180* provides for a thing forfeited to become the Crown's property if the claimant does not institute proceedings for recovery of the thing within two months of the notice of claim or if at the end of claim proceedings the court does not make an order of a kind referred to in the subclause. Once a thing is condemned as forfeited to the Crown it is, under *clause 181* to be dealt with or disposed of in accordance with the directions of the Governor.

150. *Clause 182* would require a court convicting a person for the second time of two or more grave offences committed on separate occasions within seven years or convicting a defendant for a third time where one or more of the previous offences was a grave offence or one or more of those offences was a serious offence. To order the person convicted should forfeit any licence permit or approval obtained out of the Ordinance and should be prohibited for a period of not less than two years and not exceeding five years from holding any Quota, Catch Entitlement, Licence Permit or approval obtained over the licence.

151. *Clause 183* would provide that the seizure, detention or forfeiture of a fishing vessel under the Ordinance would have effect despite the arrest of the fishing vessel, the making of an order for the sale of the fishing vessel or the sale of the fishing vessel under an order made by the court, in each case, in proceedings within the admiralty jurisdiction of the Supreme Court.

152. Under *clause 184*, the Director could establish an observer programme for the purpose of collecting reliable and accurate information for fisheries research, fisheries management and

fisheries enforcement. It would enable the Director of Fisheries to place any observer on board a vessel and confer powers on observers. Before placing an observer on board a fishing vessel, the Director would be required to give notice to the owner, chartered, operator or master of the fishing vessel under *clause 185(1)*. Once such a notice had been given the fishing vessel could not put to sea without the observer and to do that would be an offence (*clause 185(2) and (3)*).

153. *Clause 186* would require the owner, charterer, operator and master of a fishing vessel on which an observer has been placed to allow the observer at any reasonable time to do the things mentioned in the subclause. A person hindering or preventing the observer from exercising powers given to him by *clause 186(1)* would commit an offence under *clause 186(2)* and would commit an offence if he failed to provide reasonable assistance to enable the observer to exercise his powers under *clause 186(1)*.

154. *Clause 187* would require food and accommodation and access to cooking and toilet and washing facilities and access without unreasonable restriction to telecommunication facilities to be provided to an observer. Failure to do so would constitute an offence under *clause 187(2)*.

155. Powers of supervision by observers of trans-shipments, dumping of fish and processing would be conferred by *clause 188*.

I. Part VIII of the Bill Miscellaneous and General

156. Part VIII of the Bill consists of *clauses 189 to 224* of the Bill. *Clause 189* would enable the imposition of levies with the approval of the companies holding the majority of the Quota in the fishery in question and *clause 190* would make supplementary provision in relation to levies.

157. *Clause 191* would establish a Falkland Islands fishing companies association and declare its functions. *Clause 192* would create offences of making any faults of misleading statement or omitting any material information in any communication, application, record or return prescribed or acquired under the Ordinance for the similar offence of knowingly using, dealing with or acting upon or causing any other person to use, deal with or act upon any communication, application, record or return prescribed by or required under the Ordinance which is false.

158. Under *clause 193* provision would be made as to how the state of mind of a body corporate in relation to particular conduct is sufficiently proved and providing that conduct engaged in on or behalf of a body corporate by a director, servant or agent of a body corporate within the scope of his actual or apparent authority is to be deemed to have been engaged in or served by the body corporate unless the body corporate established that it took reasonable precautions and exercised due diligence to prevent their conduct. A further provision as to the conduct of director, servants and agents of a body corporate would be made by the clause. Under *Clause 194* where an offence under the Ordinance was proved to have been committed in relation to a fishing vessel or any fishing operation undertaken by a fishing vessel, the owner, chartered, operator and the master of the fishing vessel would each be deemed to have committed the offence. *Clause 195* would deal with the liability of directors and officers of bodies corporate.

159. Under the provisions of *clause 196* where an allegation is made in a prosecution as to the identity of the owner, charterer, operator or master of a fishing vessel at a time, the allegation would be presumed to be true unless the contrary were proved.

160. *Clause 197* would make provision in relation to unavoidable by-catch.

161. *Clause 198* and *199* contain evidentiary provisions. *Clause 200* contains provisions as to service of receivings upon an agent for service.

162. *Clause 201* would provide that offences should be punishable in the manner set out in Schedule 3 to the Bill and *clause 202* would provide that the court in sentencing (in addition to any other matters) to take into account the difficulty of detecting and apprehending persons committing offences under the provisions of the Bill and of bringing them to justice and the need to discourage others from committing like offences.

163. *Clause 203* would prohibit imprisonment of persons who are not British citizens, British Overseas Territories citizens, persons having Falkland Islands Status or a person holding a Permanent Resident Permit unless an agreement to the contrary had been made between the Government of the Falkland Islands and the Government of another country or the Government of the United Kingdom, on behalf of the Falkland Islands, and the Government of another country.

164. Instead of being imprisoned the overseas person would be liable to a fine not exceeding the maximum of level 10 on the standard scale if that is greater than the maximum fine he would otherwise be liable to be ordered to pay.

165. *Clause 204* would confer extended powers upon the courts in relation to awarding costs of prosecution. In offences relating to fishing vessels where a fishing vessel was pursued by a fisheries patrol vessel or was detained by a fisheries patrol vessel the court will be unable to order the costs of that.

166. If a court convicts the owner of a fishing vessel of an offence in respect of which the court would have had power to make a forfeiture order and would have made such an order if the fishing vessel had been at a port or harbour in the Falkland Islands then, under *clause 205(2)* the court could order that the owner of the fishing vessel shall pay the Crown any one or more of the following:-

(a) such sum as the court specifies as being, in the opinion of the court, the value of the fishing vessel,

(b) such sum as the court specifies as being, in the opinion of the court, the value of any nets, lines of any other fishing gear aboard the fishing vessel at the time of the offence,

(c) such sum as the court specifies as being, in the opinion of the court, the value of all or any fish aboard the fishing vessel at the time of the offence.

167. *Clause 205(3)* would enable the court to detain any security it may have ordered the owner to give under *clause 157* until any fine it is ordered the owner to pay and all sums it is ordered the owner to pay under *clause 204(2)* have been paid and, if those sums have not been paid within 21 days or such greater period as the court may allow, the security is to be realised and applied in payment of the sums due, with any balance being paid to the owner.

168. *Clause 206* would enable a fishing vessel to be detained pending payment of a fine and any sum payable under *clause 204(1)*. If default of such payment within 21 days or such greater period not exceeding 90 days as the court may allow the court may order that the fishing vessel and all stores, fuel, lubricants, apparatus, fishing gear and fish thereon is forfeit to the Crown.

169. A right of appeal to the Supreme Court against an order under *clause 204(1)* or *clause 205(2)* would be given by *clause 207*.

170. *Clause 208* would make provision for administrative penalties not exceeding the maximum of level 10 on the standard scale to be imposed in respect of more minor offences with the agreement of the alleged defender but with a right to the alleged defender under *clause 209* to require that the alleged offence should be dealt with by criminal proceedings in the normal way. The administrative penalty which could be imposed could not exceed one third of the maximum monetary penalty to which the person would be liable on conviction by a court.

171. *Clause 211* would require the Director to cause statistics to be compiled from returns furnished under the preceding provisions of the Bill and from other sources and the Governor to direct that the statistics compiled should be published.

172. *Clause 212* would provide the Director to authorise electronic transmission of accounts, records, returns, transactions, information, notices, objectives, requests, applications or other documents provided for under the Ordinance except under *clauses 24, 26, 28, 30 or 31*.

173. Where the Crown is liable to pay compensation under the Ordinance it is, under *clause 213* to be adequate compensation, within the same meaning as under section 7 of the Constitution. Where compensation has been paid out of public money as compensation for any loss occasioned by fraud on the part of any person procuring that or another person to be registered as the owner of any Individual Transferable Quota or Provisional Quota or as a mortgagee of such Quota, the amount of that compensation is to be recoverable by the Crown as a civil debt from the person or persons legally responsible for the fraud.

174. The transfer of duties and functions in relation to the keeping of Registers by the Director or a public officer in the Department of Fisheries would be transferable under an Order made by the Governor under *clause 215*. *Clauses 216 to 217* contain provision in relation to the termination of an arrangement privatising the maintenance of the registers.

175. Under *clause 218(1)* the Director would have power to amend or revoke all or any part of a licence, permit, approval or authority given under the Ordinance, or a registration completed under the Ordinance if faults or misleading information was material to the giving, making or

completion of it. *Clause 219* would enable the Director to require an applicant or other person who makes an application or a request under the Ordinance to provide such additional information or evidence as the Director considers necessary on reasonable grounds to enable him to consider the applicant's application or request.

176. Under *clause 220(1)*, the Director and every other person including members of the Fisheries Committee or the Disputes Commission having any official capacity or employed in the administration of the Ordinance would be required to regard and deal with all documents and information coming into their possession in the course of their duties which relates to the income or items of income of any company owing any Individual Transferable Quota or Provisional Quota or otherwise relating to its business affairs are confidential.

177. *Clause 221* relates to the giving of notices and service of documents while *clause 222* relates to the service of proceedings.

178. Extensive power to make regulations for the purposes of the Ordinance would be conferred by *clause 223*.

179. The Fisheries Ordinances 1986 – 1991, the High Seas Fishing Ordinance 1995, the Fishing (CCAMLR) Ordinance 1999 and the Fishing (CCAMLR) (Amendment) Ordinance 2002 would all be repealed by *clause 224(1)* but under *clause 224(2)* there would be savings for any licence granted under any of these Ordinances. Any regulations made under those Ordinances which were in force immediately before the commencement of *clause 224* would remain in force until they are revoked by regulations made under *clause 223*.

180. There follow three Schedules. Schedule 1 applies certain provisions of the Conservation of Wildlife and Nature Ordinance, Schedule 2 specifies the fisheries in which Individual Transferable Quota and Provisional Quota could be granted and Schedule 3 provides the manner in which offences under the Ordinance are punishable.

Attorney General
Cable Cottage

10 May 2005

Ref: AG/LEG/10D

Fisheries (Conservation and Management) Bill 2005

(No: of 2005)

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27. Provisional Quota Eligibility Registers
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FISHERIES CONSERVATION AND MANAGEMENT BILL 2005

(No: of 2005)

(assented to: _____)
(commencement: in accordance with section 1)
(published: _____)

A BILL

for

AN ORDINANCE

To reform and restate the law relating to fisheries resources and fisheries management, control and conservation.

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

PART I PRELIMINARY

Introductory

Short title and commencement

1.—(1) This Ordinance may be cited as the Fisheries (Conservation and Management) Ordinance 2005.

(2) This Ordinance shall come into force on a date or dates to be appointed by the Governor by Notice published in the *Gazette*, and different dates may be so appointed by one or more such Notices for different provisions and different purposes.

Interpretation

2.—(1) In this Ordinance, unless the context otherwise requires —

“the Agreements” means the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas adopted by the Conference of the United Nations’ Food and Agriculture Organisation on 24th November 1993 and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10th December 1982 relating to the Conservation of Straddling Fish Stocks and Highly Migratory Fish Stocks adopted in New York on 4th December 1995;

"aggregation limit" has the meaning given in section 58(2);

“Antarctic Convergence” means a line joining the following points along parallels of latitude and meridians of longitude —

50°S, 0°; 50°S, 30°E; 45°S, 30°E; 45°S, 80°E; 55°S, 80°E; 55°S, 150°E; 60°S, 150°E; 60°S, 50°W; 50°S, 50°W; 50°S, 0°.

“approved” means approved by the Director;

“approved form”, in relation to any document, means the form prescribed by Regulations made under this Ordinance or if there is no such prescribed form, the form approved by the Director; and includes an electronic format that is so prescribed or approved;

“Approved Mortgagees Register” means the Register provided for by section 61(3);

“associated or dependent species” means any non-harvested species taken or otherwise affected by the taking of any harvested species;

“the Association” means the Falkland Islands Fishing Companies Association established by section 191;

“best available information” means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time;

“biological diversity” means the variability among living organisms, including diversity within species, between species, and of ecosystems;

“CCAMLR” means the Convention on the Conservation of Antarctic Marine Living Resources done in Canberra on 20th May 1980, as amended from time to time, and includes any Protocol to the Convention and any decision or measure which is for the time being in force adopted pursuant to that Convention by the Commission to that Convention;

“CCAMLR waters” means the marine waters lying to the south of 60°S latitude and the waters between that latitude and the Antarctic Convergence;

“Catch Entitlement” means the Catch Entitlement generated in relation to Individual Transferable Quota or Provisional Quota as provided by section 37(5) when Total Allowable Effort is set by the Director under section 37(1), or, as the case may be, the Catch Entitlement generated in relation to Individual Transferable Quota or Provisional Quota as provided by section 36(5) when Total Allowable Catch is set by the Director under section 36(1);

“charterer”, in relation to a fishing vessel or an aircraft, means any person who is a lessee or a sublessee of the fishing vessel or aircraft or is the hirer of the vessel or aircraft under a charterparty;

“charterparty”, in relation to a fishing vessel or an aircraft, is an agreement for the hire of the vessel or aircraft entered into by any person who, whether as owner of the vessel or aircraft or otherwise, is entitled to enter into that agreement;

"commercial fisher" means a person who, other than as a fish farmer or so far as may be reasonably incidental to recreation, engages in fishing with a view to profit;

"the Commission" means the Disputes Commission established under section 98;

"the Committee" means the committee established pursuant to section 7;

"conservation" means the maintenance or restoration of fisheries resources for their future use, and "conserving" has a corresponding meaning;

"contravene" includes a failure to comply with;

"the Crown" means Her Majesty the Queen in right of Her Government of the Falkland Islands and includes Her Majesty's lawful successors in the same right;

"Director" means the Director of Fisheries continuing to hold office or appointed under section 4 and includes any Deputy Director of Fisheries appointed under that section;

"document" means a document in any form whether signed or initialled or otherwise authenticated by its maker or not, and includes —

(a) any writing on any material;

(b) any information recorded or stored by means of any tape-recorder, computer, or other device, and any material subsequently derived from information so recorded or stored;

(c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means;

(d) any book, map, plan, graph, or drawing;

(e) any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

(f) a document transmitted or received electronically;

"effort management stock" means a stock subject to an effort management system;

"effort management system" means the management of a stock of fish by permitting taking of fish of that stock only by a fishing vessel the catching capacity of which has been assessed and limiting the period for which such fishing vessel may fish for that stock;

"eligible company" in relation to Individual Transferable Quota has the meaning given by section 17(3) and in relation to Provisional Quota has the meaning given by section 18(3);

“environmental principles” means the environmental principles set out in section 9(1);

“examiner” means a person appointed under section 4(3) to be an examiner and holding a warrant card issued under section 5;

“export” means the carriage aboard any vessel or aircraft of fish from the Falkland Islands or the fishing waters to any place not within the Falkland Islands or the fishing waters, and cognate expressions have corresponding meanings;

“export licence” means a licence so described provided for in section 46(3);

“Falkland Islands fishing vessel” means a fishing vessel that is a Falkland Islands ship;

“Falkland Islands ship” has the meaning given by section 1(3) of the Merchant Shipping Act 1995 in its application to the Falkland Islands in the form set out in the Schedule to the Merchant Shipping Ordinance 2001;

“Falkland Islands status” has the same meaning as it has under section 17(5) of the Constitution;

“fish” means any marine animal not being a mammal or bird, whether fresh or cured including shellfish and any part of such animal and includes salmon, migratory trout and fishmeal;

“fish farmer” means a person who rears fish in captivity for the purpose of their sale as food or to other fish farmers;

“fish receiver permit” means a permit granted under section 47(3);

“fisheries resources” means any one or more stocks or species of fish;

“fishery” means fishery established under section 16(1) and specified in Schedule 2;

“fisheries officer” means —

(a) a person deemed by section 4(1) to be a fisheries officer and, unless he is a customs officer, police officer or a commissioned officer of Her Majesty’s armed forces, holding a warrant card issued under section 5,

(b) a person appointed in accordance with section 4 to be a fisheries officer and holding a warrant card issued under section 5,

(c) a person appointed under section 4(3) to be an examiner and holding a warrant card issued under section 5;

“fishing” means —

(a) searching for, or taking, fish;

(b) attempting to search for, or take, fish;

(c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish;

(d) any operations at sea directly in support of, or in preparation for, any activity described in this definition;

(e) aircraft use related to any activity described in this definition except flights in emergencies involving the health or safety of crew members or the safety of a fishing vessel; or

(f) the processing or carrying of fish that have been taken;

“fishing concession” means any fishing right and any permit or licence, other than a fish receiver permit, granted under this Ordinance;

“Fishing Effort Value” in relation to a fishing vessel, means the Fishing Effort Value assigned to that fishing vessel under section 40(1);

“fishing licence” means a fishing licence granted under section 41(1);

“fishing right” means any Individual Transferable Quota, any Provisional Quota and any Catch Entitlement;

“fishing vessel” means any launch, vessel or floating craft of any description of whatever size, and in whatever way propelled, which is for the time being engaged in fishing or for the processing, storage or carriage of fish or of any operations (including trans-shipment of fish) ancillary thereto and includes a fish carrier;

“fishing waters” means the fishing waters of the Falkland Islands specified in section 3;

“functions” means powers and duties and “function” has a corresponding meaning;

“high seas” means the marine waters beyond the territorial sea, archipelagic waters, fisheries zone or exclusive economic zone of any State, country, part of a country or any territory for the external affairs of which a State is responsible but does not include any waters to which CCAMLR applies;

“high seas fishing licence” means a fishing licence granted pursuant to section 130;

“holder”, in relation to any licence, authority, approval, licence or certificate, means the person to whom the licence, authority, approval, licence, or certificate has been issued, granted or given and “holds” and “held” have corresponding meanings;

“Individual Transferable Quota” has the meaning given by section 17(1);

“Individual Transferable Quota Eligibility Register” means the register in relation to the fishery concerned provided for by section 23(1);

“Individual Transferable Quota Ownership Register” means the register in relation to the fishery concerned provided for by section 52(1);

“information principles” means the information principles set out in section 10;

“intellectual property” has the meaning provided for in article 2 of the Convention done on 14th July 1967 establishing the World Intellectual Property Organisation and in the World Trade Organisation Agreement on the Trade Related Aspects of Intellectual Property Rights of 15th April 1994;

“Interim Fishery Conservation and Management Zone” means the zone of that name established by and described in the Proclamation by the Governor of 29th October 1986;

“internal waters” means those marine waters which are to the landward side of the baselines from which the territorial sea is measured;

“international conservation and management measure” means —

(a) any measure to conserve or manage one or more species of living resources that is adopted and applied in accordance with the relevant rules of international law as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 whether by global, regional or subregional fisheries organisations, subject to the rights and obligations of their members, or by treaties or other international agreements;

(b) without prejudice to paragraph (a), any decision or measure for the time being in force under CCAMLR; and

(c) any measure to conserve or manage one or more species of living resources that are adopted and applied under the provisions of any other Convention, multilateral or bilateral international agreement which has been applied by the Government of the United Kingdom in accordance with international law to the Falkland Islands so as to apply to the fishing waters;

“land store” means a building or facility on land in the Falkland Islands used or intended to be used for the storage of fish;

“long-term viability”, in relation to the biomass level of a stock or species, means that there is a low risk of collapse of the stock or species, and the stock or species has the potential to recover to a higher biomass level;

“master” includes in relation to a fishing vessel the person for the time being in command of or in charge of the fishing vessel or in charge of the fishing operations on board the fishing vessel;

“maximum sustainable yield”, in relation to any stock, means the greatest yield that can be achieved over time while maintaining the stock’s productive capacity, having regard to the population dynamics of the stock and any environmental factors that influence the stock;

“mortgage” means any charge registered under this Ordinance;

“mortgagee” means the proprietor of a mortgage;

“mortgagor” means any person who is the registered owner of quota subject to a mortgage;

“multi-species stock” means an effort or quota management stock that consists of two or more species;

“non-Falkland Islands fishing vessel” means any fishing vessel which is not a Falkland Islands fishing vessel;

“non-Falkland Islands fishing business” means a fishing business which is not a company the name of which is eligible to appear on the Individual Transferable Quota Eligibility Register;

“non-Falkland Islands fishing waters” means the waters in respect of which any country other than the Falkland Islands exercises fishery jurisdiction in accordance with international law;

“observer” means a person appointed as an observer under section 184(2);

“operator”, in relation to a fishing vessel, means a person other than the owner, charterer or master of the vessel who is responsible for the management of the vessel or is responsible for the management of fishing on or with it;

“overseas person” means a person who does not have Falkland Islands status;

“this Ordinance” includes a reference to any regulations made under this Ordinance or having effect as if made under this Ordinance;

“the Outer Zone” means the zone of that name established by and described in the Proclamation by the Acting Governor of the 22nd August 1994;

“overseas fishing business” is any business the whole or any part of the activities of which consist of fishing and which is not a company incorporated in the Falkland Islands;

“overseas master fishing licence” means an overseas master fishing licence granted under section 44;

“overseas person” means a person who does not have Falkland Islands status;

“owner” —

(a) in relation to any vessel, means any person by whom the vessel is owned;

(b) in relation to Individual Transferable Quota or quota comprised within Individual Transferable Quota granted under this Ordinance, means the person shown as the owner in the Individual Transferable Quota Ownership Register;

“person” includes a company or other body corporate;

“possession” means possession of, or control over (including joint possession and joint control over) —

(a) any fish, or

(b) any fishing vessel or other vessel, container, package, thing, premises or place in or on which any fish are found;

“premises” means any land or building, and includes any vessel, or any vehicle or conveyance of any kind whatever;

“processing” includes cutting, shelling, freezing, and the use of all other methods of manufacture and preservation;

“Provisional Quota” means any Quota granted under section 22;

“Provisional Quota Eligibility Register” means the register provided for in relation to the fishery concerned by section 26(1);

“qualifying company” has the meaning given by section 41(14);

“quota” means, any part of Individual Transferable Quota;

“quota management stock” means any stock subject to a quota management system;

“quota management system” means the management of a stock or stocks by the allocation of Individual Transferable Quota or Provisional Quota in relation to that stock;

“recognised stock exchange” means The Stock Exchange in the United Kingdom and any other stock exchange which is for the time being a recognised stock exchange for the purposes of the laws of the Falkland Islands relating to taxation;

“satellite-tracking device” means a device installed on board a fishing vessel which ensures the automatic transmission to the Fisheries Monitoring Centre of such data as are required by regulations to be transmitted by the device;

“shellfish” includes crustaceans and molluscs of any kind, and includes any (or part of any) brood, ware, half-ware or spat of shellfish and any spawn of shellfish, and the shell, or any part of the shell, of a shellfish;

“stock” means the stock of a species of fish occurring in the fishing waters or, where appropriate in the context, the relevant part of the fishing waters;

“temporary order” means an order under section 51;

“territorial sea” means the territorial sea of the Falkland Islands as defined and declared under the Falkland Islands (Territorial Sea) Order 1989;

“Total Allowable Catch”, in relation to any quota management stock, means a total allowable catch as set or varied for that stock by notice in the *Gazette* under section 38;

“Total Allowable Effort”, in relation to any effort management stock, means a total allowable effort in relation to that stock as set or varied for that stock by notice in the *Gazette* under section 37;

“transaction” in relation to any Individual Transferable Quota means a transfer of the Individual Transferable Quota or any quota comprised in it, or a mortgage of, discharge of mortgage of or assignment of mortgage of, the Individual Transferable Quota or any quota comprised in it;

“trans-shipment licence” means a licence so described granted under section 46(2); and

“trans-shipment of fish” means the passing of fish from one fishing vessel to another or from a fishing vessel to a land store or vehicle whether or not the fish was taken by, with or from the fishing vessel from which the fish is passed and trans-shipping has a corresponding meaning.

(2) In this Ordinance, “court”, unless otherwise stated to the contrary, means the Summary Court or the Magistrate’s Court and any court on appeal, or further appeal, from a decision at first instance in the Summary Court or the Magistrate’s Court.

(3) All penalties, offences and criminal proceedings under this Ordinance or any regulation made under this Ordinance may be recovered, prosecuted and taken before the Summary Court or the Magistrate’s Court and the Summary Court, notwithstanding any other written law to the contrary, shall have and may exercise in respect thereof all the powers and jurisdiction possessed by the Magistrate’s Court.

(4) This Ordinance binds the Crown.

Fishing waters

3.—(1) The fishing waters of the Falkland Islands comprise —

(a) the internal waters;

- (b) the territorial sea;
- (c) the Interim Fishery Conservation Management Zone;
- (d) the Outer Zone; and

(e) any other marine waters over which exclusive rights of fishing or fisheries management are claimed by the Falkland Islands by proclamation, law or convention for the time being in force in the Falkland Islands.

(2) All fishing rights in relation to fish in the fishing waters are, at the commencement of this section, vested in the Crown which may dispose in accordance with this Ordinance of them and of any fishing rights the grant of which is revoked or which are forfeited to the Crown under any provision of this Ordinance. In so far as any fishing right vested in the Crown at the commencement of this section has not subsequently been disposed of by the Crown in accordance with this Ordinance, it belongs to the Crown.

Director of Fisheries, Deputy Director of Fisheries, fisheries officers and examiners

4.—(1) Any person holding office immediately before the commencement of this Ordinance as Director of Fisheries, Deputy Director of Fisheries or fisheries protection officer shall hold office as Director of Fisheries, Deputy Director of Fisheries or fisheries officer as if he had been appointed to that office under the relevant provision of this section.

(2) Subject to subsection (1), the Governor shall appoint a public officer to be the Director of Fisheries and may appoint another public officer to be the Deputy Director of Fisheries. The Deputy Director of Fisheries may, subject to any directions of the Governor to the contrary, exercise any function conferred upon the Director of Fisheries by or under this Ordinance.

(3) The Governor may appoint any public officer to be an examiner to assist in the enforcement and administration of this Ordinance by examining and verifying the keeping of accounts, records, returns and information required to be kept or made under any provision of this Ordinance.

(4) The Director's responsibilities under this Ordinance include —

- (a) the conservation of stocks;
- (b) the assessment of stocks and the collection of statistics;
- (c) the development and management of fisheries;
- (d) the monitoring, control and surveillance of fishing;
- (e) the regulation of the conduct of fishing and operations and activities ancillary thereto;

(f) the issue, variation, suspension and revocation of permits and licences provided for by this Ordinance;

(g) the collection of fees payable under this Ordinance;

(h) the making of such reports to the Governor as the latter, acting in his discretion, may require;

(i) the performance of such other functions as are conferred on him by this Ordinance.

(5) In the carrying out of his responsibilities and in the performance of his functions under this Ordinance the Director shall act in accordance with any directions, not inconsistent with this Ordinance, which the Governor acting in his discretion may give to him.

(6) The following persons shall be fisheries officers —

(a) every person appointed in that behalf by the Governor;

(b) every person appointed under subsection (3) to be an examiner;

(c) every member of the Royal Falkland Islands Police;

(d) every customs officer;

(e) commissioned officers of any of Her Majesty's Ships;

(f) persons in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force or of the Falkland Islands Government.

Warrant cards

5.—(1) The Director shall cause a warrant card to be issued to every person appointed to every examiner appointed under section 4(3) and to every fisheries officer appointed under section 4(6).

(2) A warrant card shall contain a recent photograph of the examiner or fisheries officer to whom it is issued and be in the approved form.

(3) A person who ceases to be an examiner or fisheries officer shall surrender his warrant to the Director.

(4) A person who, without reasonable excuse, contravenes subsection (3) commits an offence.

Executive Council to review policy

6.—(1) The Executive Council shall at least once in every successive period of twelve months following the enactment of this Ordinance consider the matters mentioned in subsection (2).

(2) Those matters are —

(a) whether the objectives mentioned in section 13 have in the Executive Council's view been satisfactorily pursued; and

(b) whether any changes should be made in the policies of the Falkland Islands in relation to fisheries resources and fisheries management, control and conservation.

The Committee

7.—(1) There shall be a Fisheries Committee which shall be constituted by two elected members of the Legislative Council selected by all the members of the Legislative Council, the Director and such other public officers as may be determined by the Governor and by such number of representatives of fishing or other interests selected in such manner as the Governor may determine.

(2) The Chairman of the Committee shall be such of the two members of the Committee selected by the elected members of the Legislative Council as shall be determined by the elected members of the Legislative Council and the other of them shall be the Vice-Chairman of the Committee.

(3) The Committee shall not transact any business at any time when both the Chairman and the Vice-Chairman are absent therefrom.

(4) The function of the Committee shall be to advise the Director as to the exercise of his powers under this Ordinance and as to such other matters on which he consults them.

Purpose and principles

Purpose

8.—(1) The purposes of this Ordinance are —

(a) to provide for the utilisation of the fisheries resources of the Falkland Islands while ensuring sustainability; and

(b) to facilitate the compliance by the Falkland Islands with international obligations applying to the Falkland Islands relating to fishing, fishing vessels and the conservation and management of fish, and in particular the obligations under the United Nations Convention on the Law of the Sea of 10th December 1982 and the Agreements.

(2) In this Ordinance —

(a) "ensuring sustainability" means —

(i) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and

(ii) avoiding, remedying, or mitigating adverse effects of fishing on the marine environment so far as it is reasonably practicable to do so;

(b) “utilisation” means conserving, using, enhancing, and developing fisheries resources to enable the Government of the Falkland Islands to provide for the social and economic wellbeing of the Falkland Islands, either directly or by contribution to governmental revenues.

(3) So that effect may be given to the purposes of this Ordinance, fishing within the fishing waters and the trans-shipment of fish within the fishing waters is prohibited unless it is undertaken —

(a) under a licence or permit granted under this Ordinance;

(b) in accordance with the applicable provisions of this Ordinance and of any regulations made thereunder, and

(c) in accordance with the conditions of the licence or permit.

Environmental principles

9.—(1) All persons exercising or performing functions, duties or powers under this Ordinance in relation to the utilisation of fisheries resources or ensuring sustainability shall take into account the following environmental principles —

(a) associated or dependent species shall be maintained at or above a level that ensures their long term viability;

(b) biological diversity of the marine environment shall be maintained; and

(c) habitats of particular significance for fisheries management shall be protected.

(2) The provisions of the Conservation of Wildlife and Nature Ordinance 1999 specified in Schedule 1 to this Ordinance shall have effect, subject to the modifications specified in the said Schedule, to the fishing waters outside the territorial sea as they do in the Falkland Islands and the territorial sea.

Information principles

10. All persons exercising or performing functions, duties or powers under this Ordinance in relation to the utilisation of fisheries resources or ensuring sustainability shall take into account the following information principles —

(a) decisions shall be based on the best available information;

(b) decision-makers shall consider any uncertainty in the information available in any case;

- (c) decision-makers shall be cautious when information is uncertain, unreliable, or inadequate.

Sustainability measures

Sustainability measures

11.—(1) The Director may from time to time set or vary any sustainability measure for one or more stocks, after taking into account —

- (a) any effects of fishing on any stock and the marine environment;
- (b) any existing controls under this Ordinance that apply to the stock concerned; and
- (c) the natural variability of the stock concerned.

(2) Without limiting the generality of subsection (1), sustainability measures may relate to any one or more of the following —

- (a) in the case of an effort management stock, any Total Allowable Effort in relation to that stock;
- (b) in the case of a quota management stock, any Total Allowable Catch for that stock;
- (c) the size, sex, or biological state of any fish of any stock that may be taken;
- (d) the areas from which any fish of any stock may be taken;
- (e) the fishing methods by which any fish of any stock may be taken or which may be used in any area.

Consultation

12.—(1) The Director shall, except in a case of urgency, so far as is reasonably practicable consult with the Committee and such persons or organisations within the Falkland Islands as the Director considers it desirable to consult who are representative of persons having an interest in the stock or the effects of fishing on the marine environment and environmental interests before setting or varying any sustainability measure.

(2) Nothing in subsection (1) shall have effect so as to preclude the Director from consulting any person or body not identified or referred to in that subsection.

(3) After setting or varying any sustainability measure the Director shall, as soon as practicable, publish the reasons for his decision.

PART II
REGULATION OF FISHING

CHAPTER 1 — INTRODUCTORY

Preliminary

Director to pursue objectives etc

13. In performing his functions under this Part, the Director shall pursue the following objectives —

- (a) the implementation of efficient and cost-effective fisheries management on behalf of the Falkland Islands;
- (b) ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment.
- (c) ensuring, through proper conservation and management measures, that the living resources of the fishing waters are protected from over-exploitation;
- (d) achieving the optimum utilisation of the living resources of the fishing waters; and
- (e) ensuring that conservation and management measures in the fishing waters and the high seas are in accordance with the obligations of the Falkland Islands under international agreements that deal with fish stocks.

Provisions relating to international co-operation

Fishing vessels involved in contravening international conservation and management measures

14.—(1) Without prejudice to section 15, the Director shall not authorise under this Ordinance the use of any Falkland Islands fishing vessel—

- (a) for fishing within the fishing waters;
- (b) for fishing on the high seas for a conserved fish stock; or
- (c) for fishing in waters to which CCAMLR relates,

during the period specified in subsection (2) if a court has convicted a person of an offence described in subsection (3) involving the use of the fishing vessel and has ordered the person to pay a fine in respect of the offence.

(2) The period starts when the person is ordered to pay the fine and ends when one of the following events occurs —

- (a) the person pays the fine or complies with any penalty imposed on him for failure to pay the fine;
- (b) the court orders the forfeiture of the fishing vessel as a result of the failure to pay the fine or in relation to another offence;
- (c) the conviction of the person for the offence for which the person was ordered to pay the fine is quashed or the person is pardoned in respect of that offence; or
- (d) the vessel is no longer owned, in whole or in part, by the person referred to in subsection (1).

(3) Subsection (1) limits authorisation of the use of a fishing vessel involved in any of the following offences —

(a) an offence under Part VI constituted by one of the following acts or omissions that contravenes a condition of a high seas fishing licence that authorises fishing for a conserved fish stock on the high seas or contravenes a provision of a temporary order relating to fishing for a conserved fish stock on the high seas —

- (i) fishing for the conserved fish stock at a particular time in a particular place or with particular equipment;
- (ii) failing to maintain accurate records of catch;
- (iii) failing to provide an accurate return of fish taken, carried, trans-shipped or processed;
- (iv) taking, carrying, trans-shipping or processing more fish than authorised by the high seas fishing licence;
- (v) changing or hiding the markings of the fishing vessel;
- (vi) failing to comply with any measure for the time being in force under CCAMLR and relating to the conservation or management of any species (whether or not of fish) to which that Convention relates;

(b) an offence under Part VI or Part VII involving fish from a conserved fish stock and a fishing vessel;

(c) an offence under Part VI or Part VII involving a fishing vessel equipped for fishing for a conserved fish stock;

(d) an offence under a prescribed provision of this Ordinance or the regulations that is constituted by a prescribed act or omission relating to a conserved fish stock.

(4) In this section, "conserved fish stock" means —

(a) a straddling fish stock covered by a global, regional or sub-regional conservation or management measure;

(b) a highly migratory fish stock covered by a global, regional or sub-regional conservation or management measure; and

(c) any fish within waters to which CCAMLR applies.

Certain fishing vessels not to be authorised to fish

15.—(1) The Director shall not authorise under this Ordinance the use of a fishing vessel, wherever registered, for fishing in the fishing waters or a Falkland Islands fishing vessel for fishing in CCAMLR waters or on the high seas where he has been informed by the Governor in writing that States Parties to CCAMLR, or any other Convention or international agreement to which this subsection has been applied by Order under subsection (2), are required not to authorise fishing vessels to fish in the waters in question.

(2) The Governor may by Order extend the application of subsection (1) so as to apply additionally where there is a requirement of a kind referred to in that subsection under a Convention or international agreement specified in that Order.

(3) Subject to subsection (4), the Director shall not authorise under this Ordinance the use of a fishing vessel for fishing within the fishing waters where the fishing vessel has been authorised to be used for fishing on the high seas (including waters to which CCAMLR or any other international agreement relates) by another country and the Director has been informed by the Governor in writing that that country has either —

(a) suspended such authorisation and such suspension has not expired; or

(b) withdrawn such authorisation within the 3 years preceding the application to the Director for authorisation,

because the fishing vessel has undermined the effectiveness of international conservation and management measures.

(4) Subject to subsection (5), subsection (3) does not apply if the Director has been informed in writing by the Governor after taking into account all relevant facts, that the Governor is satisfied the grant of authorisation in respect of the fishing vessel will not undermine the object and purpose of any of the international obligations referred to in section 8(1)(b).

(5) In this section "the Governor" means the Governor acting in his discretion.

CHAPTER 2 — PROPERTY RIGHTS

Division A — Individual Transferable Quotas and Provisional Quotas

Establishment of fisheries

Establishment and variation of fisheries

16.—(1) The fisheries specified in Schedule 2 are hereby established.

(2) The Governor may by Order amending Schedule 2, on consideration of, but not necessarily in accordance with, a recommendation made by the Director, except in the case of emergency, after the Director has consulted the Committee and, where the Director has in mind the variation of a fishery, after he has consulted any owners of Individual Transferable Quota or Provisional Quota granted in relation to that fishery —

(a) establish a further fishery or fisheries;

(b) vary a fishery which has been established, including a fishery established by subsection (1);

(c) revoke a fishery which has been established, including a fishery established by subsection (1).

(3) An Order establishing a fishery shall state whether or not Provisional Quota may be granted under section 22 in relation to that fishery.

(4) A fishery may be established in relation to a species of fish or a number of species of fish or in relation to a description or class of fish and may be so established in relation to either or both of —

(a) the whole or a part of the fishing waters;

(b) the whole or part of a year.

(5) An Order under subsection (2) varying or revoking a fishery shall make provision in relation to the effect of the variation or revocation of any previously granted Individual Transferable Quota and shall, if a fishery is revoked for any reason other than for reasons of conservation, make provision for payment of fair and adequate compensation for any loss suffered or likely to be suffered by the owners of the Individual Transferable Quota in that fishery.

Nature of and grant of Individual Transferable Quotas and Provisional Quotas

Individual Transferable Quotas

17.—(1) An Individual Transferable Quota is a right of the owner of it to the fraction registered in the Individual Transferable Quota Ownership Register of the Total Allowable Effort or Total

Allowable Catch from time to time declared by the Director under sections 37 or 38, as the case may be, in respect of the fishery established under section 16 in relation to which the Individual Transferable Quota was granted, and where the context so requires "Individual Transferable Quota" includes any part of that fraction.

(2) Subject to the provisions of section 58 of this Ordinance the Director may at any time after the commencement of this Ordinance in writing grant an Individual Transferable Quota to an eligible company.

(3) A company is an eligible company in relation to the grant or transfer to it of the whole or part of an Individual Transferable Quota in respect of a fishery if its name appears in the Individual Transferable Quota Eligibility Register for the fishery in question.

(4) The grant of an Individual Transferable Quota does not take effect, and the transfer of the whole or part of an Individual Transferable Quota does not take effect, until the particulars of the grant or transfer required by section 52 to be registered in the Individual Transferable Quota Ownership Register have been registered.

(5) An eligible company may, subject to the provisions of section 58 of this Ordinance, take a transfer of the whole or part of an Individual Transferable Quota, and the owner of an Individual Transferable Quota may transfer the whole or part of it to an eligible company.

(6) An Individual Transferable Quota is a fishing right but does not of itself authorise the taking of fish, which is only authorised by a fishing licence or scientific permit.

Provisional Quotas

18.—(1) A Provisional Quota (hereinafter called "Provisional Quota") is a right of the owner of it to the fraction registered in the Provisional Quota Ownership Register of the Total Allowable Effort or Total Allowable Catch from time to time declared by the Director under sections 37 or 38, as the case may be, in respect of the fishery established under section 16 in relation to which the Provisional Quota was granted.

(2) Subject to the provisions of section 58 of this Ordinance in relation to aggregation limits, the Director may at any time after the commencement of this Ordinance in writing grant a Provisional Quota to an eligible company but may only do so in respect of a fishery specified in Schedule 2 as being a fishery in respect of which Provisional Quota may be granted.

(3) A company is an eligible company in relation to the grant or transfer to it of the whole or part of a Provisional Quota in respect of a fishery if its name appears in the Provisional Quota Eligibility Register for the fishery in question.

(4) The grant of a Provisional Quota does not take effect until the particulars of the grant required by section 53 to be registered in the Provisional Quota Ownership Register have been registered.

(5) A Provisional Quota is a fishing right but does not of itself authorise the taking of fish, which is only authorised by a fishing licence or scientific permit.

Notice of intention to grant Individual Transferable Quotas or Provisional Quotas and criteria in relation to their grant

19.—(1) The Director shall, before granting any Individual Transferable Quota or any Provisional Quota, by public notice, notify that he intends to grant those fishing rights as specified in the notice in relation to fishing in a specified fishery.

(2) No notice under subsection (1) in relation to Individual Transferable Quota may be published until 3 months after the opening of the Individual Transferable Quota Eligibility Register in respect of that fishery and no such notice in relation to Provisional Quota may be published until three months after the opening of the Provisional Quota Eligibility Register in relation to that fishery.

(3) A notice to which subsection (1) relates shall additionally —

(a) specify—

(i) the criteria in relation to which the Director will assess applications for the grant of Individual Transferable Quota, or, as the case may be, Provisional Quota, made in response to the notice and that only applications by companies the names of which appear on the relevant Eligibility Register will be considered;

(ii) the procedures to be followed when selecting the companies to which the grant will be made

(iii) the period for which the grant of Individual Transferable Quota or Provisional Quota will be in force unless it is sooner cancelled or otherwise ceases to apply or have effect;

(iv) the right to make application for review available under section 108 to persons in relation to the grant of, or the refusal to grant, Individual Transferable Quota or Provisional Quota; and

(v) any other matter in respect of the grant that, in the opinion of the Director, should be notified to prospective applicants.

(4) The reference in subsection (1) to public notice is a reference to notice published —

(a) in the *Gazette*;

(b) in a newspaper circulating throughout the Falkland Islands; and

(c) in such other newspaper or publication (if any) that appears to the Director to be appropriate in the circumstances.

Certain decisions to be provisional

20.—(1) Where the Director makes a decision as to the person or persons to whom the grant of an Individual Transferable Quota or Provisional Quota is to be made the following provisions of this section apply.

(2) The Director shall by notice published in the *Gazette* state the names of the companies to which the Individual Transferable Quota or Provisional Quota are to be granted and sufficient particulars of the rights to be granted to them and shall also so publish any refusal of an application for Individual Transferable Quota or Provisional Quota and the name of the company concerned.

(3) Any person aggrieved by a decision by the Director to grant or refuse an application for a grant of Individual Transferable Quota or Provisional Quota to any company may apply under section 108 to the Commission to review the matter.

(4) A grant of an Individual Transferable Quota or Provisional Quota shall not be made to such a company —

(a) before the end of the period within which, under subsection (3), applications to the Commission may be made for a review of the decision in relation to the grant;

(b) if an application in relation to the decision is made to the Commission under section 108, before the application is dealt with by the Commission or is otherwise disposed of;

(c) at all, if the Commission does not confirm the decision of the Director to grant that Individual Transferable Quota or Provisional Quota to that company, unless (and to the extent which) the decision of the Director is restored on appeal to the Supreme Court under section 124.

Grant of Individual Transferable Quota

21.—(1) A grant by the Director of an Individual Transferable Quota—

(a) can only be made in respect of a fishery established under section 16(1) or section 16(2); and

(b) shall be in writing signed by the Director and shall state —

(i) the fraction it grants of the Total Allowable Effort or Total Allowable Catch in the fishery to which it relates;

(ii) that the Individual Transferable Quota may only be transferred to a company the name of which appears on the Individual Transferable Quota Eligibility Register;

(iii) that Catch Entitlement generated in relation to the Individual Transferable Quota may only be taken by fishing vessels to which a fishing licence or scientific permit has been granted; and

(iv) the period, not exceeding 25 years, in respect of which it is made.

(2) The owner of Individual Transferable Quota may at any time surrender it to the Crown.

(3) The Crown is the owner of the Individual Transferable Quota in any fishery established under section 16(1) or section 16(2) in the aggregate from time to time of —

(a) the extent that grants of Individual Transferable Quota and Provisional Quota in that fishery from time to time made under this section do not extend to the whole of the Total Allowable Effort or Total Allowable Catch in that fishery;

(b) Individual Transferable Quota granted under this section and Provisional Quota granted under section 22 which has been surrendered to the Crown or forfeited to the Crown under the provisions of this Ordinance,

and may deal with the Individual Transferable Quota it owns —

(i) by granting it, (and where it has previously been granted, as if it had never previously been granted) to a company the name of which appears on the relevant Eligibility Register in accordance with the preceding provisions of this Ordinance; or

(ii) in the case of Individual Transferable Quota which has previously been granted, by transferring it to a company the name of which appears on the Individual Transferable Quota Eligibility Register.

(4) On granting any Individual Transferable Quota the Director shall cause sufficient particulars of it and the grantee to be registered in the Individual Transferable Quota Ownership Register maintained under section 52.

Grant of Provisional Quota

22.—(1) A grant of Provisional Quota

(a) can only be made in respect of a fishery indicated in Schedule 2 as being one in respect of which such a grant may be made; and

(b) shall be in writing signed by the Director and state —

(i) the fraction of Total Allowable Effort or Total Allowable Catch set in accordance with sections 37 or 38 in the fishery to which the Provisional Quota relates;

(ii) that it is not transferable in whole or in part and cannot be mortgaged or charged in any way;

(iii) the date from which it takes effect;

(iv) the period, which shall not exceed 5 years, for which it is granted;

- (v) the conditions subject to which it is convertible into a grant of Individual Transferable Quota, which must include a condition of the kind mentioned in subsection (2);
 - (vi) that Catch Entitlement generated in relation to the Provisional Quota may only be taken by fishing vessels to which a fishing licence has been granted;
 - (vii) that Catch Entitlement generated in relation to the Provisional Quota may only be transferred to companies named in the grant.
- (2) The compulsory condition required by subsection (1)(b)(v) is a condition that the name of the applicant for conversion appears upon the Individual Transferable Quota Eligibility Register maintained in respect of the relevant fishery.
- (3) Any purported transfer of —
- (a) Provisional Quota; or
 - (b) Catch Entitlement generated by it,
- to a company not named in the grant of Provisional Quota is void and of no effect.
- (4) The owner of Provisional Quota may at any time surrender it to the Crown.
- (5) On granting any Provisional Quota the Director shall register sufficient particulars of it and of the owner in the Provisional Quota Ownership Register.

Individual Transferable Quota Eligibility Registers

Individual Transferable Quota Eligibility Registers

23.—(1) There shall be an Individual Transferable Quota Eligibility Register in relation to every fishery upon which the Director shall place the name and principal place of business of every company which satisfies him on application under section 24(1) that it is eligible to have its name placed upon that Register or the name of which the Governor has authorised him under section 25(4) to place upon that Register.

(2) Subject to subsection (3), the Director shall strike out in an Individual Transferable Quota Eligibility Register any entry therein relating to a company which appears to him to be no longer eligible to have its name appear on that Register.

(3) The Director shall not strike out a company's name under subsection (2) unless at least 14 days previously he has served a notice in writing upon the company stating his intention to do so and additionally notifying the company that it may at any time within the period stated in the notice, being not less than 14 days, make written representations to him against the entry in relation to it in the Individual Transferable Quota Eligibility Register being struck out, which the Director shall take into account before deciding to strike out the name of the company.

(4) The Director, if he strikes out an entry in relation to a company in an Individual Transferable Quota Eligibility Register shall forthwith give notice to the company in writing of the effect of such striking out, that is to say that the company shall within 90 days of the service of that notice, or such longer period as the Governor may, on the application of the company, in writing agree, do one of the following —

(a) on application to the Commission under section 108 satisfy the Commission that the decision of the Director was made in error;

(b) on application under section 24(1), satisfy the Director that it has again become eligible to have its name appear on the Individual Transferable Quota Eligibility Register for the fishery; or

(c) dispose of the Individual Transferable Quota it owns in the fishery it owns to a company or companies the name or names of which appear on the Individual Quota Eligibility Register,

and, where the company owns Individual Transferable Quota, that if it fails to do so, any grant of Individual Transferable Quota to the company may be revoked under section 33(2)(d).

(5) A company by a decision of the Director under subsection (2) to strike its name from an Individual Quota Eligibility Register may apply under section 108 for the Commission to review that decision.

Application for name of company to be placed upon Individual Transferable Quota Eligibility Register

24.—(1) A company may on payment of the prescribed fee, if any, apply to the Director in the approved form for its name to be placed upon an Individual Transferable Quota Eligibility Register.

(2) An application under subsection (1) shall be accompanied by —

(a) a statutory declaration by a person who is a director of the company to which are exhibited the documents mentioned in subsection (3); and

(b) information as to such of the things mentioned in subsection (5) as are relevant in relation to the applicant company.

(3) The documents referred to in subsection (2)(a) are —

(a) a copy of the register of members of the company certified by the secretary of the company to be a true copy of the register as made up to a date not preceding by more than 7 days the date on which the declaration was made;

(b) a list of the directors and secretary of the company and of their addresses as at the date of the declaration;

- (c) a certified copy of the certificate of incorporation of the company;
 - (d) a certified copy of the Articles of Association of the company;
 - (e) a copy of the register of members of any company appearing in the register of members to which paragraph (a) refers, certified by the secretary of that company to be a true copy of that register as made up to a date not preceding by more than 7 days the date on which the declaration was made;
 - (f) a copy of the last available audited annual accounts of the company, and, in addition where available any later unaudited annual accounts of the company;
 - (g) any other document prescribed by regulations as being required to be exhibited to the statutory declaration or which the Director may have notified the applicant is required to accompany the application.
- (4) The statutory declaration referred to in subsection (2)(a) shall contain statements on the part of the person making it as to the following matters —
- (a) that he believes all the natural persons appearing in the copy of the register of members referred to in subsection (3) (a) to be persons having Falkland Islands status;
 - (b) that he believes that none of the persons whose name appears in that register is a nominee or trustee for any other person;
 - (c) if a copy of a register of a company which is a member of the applicant company accompanies the declaration pursuant to subsection (3)(e), that he believes all natural persons whose names appear in that register to be persons having Falkland Islands status and that he believes that none of those persons is a nominee or trustee for any other person;
 - (d) that he has perused the information provided under subsection (2)(b) and believes that information to be true and that, as far as he is aware it contains all available relevant information to which subsection (5) refers; and
 - (e) any other matter prescribed by regulations as being a matter with which the statutory declaration shall deal or which the Director may have notified him is required to accompany the application.
- (5) The information referred to in subsection 2(b) is information as to—
- (a) details of any existing business arrangements with any company, body, organisation or person involved in the taking, processing, purchasing or marketing of fish, or the provision of vessels, equipment, or crews;

(b) details of any proposed business arrangements with any company, body, organisation or person involved in the taking, processing, purchasing or marketing of fish, or the provision of vessels, equipment, or crews;

(c) any existing borrowing or financing arrangements with any company, body, organisation or person;

(d) any proposed borrowing or financing arrangements with any company, body, organisation or person;

(e) any other information available to the company which may serve to demonstrate that—

(i) the shareholders of the company who have Falkland Islands status are, or as the case may be, if Individual Transferable Quota is thereafter granted to the company, will be, in effective control of how its Individual Transferable Quota rights are used;

(ii) the company is or, in the case of a holding company, its associate companies are, or as the case may be, if Individual Transferable Quota is thereafter granted, will be, actively involved in one or more of taking, processing or selling fish and that its holdings of Individual Transferable Quota rights are, or as the case may be if Individual Transferable Quota is thereafter granted, will be, commensurate with the level of its business activity;

(iii) the company's income and economic returns from taking, processing and sale of fish, or such of them as are relevant in the circumstances of the case represent, or as the case may be, if Individual Transferable Quota is thereafter granted, will represent, a sufficient return on the value of the rights held and one which does not, or as the case may be, will not, over a reasonable period represent a significantly lower rate of return than that received by holders of similar rights.

(6) An application under subsection (1) may be made in respect of the Individual Transferable Quota Eligibility Register of any number of established fisheries.

Determination of applications for name of company to be placed upon Individual Transferable Quota Eligibility Register

25.—(1) The Director shall, provided the prescribed fee, if any, has been paid upon the application, but not otherwise, consider any application under section 24 which he receives and determine it in accordance with the provisions of this section.

(2) The Director shall not grant an application for a company's name to be placed upon an Individual Transferable Quota Eligibility Register by —

(a) any person other than a company which he is satisfied is a company incorporated in and having its principal place of business in the Falkland Islands which satisfies the following requirements —

(i) its Articles of Association do not permit —

(aa) the issue of bearer shares, convertible loan stock or convertible debentures;

(bb) the issue of shares to, and the registration of shares in the name of, any person other than persons who have Falkland Islands status and who are ordinarily resident in the Falkland Islands;

(ii) the whole of its issued share capital and all of its directors are persons having Falkland Islands status who are ordinarily resident in the Falkland Islands or are companies the whole of the issued share capital of which and all the directors of which are persons having Falkland Islands status who are ordinarily resident in the Falkland Islands;

(b) any company which the Financial Secretary has notified him appears on his list of persons to whom credit is not to be granted; or

(c) any company which has been convicted of an offence specified for the purposes of this paragraph by an Order made by the Governor.

(3) The Director shall refuse any application for registration of a company's name upon an Individual Transferable Quota Eligibility Register unless he is satisfied —

(a) that the shareholders of the company who have Falkland Islands status are, or as the case may be, if Individual Transferable Quota is thereafter granted to the company, will be, in effective control of how its Individual Transferable Quota rights are used;

(b) the company or, in the case of a holding company, its associate companies are, or as the case may be, if Individual Transferable Quota is thereafter granted, will be, actively involved in one or more of taking, processing or selling fish and that its holdings of Individual Transferable Quota rights are, or as the case may be if Individual Transferable Quota is thereafter granted, will be, commensurate with the level of its business activity;

(c) the company's income and economic returns from taking, processing and sale of fish, or such of them as are relevant in the circumstances of the case represent, or as the case may be, if Individual Transferable Quota is thereafter granted, will represent, a sufficient return on the value of the rights held and one which does not, or as the case may be, will not, over a reasonable period represent a significantly lower rate of return than that received by holders of similar rights.

(4) The Governor may upon such conditions, if any, as he sees fit, whether on application of the company concerned or otherwise, authorise the Director, if the Director is satisfied that he can properly do so having regard to the requirements of subsection (3), to enter the name of the company upon the Individual Transferable Quota Eligibility Register notwithstanding that the Director would otherwise be bound to refuse the application by reason of subsection (2)(a) (ii) or (b).

(5) The Director shall, as soon as practicable, notify the applicant in writing of his decision to grant or refuse its application for entry of its name upon an Individual Transferable Quota Eligibility Register and, if he refuses such an application, of the reasons why he has done so and, if he has refused the application because of any of the requirements of subsection (3) the notification shall draw the applicant's attention to the right of the applicant under subsection (6) to seek review of his decision.

(6) A company aggrieved by a decision of the Director to refuse its application for entry of its name upon an Individual Transferable Quota Eligibility Register because of any of the requirements of subsection (3) may apply under section 108 for the Commission to review that decision, but there is no right to apply for such review where the refusal is based or partly based on the ground that the provisions of subsection (2) are not complied with by the company.

(7) The Governor may by Order under this subsection specify offences for the purposes of subsection (2)(c) and such offences may include offences under the laws relating to fishing or fisheries conservation and management of overseas countries.

Period for which name of company shall appear upon Individual Transferable Quota Eligibility Register

26.—(1) Unless otherwise provided by Order made by the Governor under this subsection, the name of a company on an Individual Transferable Quota Eligibility Register remains valid for a period of 12 months from the date of first registration or, as the case may be, the last preceding renewal of registration but the registration may be renewed or further renewed on an application under subsection (2).

(2) Unless otherwise provided by an Order made under subsection (1), an application for the renewal of the period for which the name of a company shall appear upon an Individual Transferable Quota Eligibility Register shall be made annually not more than 56 days and not less than 28 days before the expiration of the initial period or last preceding renewal granted under this subsection and shall be —

(a) made in the approved form;

(b) accompanied by the prescribed fee (if any);

(c) accompanied by a statutory declaration made by a director of the company containing the following statements —

(i) either —

(aa) that there have been no changes since the date of the application under section 24(1) or, if the period has previously been renewed on application under this subsection, since the last preceding application for renewal under this subsection, in any of the documents copies of which were required to be furnished by section 24(3) (a) to (e) and (g) upon the application under section 24(1); or

(bb) that there have been such changes, identifying them, if necessary by reference to copy documents exhibited to the statutory declaration, and that there have been no other such changes;

(ii) unless the name of the company was placed upon the Register pursuant to an authorisation given under section 25(4), that he believes that —

(aa) all the natural persons appearing in the copy of register of members of the company on the date the statutory declaration is made to be persons having Falkland Islands status;

(bb) none of the persons whose name appears in that register is a nominee or trustee for any other person;

(cc) all the natural persons whose names appear in the register of members of any company which is a shareholder of the company to which the registration relates to be persons having Falkland Islands status and that he believes that none of those persons is a nominee or trustee for any other person;

(iii) if the name of the company was first registered pursuant to an authorisation given under section 25(4) either —

(aa) that there has been no change in the ownership of the shares of the company since the date of the original application leading to the first registration or, if the registration has been renewed under this subsection, since the date of the last preceding application for renewal of the application; or

(bb) that there have been such changes, identifying them, if necessary by reference to copy documents exhibited to the statutory declaration, and that there have been no other such changes;

(iv) either —

(aa) that there have been no changes since the date of the application under section 24(1) or if the period of appearance of the company's name upon the register has been previously been renewed under this subsection, since the date of the last preceding application under this subsection, in any of the matters to which section 24(5) relates; or

(bb) state that there have been such changes, identifying them and exhibiting any documents not previously exhibited to a statutory declaration under this section which section 24(5) would have required to be exhibited were the application for under this subsection an application under section 24(1) ; and

(v) statements as to such other matters as may be required by regulations to be contained in the statutory declaration.

(3) The Director may grant an application for renewal under subsection (2) if he is satisfied on considering the application that the company continues to meet the requirements for appearance of its name upon the Individual Transferable Quota Eligibility Register.

(4) The Director may refuse any application under subsection (2) on any ground upon which under section 25 he may refuse an application under section 24(1), but if he refuses any such application he shall notify the applicant in writing within 7 days of the reason or reasons for the refusal.

(5) If the Director refuses an application made under subsection (2) of this section, section 25(6) applies to the same extent as it would had the application been an application under section 24(1) which the Director had refused on a corresponding ground.

(6) If a company fails to make application under subsection (2) in accordance with that subsection and has not notified the Director under section 31(2) that it is no longer eligible to hold Individual Transferable Quota, it commits an offence and the Director shall, whether or not the company is prosecuted for that offence, as soon as its registration upon that Register expires, serve notice upon the company under section 33(2) of revocation of the Individual Transferable Quota held by the company, on the ground specified in section 33(2)(h).

Provisional Quota Eligibility Register

Provisional Quota Eligibility Registers

27.—(1) There shall be a Provisional Quota Eligibility Register in relation to every fishery in respect of which by virtue of section 16(1) or (3) and Schedule 2 Provisional Quota may be granted, upon which the Director shall place the name and principal place of business of every company which satisfies him on application under section 28 that it is eligible to have its name placed upon that Register.

(2) Subject to subsection (3), the Director shall strike out in a Provisional Quota Eligibility Register any entry therein relating to a company which appears to him to be no longer eligible to have its name appear on that Register.

(3) The Director shall not strike out a company's name under subsection (2) unless at least 21 days previously he has served a notice in writing upon the company stating his intention to do so and his proposed reasons for doing so and additionally notifying the company that it may at any time within the period stated in the notice, being not less than 21 days, make written representations to him against the entry in relation to it in the Provisional Quota Eligibility Register being struck out, which the Director shall take into account before deciding to strike out the name of the company.

(4) The Director, if he strikes out an entry in relation to a company in a Provisional Quota Eligibility Register shall forthwith give notice to the company in writing of the effect of such striking out, that is to say that the company shall within 90 days of the service of that notice or

such longer period as the Governor may, on the application of the company, in writing agree, either —

(a) on application to the Commission under section 108 satisfy the Commission that the decision of the Director was made in error; or

(b) on application under section 28, satisfy the Director that it has again become eligible to have its name appear on the Provisional Quota Eligibility Register for the fishery,

and that if it fails to do so, the grant of Provisional Quota to the company will be revoked under section 33(2)(e).

Application for name of company to be placed upon Provisional Quota Eligibility Register

28.—(1) A company may on payment of the prescribed fee, if any, apply to the Director in the approved form for its name to be placed upon a Provisional Quota Eligibility Register.

(2) An application under subsection (1) shall be accompanied by a statutory declaration by a person who is a director or the secretary of the company to which are exhibited the following documents —

(a) a copy of the register of members of the company certified by the secretary of the company to be a true copy of the register as made up to a date not preceding by more than 7 days the date on which the declaration was made;

(b) a list of the directors and secretary of the company and of their addresses as at the date of the declaration;

(c) a certified copy of the certificate of incorporation of the company;

(d) a certified copy of the Articles of Association of the company;

(e) a copy of the register of members of any company appearing in the register of members to which paragraph (a) refers, certified by the secretary of that company to be a true copy of that register as made up to a date not preceding by more than 7 days the date on which the declaration was made;

(f) any other document prescribed by regulations as being required to accompany an application under subsection (1) or which the Director may have notified him is required to accompany the application.

(3) The statutory declaration shall —

(a) contain statements on the part of the person making it as to the following matters —

(i) as to such of the shareholders as are natural persons —

(aa) as to which of them are persons who have Falkland Islands status and are ordinarily resident in the Falkland Islands; and

(bb) as to the remainder of such shareholders, the country in which they are ordinarily resident and their country of citizenship;

(ii) as to such of the shareholders of the company as are bodies corporate the country under the law of which they are incorporated;

(b) as to every company identified pursuant to paragraph (a)(ii), be accompanied by —

(i) the documents mentioned in paragraphs (a) to (e) of subsection (2) or, where the company is not incorporated in the Falkland Islands, the documents which, under the law of the country of incorporation of that company, correspond to the documents mentioned in paragraphs (a) to (e) of subsection (2);

(ii) any other document prescribed by regulations as being required to accompany an application under subsection (1) or which the Director may have notified him is to accompany the application.

(c) contain statements as to any other matter prescribed by regulations as being a matter with which the statutory declaration shall deal or which the Director may have notified him is required to accompany the application.

(4) An application under subsection (1) may be made in respect of the Provisional Quota Eligibility Register of any number of established fisheries in respect of which Provisional Quota may be granted.

Determination of applications for name of company to be placed upon Provisional Quota Eligibility Register

29.—(1) The Director shall consider any application under section 28 which he receives and shall determine it in accordance with the provisions of this section.

(2) The Director shall not grant an application for a company's name to be placed upon a Provisional Quota Eligibility Register —

(a) by any person other than a company which he is satisfied is a company incorporated in and having its principal place of business in the Falkland Islands which satisfies the following requirements —

(i) its Articles of Association prohibit the issue of bearer shares, convertible loan stock or convertible debentures;

(ii) not less than 25.1% of its issued share capital, or such other percentage as may be prescribed by Order, either generally or in relation to the Eligibility Register maintained

in respect of the fishery in question, is owned by persons who are ordinarily resident in the Falkland Islands and who have Falkland Islands status;

(iii) its Articles require a majority of its directors to be persons who have Falkland Islands status and who are ordinarily resident in the Falkland Islands;

(b) by any company which the Financial Secretary has notified him appears on his list of persons to whom credit is not to be granted; or

(c) by any company which has been convicted of an offence specified for the purposes of this paragraph by an Order made by the Governor, or which is owned or controlled directly or indirectly by such a company.

(3) The Director may (provided that the company has paid the prescribed fee, if any, in relation to the application) grant any application for a company's name to be placed upon a Provisional Quota Eligibility Register which he is satisfied is not one he is required by subsection (2) to refuse, and may refuse such an application notwithstanding that he is satisfied it is not one he is required by subsection (2) to refuse.

(4) The Director shall, as soon as practicable, notify the applicant in writing of his decision to grant or refuse an application for placing a company's name upon a Provisional Quota Eligibility Register and, if he refuses such an application, of the ground or grounds on which he has done so and the right of the applicant to apply to the Commission to review any decision of the Director to refuse the application for any reason other than one mentioned in subsection (2).

Period for which name of company shall appear upon Provisional Quota Eligibility Register

30.—(1) Unless otherwise provided by Order made by the Governor under this subsection, the name of a company on a Provisional Quota Eligibility Register shall appear upon that Register for a period of 12 months from the date it was first placed upon that Register or, as the case may be, the last preceding date from which the period of appearance of its name on that Register was renewed but the period of appearance of its name may be renewed or further renewed on an application under subsection (2).

(2) Unless otherwise provided by an Order made under subsection (1), an application for the renewal of the period for which the name of a company shall appear upon a Provisional Quota Eligibility Register shall be made annually not more than 56 days and not less than 28 days before the expiration of the initial period or last preceding renewal granted under this subsection and shall be —

(a) made in the approved form;

(b) accompanied by the prescribed fee, if any;

(c) accompanied by a statutory declaration made by a director of the company containing the following statements —

(i) either —

(aa) that there have been no changes since the date of the original application leading to the first registration or, if the registration has been renewed, since the last preceding application for renewal of registration under this subsection, in any of the documents copies of which were required to be furnished by section 28(2)(a) to (d) upon the first application for registration; or

(bb) that there have been such changes, identifying them, if necessary by reference to copy documents exhibited to the statutory declaration, and that there have been no other such changes; and

(ii) statements as to such other matters as may be required by regulations to be contained in the statutory declaration.

(3) The Director may grant an application for renewal under subsection (2) if he is satisfied that on considering the application the company continues to meet the requirements for registration of its name upon the Provisional Quota Eligibility Register.

(4) The Director may refuse any such application on any ground upon which under section 29 he may refuse an application under section 28(1), but if he refuses any such application he shall notify the applicant in writing within 7 days of the reason or reasons for the refusal.

(5) If the Director refuses an application for renewal of the registration of a company's name upon the Provisional Quota Eligibility Register, section 24(6) applies to the same extent as it would had the application been an application for original registration of a company's name upon the Individual Transferable Quota Eligibility Register which the Director had refused on a corresponding ground.

(6) If a company fails to make application for renewal of the registration of its name upon the Provisional Quota Eligibility Register in accordance with subsection (2) and, if it holds any Provisional Quota, has not notified the Director that it wishes to surrender the Provisional Quota it holds, the company commits an offence and the Director shall, whether or not the company is prosecuted for that offence, as soon as its registration upon that Register expires serve notice under section 33(2) of revocation of the Provisional Quota held by the company, on the ground specified in section 33(2)(h).

Changes of circumstances

Duty to notify change in circumstances: removal of company's name from Eligibility Register

31.—(1) For the purposes of this section, a company is not qualified to hold Individual Transferable Quota or, as the case may be, Provisional Quota if, at the time in question, in the case of a holding of Individual Transferable Quota, it is to be treated by subsection (2) as not continuing to be eligible to have its name appear on the relevant Individual Transferable Quota

Eligibility Register or, in the case of a holding of Provisional Quota it is to be treated by subsection (2) as not continuing to be eligible to have its name appear on the relevant Provisional Quota Eligibility Register.

(2) For the purposes of subsection (1), a company continues to be eligible to have its name appear on an Individual Transferable Quota Eligibility Register or, as the case may be, a Provisional Quota Eligibility Register, on which its name appears if, were it to apply—

(a) in the case of an Individual Transferable Quota Eligibility Register, under section 24(1) on that date for the registration of its name upon that Individual Transferable Quota Eligibility Register, it would satisfy either —

(i) the requirements of section 25(2); or

(ii) the conditions of any special consent given to it by the Governor under section 25(4),

in relation to the entry of its name upon that Register;

(b) in the case of a Provisional Quota Eligibility Register, under section 28(1) on that date for the registration of its name upon that Provisional Quota Eligibility Register, it would satisfy the requirements of section 29(2) in relation to the entry of its name upon that Register.

(3) Without prejudice to its obligations under section 32(1), if a company becomes no longer qualified to hold Individual Transferable Quota or, as the case may be, Provisional Quota —

(a) it shall forthwith notify the Director in writing of that fact and give him full particulars of the event or events which has or have occurred and caused it to be no longer qualified to hold Individual Transferable Quota or, as the case may be, Provisional Quota;

(b) within 90 days of the date on which the company ceased to be qualified or such greater period as the Director may allow under subsection (5) —

(i) take action resulting in it within that period again becoming qualified to hold Individual Transferable Quota or, as the case may be, Provisional Quota;

(ii) surrender the Individual Transferable Quota or, as the case may be, Provisional Quota to the Crown; or

(iii) in the case of Individual Transferable Quota, dispose of the Individual Transferable Quota to a company qualified to hold it, without contravening section 58.

(4) If the Director becomes aware, other than by reason of a notice under subsection (2) being given to him, that a company which holds Individual Transferable Quota is no longer qualified to hold it, he shall serve notice on that company requiring it within 90 days of the service of that notice, to do one or other of the things mentioned in paragraphs (a), (b) and (c) of subsection (2) and notify the Director in writing if it does so.

(5) The Director, on application by a company which has given him notice under subsection (2) or upon which he has served notice under subsection (3), may, if he considers that there is reasonable cause so to do, extend the time within which the company may take action resulting in it again becoming qualified to hold the Quota or dispose of the Individual Transferable Quota it holds by such period as he may see fit, but not exceeding a further 90 days.

(6) A company aggrieved by the service upon it of a notice under subsection (3) may apply under section 108 for a review by the Commission of the matter, but only on the ground that at the time of the service of the notice it was qualified to hold Individual Transferable Quota or, as the case may be, Provisional Quota.

(7) If having given notice under subsection (3) or having been served with notice under subsection (3), the company fails within the period of 90 days or such further period as may be permitted under subsection (4) to do such one or other of the things mentioned in paragraph (b) of subsection (3) as may be appropriate in the circumstances of the case and notify the Director thereof in writing, the Director shall revoke the grant of Individual Transferable Quota to the company and shall —

(a) notify the company in writing that he has revoked the grant;

(b) make such notation in the Individual Transferable Quota Register or the Provisional Quota Register as is required by section 52(2)(h) or section 53; and

(c) remove the company's name from the relevant Eligibility Register,

but shall not do so while any application to the Commission for review of the service of the notice under subsection (3) remains undetermined.

(8) A company which, without reasonable excuse, fails to notify the Director as required by subsection (2) commits an offence.

(9) Section 34(8) to (10) shall apply in relation to any Individual Transferable Quota the grant of which has been revoked under subsection (6).

Documents and information to be supplied to the Director

Duty to provide documents and information to the Director

32.—(1) Every company which owns Individual Transferable Quota or Provisional Quota shall—

(a) at the same time as it files—

(i) a copy of its audited annual accounts to the Commissioners of Taxes under the provisions of section 30 of the Taxes Ordinance, supply a copy of those audited accounts to the Director;

- (ii) its annual return under the provisions of section 126 of the Companies Act 1948 in its application to the Falkland Islands, supply a copy of that annual return to the Director;
 - (iii) a certified copy of any amendment to its Articles of Association under section 12 of the Companies Act 1948 in its application to the Falkland Islands, supply a certified copy of that amendment to the Director; and
- (b) at the same time as it supplies to the Director a copy of its audited accounts pursuant to paragraph (a), further supply to the Director a statutory declaration made not more than 7 days previously by a director of the company that as at the date that declaration was made the company continued to be eligible to have its name appear on any Individual Transferable Quota Register or Provisional Quota Register on which its name appeared as at that date.
- (2) Every company which owns Individual Transferable Quota or Provisional Quota shall within 14 days of any request in writing by the Director so to do, or such greater time as he may, on the application of the company allow, supply to the Director —
- (a) an explanation or further details of anything appearing in the company's audited accounts of which he may require an explanation;
 - (b) a copy of any agreement made by the company in relation to the marketing of fish, or the lending of money to the company or financing of any building, facility, ship or fishing vessel acquired or to be acquired by the company or of any activity undertaken by the company;
 - (c) particulars of any transaction in relation to the sale of fish entered into by the company;
 - (d) any other document or information relating to the business of the company.
- (3) A company which contravenes subsection (1) or (2) commits an offence.

Revocation of grant of Individual Transferable Quota or Provisional Quota

Grounds on which grant of Individual Transferable Quota or Provisional Quota may be revoked

33.—(1) This section has effect without prejudice to sections 31(7) and 173(1)(e).

(2) The grant of Individual Transferable Quota or Provisional Quota to a company may be revoked by the Director serving a notice on the owner on any one or more of the following grounds —

- (a) that a receiver or administrative receiver has been appointed by any mortgagee or debenture-holder under the provisions of any mortgage or debenture of Individual Transferable Quota, and that Individual Transferable Quota has not, within 90 days of his appointment, or such greater period as the Director may allow, been transferred to a company the name of which appears on the relevant Eligibility Register;

(b) that a winding up order has been made by the Supreme Court or any other court having jurisdiction to do so in respect of the company and the liquidator of the company has not, within 90 days thereafter, transferred the Individual Transferable Quota or Provisional Quota to a company the name of which appears on the relevant Eligibility Register;

(c) that the Director is not satisfied that the company is properly exploiting the Individual Transferable Quota or Provisional Quota;

(d) that the company has failed to comply with a notice served on it under section 23(4) or section 27(4);

(e) that the Director has removed the company's name under section 31(6)(c) from the relevant Eligibility Register;

(f) that, in relation to a material part of its business, the owner appears to the Director to be required to act in accordance with the instructions of a non-Falkland Islands fishing business;

(g) that the Director has refused an application for renewal of the registration of the company's name upon the Individual Transferable Quota Eligibility Register or Provisional Quota Eligibility Register, as the case may be;

(h) that the company has failed to renew its registration upon the Individual Transferable Quota Register or Provisional Quota Eligibility Register, as the case may be.

(3) The revocation of the grant of an Individual Transferable Quota or of a Provisional Quota does not bring to an end any Catch Entitlement generated in respect of that Individual Transferable Quota or Provisional Quota in respect of the fishing period current on the date of the revocation.

(4) The ground or grounds on which the Director revokes the grant of Individual Transferable Quota or Provisional Quota shall be stated in the notice served under subsection (2).

(5) Where a notice is served on the ground specified in subsection (2)(h), it shall not take effect if within 14 days of the service of that notice the company makes an application to renew its registration upon the relevant Register, but without prejudice to the power of the Director, if that application is refused, to serve a further notice on the ground specified in subsection (2)(g).

(6) Subsection (5) has prejudice to the power of the Director to serve a further notice of revocation of the grant under any other paragraph of subsection (2).

Supplementary to sections 31 and 33

34.—(1) The Director shall consult the owners of Individual Transferable Quota and the owners of Provisional Quota and the Committee as to the criteria and policies to be applied by him in determining whether a company is properly exploiting Individual Transferable Quota or Provisional Quota belonging to it ("the proposed criteria") and shall thereafter submit the

proposed criteria to the Governor for approval who may approve them, with or without amendment or refer them back to the Director for reconsideration.

(2) As soon as the proposed criteria have been approved by the Governor, they shall be published in the *Gazette*, and, if appropriate, as amended by the Governor.

(3) The criteria published in accordance with subsection (2) may be amended or replaced from time to time in accordance mutatis mutandis with the procedure set out in subsections (1) and (2).

(4) Without prejudice to any other provision conferring a right of application for such review, a right of application for review by the Commission lies to the Commission under section 108 against a decision by the Director to revoke a grant of Individual Transferable Quota or Provisional Quota on the ground set out in section 33(2)(c) or (g), but not on any ground set out in any other paragraph of section 33(2).

(5) When a fishing right registered under this Part is suspended, revoked, forfeited or ceases to , or a suspension of a fishing right is revoked the Director shall make a notation in the Register to that effect and if the fishing right is cancelled or ceases to have effect shall, in addition, cancel the registration of the fishing right.

(6) The Director shall rectify the Register accordingly where, because of a decision made by him or by the Magistrate's Court or the Supreme Court, a notation made by him under subsection (5) is no longer correct.

(7) Where a person other than the holder of a fishing right has an interest in the fishing right, being an interest in relation to which a dealing has been registered under section 52, the Director shall give that person written notification of anything he has done under subsection (5) or (6) in relation to that fishing right.

(8) The Director shall use his best efforts to sell by tender any Individual Transferable Quota the grant of which has been revoked under section 31(6) or section 33(2) to a company or companies the name of which appears upon the Individual Transferable Quota Eligibility Register at the best price reasonably obtainable, but shall not do so —

(a) within 14 days of the revocation; or

(b) while any application to the Commission or to the Supreme Court for review of his decision to revoke the grant remains undetermined.

(9) The proceeds of sale of any Individual Transferable Quota under subsection (8) shall be applied —

(a) in payment of any expenses of and in connection with the sale;

(b) in discharge of any sums due and payable to the Crown under this Ordinance from the former owner of the quota;

(c) in discharge of any sum due in respect of principal and interest to a registered mortgagee of the quota;

(d) in payment of any balance to the former owner of the quota.

(10) The Director shall execute a grant of Individual Transferable Quota to give effect to any sale he effects under subsection (8), and shall register that grant in the Individual Transferable Quota Ownership Register.

Fees

Fees for Individual Transferable Quota and Provisional Quota

35.—(1) Without prejudice to section 189 there shall be payable to the Crown in respect of Individual Transferable Quota and Provisional Quota such sums if any as are from time to time prescribed by regulations under this subsection.

(2) Such sums shall be prescribed —

(a) in relation to the amount of Individual Transferable Quota or Provisional Quota held by a company, and different sums may be prescribed in relation to different established fisheries;

(b) shall be payable on such annual, seasonal or other periodic basis as is prescribed by such regulations.

Offences

Offences in relation to certain applications

36.—(1) A company commits an offence if on, or in connection with, an application —

(a) under section 24(1) for its name to be placed upon an Individual Transferable Quota Eligibility Register;

(b) under section 26(2) for renewal of the period for which a company's name shall appear upon an Individual Transferable Quota Eligibility Register;

(c) under section 28(1) for its name to be placed upon a Provisional Quota Eligibility Register;

(d) under section 30(2) for renewal of the period for which a company's name shall appear upon a Provisional Quota Eligibility Register;

it does or permits or suffers to be done any of the things mentioned in subsection (2).

(2) The things referred to in subsection (1) are —

(a) the making by or on behalf of the company of any statement which is false in any material particular;

(b) the supply to the Director of any document of any kind containing any statement which is false in any material particular.

(3) For the purposes of subsection (2) —

(a) without prejudice to any circumstances in which a statement may be found to be made by or on behalf of a company a statement is to be deemed to be made by or on behalf of the company if it is made by any director, officer or manager of the company apparently acting within his authority as such;

(b) a document is to be deemed to be supplied on behalf of a company if it is supplied or delivered to the Director by the company or any director, officer or manager of the company, or any other person doing so on behalf of the company;

(c) a statement is false in a material particular if it is both false and, in the circumstances of the case, may influence the Director in however small a degree, in favour of granting the application or disincline him to refuse it.

Division B — Catch Entitlements

Setting of Total Allowable Effort or Total Allowable Catch and Fishing Effort Values of vessels

Total Allowable Effort and Catch Entitlements

37.—(1) The Director, if he does not propose to set Total Allowable Catch in respect of it under the next following section, shall from time to time, by notice published in the *Gazette*, set in respect of every effort management stock in respect of which any Individual Transferable Quota has been granted, and which is for the time being managed by way of setting Total Allowable Effort in respect of that stock, the Total Allowable Effort in respect of that stock expressed in terms of units of vessel Fishing Effort Value and specify the period to which the notice relates.

(2) The Total Allowable Effort may be set under subsection (1) so as to apply —

(a) in respect of the calendar year or other period specified in the notice; or

(b) in respect of the calendar year specified in the notice and thereafter in respect of each successive calendar year until the notice is amended or revoked under subsection (4).

(3) A notice under subsection (1) may set the Total Allowable Effort in respect of a stock at nil and no compensation shall be payable to any person if Total Allowable Effort is so set.

(4) The Director may at any time amend or revoke a notice under subsection (1) by further notice under that subsection.

(5) Where a notice under subsection (1) has been published, an Individual Transferable Quota and a Provisional Quota generates Catch Entitlement in accordance with the following formula—

$a = (b \text{ divided by } 1000) \text{ multiplied by } c$, where —

a is the Catch Entitlement,

b is the number of thousandths of the total allowable effort in relation to the stock held by the owner of the Individual Transferable Quota or Provisional Quota; and

c is the Total Allowable Effort notified under subsection (1),

but the Catch Entitlement does not authorise the taking of fish, which is only authorised by a fishing licence or scientific permit.

(6) The Director shall notify every owner of Individual Transferable Quota or Provisional Quota in relation to a fishery 3 months or such shorter period as may be specified by regulations before the commencement of the period to which the notice under subsection (1) relates the Catch Entitlement, if any, generated for that period in respect of that owner's Individual Transferable Quota or Provisional Quota.

(7) Any Catch Entitlement generated under subsection (5) shall be registered by the Director in the Catch Entitlement Register maintained under section 55.

(8) The Director may of his own motion or on the application of any interested person correct any error in any notification he has given under subsection (6).

Total Allowable Catch and Catch Entitlements

38.—(1) The Director, if he does not propose to set Total Allowable Effort in respect of it under the preceding section, shall from time to time by notice published in the *Gazette*, set in respect of every quota management stock in respect of which any Individual Transferable Quota or Provisional Quota has been granted the Total Allowable Catch in respect of that stock and specify the period to which the notice relates.

(2) The Total Allowable Catch may be set under subsection (1) so as to apply —

(a) in respect of the calendar year or other period specified in the notice; or

(b) in respect of the calendar year specified in the notice and thereafter in respect of successive calendar years until the notice is amended or revoked under subsection (4).

(3) A notice under subsection (1) may set the Total Allowable Catch at nil, and no compensation shall be payable to any person if the Total Allowable Catch is so set.

(4) The Director may at any time amend or revoke a notice under subsection (1) by further notice under that subsection.

(5) Where a notice under subsection (1) has been published, an Individual Transferable Quota or a Provisional Quota generates Catch Entitlement in accordance with the following formula—

$a = (b \text{ divided by } 100,000) \text{ multiplied by } c$, where —

a is the Catch Entitlement,

b is the number of hundred thousandths of the total allowable catch in relation to the stock held by the owner of the Individual Transferable Quota; and

c is the Total Allowable Catch notified under subsection (1).

(6) The Director shall notify every owner of Individual Transferable Quota or Provisional Quota in relation to a stock 3 months before the commencement of the period to which the notice under subsection (1) relates the Catch Entitlement generated under this section for that period in respect of that owner's holding of Individual Transferable Quota or Provisional Quota.

(7) Any Catch Entitlement generated under subsection (5) shall be registered by the Director in the Catch Entitlement Register maintained under section 55.

(8) The Director shall of his own motion or on the application of any interested person correct any error he finds in any notification he has given under subsection (6).

Supplementary to sections 37 and 38

39.—(1) The Director shall set the Total Allowable Effort or Total Allowable Catch as the case may be, in respect of a stock to which section 37(1) or section 38(1) applies so that the Total Allowable Effort or Total Allowable Catch —

(a) takes into account the interdependence of stocks;

(b) enables the level of any stock the current level of which is below the level the Director believes to be appropriate for ensuring sustainability to be restored to that level within a period appropriate to the stock, having regard to the biological characteristics of the stock and any environmental conditions affecting the stock, or

(2) In considering the way in which and rate at which a stock is moved towards or above a level necessary to ensure sustainability, the Director shall take into account such economic factors as he considers relevant.

(3) Any sale or other disposal of a Catch Entitlement is void if it was entered before the notification under section 37(6) or section 38(6) of the Catch Entitlement for the period to which the Catch Entitlement relates but the sale or other disposal of Individual Transferable Quota shall be deemed not to be the sale or other disposal of Catch Entitlement.

Assessment of Fishing Effort Value in relation to fishing vessels

40.—(1) The Director may of his own motion and shall on application being made to him in the approved form by the owner or charterer of a fishing vessel or any other person appearing to the Director to have a sufficient interest, and the prescribed fee, if any, being paid, assign to that fishing vessel a Fishing Effort Value in relation to —

- (a) the type of the fishing vessel;
- (b) the tonnage and engine power of the fishing vessel and its maximum speed;
- (c) the equipment with which the fishing vessel is fitted, including fishing equipment, fish processing machinery or apparatus and fish freezing apparatus or equipment;
- (d) the fish storage capacity of the fishing vessel;
- (e) the fishing method to be employed as specified in the application;
- (f) the target species specified in the application;
- (g) the manning of the fishing vessel;
- (h) any other matter the Director considers to be relevant or is prescribed, and without prejudice to section 54(4) a Fishing Effort Value assigned under this subsection may be expressed by the Director to be provisional.

(2) A Fishing Effort Value shall be assessed in relation to the weight of fish of the target species specified in the application which, in the opinion of the Director, the fishing vessel could be expected with a full complement, composed as stated in the application, all other things being equal, to take in a day's fishing in comparison with a notional fishing vessel, the Fishing Effort Value of which is 1, (and so that a fishing vessel which, in the opinion of the Director, could be expected to take 70 per cent more fish in a day's fishing than that notional fishing vessel, would be assigned a Fishing Effort Value of 1.7).

(3) The Director shall notify the applicant under subsection (1) and the owner of the fishing vessel in question if he was not the applicant, of —

- (a) the Fishing Effort Value assigned by the Director to that fishing vessel on application being made under subsection (1) or of the Director's own motion; and

(b) the characteristics of and in relation to that fishing vessel (including fishing gear) and the target species and method of fishing taken into account by the Director in assigning that Fishing Effort Value to that fishing vessel.

(4) For the purposes of subsection (1), the Director shall calculate Fishing Effort Value units in such manner, if any, as is for the time being prescribed and, if none is for the time being prescribed, in such manner as he determines.

Division C — Licences and Permits

Fishing licences

Fishing licences

41.—(1) The Director may, upon application made in the approved form, and on payment of the prescribed fee, if any, and subject to section 14(1)(a), grant to a person a fishing licence authorising, subject to subsections (2) to (4), the use by that person, or by a person acting on that person's behalf, of a fishing vessel for fishing in the fishing waters or a specified fishery within the fishing waters. The Director may impose conditions, specified in the licence, on granting a licence under this subsection.

(2) Unless specifically stated to the contrary therein a fishing licence granted under subsection (1) does not authorise fishing within the internal waters.

(3) A fishing licence granted under subsection (1) does not authorise the use of a fishing vessel unless the fishing vessel complies with all conditions (if any) subject to which the licence was granted.

(4) An application made for the grant of a fishing licence under subsection (1) shall —

(a) provide the Director with such information as the Director reasonably requires for proper consideration of the application;

(b) if the application is made by a person other than a company incorporated in the Falkland Islands or a natural person ordinarily resident in the Falkland Islands, specify the name of a company so incorporated authorised by the applicant to accept service on behalf of the applicant or all notices, documents and proceedings given made or commenced under any provision of this Ordinance or any other written law of the Falkland Islands, (and, for the purposes of paragraph (b) of this subsection, an application for a licence made by an agent on behalf of another person, shall be deemed to be made by that other person).

(5) A person named as the applicant's agent for service pursuant to paragraph (b) of subsection (4) shall, if a licence is granted pursuant to that application, continue to be authorised to accept service on behalf of the applicant until the expiration of 3 years from the date on which the licence ceases to have effect unless the applicant notifies the Director in writing that another person (being a company incorporated in the Falkland Islands) is the applicant's agent for service

in substitution for the agent for service named in the application when service may be effected on the company so substituted. The foregoing provisions of this subsection shall apply mutatis mutandis to every replacement of agent for service by the applicant.

(6) In addition to any other reason for which the Director may under subsection (1) refuse to grant a fishing licence, the Director may refuse to grant a fishing licence if he has reasonable cause to believe that a requirement of a law of the Falkland Islands has not been complied with in relation to the fishing vessel in question.

(7) A fishing licence granted under this section may authorise the use of a fishing vessel —

(a) for commercial fishing generally;

(b) for recreational fishing generally; or

(c) as a charter boat, that is to say for charter to persons who wish to engage in recreational fishing;

(d) for specified fishing activities including —

(i) carrying of fish received from another fishing vessel; or

(ii) the processing of fish.

(8) The Director shall not grant to any person other than a qualifying company a fishing licence authorising the taking of any part of any Catch Entitlement generated by any Individual Transferable Quota.

(9) No compensation is payable if a fishing licence is revoked or ceases to be in force or ceases to apply to a fishery .

(10) A fishing licence —

(a) is subject to such conditions as are prescribed in relation to licences granted under this section and without prejudice to the generality of the foregoing and to any power to make regulations under section 223(2)(u), may include a condition that there be a functioning satellite-tracking device aboard the fishing vessel at all times during the continuation of the licence, whether or not the fishing vessel is within the fishing waters;

(b) comes into force on the date specified for the purpose in the licence or, if no date is so specified, on the date on which it is granted; and

(c) subject to this section, remains in force until the date specified for the purpose in the licence.

(11) A fishing licence ceases to be in force if the holder of the licence surrenders the licence by written notice given to the Director.

(12) A fishing licence is not transferable.

(13) The Director may, by written notice given to the holder of a fishing licence —

(a) revoke the licence; or

(b) whether or not at the request of the holder, vary or revoke a condition to which the licence is subject or specify a condition or further condition to which the licence is to be subject.

(14) For the purposes of subsection (8), a qualifying company is a company —

(a) which is incorporated in the Falkland Islands and has its principal place of business in the Falkland Islands;

(b) in which at least 25.1% or such other percentage as may be specified by regulations of each class of the shares in the company carrying voting rights at general meetings of the company are owned by persons having Falkland Islands status ordinarily resident in the Falkland Islands or by a company or companies incorporated in the Falkland Islands and wholly so owned.

Scientific permits

Scientific permits

42.—(1) The Director may, upon application made in the approved form, and on payment of the prescribed fee, if any, grant to a person a scientific permit in respect of a specified fishing vessel (including an overseas fishing vessel) authorising the use of the fishing vessel by that person, or a person acting on that person's behalf, for scientific research purposes in a specified area of the fishing waters or a specified fishery within the fishing waters. The Director may impose conditions, specified in the permit, on granting a permit under this subsection.

(2) An application made for the grant of a scientific permit under subsection (1) shall —

(a) provide the Director with such information as the Director reasonably requires for a proper consideration of the application;

(b) if the application is made by a person other than a company incorporated in the Falkland Islands or a natural person ordinarily resident in the Falkland Islands, specify the name of a company so incorporated authorised by the applicant to accept service on behalf of the applicant or all notices, documents and proceedings given made or commenced under any provision of this Ordinance or any other written law of the Falkland Islands,

(and, for the purposes of paragraph (b) of this subsection, an application for a scientific permit made by an agent on behalf of another person shall be deemed to be made by that other person).

(3) A person named as the applicant's agent for service pursuant to paragraph (b) of subsection (2) shall, if a permit is granted pursuant to that application, continue to be authorised to accept service on behalf of the applicant until the expiration of 3 years from the date on which the permit ceases to have effect unless the applicant notifies the Director in writing that another person (being a company incorporated in the Falkland Islands) is the applicant's agent for service in substitution for the agent for service named in the application when service may be effected on the company so substituted. The foregoing provisions of this subsection shall apply mutatis mutandis to every replacement of agent for service by the applicant.

(4) A scientific permit is, in addition to any conditions which are imposed on the grant of the permit, or which may have effect under any other provision of this Ordinance, subject to the following conditions —

(a) the permit may be revoked under subsection (7);

(b) no compensation is payable because the permit is revoked or ceases to be in force.

(5) Subsection (4) has effect without prejudice to any other provision of this Ordinance which imposes a condition on scientific permits.

(6) A scientific permit —

(a) comes into force on the day specified for the purpose in the permit or, if no day is so specified, on the day on which it is granted; and

(b) subject to this Ordinance, remains in force until the date specified for the purpose in the permit.

(7) The Director may, by written notice given to the holder of a scientific permit —

(a) revoke the permit; or

(b) whether or not at the request of the holder, vary or revoke a condition to which the permit is subject or specify a condition or further condition to which the permit is to be subject.

(8) A scientific permit ceases to be in force if the holder of the permit surrenders the permit by written notice given to the Director.

Suspension and revocation of suspension of fishing concessions

Suspension of fishing concessions

43.—(1) The Director may by written notice given to the holder of a fishing concession suspend the operation of the concession if any fee, levy, charge or other money relating to the concession is not paid as it becomes due.

(2) The Director, by written notice given to the holder of a fishing concession suspended under this section —

(a) may revoke the suspension; and

(b) shall revoke the suspension if it was effected under subsection (1) and the money is paid or there is a remission or refund made under the regulations of the whole of the money.

Overseas masters of fishing vessels

Overseas master fishing licences

44.—(1) The Director may, upon application made in the approved form, and on payment of the prescribed fee, if any, grant to an overseas person an overseas master fishing licence authorising the person to be in charge of a fishing vessel that is being used for fishing in the fishing waters or may for any reason he sees fit, refuse to grant such a licence.

(2) An application made for the grant of an overseas master fishing licence shall provide the Director with such information as he reasonably requires for proper consideration of the application.

(3) An overseas master fishing licence authorising a person to be in charge of a fishing vessel that is being used for commercial fishing in a fishery specified in Schedule 2 is subject to the following conditions in addition to any conditions which may be specified in the licence —

(a) the holder of the licence shall comply with any obligations imposed on the holder by the licence;

(b) the licence shall cease to apply in relation to that fishery if the fishery is revoked under section 16(2)(c) and shall not apply for so long as fishing in that fishery is suspended by the Director;

(4) A licence granted under this section —

(a) is subject to such other conditions as are prescribed in relation to licences granted under this section;

(b) comes into force on the date specified for the purpose in the licence or, if no date is so specified, on the date on which it is granted; and

(c) subject to this section, remains in force until the date specified for the purpose in the licence.

(5) The Director may, by written notice given to the holder of a licence whether or not at the request of the holder, vary or revoke a condition of the licence (not being a condition mentioned in subsection (3)) or specify a condition or further condition to which the licence is to be subject.

(6) A licence ceases to be in force if the holder of the licence surrenders the licence by written notice given to the Director.

(7) The Director may, by written notice given to the holder of the licence, revoke the licence —

(a) if the holder of the licence is convicted of an offence under this Ordinance;

(b) if the holder of the licence during the currency of the licence or at any time during the preceding 5 years is or was convicted of any offence under the law of the Falkland Islands or any other country which involved violence towards or maltreatment of any member of the crew of a fishing vessel of which he was at the time a master or a mate or officer, and which was not, in the case of an offence preceding the application under subsection (1), disclosed in that application; or

(c) if any information provided by or on behalf of an applicant under subsection (1) is found by him to be false or misleading in a material particular.

(8) No compensation is payable because the overseas master fishing licence is revoked, ceases to be in force or ceases to apply to a fishery.

(9) A person who uses a fishing vessel for fishing in the fishing waters commits an offence unless every overseas person who is a master of that fishing vessel holds a licence granted under subsection (1).

(10) Where the person who is in charge of a fishing vessel is different from the person who is in charge of the fishing operations of that fishing vessel and either of them is an overseas person, a licence under subsection (1) is required by such of them as is an overseas person and the provisions of this section, including subsection (8) shall have effect accordingly.

Prohibited masters

45.—(1) Without prejudice to the generality of his powers under section 44(1) to refuse to grant an overseas master fishing licence, the Director may refuse to grant such a licence to any person to whom the Director reasonably believes any of the things mentioned in section 44(7) applied at any time during the preceding 5 years.

(2) The Director may in the circumstances mentioned in subsection (3) by written notice given to any person prohibit that person from being master—

(a) of any Falkland Islands fishing vessel or from being in charge of fishing operations on that fishing vessel during any time a licence or permit under this Ordinance is held in respect of that fishing vessel; or

(b) of any non-Falkland Islands fishing vessel or from being in charge of fishing operations on that fishing vessel at any time it is within the fishing waters.

The making of a prohibition under this subsection, and the period for which it has effect, shall be published in the *Gazette*.

(3) The circumstances referred to in subsection (2) are that there applies in respect of that person any of the things mentioned in section 44(7) which would, if that person held an overseas master fishing licence, enable the Director to revoke that licence.

(4) A person who contravenes a prohibition imposed under subsection (2) commits an offence.

(5) A person commits an offence who employs another person as master or person in charge of fishing operations—

(a) on any fishing vessel within the fishing waters;

(b) upon any Falkland Islands fishing vessel,

while—

(i) a licence or permit under this Ordinance is held in respect of that vessel; and

(ii) that person is the subject of a prohibition under subsection (2) of this section.

(6) A prohibition under subsection (2) shall have effect for such period as is stated therein, not being greater than 5 years from the happening of the thing in respect of which the prohibition was made.

Trans-shipment and export licences

Trans-shipment licences and export licences

46.—(1) A person who, except as may be provided by regulations —

(a) trans-ships fish in the fishing waters other than under and in accordance with the conditions of a licence granted under subsection (2);

(b) exports fish from the Falkland Islands other than under and in accordance with the conditions of a licence granted under subsection (3),

commits an offence.

(2) The Director may, subject to the payment of such fee, if any, as is prescribed, grant a trans-shipment licence to the owner, charterer or operator of —

(a) a fishing vessel from which fish is to be transferred; or

(b) a fishing vessel or other vessel by which fish is to be received.

(3) The Director may, subject to the payment of such fee, if any, as is prescribed, grant an export licence to —

(a) the owner, charterer or operator of a fishing vessel on board which the fish is to be exported;

(b) the owner or charterer of a specified aircraft on board which the fish is to be exported.

(4) The Director may impose conditions consistent with the purposes of this Ordinance on the grant of a licence under subsection (2) or subsection (3).

(5) The holder of a licence granted under subsection (2) or subsection (3) and the master of any fishing vessel or the commander of any aircraft to which it relates shall make such returns and provide such statistical information to the Director as he may require or may be prescribed by regulations.

Fish receiver permits

Fish receiver permits

47.—(1) Subject to subsection (2), this section applies in respect of the receipt of fish from any fishery mentioned in Schedule 2.

(2) This section does not apply in respect of —

(a) the receipt by any person on any one occasion of a quantity of not more than 30 kilograms of fish intended for consumption upon his own premises;

(b) fish purchased or received from a person who himself has a fish receiver licence;

(c) the receipt of fish under a trans-shipment licence or export licence granted under section 46.

(3) The Director may, on application being made in the approved form, and upon payment of the prescribed fee (if any), grant to a person a fish receiver permit authorising that person to receive fish from a person engaged in fishing in the fishery or fisheries specified in the application.

(4) An application for a fish receiver permit shall provide the Director with such information as he reasonably requires for proper consideration of the application.

(5) No compensation shall be payable if the fish receiver permit is revoked, ceases to be in force or ceases to apply to a fishery in respect of fish taken in a particular fishery or fisheries.

(6) A fish receiver permit—

(a) may be granted subject to such conditions as are specified in the permit;

(b) may specify premises at which fish received under the permit are to be kept while in the possession of the holder;

(c) comes into force on the date specified in the permit, and if no date is specified comes into force on the date on which it is granted; and

(d) subject to this Ordinance, remains in force until the earlier of the date specified in the permit or the first anniversary of the date on which it came into force.

(7) Without prejudice to any provisions of regulations made under section 223, the Director may by written notice to the holder of a fish receiver permit require that person —

(a) to provide to him in writing, within 14 days or such longer period as is specified in the notice, such return or information in relation to fish received by that person as is specified in the notice; and

(b) to verify that return by statutory declaration.

(8) A person commits an offence who —

(a) receives any fish in contravention of this section; or

(b) fails without reasonable excuse to comply with a requirement of the Director made in accordance with subsection (8).

Division D — Miscellaneous provisions

Authority to extend to tender boats

48. Where the use by a person of a specified fishing vessel is authorised by a fishing licence, high seas fishing licence or scientific permit the authority to use that fishing vessel extends to the use of any tender boat carried by the first-mentioned fishing vessel.

Holders of fishing concessions to furnish returns etc

49.—(1) Regulations made under section 223 may require the holders of fishing concessions to record, and furnish returns containing, information in relation to —

(a) the taking of fish and the sale or disposal of such fish;

(b) the carrying and trans-shipping, unloading or discharging of fish taken;

(c) the processing of fish taken;

(d) the sale or other disposal of fish taken, whether processed or not; and

(e) the course, or position at regular intervals, inside or outside the fishing waters of fishing vessels to which the fishing concessions relate.

(2) In subsection (1)(d) of this section "disposal" includes the return of fish to the sea, dumping fish on land and incinerating fish, whether at sea or on land.

(3) It is a condition of a fishing concession that the holder of the fishing concession shall comply with the requirements of any regulations made by virtue of subsection (1).

High seas fishing licence condition to facilitate boarding outside fishing waters

50.—(1) It is a condition of a high seas fishing licence authorising the use of a Falkland Islands-fishing vessel upon the high seas that the master of the fishing vessel, except as may otherwise be authorised by the Governor acting in his discretion, shall —

(a) facilitate boarding of the fishing vessel; and

(b) co-operate with inspection of the fishing vessel,

by any official of any country acting in accordance with the provisions of an international agreement or convention which applies to the Falkland Islands.

(2) A master who contravenes the condition mentioned in subsection (1) commits an offence.

Temporary orders

51.—(1) The purpose of this section is to enable speedy action to be taken by the Governor acting in his discretion to deal with —

(a) emergencies;

(b) other circumstances where urgent action is required for purposes related to the management of a fishery; or

(c) to ensure compliance by the Falkland Islands with an international agreement or convention applying to the Falkland Islands and relating to fishing or fish.

(2) If the Governor acting in his discretion is satisfied after taking into account any views expressed to him by the Director —

(a) that it is necessary to take action for the purposes of this section; and

- (b) that the action contemplated is consistent with the purposes of this Ordinance,
- the Governor may make an Order under this subsection.
- (3) An Order under subsection (2) may be made with respect to any matter directly or indirectly connected with fishing —
- (a) in a fishery;
 - (b) in relation to Falkland Islands fishing vessels, upon the high seas; or
 - (c) any matter incidental to (a) or (b).
- (4) The Governor may at any time by Order revoke an Order made under subsection (2).
- (5) Unless it is extended by Order made by the Governor under this subsection, an Order made under subsection (2) ceases to have effect —
- (a) on a date specified in the Order made under subsection (2);
 - (b) on being revoked pursuant to subsection (4); or
 - (c) at the expiry of 3 months after the Order is made,
- whichever is the earliest.
- (6) To the extent that an Order under subsection (2) or (5) is inconsistent with any provision of a fishing concession or fish receiver permit, the Order overrides that provision and, to that extent, that provision has no effect, but when the Order ceases to have effect, any provision overridden by the Order is, subject to this Ordinance, and unless otherwise provided by regulations, revived.

PART III REGISTERS AND DEALINGS

Division A — Registers

Individual Transferable Quota and Provisional Quota Ownership Registers

Individual Transferable Quota Ownership Register

52.—(1) There shall be an Individual Transferable Quota Ownership Register in respect of every fishery in respect of which Individual Transferable Quota has been granted.

(2) The Director shall register in an Individual Transferable Quota Ownership Register —

(a) sufficient particulars of the grant of any Individual Transferable Quota in that fishery, including a grant of Individual Transferable Quota made by way of conversion of Provisional Quota;

(b) sufficient particulars of every surrender of Individual Transferable Quota in that fishery delivered to him;

(c) particulars of any lawful transfer of Individual Transferable Quota in that fishery delivered to him for registration pursuant to section 21(4) and—

(i) the names of the transferor and the transferee;

(ii) the time and date of the registration of the transfer;

(d) the aggregate holding of Quota held by each company;

(e) particulars of any mortgage of Individual Transferable Quota in that fishery delivered to him pursuant to section 60(1) and —

(i) the names of the mortgagor and the mortgagee;

(ii) the time and date of the registration of the mortgage;

(iii) the number of Quota shares secured by the mortgage;

(iv) every variation of the terms of the mortgage;

(v) every assignment of the mortgage; and

(vi) the time and date of the discharge of the mortgage;

(f) particulars of any memorandum of variation of a mortgage of Individual Transferable Quota or Provisional Quota registered pursuant to section 60(6);

(g) every caveat registered in respect of any Individual Transferable Quota or quota shares under section 59 or section 70 —

(i) the names of the caveator and Individual Transferable Quota owner over whose quota shares the caveat is registered;

(ii) the time and date of the registration of the caveat;

(iii) the number of quota shares over which the caveat is registered;

(iv) the type of caveat being imposed;

- (v) the date (if any) on which the caveat will lapse; and
- (vi) the date on which the caveat is withdrawn;
- (h) every revocation of the grant or forfeiture of Individual Transferable Quota under this Ordinance, including —
 - (i) the time and date of the registration of the resulting transfer to the Crown of the quota; and
 - (ii) the number of quota shares transferred to the Crown;
- (i) such other matters as may be required to be registered by regulations made under section 223 of this Ordinance.

Provisional Quota Ownership Register

53.—(1) There shall for every fishery in respect of which Provisional Quota has been granted be a Provisional Quota Ownership Register.

(2) The Director shall register in a Provisional Quota Ownership Register —

- (a) sufficient particulars of the grant of any Provisional Quota in that fishery;
- (b) sufficient particulars of every surrender of Provisional Quota in that fishery delivered to him;
- (c) the aggregate holding of Quota held by each company by way of Provisional Quota;
- (d) particulars of every conversion of Provisional Quota in that fishery to Individual Transferable Quota in that fishery;
- (e) the names of the companies to which, in relation to any Provisional Quota, Catch Entitlement generated in relation to that Provisional Quota may be transferred and held by such companies.

Registers of Fishing Effort Value and Catch Entitlement

Fishing Effort Value Register

54.—(1) The Director shall maintain a Fishing Effort Value Register.

(2) The Director shall register in the Fishing Effort Value Register —

- (a) all Fishing Effort Values assigned to fishing vessels whether on application under section 40(1) or of his own motion;

(b) in relation to each fishing vessel appearing in the Register —

- (i) the characteristics of that fishing vessel;
- (ii) the target species;
- (iii) the method of fishing,

taken into account under section 40.

(3) Where any alteration is made to any fishing vessel in relation to any of the characteristics notified to the owner of a fishing vessel under section 40(3)(b), the owner shall as soon as reasonably possible, and in any case before any further fish from a quota management stock is taken by that fishing vessel, notify the Director in writing of the alteration and furnish him with full particulars of it.

(4) A person who contravenes subsection (3) commits an offence.

(5) The Director may from time to time, whether as a result of a notification or for any other reason which in his opinion renders it desirable to do so (including the fishing vessel taking more or less fish than the Fishing Effort Value assigned to it would predicate) alter the Fishing Effort Value of any fishing vessel and shall amend the Register maintained under subsection (1) accordingly.

(6) Whenever the Director, pursuant to subsection (5), notifies an increase in the Fishing Effort Value assigned to any fishing vessel, he may vary any permit or licence held by that fishing vessel as he thinks necessary so as to reduce the quantity of fish that the fishing vessel is permitted to take under that permit or licence to the quantity it would have been able to take if it had its formerly assigned Fishing Effort Value.

Catch Entitlement Register

55.—(1) The Director shall maintain a Catch Entitlement Register in respect of every fishery in respect of which Individual Transferable Quota or Provisional Quota has been granted.

(2) The Director shall register in a Catch Entitlement Register —

- (a) every Catch Entitlement held by any person at any time;
- (b) the amount of Catch Entitlement generated under section 37 or section 38, and held by any person;
- (c) every registered transfer of Catch Entitlement and—
 - (i) the names of the transferor and transferee; and
 - (ii) the amount in fishing effort or in weight of the Catch Entitlement transferred; and

- (iii) the time and date of the registration;
 - (d) every caveat registered in respect of Catch Entitlement under section 70 and—
 - (i) the names of the caveator and the Catch Entitlement owner over whose Catch Entitlement the caveat is registered;
 - (ii) the time and date of the registration of the caveat;
 - (iii) the amount in fishing effort or in weight of Catch Entitlement in respect of which the caveat is registered;
 - (iv) the type of caveat imposed;
 - (v) the date (if any) on which the caveat will lapse; and
 - (vi) the date on which the caveat is withdrawn;
 - (e) every forfeiture of Catch Entitlement under this Ordinance, including —
 - (i) the time and date of the registration of the resulting transfer to the Crown of the Catch Entitlement;
 - (ii) the amount of fishing effort of Catch Entitlement transferred to the Crown; and
 - (f) such other matters as may be required by regulations made under section 223.
- (3) Each Catch Entitlement Register shall in relation to each Catch Entitlement registered therein contain the last known postal address of the Catch Entitlement owner and of any person having a registered interest in that Catch Entitlement.
- (4) The Director shall not register any transfer of any Catch Entitlement to an unqualified person and any transfer to such a person is void.
- (5) For the purposes of subsection (4) a person is an unqualified person —
- (a) in relation to any Catch Entitlement generated under section 37 or section 38 in respect of any Individual Transferable Quota, unless the person is a company incorporated in the Falkland Islands in which at least the prescribed fraction of the equity capital is owned by an eligible company;
 - (b) in relation to any Catch Entitlement generated under section 37 or section 38 in relation to any Provisional Quota, unless the person is a company the name of which is registered under section 53(2)(e), in the Provisional Quota Ownership Register relating to the fishery concerned.

(6) In subsection (5)(a) —

“eligible company” means a company within the definition of that term contained in an Order made by the Governor under this subsection;

“prescribed fraction” means such fraction of the equity capital of an eligible company as is prescribed by such an Order.

General provisions in relation to Registers

56.—(1) The Director may delegate the performance of any of his functions in relation to any Register to any public officer in the Department of Fisheries.

(2) Subject to any Order under section 215, every Register shall be maintained at the Department of Fisheries.

(3) Notice of any kind of trust relating to an Individual Transferable Quota, Provisional Quota or Catch Entitlement is not receivable by the Director and shall not be entered upon any Register maintained for the purposes of this Ordinance.

(4) The Director may close any Register maintained under this Ordinance —

(a) for a period not exceeding 72 hours;

(b) for a period exceeding 72 hours after consulting such persons or organisations as the Director considers to be representative of the classes of owners of the Individual Transferable Quota, Provisional Quota or Catch Entitlements affected by the closure,

but before doing so, the Director shall, if practicable, publicly notify the proposed closure.

(5) The Director shall, subject to any Order under section 215, receive documents for registration during ordinary office hours of the Department of Fisheries within any period a Register is closed under subsection (4), but is not obliged to register or cause to be registered any documents received during that period which if not so registered shall be registered immediately the Register is re-opened and before any other documents received after the Register is re-opened are registered therein.

Division B — Dealings

Transfers and mortgages

Transfer of Individual Transferable Quota .

57.—(1) A transfer of quota shares shall not be registered if—

(a) at the time of the presentation of the transfer for registration, the transferor is not registered as the owner of the Individual Transferable Quota or as a mortgagee whose name appears on the Approved Mortgagees Register;

(b) the quota shares or Individual Transferable Quota of which they form part sought to be transferred are subject to any caveat or mortgage registered under the provisions of this Ordinance;

(c) the name of the transferee does not appear on the Individual Transferable Quota Eligibility Register;

(d) the transfer would cause a contravention of section 58;

(e) the transfer would result in the number of quota shares in the quota management stock concerned owned by the transferee exceeding the prescribed percentage;

(f) the fee, if any, prescribed as payable on registration of the transfer remains unpaid.

(2) Subject to subsection (1) a transfer of part of an Individual Transferable Quota may be registered.

(3) For the purposes of subsection (1)(d) a transfer would result in an impermissible Catch Entitlement if as a result of the transfer either the transferor or transferee would own less than one thousandth (or such other fraction as is prescribed by regulations) of the aggregate Individual Transferable Quota in the fishery in question.

(4) A transfer of Individual Transferable Quota to any person is void if it is to any person other than a company the name of which is registered upon the Individual Transferable Quota Eligibility Register.

(5) A transfer has no effect to transfer Individual Transferable Quota unless it is registered.

(6) In subsection (1)(e), "prescribed percentage" has the same meaning as it has under section 58(1)(c).

Domination of fishing sector

58.—(1) In this section —

(a) a person is connected to another person if under the provisions of section 208 read with section 210 of the Taxes Ordinance 1997 he would be taken to be connected with that person;

(b) "divest" means —

(i) to dispose of to another or to others by way of transfer of Individual Transferable Quota not resulting in a contravention of subsection (2);

(ii) to surrender such Individual Transferable Quota to the Crown; or

(iii) to transfer shares in a company or companies,

and so as to bring to an end a contravention of subsection (2);

(c) "the prescribed percentage" means such percentage as is for the time being prescribed by regulations for the purposes of this section of the total Individual Transferable Quota of a quota management stock; and

(d) "a person" does not include the Crown.

(2) Subject to the provisions of any regulations to the contrary, a grant or disposal of Individual Transferable Quota is prohibited if it has the effect that in aggregate more than the prescribed percentage ("the aggregation limit") of Individual Transferable Quota in relation to a stock is owned or controlled by a person or by that person and persons who are associated or connected persons in relation to that person and a grant of Provisional Quota is prohibited if the grantee, as a result of such grant would, subject to performance of the conditions of that grant become entitled to a grant of Individual Transferable Quota which would exceed the aggregation limit.

(3) The Director shall, if he believes that a transfer in contravention of subsection (2) has taken place, serve a notice ("a divestment notice") —

(a) requiring the person or that person and the associated or connected persons (as the case may be) within such period, not being less than 90 days as is stated in the notice, or such longer period, not exceeding 180 days from the service of the notice, as the Director may subsequently agree in writing, to divest himself or themselves of ownership or control of so much of the Individual Transferable Quota as to result in the aggregate Individual Transferable Quota owned by that person or by that person and persons who are associated or connected persons in relation to that person becoming equal to or less than the prescribed percentage; and

(b) stating the ground or grounds for the belief of the Director;

and shall enter a caveat in the Individual Transferable Quota Ownership Register against the transfer of so much of the Individual Transferable Quota of the relevant owner as the divestment notice relates to.

(4) If, after taking into account any extension of time granted by the Director under subsection (3), the person or persons on whom a divestment notice is served fails or fail to comply with its requirements within the time allowed the Director shall—

(a) serve upon that person or those persons a further notice —

(i) notifying that so much of the Individual Transferable Quota under its or their ownership or control as exceeds the prescribed percentage ("the excess") is forfeit to the Crown pursuant to subsection (5);

(ii) stating the amount of Individual Transferable Quota concerned;

(b) register in the Individual Transferable Quota Register the transfer in respect of so much of the Individual Transferable Quota as is not forfeit to the Crown pursuant to subsection (5) or, as the case may be, amend that Register so as to show ownership by the owner in question of only so much Individual Transferable Quota as is not forfeit under subsection (5).

(5) On service of a notice under subsection (4) the excess is forfeit to and vested in the Crown without liability for payment of compensation.

Registration of caveat on behalf of Crown

59.—(1) If the Director has served a notice of revocation of grant under section 33(2) he shall cause a caveat to be entered in relation to the Individual Transferable Quota or Provisional Quota concerned in the appropriate Register.

(2) Any caveat directed to be registered under subsection (1) shall remain on the Register until removed by a direction of the Director or order of the Supreme Court.

Mortgages of Individual Transferable Quota

60.—(1) Except as otherwise provided by this Ordinance, any Individual Transferable Quota or quota shares comprised in it may be mortgaged by deed registered in the Individual Transferable Quota Register.

(2) A mortgage by way of transfer or assignment of Individual Transferable Quota shall not be made and a mortgage thereof shall only be made by way of charge thereon.

(3) A mortgagee may assign to another person a mortgage and the mortgagee's rights, interests and obligations under that mortgage by a memorandum of assignment in the approved form.

(4) No such assignment shall have effect until it is registered in the Individual Transferable Quota Register.

(5) Without limiting the covenants, conditions and powers that may, by agreement between the mortgagor and the mortgagee, be contained in a mortgage of an Individual Transferable Quota or quota shares comprised therein, such a mortgage shall confer on the mortgagee, in the event of default by the mortgagor in the performance of any covenant by, or obligation on the part of, the mortgagor contained or implied in the mortgage, the power to sell the Individual Transferable Quota, in whole or in part.

(6) A mortgage may be varied by a memorandum in writing executed by the parties to the mortgage, but no such variation shall have effect until it has been registered in the Individual Transferable Quota Register.

Mortgages to be to approved mortgagees only

61.—(1) A mortgage of an Individual Transferable Quota is of no effect so as to confer any security or power upon the mortgagee unless the mortgagee has been approved under this section and the name of the mortgagee appears on the Approved Mortgagees Register on the date on which the mortgage was executed.

(2) The Governor may on application in writing containing such particulars as are prescribed approve, or as he sees fit refuse to approve, any company to be a mortgagee of Individual Transferable Quota or of quota shares comprised therein.

(3) The Director shall maintain an Approved Mortgagees Register in which the Director register particulars of the name and principal place of business of every company which has been approved by the Governor under subsection (2).

(4) A mortgage of an Individual Transferable Quota to a person who is not a company the name of which appears on the Approved Mortgagees Register does not have effect to confer any security upon the lender over the quota to which it relates.

Enforcement of mortgages

Restriction on exercise of mortgagee's power of sale

62.—(1) A mortgagee cannot exercise his power of sale —

(a) if the Individual Transferable Quota is subject to a Crown caveat registered under section 58; or

(b) so as to dispose of the Individual Transferable Quota to any person whose name does not appear on the Individual Transferable Quota Eligibility Register,

and any purported disposition which contravenes this subsection is void and of no effect.

(2) A power conferred by any mortgage to sell any Individual Transferable Quota shall not become or be deemed to have become exercisable because of —

(a) any default in the payment of any money secured by that mortgage; or

(b) any default in the performance or observance of any covenant expressed or implied in the mortgage,

unless and until the mortgagee serves on the mortgagor a notice complying with this section: provided that a notice which does not comply with subsection (3) shall not for that reason only be void if the failure to comply with that subsection does not materially prejudice the interests of the mortgagor.

(3) Every notice required by subsection (2) shall —

(a) be in writing;

(b) shall inform the mortgagor of —

(i) the nature and extent of the default complained of;

(ii) the date by which the mortgagor is required to remedy the default, if the default is capable of remedy; and

(iii) the rights that the mortgagee will be entitled to exercise if the default is not remedied within the stated period.

(4) The date stated pursuant to subsection (3)(b)(ii) shall not be less than 1 month from the date of service of the notice.

(5) In addition to giving the notice required by subsection (2), if the Individual Transferable Quota is subject to any caveat registered under this Ordinance, the mortgagee shall immediately after serving notice upon the mortgagor serve a copy of the notice on each caveator, but failure to do so does not of itself prevent any of the powers referred to in subsection (2) becoming or being deemed to have become exercisable and does not prevent any money secured by the mortgage from becoming or being deemed to have become payable.

(6) For the purposes of subsection (2), entering into a contract to sell, or the granting of an option to purchase, Individual Transferable Quota shall not be regarded as the exercise of a power of sale if the contract or option is expressed to be conditional on the failure by the mortgagor to remedy a default specified in a notice under this section served either before or after the contract is entered into or the option is granted, as the case may be.

(7) A mortgagee who exercises a power of sale of Individual Transferable Quota owes a duty to the mortgagor to take care to obtain the best price reasonably obtainable.

(8) The effect of subsection (7) cannot be excluded by contract between the parties to any mortgage or in any other manner whatsoever and notwithstanding any enactment or rule of law or anything contained in any deed or instrument by or under which the power of sale is conferred—

(a) it is not a defence to proceedings against a mortgagee for a breach of the duty imposed by subsection (7) that the mortgagee was acting as the mortgagor's agent or under a power of attorney from the mortgagor;

(b) a mortgagee is not entitled to compensation or indemnity from the mortgaged Individual Transferable Quota or mortgaged quota shares or the mortgagor in respect of any liability incurred by the mortgagee arising from a breach of the duty imposed by subsection (7).

Court may permit mortgagee to exercise power of sale before period expired

63.—(1) The Supreme Court may, on the application of a mortgagee made *ex parte* or otherwise as the Supreme Court thinks fit, grant leave to the mortgagee to exercise any of the powers of the mortgagor of the Individual Transferable Quota the subject of the mortgage at any time before the date specified in the notice served on the mortgagor under section 62(2).

(2) Leave granted under subsection (1) may be granted either unconditionally or upon and subject to such conditions as the Supreme Court thinks fit.

Restriction on action to recover deficiency

64.—(1) If at any time the mortgagee exercises the power of sale the amount realised is less than the amount owing under the covenant to repay expressed or implied in the mortgage, no action to recover the amount of the deficiency, or any part of the deficiency, shall be commenced by the mortgagee against any person (other than the mortgagor of the Individual Transferable Quota or quota shares comprised therein at the time of the exercise of the power of sale) unless the mortgagee, at least one month before the exercise of the power of sale, serves on that person notice of the mortgagor's intention to exercise the power of sale and to commence action against that person to recover the amount of the deficiency in the event of the amount realised being less than the amount owing under the covenant to repay.

(2) The Supreme Court may on the application of a mortgagee made *ex parte* or otherwise as the Supreme Court thinks fit, waive wholly or in part the one month period referred to in subsection (1).

(3) The effect of subsection (1) cannot be excluded by contract between the parties or, subject to subsection (2), in any other manner whatsoever.

Application of proceeds of sale

65. The proceeds of any sale by a mortgagee pursuant to any power of sale of an Individual Transferable Quota shall be applied —

(a) firstly, in payment of the costs and expenses of and occasioned by the sale;

(b) secondly, in payment of any sum then due and owing to the mortgagee under or by virtue of the mortgage;

(c) thirdly, in payment of any sum then due and owing from the mortgagor to the Crown in respect of fees and levies payable to the Crown under this Ordinance; and

(d) fourthly, in payment of any surplus to the mortgagor.

Transfer by mortgagee

66.—(1) Upon the registration of any transfer executed by a mortgagee for the purpose of the sale of any Individual Transferable Quota or quota shares comprised therein by the mortgagee, ownership of the Individual Transferable Quota, subject to section 61(1), passes to and vests in the purchaser, freed and discharged from any liability under or by virtue of the mortgage.

(2) Upon registration of such a transfer in the Individual Transferable Quota Register, every caveat in respect of the Individual Transferable Quota or the quota shares the subject of the transfer being transferred lapses and the ownership of the Individual Transferable Quota or that part passes to and vests in the purchaser, freed and discharged from the interest claimed by the caveator.

(3) The Director shall cause to be made in the Individual Transferable Quota Register any entry necessary to show that the mortgage has been discharged and that all caveats have lapsed in respect of the Individual Transferable Quota or quota shares comprised therein transferred.

(4) If a mortgagee gives a receipt in writing in respect of any money arising under an exercise of the power of sale conferred by this Division, or any money or securities comprised in or arising under the mortgagee's mortgage, the receipt is a sufficient discharge for that money or for those securities, and a person paying or transferring the money or securities shall not be concerned to inquire whether any money remains due under the mortgage or to see to the application of the money or securities so paid or transferred.

Discharge of mortgage

67.—(1) The mortgagee shall execute a memorandum of discharge of the mortgage—

(a) upon the sum secured by it being wholly paid off; or

(b) if for any other reason the mortgagee is bound to discharge the mortgage.

(2) A memorandum of discharge shall be in substantially the form specified in Form 6 in Schedule 1 to the Mortgages and Property Ordinance 1996, omitting so much thereof as relates to the source of funds used by the mortgagee to procure the discharge.

(3) A memorandum of discharge shall be registered in the Individual Transferable Quota Ownership Register and shall have effect in accordance with its tenor.

Division C — Caveats

Types of caveat

68. A caveat may, subject to section 70(2), be registered over any Individual Transferable Quota, Provisional Quota or Catch Entitlement —

(a) at the request of any person with the consent of the owner;

(b) by or at the direction of the Director under section 74;

(c) at the direction or order of the Supreme Court in any civil proceedings.

Effect of caveat

69.—(1) While a caveat remains in force, no entry shall be made on a Register which would have the effect of mortgaging or transferring the whole or any part of the Individual Transferable Quota or Provisional Quota or transferring the whole or any part of the Catch Entitlement to which the caveat relates, but nothing in this subsection applies to a transfer by a mortgagee to which section 66(1) applies.

(2) Subsection (1) does not prevent the registration of an entry if the caveator consents to that entry and the consent relates to —

(a) a transfer of the whole or a part of the Individual Transferable Quota or Catch Entitlement and constitutes a withdrawal of the caveat in respect of the property transferred; or

(b) a mortgage of the whole or part of the Individual Transferable Quota the subject of the caveat.

Caveat against transfer of Individual Transferable Quota, Provisional Quota or Catch Entitlement

70.—(1) If—

(a) the owner of the Individual Transferable Quota, Provisional Quota, or Catch Entitlement concerned and any other person jointly lodge a caveat with the Director;

(b) a court directs or orders that a caveat be lodged; or

(c) the Director enters a caveat or causes a caveat to be lodged under section 58(3) or 74,

the Director shall, if the caveat meets all the requirements of this Ordinance for registration, cause that caveat to be registered under section 79 against the Individual Transferable Quota, Provisional Quota or Catch Entitlement, as the case may be.

(2) Except as otherwise provided by this Ordinance, the Director shall only cause a caveat to be registered under subsection (1)(a) if the Individual Transferable Quota, Provisional Quota or Catch Entitlement is not already subject to any other caveat registered under this Ordinance.

Caveat may be withdrawn

71.—(1) Any caveat may, either as to the whole or any part of an Individual Transferable Quota, Provisional Quota or Catch Entitlement protected by the caveat be withdrawn by the person whose interests are protected by the caveat or by the person's attorney or agent under a written authority.

(2) Every withdrawal of a caveat shall be in the approved form.

(3) If the caveat is registered for a period stated at the time of registration, the caveat lapses at the expiration of that period.

Order of court for removal of caveat

72.—(1) This section does not apply to caveats imposed under section 74.

(2) The owner of Individual Transferable Quota, Provisional Quota or Catch Entitlement against which a caveat has been registered may apply to the Supreme Court for an order that the caveat shall be removed.

(3) The Supreme Court, if satisfied that at least 3 working days' notice in writing of the application has been given to the caveator or the person on whose behalf the caveat was registered, or that that person has in writing waived such notice, may —

(a) order that the caveat be removed —

(i) entirely;

(ii) in part; or

(iii) in respect of a particular transaction;

(b) impose such sureties and other conditions as it thinks fit; and

(c) make such other orders in respect of the caveat as it thinks fit.

Person entering or maintaining caveat without due cause liable in damages

73. Any person who lodges a caveat and who, when that caveat is no longer needed to protect any interest of the caveator, fails, without reasonable cause, to withdraw that caveat as soon as reasonably practicable after having been requested to do so by any person prejudicially affected by the caveat, is liable in damages for any loss or damage suffered by any person as a result of the failure to withdraw the caveat.

Crown caveats preventing registration of transactions

74.—(1) If —

(a) a company has been charged with an offence under sections 127(2), 136, 137(1), 138(1), 167(1), 168(1) or 172(1);

and conviction for that offence may result in forfeiture of Quota under section 173; or

(b) the Director believes on reasonable grounds that any company has committed such an offence,

the Director may cause a caveat to be registered under this Ordinance in respect of any Individual Transferable Quota owned by that person at the time of the entry of the caveat, and the caveat may apply to a number of quota shares not exceeding the whole Individual Transferable Quota or to the whole Individual Transferable Quota, and if he causes a caveat to be

registered he shall forthwith give written notice thereof to the owner of the Individual Transferable Quota.

(2) The Supreme Court may at any time, on application by the owner of any quota order that any caveat registered in accordance with subsection (1) shall not apply in respect of the quota or any part of the quota whether generally or in respect of any specified dealing in the quota and any such Order may be subject to such sureties and conditions as the Supreme Court may specify.

(3) A caveat registered in accordance with subsection (1)(a) shall have effect until all proceedings in respect of the relevant offence have been finally determined.

(4) A caveat registered in accordance with subsection (1)(b) shall have effect until the later of —

(a) the expiry of 30 days from the date of the registration of the caveat; and

(b) where proceedings for an offence to which subsection (1)(a) applies are commenced within that period of 30 days, the final determination of all proceedings in respect of that offence.

(5) Where a caveat has been registered under subsection (1)(a) or (b) and it is decided subsequently —

(a) not to institute proceedings for an offence to which subsection (1)(a) relates; or

(b) to abandon any such proceedings which have been commenced,

the Director shall forthwith cause any caveat registered under subsection (1) to be cancelled.

Division D — Registration procedure and correction of Registers

Registration procedure

Transactions not effectual until registered

75. No transaction has any effect for any of the purposes of this Ordinance until it is registered in accordance with this Part.

When transactions deemed registered

76. Every transaction registered under this Ordinance shall be deemed to have been registered for the purposes of this Ordinance at the time recorded in the Register as the time at which the transaction was registered.

Application for registration

77. Every application to register a transaction shall—

- (a) be made by presenting to the Director an instrument in such form as is approved or prescribed, if any;
- (b) contain such particulars as are specified in that form (if any) or are prescribed;
- (c) be executed in such manner, if any, as is specified in the approved form or is prescribed; and
- (d) be accompanied by the prescribed fee, if any.

Priority according to time of registration

78.—(1) Instruments presented for registration under this Ordinance shall be registered in the order in which they are received for registration or by regulations to be treated as received for registration and, for that purpose, that order shall be in accordance with the dates and times recorded by the Director or by any public officer charged by an Order under section 215 with the duty of maintaining the Register as the date and time when the instruments were received.

(2) Regulations under this Ordinance may prescribe when an instrument is to be treated as received for registration.

Registration procedure

79. On receipt of an application that complies with section 77 and is completed to the satisfaction of the Director, the Director shall —

- (a) record in the appropriate Register the particulars set out in the instrument required by this Ordinance to be registered and the date on which and time at which the particulars are so recorded;
- (b) issue a registration notice as to the particulars recorded under paragraph (a);
- (c) forward the registration notice to the person who presented the instrument for registration and forward copies of the notice to each of the other parties to the transaction;
- (d) if the instrument registered is a caveat in relation to any Individual Transferable Quota, Provisional Quota or Catch Entitlement, give notice of the registration of the caveat to the owner (if not otherwise notified) and any mortgagee and to any other caveator of that Individual Transferable Quota, Provisional Quota or Catch Entitlement.

Procedure relating to defective applications for registration

80.—(1) If —

- (a) any document relating to a transaction lodged for registration; or
- (b) any document presented for registration together with any other documents,

is found not to be in order for the purposes of registration, the Director may return that document or those documents to the person by whom they were lodged or, if that person is not available, to such other person as may, in the opinion of the Director, be entitled to receive them.

(2) Before returning any documents in accordance with subsection (1), the Director shall cause a copy to be made of that document and cause that copy to be filed in his office.

(3) If any document is returned as provided in subsection (1), that document shall be deemed not to have been presented for registration, but any fee paid in respect of its registration shall be retained unless the Director decides otherwise.

Director not concerned with effect

81. The Director is not concerned with the effect in law of any instrument lodged under this Part and the registration of the dealing does not give any effect to the instrument which it would not have if this Part had not been enacted.

Correction of Registers

Application for correction of Register

82.—(1) A person who presents an instrument for registration under section 77 and any other person having a registered interest in the Individual Transferable Quota or Catch Entitlement to which the instrument applies may apply to the Director to correct the record on the Register of the particulars set out in the instrument on the ground that the Register does not accurately record those particulars or is incorrect for any other reason specified for the purpose in regulations made under section 223.

(2) Every application made under subsection (1) shall —

(a) be made within 14 days after the registration notice issued under section 79(b) is forwarded to that person, or such longer period as the Director may allow;

(b) be in the approved form, if any; and

(c) include a copy of the registration notice issued under section 79(b) that relates to the record on the Register to which the application relates.

Correction of Register

83.—(1) If, upon receipt of an application under section 82, the Director is satisfied that the Register does not record accurately the particulars set out in the instrument to which the application relates or is incorrect for any other reason specified in regulations made under section 220, the Director shall correct the Register accordingly and —

(a) record on the Register the nature of the correction and the date and time at which the correction was made; and

(b) notify the person who made the application under section 82 and any other person whom the Director considers will be affected by the correction.

(2) If the Director is satisfied that the Register does not record accurately the particulars set out in the instrument to which the entry on the Register relates, or subject to any regulations made under section 223, is for any other reason incorrect, the Director may of his own motion, after notifying those persons whom the Director considers will be affected, correct the Register accordingly and record on the Register the nature of the correction and the time at which the correction was made.

(3) Without limiting the generality of subsection (2), the power conferred by that subsection is exercisable if —

(a) a registration notice has been issued in error or an entry or endorsement has been made in error;

(b) a misdescription has occurred in any entry in the Register or in any registration notice issued under section 79(b); or

(c) an instrument has been obtained fraudulently or wrongfully, or retained fraudulently or wrongfully.

(4) Subject to subsection (5), the Director shall not make any correction to a Register under this section if to do so would, in the opinion of the Director, prejudice a purchaser for value who appears to the Director to have acted in good faith. In this subsection “purchaser for value” includes a mortgagee for value.

(5) Subsection (4) does not prevent the Director from correcting a Register if he is satisfied that the purchaser for value has consented in writing to the correction being made.

(6) Any person who is aggrieved by the refusal of the Director to grant an application under section 82(1) to correct a Register, or any alleged false, incorrect or misleading entry in any Register may apply to the Magistrate’s Court for an order for correction of the Register concerned and the Director shall comply with any such order.

Evidentiary

Evidentiary provisions

84.—(1) Any Register maintained under this Ordinance is *prima facie* evidence of any particulars registered in it.

(2) If any such Register is wholly or partly kept by use of a computer, a document authenticated by the Director which purports to reproduce in writing all or any of the particulars comprising that Register, or that part of it, as the case may be, is admissible in any proceedings as evidence of those particulars to the full extent of the original of them.

(3) A copy or extract authenticated by the Director of or from an instrument evidencing a dealing registered under this Ordinance is admissible in any proceedings to the full extent of the original.

(4) The Director, upon application and on payment of the prescribed fee, shall supply a person with an authenticated copy of or extract from an entry in the Register or an instrument evidencing a dealing registered under this Ordinance.

(5) In this section "authenticated by the Director" means signed by the Director or another public officer in the Department of Fisheries authorised by the Director and bearing the official seal or stamp of the Department of Fisheries.

Miscellaneous

Immunity from personal liability

85.—(1) Subject to subsection (2), the Director and other public officers are not liable to any action, suit or proceedings for or in respect of an act or matter in good faith done or omitted to be done in the exercise or purported exercise of any power conferred by this Part.

(2) Nothing in subsection (1) shall have effect in relation to proceedings for judicial review or an application for leave to bring proceedings for judicial review, provided that no order shall be made in such proceedings requiring the Director or any public officer personally to pay any sum to any person in respect of or arising out of any act or matter in good faith done or omitted to be done in the exercise or purported exercise of any power conferred by this Part.

(3) Where, apart from subsection (2), the Supreme Court would otherwise have had power in judicial review proceedings to order the Director or other public officer personally to pay any sum to any person, the Supreme Court shall have power, if it sees fit, to order the Crown to pay that sum to that person.

False entries in registers etc

86. A person commits an offence who —

(a) makes, causes to be made or concurs in making a false entry in a Register; or

(b) produces or tenders in evidence a document falsely purporting to be an instrument or a copy of or extract from an instrument lodged with the Director under this Part or to be a copy from an entry in a Register maintained under this Part.

Provisions in relation to Registers

87.—(1) Any Register required or permitted to be kept under any provision of this Ordinance may be kept wholly or partly by means of a computer.

(2) Any Register kept pursuant to this Ordinance shall, subject to payment of such fee, if any, as may be prescribed, be available for inspection by the public during the usual office hours of the place at which it is kept.

(3) If a Register is kept wholly or partly by use of a computer, references in this Ordinance —

(a) to an entry in the Register are to be read as including references to a record of particulars kept by use of the computer and comprising the Register or part of the Register;

(b) to particulars being registered, or entered in the Register, are to be read as including references to the keeping of a record of those particulars as part of the Register by use of the computer; and

(c) to the rectification of the Register are to be read as including references to the rectification of the record of particulars kept by use of the computer and comprising the Register or part of the Register.

(4) The Director or any other public officer charged by an Order under section 215 with the duty of keeping the Register shall, upon request and on payment of such charge as may be prescribed, and if none such charge as may be reasonable, provide to the person requesting the same copies of and extracts from any Register referred to in subsection (1).

Protection of purchasers

Purchasers and mortgagees not to be affected by notice

88.—(1) A person —

(a) who has as a bona fide purchaser for value acquired, or intends as a bona fide purchaser for value to acquire, any Individual Transferable Quota; or

(b) who has as a bona fide mortgagee for value of Individual Transferable Quota taken, or intends as a bona fide mortgagee for value to take, a mortgage granted in accordance with this Ordinance,

is not required —

(i) to inquire into or ascertain the circumstances in which or the consideration for which the previous owner, or as the case may be, the owner, of the Individual Transferable Quota or any predecessor in title of the previous owner or owner was or is registered; or

(ii) to inquire as to the application of the purchase money, or of any part of it,

and, in the absence of fraud on his part, is not affected by notice, direct or constructive, of any trust or unregistered interest (and knowledge that any such trust or unregistered interest is in existence is not of itself evidence of fraud).

(2) A person —

(a) who has acquired ownership as a bona fide purchaser for value of an Individual Transferable Quota and who is registered under this Ordinance as its owner; or

(b) who has taken as a bona fide mortgagee for value of any Individual Transferable Quota any mortgage granted in accordance with this Ordinance and is registered as mortgagee under that mortgage in accordance with this Ordinance,

shall not be liable to—

(i) any action or proceedings for recovery of damages; or

(ii) be deprived of his rights as registered owner of the Individual Transferable Quota or, as the case may be, of his interest as mortgagee,

on the ground that the person from whom the registered owner acquired the Individual Transferable Quota, or as the case may be, took the mortgage —

(aa) was registered as owner through fraud or error or under any void or voidable instrument; or

(bb) directly or indirectly derived title from a person registered as owner through fraud or error or under any void or voidable instrument.

Compensation

Individual Transferable Quota Ownership Register: compensation for mistake or wrongdoing

89.—(1) This section applies to any person who —

(a) sustains loss or damage through any omission, mistake or wrongdoing of the Director or, as the case may be, any other person, body or organisation responsible under this Ordinance for maintaining the Individual Transferable Quota Ownership Register in the exercise of functions connected with the keeping of that Register;

(b) is deprived of the rights in respect of which the person is registered as owner or mortgagee of any Individual Transferable Quota —

(i) by the registration of any other person as the owner or as mortgagee, as the case may be; or

(ii) by any error, omission or misdescription in any record in respect of Individual Transferable Quota kept by the Director or, as the case may be, any other person body or

organisation responsible for keeping the Individual Transferable Quota Ownership Register or in any entry or memorial in that Register; or

(c) sustains any loss or damage by the wrongful inclusion in any such record of a statement about ownership or any mortgage of quota,

and who by virtue of section 88 is unable to bring proceedings in respect of that Individual Transferable Quota or that interest as owner or mortgagee, as the case may be.

(2) A person to whom this section applies may bring proceedings for recovery of damages against the Crown.

(3) The Crown Proceedings Act 1947 in its application to the Falkland Islands applies to proceedings against the Crown under subsection (2).

PART IV

RECORD-KEEPING, REPORTING, DISPOSAL OF FISH AND PROVISIONS RELATING TO TAKING AND POSSESSION OF FISH FOR PURPOSE OF SALE

References to weight of fish to be references to green weight etc

90.—(1) Unless otherwise expressly provided to the contrary by regulations under this Ordinance, every reference in this Ordinance to the weight of fish is to be taken to be a reference to the green weight of the fish.

(2) The Director may, by notice published in the *Gazette*, after consultation with such bodies or persons as the Director considers appropriate in the circumstances, set conversion factors which shall, subject to subsection (3), for all purposes (including any proceedings for an offence under this Ordinance) be used to determine the weight of any fish and such conversion factors shall be used to translate the weight of the fish in the state to which it has been processed to the green weight.

(3) The Director may, in respect of any fishing vessel on which fish is processed, having regard to the method of processing or the processing history of the fishing vessel and after consultation with the owner, charterer, operator or master of the fishing vessel, issue a certificate specifying conversion factors for that fishing vessel which shall for all purposes (including any proceedings for an offence under this Ordinance) be used to determine the weight of any fish processed by that fishing vessel within the terms of the certificate.

(4) Every certificate issued under subsection (3) —

(a) shall apply in respect of the fish processed during the currency of the certificate;

(b) may be subject to such conditions, including conditions relating to methods of taking, processing, packing and labelling of fish, the presence of observers appointed under section 184(2) or fisheries officers, or the recording of catches, as the Director sees fit; and

(c) may at any time be revoked by the Director by notice in writing, or may be amended or replaced by a further certificate issued by the Director under subsection (3).

(5) A certificate issued under subsection (3) may be expressed to be valid for such period as the Director thinks fit, and the certificate, or any revocation of the certificate, shall take effect on the date specified for the purpose by the Director, being a date not earlier than the earliest of the following dates or occasions —

(a) the commencement of the fishing period following that in which the owner, charterer operator or master of the fishing vessel is issued with the certificate or notified of the revocation;

(b) the next departure of the fishing vessel from any Falkland Islands port following the issue of the certificate or notification of the revocation;

(c) the day on which any observer who is present on the fishing vessel concerned, after the owner, charterer, operator or master is issued with a certificate or notified of the revocation, certifies that the current catch of the fishing vessel has been recorded by that observer; and

(d) such earlier date as may be agreed in writing between the Director and the owner, charterer, operator or master of the fishing vessel.

Persons who are required to keep records and returns

91.—(1) The following persons shall keep such accounts and records, and provide to the Director such returns and information, as may be required by or under regulations made under this Ordinance —

(a) holders of scientific permits or fishing licences entitling the holder to take fish;

(b) owners, caveators and mortgagees of Individual Transferable Quota , and owners and caveators of Provisional Quota and Catch Entitlements;

(c) owners, charterers, operators and masters of Falkland Islands fishing vessels;

(d) owners and persons in charge of any premises where fish are received, purchased, stored, transported, processed, sold or otherwise disposed of;

(e) persons engaged in the receiving, purchasing, transporting, processing, storage, sale or disposal of fish;

(f) holders of high seas fishing licences issued under section 130.

Disposal of fish

Disposal of fish by commercial fishers

92.—(1) In this section and in section 93, “commercial fisher” includes a person who holds a high seas fishing licence issued under section 130.

(2) No commercial fisher may sell or otherwise dispose of fish taken by the commercial fisher in that capacity, except to a licensed fish receiver or as provided in subsection (3) or (6).

(3) Any commercial fisher may sell or otherwise dispose of not more than 30 kilograms of fish in one transaction.

(4) A commercial fisher shall not enter into more than one transaction permitted by subsection (3) with the same person within any period of 24 hours.

(5) Every commercial fisher who sells or otherwise disposes of any fish under subsection (3) shall, at the time of the transaction, make such records of the transaction as the commercial fisher is required to make by regulations.

(6) Subsection (2) does not apply in respect of fish —

(a) landed outside the Falkland Islands or trans-shipped outside the fishing waters;

(b) lawfully abandoned or returned to the waters from which the fish was taken;

(c) lawfully used by the commercial fisher who took the fish as bait, or consumed on board the fishing vessel with which the fish was taken;

(d) lawfully taken on the high seas and landed other than in the Falkland Islands; or

(e) lawfully taken on the high seas and trans-shipped without contravening a high seas fishing licence issued under section 130.

(7) A commercial fisher who contravenes any provision of this section commits an offence.

Restrictions on purchase or acquisition of fish by certain persons

93.—(1) A commercial fisher who is not a licensed fish receiver shall not purchase, acquire or be in possession of any fish for the purpose of sale unless the fish was —

(a) taken in that person’s capacity as a commercial fisher; or

(b) purchased or acquired by that person from a licensed fish receiver for use as bait in that person’s commercial fishing activities.

(2) A licensed fish receiver shall not purchase or otherwise acquire or be in possession of any fish unless the fish was —

(a) purchased or acquired for the purpose of sale from —

(i) a commercial fisher;

(ii) another licensed fish receiver;

(iii) the owner, charterer or operator of a non-Falkland Islands fishing vessel licensed under a fishing licence;

(iv) the owner, charterer or operator of a non-Falkland Islands fishing vessel if the fish was landed and disposed of in accordance with the conditions of an approval granted under subsection (8); or

(b) lawfully taken by that person for the purposes of sale in the person's capacity as a commercial fisher, where that person has lawfully kept and completed all records, returns and other documents required under this Ordinance as if the commercial fisher and the licensed fish receiver had been separate persons; or

(c) acquired or possessed by the licensed fish receiver otherwise than for the purpose of sale by the licensed fish receiver in accordance with subsection (5).

(3) A person other than a person who at the relevant time is acting in the person's capacity as a commercial fisher or licensed fish receiver shall not purchase, otherwise acquire or be in possession of any fish for the purpose of sale, unless the fish was —

(a) lawfully taken by him within the Falkland Islands; or

(b) purchased or acquired from —

(i) a commercial fisher in a transaction referred to in section 92(2);

(ii) a licensed fish receiver; or

(iii) a fish farmer.

(4) Any person who contravenes any provision of subsections (1) to (3) commits an offence.

(5) For the purposes of subsection (2)(c) of this section, fish is acquired or possessed by a licensed fish receiver in accordance with this subsection if the fish —

(a) is held by the licensed fish receiver for a person for storage or processing;

(b) is held by the licensed fish receiver with the approval in writing of the Director (which approval may be granted either generally or particularly) but was not so held before that approval was granted; and

(c) is stored in accordance with any condition imposed by the Director in relation to the furnishing to him of records and returns and any other conditions which the Director may impose.

(6) Subsection (3) of this section does not apply in respect of fish if —

(a) the fish was lawfully purchased or acquired from an approved person;

(b) that approved person has lawfully acquired or purchased the fish from a licensed fish receiver; and

(c) the purchase or acquisition, and the storage and disposal, of the fish and the keeping of records in relation to it was in accordance with the conditions of the approval granted by the Director.

(7) Subsection (4) does not apply in respect of any fish produced in the course of a lawful fish farming operation and subsequently traded.

(8) The Director may approve in writing, subject to such conditions as he may think fit, the landing in the Falkland Islands of fish taken by a non-Falkland Islands fishing vessel outside the fishing waters.

(9) This section does not apply in respect of —

(a) any fish lawfully taken outside the fishing waters that has been landed other than in the Falkland Islands; or

(b) any transaction with the Crown; or

(c) any fish lawfully taken otherwise than for the purpose of sale and served as part of a meal to the person who took the fish and their immediate guests.

When fish deemed to be taken or possessed for purposes of sale

Fish in licensed premises or premises where food sold deemed to have been taken for the purposes of sale

94.—(1) For the purposes of this Ordinance, all fish in any premises owned or operated by any licensed fish receiver shall, in the absence of proof to the contrary, be deemed to have been taken, and to be possessed, for the purpose of sale.

(2) For the purposes of this Ordinance, all fish in any premises where food is sold, prepared for sale, stored, or processed shall, in the absence of proof to the contrary, be deemed to have been taken, and to be possessed, for the purpose of sale.

Special provision in relation to fish farms

95.—(1) No fish farmer shall be in possession of fish for sale unless —

(a) lawfully purchased or acquired from another fish farmer or from a licensed fish receiver;
or

(b) lawfully bred or cultivated by the fish farmer.

(2) Unless the contrary is proved all fish on or transferred from any fish farm shall be deemed to be farmed, and to be possessed, for the purpose of sale.

(3) A person who contravenes subsection (1) commits an offence.

Possession of excessive quantities of fish

96. For the purposes of this Ordinance any person in possession of fish exceeding 100 kilograms meat weight or green weight shall, in the absence of proof to the contrary, be deemed to have acquired or to possess that fish for the purposes of sale unless the fish is shown to have been taken by him as an amateur angler in the inland waters or in a river, stream or lake but nothing in this section prohibits the possession by an amateur fisher of a single fish exceeding that weight.

Exclusion of ornamental fish

97.—(1) Nothing in this Part applies to ornamental fish.

(2) For the purposes of subsection (1) “ornamental fish” are fish not ordinarily found in the wild state in the fishing waters and which are kept in, or kept for the purpose of sale to persons for keeping in, aquaria or ornamental pools or ponds.

PART V REVIEW BY DISPUTES COMMISSION

Establishment etc. of Disputes Commission

Establishment of Disputes Commission

98.—(1) There is hereby established a Disputes Commission.

(2) The Commission shall consist of the following members —

(a) a person appointed by the Governor, who shall be the Chairman of the Commission (hereinafter in this Part called “the Chairman”); and

(b) such other members as are appointed in accordance with section 99.

Appointment of members

99.—(1) The Governor shall appoint not more than 7 persons to be members of the Commission.

(2) Each member shall be appointed for a period not exceeding 4 years specified in his instrument of appointment, but is eligible for re-appointment under this section.

Acting Chairman of Commission

100.—(1) The Governor may appoint a person to act in the office of Chairman —

(a) during a vacancy in the office of Chairman; or

(b) during any period, or during all periods, when the Chairman is absent from duty or from the Falkland Islands or is, for any other reason, unable to perform the duties of the office of Chairman.

(2) Anything done by or in relation to a person purporting to act as Chairman by virtue of appointment under subsection (1) is not invalid merely because —

(a) the occasion for the person's appointment had not arisen; or

(b) there is a defect or irregularity in connection with the person's appointment; or

(c) the person's appointment had ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.

(3) A person appointed under subsection (1) to act in the office of Chairman need not be one of the persons appointed to be a member of the Commission under the preceding section.

(4) Any reference in any subsequent provision of this Part to the Chairman shall wherever appropriate be construed as a reference to a person appointed under subsection (1) of this section to act in the office of Chairman.

Constitution of Commission for exercise of powers

101. For the purpose of any review, the Commission is to be constituted by —

(a) the Chairman; and

(b) two members selected by the Chairman.

Member unable to complete review

102. If the Commission has commenced or completed a review of a decision but has not finally determined the matter and one of the members (other than the Chairman) constituting the Commission for the purposes of the review has ceased to be a member, or has ceased to be available for the purposes of the review whether because of the operation of section 104 or otherwise, then the hearing and determination, or the determination, of the review, is to be completed by the Commission constituted by the remaining members, but if the Chairman has ceased to be a member constituting the Commission for such purpose or has ceased to be available the review shall recommence before the Commission differently constituted.

Terms and conditions of appointment

103. A member of the Commission holds office on such terms and conditions as may be prescribed by regulations under section 223, but such regulations shall not provide for remuneration to be payable to any member of the Commission who is a full-time public officer.

Disclosure of interests

104.—(1) Where a member is, or is to be, a member of the Commission for the purposes of a review and has a conflict of interest in relation to the review, the member shall disclose the matters giving rise to that conflict to the parties to the proceedings and except with the consent of all the parties to the proceedings shall not take part in the review or exercise any powers in relation to the review and if he fails to disclose his interest in accordance with this subsection he commits an offence.

(2) Where the Chairman becomes aware that a member is, or is to be a member of the Commission as constituted for the purposes of a review and that the member has a conflict of interest in relation to the review —

(a) the Chairman shall, if he considers that the member should not take part, or should not continue to take part, in the review, direct the member accordingly; and

(b) in any other case, the Chairman shall disclose the member's interests to all the parties to the proceedings.

(3) Where the Chairman discloses the member's interest to all the parties to the proceedings, the member shall not, except with the consent of all the parties, take part in the review or exercise any powers in relation to the review.

(4) For the purposes of this section, a member has a conflict of interest in relation to a review by the Commission if he has any interest pecuniary or otherwise that could conflict with the proper performance of the member's functions in relation to that review.

Resignation and termination of appointment

105.—(1) The Governor may terminate the appointment of a member of the Commission for misbehaviour or physical or mental incapacity or by reason of inefficiency or incompetence.

(2) A member of the Commission may resign by giving to the Governor a signed notice of resignation.

(3) The appointment of a member of the Commission ceases if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit.

Registrar of Commission

106.—(1) The Courts Administrator shall be Registrar of the Commission.

(2) The Registrar has such duties, powers and functions as are provided by this Ordinance and the regulations and such other powers and functions as the Chairman directs.

Review by Commission

The functions of the Commission

107. The functions of the Commission are to review decisions made by the Director —

- (a) under section 20 as to the person or persons to whom the grant of Individual Transferable Quota or Provisional Quota is made;
- (b) under section 23(2) to strike out an entry in an Individual Transferable Quota Eligibility Register;
- (c) under section 2(3) to refuse an application for entry of a company's name upon an Individual Transferable Quota Eligibility Register;
- (d) under section 26(3) to renew the registration of a company's name upon an Individual Transferable Quota Eligibility Register;
- (e) under section 26(4) to refuse to renew the registration of a company's name upon an Individual Transferable Quota Eligibility Register;
- (f) under section 27(2) to strike out an entry in a Provisional Quota Eligibility Register;
- (g) under section 29(3) to refuse an application for registration of a company's name upon a Provisional Quota Eligibility Register;
- (h) under section 30(4) to refuse to renew the registration of a company's name upon Provisional Quota Eligibility Register;
- (i) to serve a notice upon a company under section 31(3); and
- (j) under section 33(2)(c) or (f), to revoke a grant of Individual Transferable Quota or Provisional Quota.

Application to the Commission for review

108.—(1) A person who is aggrieved by a decision that is reviewable under section 107 may, within 14 days after being notified by the Director of the decision, by written notice delivered to the Registrar apply to the Commission for review of the decision.

(2) An application for review shall include details of the decision in respect of which review is sought and of the reasons why the review is sought.

(3) Where a decision of the Director is required to be published in the *Gazette* the Director shall for the purposes of subsection (1) be deemed to have notified that decision to every person affected by it on the date it is published in the *Gazette*.

Director to be notified of application to Commission for review

109.—(1) Where an application for a review of a decision is made under section 108, the Registrar shall, as soon as practicable, give written notice of the making of the application —

(a) to the Director; and

(b) to such other persons as the Chairman may direct him to give such notice.

(2) Where the Director is notified of an application for review, he shall, within 14 days of being so notified, send to the Registrar —

(a) a statement of his reasons for the decision; and

(b) a copy of each other document or part of a document that is in the possession or control of the Director and is considered by the Director to be relevant to the review of the decision.

(3) The Director shall be a party to the proceedings before the Commission.

Arrangements for hearing of application

110. If an application is made to the Registrar for review of a decision, the Chairman shall fix, and direct the Registrar to give to each party written notice of, the date, time and place for the hearing of the application.

Powers of Commission etc.

111.—(1) The Commission may, for the purposes of the review of a decision —

(a) take evidence on oath or affirmation; and

(b) adjourn the review from time to time.

(2) The Chairman may in relation to a review —

(a) by summons in writing require any person to appear before the Commission to give evidence;

(b) by summons in writing require any person to produce to the Commission such documents as are referred to in the summons;

(c) require any person appearing before the Commission to give evidence, to give such evidence on oath or affirmation; and

(d) administer an oath or affirmation to any person so appearing.

(3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.

(4) A person appearing before the Commission to give evidence is not entitled unless he is a party to the proceedings to be represented before the Commission by any other person or to examine or cross-examine any other person appearing before the Commission to give evidence.

(5) Notwithstanding the preceding provisions of this section, the Commission may if it sees fit accept a written statement verified by statutory declaration from a person instead of oral evidence by that person.

Procedure of Commission

112.—(1) In proceedings before the Commission —

(a) the procedure to be followed is, subject to this Ordinance, such as the Chairman may decide;

(b) the proceedings are to be conducted with as little formality and technicality, and as quickly, as the requirements of this Ordinance and a proper consideration by the Commission permit; and

(c) the Commission is not bound by any rules of evidence but may inform itself on any matter in any way it thinks appropriate and which is fair as between the parties.

(2) For the purposes of subsection (1) directions as to the procedure to be followed at or in connection with the hearing of an application may be given whether before or after the hearing of the application has commenced by the Chairman.

(3) A direction may be varied or revoked at any time by the Chairman.

(4) A party to the proceedings may appear in person or may be represented by any other person.

(5) Subject to the subsequent provisions of this section, the Commission shall take oral evidence in public.

(6) Where the Commission is satisfied that it is in the public interest to do so, the Commission may direct that particular oral evidence, or oral evidence for the purposes of a particular review, is to be taken in private.

(7) If the Commission gives a direction under subsection (6), it shall also give directions as to the persons who may be present when the oral evidence is given.

Powers in relation to decisions under review

113.—(1) The Commission may, for the purposes of reviewing a decision, exercise all the powers conferred by this Ordinance on the Director and may —

(a) affirm the decision;

(b) vary the decision;

(c) set the decision aside and substitute a new decision.

(2) Where the Commission varies the decision or sets aside the decision and substitutes a new decision, the decision as varied or substituted is, for all purposes of this Ordinance, except for the purposes of applications to the Commission for review, appeals to the Supreme Court under section 124 or applications to the Supreme Court for judicial review of the determination by the Commission, to be taken to be a decision of the Director.

(3) A decision made by the Commission takes effect when the applicant is notified of the decision under section 123.

Withdrawal of application for review and power to dismiss application

114.—(1) An applicant for review of a decision may, by written notice sent or delivered to the Registrar, withdraw that application at any time.

(2) If a person has lodged an application to the Registrar for review by the Commission of a decision by the Director, and the Chairman is satisfied, either after having communicated with the person or having made reasonable attempts to contact the person and having failed to do so, that the person does not intend to proceed with the application, the Chairman may dismiss the application.

(3) If the Chairman dismisses an application under subsection (2), that application is to be taken to have been withdrawn at the time when the application is dismissed.

Refusal to be sworn or to answer questions etc.

115.—(1) A person appearing before the Commission to give evidence commits an offence if he, without reasonable excuse —

(a) refuses to comply with a requirement under section 111(1) either to take an oath or make an affirmation; or

(b) refuses or fails to answer a question which he is required by the Commission to answer or gives any evidence knowing that it is false or misleading in a material particular or being reckless as to whether it is false or misleading in a material particular.

(2) A person commits an offence who without reasonable excuse refuses or fails to produce a document that he is required to produce by a summons under section 111(2).

Decision of questions before the Commission

116. Any question relating to the review of a decision before the Commission is to be decided—

(a) according to the opinion of a majority of the members constituting the Commission for the purposes of the review;

(b) if the Commission, for a reason mentioned in section 102 is constituted by the Chairman and another member, in accordance with the opinion of the Chairman.

Restriction of publication of certain matters

117.—(1) Where the Commission is satisfied in relation to a review that it is in the public interest —

(a) that any evidence given before the Commission;

(b) that any information given to the Commission; or

(c) that the contents of any document produced to the Commission,

should not be published, or should not be published except in a particular manner and to particular persons, the Commission may give a written direction accordingly.

(2) A person who contravenes a direction given by the Commission under subsection (1) commits an offence.

(3) Where the Commission has given a direction under subsection (1) in relation to the publication of any evidence or information or the contents of a document, such direction does not—

(a) excuse the Commission from its obligations under section 123; or

(b) prevent a person from communicating to another person a matter contained in the evidence, information or document if the first-mentioned person has knowledge of the matter otherwise than because of the evidence or information having been given or the document having been produced to the Commission.

Failure of witness to attend

118. A person commits an offence who, having been served with a summons to appear before the Commission to give evidence, fails to attend as required by the summons or fails to appear and report from day to day unless excused, or released from further attendance by the Chairman.

Protection of members of Commission

119. A member of the Commission has, in the performance of his duties as a member the same protection and immunity as a Justice of the Peace has as a member of the Summary Court.

Protection of witnesses

120. Subject to this part, a person summoned to attend or appearing before the Commission as a witness has the same protection as a witness in proceedings before a court.

Fees for persons giving evidence

121.—(1) A person, other than a party to proceedings or a public officer, who is summoned to appear before the Commission to give evidence is entitled to be paid in respect of his attendance such fees and allowances for expenses as are fixed by or allowed in accordance with regulations made for the purposes of this subsection or, if no such regulations have been made, fees and allowances for expenses fixed or allowed by the Chairman.

(2) Where a witness has been summoned to give evidence at the request of a party to the proceedings, the fees and allowances payable to that witness are to be paid by that party and in any other case they are to be paid by the Director.

Obstruction of Commission

122. A person commits an offence who obstructs or hinders the Commission or a member of the Commission in the performance of the functions of the Commission or who disrupts the taking of evidence by the Commission.

Reasons for and notification of Commission decision

123.—(1) Whenever it reaches a decision on a review, the Commission shall prepare a written statement setting out the decision of the Commission on the review and the reasons for that decision.

(2) The Registrar shall send or give to each party to the proceedings a copy of the statement prepared under subsection (1) as soon as practicable after the decision concerned is made.

Appeals

Appeals to Supreme Court on question of law

124.—(1) An appeal lies on a point of law to the Supreme Court at the instance of any party to proceedings before the Commission who is aggrieved by the decision of the Commission.

(2) Such an appeal shall be instituted within 28 days after the appellant was notified under section 123 of the decision concerned.

(3) The Supreme Court has jurisdiction to hear and to determine the appeal and may make such order thereon as it thinks appropriate and, without prejudice to the generality of the foregoing may —

(a) affirm or set aside the decision of the Commission and substitute such decision as it thinks fit for the decision of the Commission; or

(b) remit the matter to the Commission to be reviewed and decided afresh in accordance with directions of the Supreme Court and either with or without the taking of further evidence.

Operation etc of decisions subject to appeal

125.—(1) Subject to this section, the institution of an appeal to the Supreme Court from a decision of the Commission does not —

- (a) affect the operation of the decision; or
- (b) prevent the taking of action to implement the decision; or
- (c) prevent the taking of action in reliance on the making of the decision.

(2) Where an appeal is made to the Supreme Court from a decision of the Commission, a judge of that Court may make such Order of the kind mentioned in subsection (3) as he considers appropriate for the purposes of securing the effectiveness of the hearing and the determination of the appeal.

(3) The Orders that may be made under subsection (2) are Orders staying, or otherwise affecting the operation or implementation of either or both of the following —

- (a) the decision of the Commission or a part of the decision;
- (b) the decision to which the proceedings before the Commission related or a part of the decision.

(4) A judge of the Supreme Court may by Order vary or revoke an Order in force under subsection (2), including an Order that has previously been varied under this subsection.

(5) An Order under subsection (2) —

- (a) is subject to such conditions as are specified in the Order; and
- (b) has effect until the earlier of—
 - (i) the end of the period, if any, specified in the Order as the period of its operation; and
 - (ii) the giving by the Supreme Court of a decision on the appeal to the Supreme Court; or
 - (iii) the withdrawal of the appeal.

PART VI
HIGH SEAS FISHING
Administration

Responsibilities of Director under this Part

126.—(1) The Director shall be responsible for —

- (a) maintaining a record of all Falkland Islands fishing vessels in respect of which high seas fishing licences have been issued under this Part, which record shall include all information provided by an applicant under section 129;
 - (b) the collection of statistics concerning fish stocks and fishing on the high seas;
 - (c) the monitoring, control and surveillance of the operations of Falkland Islands fishing vessels on the high seas;
 - (d) the issue, variation, suspension and revocation of licences for fishing on the high seas;
 - (e) the collection of fees in respect of licences issued under this Part;
 - (f) the taking of appropriate measures in co-operation with foreign states for the implementation of the Agreements;
 - (g) the making of such reports to the Governor as the Governor may direct or the Director may consider appropriate for the implementation of the Agreements and this Part.
- (2) The Governor may give or may authorise the Director to give such information and make such reports as may be necessary to enable the Falkland Islands to ensure compliance with obligations under the Agreements or either of them.
- (3) The Director may, and if directed by the Governor shall, in writing authorise any public officer to exercise any or all of the powers of the Director either concurrently with him or in his absence subject to such conditions, including territorial restrictions, as may be stipulated in the authorisation.
- (4) This Part shall be enforced by all fisheries officers acting subject to the direction of the Director and such officers shall have the powers set out or referred to in sections 134 and 135.
- (5) In this section “the Governor” means “the Governor acting in his discretion”.

Licences for fishing on the high seas

Prohibition of fishing on the high seas without a licence

126.—(1) No Falkland Islands fishing vessel shall be used for fishing on the high seas except under the authority of a high seas fishing licence.

(2) Where a fishing vessel is used in contravention of subsection (1) the master, owner, charterer and operator each commit an offence.

(3) A person taking or transporting fish under the authority of a high seas fishing licence shall—

(a) at all times the licence remains in force, carry the licence, or a copy of the licence on board the fishing vessel to which the licence relates;

(b) produce the licence, or copy, on demand to a fisheries officer or high seas fishery inspector or a high seas fishing inspector acting on behalf of any other country.

(4) A person commits an offence who contravenes subsection (3).

Fishing vessels eligible for high seas fishing licences

128. Any Falkland Islands fishing vessel is eligible for a high seas fishing licence except where section 14(1)(b), section 15(1) or an Order under section 16(2) prohibits the grant of a high seas fishing licence in respect of that fishing vessel.

Applications and fees

129.—(1) An application for the grant of a high seas fishing licence shall be —

(a) made to the Director in the approved form;

(b) accompanied by the information required under subsection (2) and such other information and documents as may be prescribed or if none have been prescribed are required by the Director in the approved form; and

(c) accompanied by the application fee, if any.

(2) An application for a high seas fishing licence shall relate to a specific Falkland Islands fishing vessel and shall be accompanied by the following information in relation to that fishing vessel —

(a) —

(i) the name of the fishing vessel;

(ii) its registration number;

(iii) previous names (if known);

(b) previous flag;

(c) international radio callsign;

- (d) names and addresses of the owner and of any charterer or operator if different from the owner;
- (e) when and where the fishing vessel was built;
- (f) the type of the fishing vessel;
- (g) its length;
- (h) the type of fishing method or methods employed by the fishing vessel;
- (i) its moulded depth;
- (j) its beam;
- (k) its gross registered tonnage, where available; and
- (l) the power of the main engine or engines of the fishing vessel.

Grant of high seas fishing licences and conditions relating to licences

130.—(1) A high seas fishing licence shall be granted by the Director to the owner, charterer or operator in respect of a specified Falkland Islands fishing vessel.

(2) Subject to any directions given to him by the Governor pursuant to section 4(5), the issue of each high seas fishing licence shall be in the discretion of the Director.

(3) The Director shall not grant a high seas fishing licence in respect of a Falkland Islands fishing vessel unless he is satisfied that the Falkland Islands will be able to exercise effectively their responsibilities under the Agreements in respect of that fishing vessel.

(4) A high seas fishing licence may authorise a Falkland Islands fishing vessel to be used for fishing generally or may confer limited authority by reference in particular to —

- (a) the area in which fishing is authorised;
- (b) the period, times or particular voyages during which fishing is authorised;
- (c) the descriptions, quantities, size and presentation of fish which may be taken, or
- (d) the method of fishing.

(5) A high seas fishing licence shall be subject to the following conditions —

- (a) the fishing vessel to which the licence relates shall be marked in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels;

(b) such records of fishing operations shall be kept on board the fishing vessel to which the licence relates and such returns shall be submitted to the Director concerning areas of fishing, catches and landings of fish and such other matters as are stipulated in the licence or as shall be notified by the Director to the person to whom the licence is granted; and

(c) the fishing vessel to which the licence relates shall not engage in activities which undermine the effectiveness of international conservation and management measures and in particular such activities as may be prescribed,

and may be granted subject to such other conditions, including in particular (but without prejudice to the generality of the Director's power to impose conditions) as to—

(i) the trans-shipment, of any fish taken under authority of the licence, as the Director thinks fit;

(ii) the installation, maintenance in working order and operation at all specified times of a satellite-tracking device of such model, type and specification and having such operating and reporting characteristics as the Director may specify in any such condition.

(6) A high seas fishing licence shall authorise fishing subject to such further conditions as may appear to the Director to be necessary or expedient for the conservation or management of species of living marine resources in the high seas and as may be specified by him in writing.

(7) If a licence condition referred to in or imposed in exercise of the Director's powers under subsection (4) or (5) is contravened, the master, the owner, charterer and operator of the fishing vessel concerned in such breach each commit an offence.

(8) A high seas fishing licence may be —

(a) varied from time to time; or

(b) revoked or suspended if —

(i) that appears to the Director to be necessary or expedient for the conservation or management of living marine resources in the high seas;

(ii) the fishing vessel is no longer registered in the Falkland Islands under Part 1 of the Merchant Shipping Act 1995 in its application to the Falkland Islands;

(iii) the holder of the licence or any person authorised to fish under the authority of the licence has been convicted of an offence under this Part;

(iv) the holder of the licence has been convicted of a fish-related offence under the laws of a country other than the Falkland Islands;

(v) the holder of the licence is no longer the owner, charterer or operator of the fishing vessel;

(vi) any information or documents supplied in or in connection with the application was false in any material particular.

(9) If a high seas fishing licence is varied, revoked or suspended the Director may, if he considers it appropriate after taking into account the circumstances of the case, refund the whole or any part of the fee charged for the licence.

Period of validity of high seas fishing licences

131.—(1) Subject to section 130(8)(b) and to subsection (2) of this section, the period of validity of a high seas fishing licence shall be 12 months or such other period less than 12 months as may be specified in the licence.

(2) A high seas fishing licence ceases to be valid if the fishing vessel in respect of which it was issued ceases to be a Falkland Islands fishing vessel.

(3) The holder of a high seas fishing licence shall within 7 days of any change of owner, charterer or operator of the fishing vessel to which the licence relates notify the Director in writing of the change.

(4) A person who contravenes subsection (3) commits an offence.

International co-operation

High seas fishing information

132.—(1) The Director may require any person who holds a licence under this Part and any fisherman or person owning, chartering or working on a Falkland Islands fishing vessel that is used for fishing on the high seas, to provide him with information or make returns in such form and at such intervals as he may decide concerning areas of fishing, catches and landings of fish and such other matters relating to fishing operations with which such person is connected as may be stated in any such requirement.

(2) A person commits an offence who, without reasonable excuse, refuses or fails to provide to the Director any information he has required in the exercise of his powers under subsection (1).

Exchange of information with other countries

133.—(1) The Director if so authorised by the Governor acting in his discretion may make such arrangements as may be appropriate to enable him to exchange information, including evidentiary material, with other countries that are parties to the Agreements or either of them or to which the Agreements have or either of them has been applied to enable the Falkland Islands and such other countries better to implement the objects of the Agreements or either of them.

(2) Without derogating from the generality of arrangements which may be made by the Director under subsection (1), the Director in particular, if so authorised by the Governor acting in his discretion, may where he has reason to believe that a non-Falkland Islands fishing vessel has engaged in activities that undermine international conservation and management measures —

(a) provide to the appropriate authorities of the country in which the non-Falkland Islands fishing vessel concerned is registered such information, including evidentiary material, relating to those activities, as may be necessary to assist the flag state in identifying the vessel; and

(b) when such non-Falkland Islands fishing vessel is voluntarily in a port of the Falkland Islands, promptly notify the appropriate authorities of the country in which the non-Falklands Islands fishing vessel is registered accordingly.

Enforcement

General powers of fisheries officers for the purposes of this Part

134.—(1) For the purpose of enforcing this Part, a fisheries officer may exercise in respect of a Falkland Islands fishing vessel on the high seas the same powers as he is authorised by section 140(2) to exercise in relation to such a vessel within the fishing waters.

(2) For the purposes of enforcing this Part, any reference in section 141(2)—

(a) to a fishing licence shall be deemed to be a reference to a high seas fishing licence; and

(b) to the fishing waters shall be deemed to be a reference to the high seas.

Application of provisions of Part VII in relation to this Part

135. Sections 141 to 161 in Part VII of this Ordinance apply equally for the purposes of this Part.

Offences in places beyond the fishing waters: Falkland Islands fishing vessels beyond the fishing waters

Falkland Islands fishing vessel with fish on high seas

136. A person commits an offence if —

(a) he knowingly has fish in his possession or control;

(b) the fish is on a Falkland Islands fishing vessel on the high seas; and

(c) the taking of the fish was not authorised by a high seas fishing licence,

but it is a defence to a prosecution for an offence under this section for the defendant to prove either —

(i) that the fish concerned was lawfully taken within the fishing waters under the authority of a fishing licence or scientific permit granted under this Ordinance; or

(ii) that the fish concerned was lawfully taken within the fishing waters of another country.

Falkland Islands fishing vessel on high seas equipped for fishing

137.—(1) A person commits an offence if he is the owner, charterer, operator or master of a Falkland Islands fishing vessel and —

(a) that fishing vessel is equipped with nets, traps or other equipment for fishing; and

(b) the fishing vessel is on the high seas.

(2) It is a defence to a prosecution under subsection (1) for the defendant to prove that —

(a) he holds a high seas fishing licence to be at that location equipped with the nets, traps or other equipment for fishing with which it was, in fact, equipped;

(b) all fishing equipment on board is, so far as is reasonably practicable, stowed so as not to be readily available for immediate fishing or in such manner as may be prescribed; and

(i) the fishing vessel is proceeding for one or more of the purposes of repair, alteration, survey, sale, charter, change of crew or disembarking of crew to a port outside the Falkland Islands;

(ii) the fishing vessel is engaged solely in the ordinary course of trade of carrying cargo between the Falkland Islands or the fishing waters and a port outside the Falkland Islands; or

(c) there is some other reasonable excuse for the fishing vessel being found in the position it was found equipped as mentioned in subsection (1).

Falkland Islands fishing vessel fishing in another country's waters

138.—(1) A person commits an offence if —

(a) the person knowingly uses a Falkland Islands fishing vessel for fishing; and

(b) the fishing vessel is in the fishing waters of another country and the person knows that fact or is reckless as to that fact; and

(c) the person is required by the law of the country in question to have an authorisation (however described) given under the law of the country for the fishing and he does not have any such authorisation.

(2) If the person has been convicted in the other country of an offence involving the fishing, he cannot be convicted of an offence under this section in relation to it.

Other

Visits by fishing vessels and fish carriers which are not Falkland Islands ships

139.—(1) Except in the case of emergency, the master of a fishing vessel or fish carrier that is not a Falkland Islands ship who intends to bring the vessel into the internal waters of the Falkland Islands, shall give the Director at least 72 hours' notice of his intention to do so.

(2) If the Governor is satisfied on the report of the Director that a vessel has undermined international conservation and management measures, he may authorise the Director, by notice to the master of a vessel to which subsection (1) applies, to direct the vessel —

(a) not to enter the internal waters of the Falkland Islands; or

(b) if it has entered the internal waters of the Falkland Islands, to leave those waters.

(3) If the Governor is satisfied on reasonable grounds that it is necessary for the purpose of the conservation and management of fish, the Governor may, by notice in the *Gazette*, direct any class or classes of fishing vessel or fish carrier not to enter the internal waters of the Falkland Islands.

(4) The master of a vessel to which a notice under subsection (2) or subsection (3) applies, who brings the vessel into the internal waters of the Falkland Islands knowing that the notice applies to the vessel, commits an offence.

(5) This section does not prevent a vessel from entering or remaining in the internal waters of the Falkland Islands for such period as is necessary for the purposes of obtaining food, fuel, and other goods and services necessary to enable the vessel to proceed safely and directly to a port outside the Falkland Islands.

Application of this Part to CCAMLR waters

140.—(1) Subject to this section, the foregoing provisions of this Part shall apply to fishing in CCAMLR waters.

(2) In their application in respect of CCAMLR waters the foregoing provisions of this Part shall be modified in accordance with the following Table —

TABLE

<i>Provision</i>	<i>Modification</i>
Section 130(3)	Replace with the following— “(3) The Director shall not grant a high seas fishing licence in relation to CCAMLR waters in respect of a Falkland Islands fishing vessel unless he is satisfied that the Falkland Islands will be able to exercise sufficient control and supervision in respect of that vessel, such that its activities are unlikely to prejudice the objectives of CCAMLR and CCAMLR conservation measures.”

Section 130(5)(c)	(a) Replace all words appearing before the words “as may be prescribed” with the words “the fishing vessel shall not engage in activities which undermine the effectiveness of conservation measures or any such other activities” ; and (b) insert after the words “such other conditions” the words “not inconsistent with conservation measures”,
Section 130(6)	(a) Insert after “A high seas fishing licence shall authorise fishing” the words, “in CCAMLR waters”; and (b) replace “in the high seas” with the words, “in CCAMLR waters”.
New section 130(6A)	Insert the following new subsection (6A)— “(6A). In relation to CCAMLR waters “conservation measures” means measures to conserve Antarctic marine living resources and the Antarctic ecosystem adopted in accordance with Article IX of CCAMLR.”
Section 130(8)(b)(i)	Replace “living marine resources in the high seas” with “Antarctic marine living resources in CCAMLR waters”
Section 132	Replace “on the high seas” with “in CCAMLR waters”
Section 133(1)	Replace— (a) “the Agreements or either of them” with “CCAMLR”; (b) “the Agreements have or either of them” with “CCAMLR”; and (c) “the Agreements or either of them” with “CCAMLR”
Section 133(2)	Replace “international conservation and management measures” with “measures to conserve Antarctic marine living resources and the Antarctic marine ecosystem adopted in accordance with Article IX of CCAMLR”

PART VII SURVEILLANCE AND ENFORCEMENT

Officers

Powers of officers

141.—(1) Fisheries officers are, in the exercise of their powers and performance of their functions, subject to the directions of the Director.

(2) A fisheries officer may —

(a) board a fishing vessel in the fishing waters that the fisheries officer has reasonable grounds to believe has been used, is being used, or is intended to be used, for fishing in the fishing waters and may —

(i) search the fishing vessel for fish, for equipment that has been used, is being used, is intended to be used or is capable of being used for fishing or for any document or record relating to the fishing operations of the fishing vessel; and

(ii) break open and enter any hold, compartment, container or other receptacle on the fishing vessel that the officer has reasonable grounds to believe contains anything that may afford evidence as to the commission of an offence under this Ordinance;

(b) board a fishing vessel in the fishing waters in relation to which a fishing licence or scientific permit is in force for the purpose of ascertaining whether a condition of the fishing licence or scientific permit or a provision of a temporary order is being, or has been, complied with and, in furtherance of that purpose, may search the fishing vessel and break open and enter any hold, compartment, container or other receptacle on the fishing vessel;

(c) examine anything found by action taken under paragraph (a) or (b);

(d) for the purposes of boarding a fishing vessel under paragraph (a) or (b), require the master to stop the fishing vessel;

(e) where the fisheries officer has reasonable grounds to believe that there is on any land or in any premises anything that may afford evidence as to the commission of an offence under this Ordinance, with the consent of the owner or occupier of the land or premises or under a warrant issued under section 143 —

(i) enter the land or premises;

(ii) search the land or premises and break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in which the fisheries officer has reasonable grounds to believe that there is any such thing;

(iii) examine and take possession of, or secure against interference, any such thing that the fisheries officer has reasonable grounds to believe may afford evidence as to the commission of an offence under this Ordinance;

(f) where the fisheries officer has reasonable grounds to believe that there is in any vehicle or aircraft anything that may afford evidence as to the commission of an offence under this Ordinance, with the consent of the owner or the person in charge of the vehicle or aircraft or under a warrant issued under section 143 —

(i) stop and detain the vehicle or detain the aircraft, as the case may be; and

(ii) enter and search the vehicle or aircraft;

(iii) break open and search any compartment, container or other receptacle in the vehicle or aircraft in which the fisheries officer has reasonable grounds to believe that there is any such thing; and

(iv) examine and take possession of, or secure against interference, any document or other thing found within the vehicle or aircraft that the fisheries officer has reasonable

grounds to believe may afford evidence as to the commission of an offence under this Ordinance;

(g) examine any equipment found in any place, being equipment that the officer has reasonable grounds to believe has been used, is being used, or is intended to be used, for fishing in the fishing waters;

(h) require the holder of a fishing licence or scientific permit which provides for the use of equipment of a particular type to give the fisheries officer such help as he reasonably requires for the purpose of measuring the equipment;

(i) subject to subsections (1) and (11), seize, detain, remove or secure —

(i) any fish that the fisheries officer has reasonable grounds to believe have been taken, processed, carried or landed in contravention of this Ordinance;

(ii) any fishing vessel, net, trap or other equipment that the officer has reasonable grounds to believe has been used, is being used or is intended to be used in contravention of this Ordinance; or

(iii) any document, instrument, appliance or other thing of whatsoever nature or description that the fisheries officer has reasonable grounds to believe may afford evidence as to the commission of an offence under this Ordinance;

(j) seize any fishing vessel, net, trap, other equipment or fish that are forfeited to the Crown under any provision of this Ordinance or which the fisheries officer has reasonable grounds to believe are forfeited under any such provision;

(k) enter on any land or premises specified in a fish receiver permit for the purpose of ascertaining whether a condition of the permit is being, or has been, complied with or whether the holder is contravening or has contravened a provision of this Ordinance and, in furtherance of that purpose —

(i) search the land or premises for, and examine, fish;

(ii) search the land or premises for, inspect, take extracts from, and make copies of, any documents relating to the receiving of fish; and

(iii) if the fisheries officer finds, during the course of the search, anything that he believes, on reasonable grounds, may provide evidence of a contravention of a provision of this Ordinance, secure the thing pending the obtaining of a warrant to seize it; and

(iv) with the consent of the holder of a fish receiver permit or under a warrant issued under section 143, seize anything found during the course of a search that the fisheries officer believes, on reasonable grounds, may provide evidence of a contravention of this Ordinance;

(l) subject to section 154, detain a person in the Falkland Islands for a period not exceeding 48 hours for the purpose of determining during the period of detention whether or not to charge the person with an offence under this Ordinance if he has reasonable grounds to believe that the person —

(i) is not a person who has Falkland Islands status or a person who is ordinarily resident in the Falkland Islands; and

(ii) was on a non-Falkland Islands fishing vessel when it was used in the commission of such an offence;

(m) subject to section 155, search without warrant a person detained under paragraph (l), his clothing and any property under his immediate control so as to ascertain whether a weapon or other thing capable of being used to inflict bodily injury or to help the person to escape from that detention is hidden on the person or his clothing or property;

(n) without warrant, arrest a person whom the fisheries officer has reasonable grounds to believe has committed an offence under this Ordinance;

(o) if the fisheries officer has reasonable grounds to believe that a fishing vessel has been used, is being used or is intended to be used in contravention of this Ordinance, require the master of the fishing vessel, if the fishing vessel is at a place in the Falkland Islands, to remain in control of the fishing vessel at that place or, if the fishing vessel is not at a place in the Falkland Islands, to bring the fishing vessel to such a place, or to a place at sea, specified by the officer and to remain in control of the fishing vessel at that place, and (in either case) until a fisheries officer permits the master to depart from that place;

(p) require the master of a fishing vessel who, because of a requirement under paragraph (o) or a previous requirement under this paragraph, is in control of a fishing vessel at a place to take the fishing vessel to another place in the Falkland Islands, or to a place at sea, specified by the fisheries officer and to remain in control of the fishing vessel at that place until a fisheries officer permits the master to depart from that place;

(q) bring a fishing vessel that the fisheries officer has reasonable grounds to believe has been used, is being used or is intended to be used in contravention of this Ordinance to a place in the Falkland Islands (whether or not the fishing vessel has previously been brought to another place or other places) and may remain in control of that fishing vessel pending the taking and determination of proceedings in respect of that contravention;

(r) require the master of a fishing vessel to produce any fishing licence or scientific permit, or evidence of the grant of any such licence or permit, for or in respect of the fishing vessel;

(s) take copies of, or extracts from, a fishing licence or scientific permit or any other document produced in accordance with a requirement under paragraph (r);

(t) require the master of a fishing vessel in relation to which a fishing licence or scientific permit is in force under this Ordinance to give information concerning the fishing vessel and its crew and any person on board the fishing vessel;

(u) require the master of a fishing vessel to cause to be lifted from the sea any equipment that the fisheries officer has reasonable grounds to believe is being, or has been, used by a person on board the fishing vessel in contravention of this Ordinance;

(v) require a person who is on board a fishing vessel in relation to which a fishing licence or scientific permit under this Ordinance is in force, or who is engaged in fishing in the fishing waters, or whom he reasonably suspects of having committed an offence under this Ordinance, to state the person's name and address;

(w) require a person found on any land or premises entered under paragraph (e) or in any vehicle or aircraft detained or searched under paragraph (f) to state the person's name and address or produce any document in the person's possession or under the person's control relating to any fish found on the land or in the premises, vehicle or aircraft or to give information concerning any such fish.

(3) If a fisheries officer under subsection (2)(i) seizes, detains, removes or secures any fish or any fishing vessel, net, trap or other equipment, the fisheries officer shall within 7 days after taking that action give written notice of the grounds for the taking of the action to the person believed by the officer —

(a) to have taken, processed, carried or landed the fish, in the case of action having been taken by the officer in relation to any fish;

(b) to be the owner of the fishing vessel (if the action has been taken in relation to any fishing vessel); or

(c) to be the person to have used, to be using or to be intending to be used the net, trap or other equipment (if the action has been taken in relation to any net, trap or other equipment).

(4) For the sake of avoidance of doubt it is hereby declared that —

(a) the validity of the seizure of a fishing vessel by a fisheries officer under subsection (2)(i) is not affected merely because the fishing vessel is brought or taken under escort to a place and the fishing vessel had to travel on the high seas to reach that place;

(b) subsection (2)(o) and (p) permit a fisheries officer to require the master of a fishing vessel to bring or take the fishing vessel to a specified place and remain in control of the fishing vessel there even if it is necessary for the fishing vessel to travel on the high seas to reach that place;

(c) subsection (2)(q) allows a fisheries officer to bring a fishing vessel to a place and remain in control of it there even if it is necessary for the fishing vessel to travel on the high seas to reach the place.

(5) Where a fisheries officer (other than a member of Her Majesty's armed forces, police officer or customs officer who is in uniform) boards a fishing vessel, the fisheries officer shall produce his warrant card and, if he fails to do so, he is not authorised to remain on board the fishing vessel.

(6) Where a fisheries officer (other than a member of Her Majesty's armed forces who is in uniform) proposes to enter and search, or to detain, a vehicle or aircraft, the officer shall, if there is a person in charge of the vehicle or aircraft produce his warrant card and, if the fisheries officer fails to do so, the fisheries officer is not authorised to enter and search, or to detain, the vehicle or aircraft.

(7) Where a fisheries officer (other than a member of Her Majesty's armed forces who is in uniform) makes a requirement of a person ("the relevant person") under any provision of subsection (2) except paragraph (d), he is required to produce a warrant card to the relevant person and, if the fisheries officer fails to do so, the relevant person is not obliged to comply with the requirement.

(8) In exercising the powers conferred on him by subsection (2), a fisheries officer may only use force when and to the degree necessary in the circumstances—

(a) to ensure the safety of the fisheries officer, of any other fisheries officer or of any person assisting the fisheries officer pursuant to section 142; or

(b) where the fisheries officer or any other fisheries officer is obstructed in the performance of his duties.

(9) In this section "examine" includes count, measure, weigh, grade or gauge.

(10) In subsection (6) "his warrant card", in the case of a police officer or customs officer, means the warrant card issued to him as a police officer or customs officer, as the case may be.

(11) Whenever a fisheries officer seizes, detains, removes or secures any document, instrument, appliance or other thing as evidence in exercise of his powers under subsection (2)(i)(iii) he shall within 7 days give written notice of such seizure, detention, removal or securing to the person appearing to him to have been in possession thereof immediately prior to such seizure, detention, removal or securing.

Person to assist fisheries officer

142.—(1) Any fisheries officer exercising any of the powers conferred on him by this Ordinance may do so with the aid of such assistants as he considers to be necessary for the purpose.

(2) Any person called upon by a fisheries officer to assist him in the exercise of any of the powers conferred by this Ordinance is, by this subsection, authorised to render such assistance.

(3) A person who, while assisting a fisheries officer, does any act under this Ordinance, or omits to do any act required by this Ordinance, shall not be under any civil or criminal liability as a result of that act or omission on the ground of want of jurisdiction or mistake of law or fact, or on any other ground, unless he acted or omitted to act in bad faith.

(4) The Crown may not be held directly or indirectly liable for an act or omission of any person assisting a fisheries officer under the authority of subsection (2) unless he has himself incurred liability for the act or omission.

Search warrants

143.—(1) A Justice of the Peace may, upon application by a fisheries officer, issue a warrant to search land or premises or any vehicle or aircraft if the Justice of the Peace is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or that there will be within the next 72 hours, any evidential material on the land, at the premises or in the vehicle or aircraft.

(2) A warrant issued under this section shall set out —

(a) the offence to which the warrant relates;

(b) a description of the land, premises, vehicle, aircraft or other conveyance (hereinafter in this Part called “the premises”) to which the warrant relates;

(c) the kinds of evidential material that may be searched for under the warrant;

(d) the name of the fisheries officer who, unless he inserts the name of another officer in the warrant, is to be responsible for executing the warrant;

(e) the period for which the warrant remains in force, which shall not exceed 7 days; and

(f) whether the warrant may be executed at any time or only during particular hours.

(3) The warrant shall also state that it authorises the seizure of a thing (other than evidential material of a kind referred to in subsection (2)(c)) found at the premises in the course of the search that the executing officer or a person assisting him believes on reasonable grounds to be evidential material in relation to an offence to which the warrant relates or a thing relevant to another offence under this Ordinance or the regulations if the executing officer or a person assisting him believes on reasonable grounds that seizure of that thing is necessary to prevent its concealment, loss or destruction or use in committing an offence under this Ordinance or the regulations.

(4) Nothing in subsection (2)(e) prevents the issue of successive warrants in relation to the same premises.

Actions authorised by a search warrant

144.—(1) A warrant authorises the executing officer or a person assisting him —

- (a) to enter the premises;
- (b) to take samples of things found at the premises for forensic purposes;
- (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises;
- (d) to seize other things found at the premises in the course of the search that the executing officer or a person assisting him believes on reasonable grounds to be evidential material in relation to an offence to which the warrant relates or evidential material in relation to another offence under this Ordinance or the regulations under the Ordinance, if the executing officer or a person assisting him believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence under this Ordinance or the regulations.

(2) If the warrant states that it may be executed only during particular hours, the warrant shall not be executed outside those hours.

(3) If things are seized under a warrant, the warrant authorises the executing officer to make the things available to officers of other agencies for the purpose of investigating or prosecuting an offence to which the things relate.

Availability of assistance and use of force in executing a search warrant

145. In executing a warrant —

- (a) the executing officer may be accompanied by such persons and make use of such assistance;
- (b) the executing officer, or a person who is a fisheries officer or a police officer and who is assisting in the execution of the warrant, may use such force against such persons and things; and
- (c) a person who is not a fisheries officer and is not a police officer and who is assisting in the execution of a warrant may use such force against things,

as is reasonable in the circumstances.

Copy of search warrant to be given to occupier etc.

146.—(1) If while a warrant is being executed the occupier of the premises concerned or another person apparently representing him is present at the premises, the executing officer or a person assisting him shall make available to that person a copy of the warrant and the executing officer shall produce to that person his warrant card issued to him under section 5 or as a police officer or customs officer, as the case may be.

(2) The copy of the warrant referred to in subsection (1) need not include the signature of the Justice of the Peace or the seal of the relevant court.

Powers available to officer executing search warrant

147.—(1) In executing a warrant, the executing officer or person assisting him may, for a purpose incidental to the execution of the warrant or if the occupier of the premises consents in writing, take photographs (including video recordings) of the premises or of things at the premises.

(2) If a warrant is being executed, the executing officer or person assisting him may, if the warrant is still in force, complete the execution of the warrant after the officer and all persons assisting him temporarily ceases occupation and leaves the premises —

(a) for not more than 1 hour; or

(b) for a longer period if the occupier of the premises consents in writing.

Use of equipment to examine or process things

148.—(1) The executing officer or a person assisting him may bring to the premises the subject of the warrant any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under the warrant.

(2) If it is not practicable to examine or process the things at the premises the subject of the warrant or the occupier of the premises consents in writing, the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.

(3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer shall, if it is practical to do so, inform the occupier of the address of the place, and a time at which the examination or processing will be carried out and allow that occupier or his representative to be present during the examination or processing.

(4) The executing officer or person assisting him may operate equipment already at the premises the subject of the warrant to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under the warrant if the executing officer or such a person believes on reasonable grounds that the equipment is suitable for the examination or processing and the examination or processing can be carried out without damage to the equipment or the thing.

Use of electronic equipment at premises

149.—(1) The executing officer or person assisting him may operate electronic equipment at the premises the subject of the warrant to see whether evidential material is accessible by doing so if he believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

(2) If the executing officer or a person assisting him, after operating the equipment, finds that the evidential material is accessible by doing so, he may —

(a) seize the equipment and any disk, tape or other associated device; or

(b) operate the equipment to put the material into documentary form, if the material can, by using facilities at the premises, be put in documentary form and may seize the documentation so produced; or

(c) if the material can be transferred to a disk, tape or other storage device that is brought to the premises or is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises, operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

(3) A person may seize equipment under subsection (2)(a) only if —

(a) it is not practicable to put the material in documentary form as mentioned in subsection (2)(b) or to copy the material as mentioned in subsection (2)(c); or

(b) possession by the occupier of the equipment would constitute an offence under this Ordinance or the regulations.

(4) If the executing officer or a person assisting him believes on reasonable grounds that evidential material may be accessible by operating electronic equipment at the premises but expert assistance is required to operate the equipment and if he does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with, then the executing officer may do whatever is necessary to secure the equipment whether by locking it up, placing a guard or otherwise.

(5) The executing officer or a person assisting him shall give notice to the occupier of the premises the subject of the warrant of his intention to secure equipment and of the fact that the equipment may be secured for up to 48 hours.

(6) The equipment may be secured under subsection (4) until the end of a period of not more than 48 hours or until the equipment has been operated by the expert, whichever happens first.

(7) If the executing officer or a person assisting him believes on reasonable grounds that the expert assistance required to operate the electronic equipment on the premises which has been secured pursuant to subsection (4) will not be available within 48 hours, he may apply to a Justice of the Peace for an extension of that time.

(8) If an executing officer or a person assisting him intends to make an application under subsection (7), he shall give notice to the occupier of the premises of that intention and the occupier is entitled to be heard in relation to the application.

(9) The foregoing provisions of this Part relating to the issue of warrants apply, with any modifications that are necessary, to the issuing of an extension.

Compensation for damage to electronic equipment

150.—(1) If —

(a) damage is caused to equipment as a result of being operated as mentioned in section 148 or 149; and

(b) the damage was caused as a result of insufficient care being exercised in selecting the person who was to operate the equipment or insufficient care being exercised by the person operating the equipment,

compensation for the damage is payable to the owner of the equipment.

(2) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

Copies of seized things to be provided

151.—(1) Subject to subsection (2), if a person seizes under a warrant a document, film, computer file or other thing that can readily be copied or a storage device information in which can readily be copied, that person shall, if requested to do so by the occupier of the premises or by another person who apparently represents the occupier and is present when the warrant is executed, give a copy of the thing or the information to the person who made the request as soon as practicable after the seizure.

(2) Subsection (1) does not apply if the thing that has been seized was seized under section 149(2)(b) or possession by the occupier of the document, film, computer file, thing or information would constitute an offence under any law having effect in the Falkland Islands.

Occupier entitled to be present during search

152. If a warrant is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, he is entitled to observe the search being conducted but —

(a) the right to observe the search being conducted ceases if the person impedes the search; and

(b) the right to observe the search being conducted does not prevent two or more areas of the premises being searched at the same time.

Receipts for things seized under search warrant

153. The executing officer or a person assisting him shall provide a receipt for a thing seized under a warrant or moved under section 149(2) but if two or more things are seized or moved, they may be covered in the one receipt.

Detention under sections 134 and 141(2)

154.—(1) A person ("the detainee") detained under section 134 or section 141(2)(l) shall be released from detention —

- (a) as soon as a fisheries officer knows or reasonably believes that the detainee is a person who has an address in the Falkland Islands;
- (b) at the time the detainee is brought before a Justice of the Peace following a decision to charge the detainee with an offence referred to in sections 134 or 141(2)(l);
- (c) at the time a decision is made not to charge the detainee with an offence referred to in that provision; or
- (d) at the expiry of 48 hours after the beginning of the detention,

whichever first occurs.

(2) Nothing in this Ordinance authorises a fisheries officer to use more force in detaining a person than is reasonably necessary.

Searches under sections 134 and 141(2)

155.—(1) A search under section 134 or section 141(2)(m) of a person ("the detainee") shall ordinarily only be conducted by a fisheries officer of the same sex as the detainee or by a person assisting a fisheries officer of the same sex as the detainee.

(2) Section 134 and section 141(2)(m) and this section do not authorise a fisheries officer, or other person conducting the search —

- (a) to remove any of the detainee's clothing;
- (b) to require the detainee to remove any of his clothing; or
- (c) to use more force, or subject a detainee to greater indignity, than is reasonably necessary to conduct the search.

(3) If, in conducting a search, a fisheries officer finds a weapon or other thing mentioned in section 141(2)(m), he may take possession of that weapon or other thing and keep it for such time as he reasonably thinks necessary for the purposes of this Ordinance.

(4) If on conducting a search under subsection (1) a person not being a police officer finds a weapon or other thing mentioned in subsection (3), he shall take possession of it and shall as

soon as possible give it to a police officer and that officer may keep it for such time as he thinks necessary for the purposes of this Ordinance.

Power to pursue vessels

156.—(1) A fisheries officer may exercise, with respect to non-Falkland Islands fishing vessels at a place at sea outside the fishing waters but not within the territorial sea of another country, a power conferred on a fisheries officer under section 141 if the following conditions are satisfied—

- (a) a fisheries officer has good reason to believe that a provision of this Ordinance has been contravened in relation to the vessel;
- (b) before the pursuit of the fishing vessel was commenced, the vessel was given a visual or auditory signal to stop at a distance which enabled the signal to be seen or heard by the vessel;
- (c) the fishing vessel or one of its boats was at a place within the fishing waters when the pursuit of the vessel commenced;
- (d) one or more fisheries officers have pursued the fishing vessel from that place to the place at which it is sought to exercise that power; and
- (e) the pursuit was not interrupted at any time before the fisheries officer arrived at that place with a view to exercising that power.

(2) For the purposes of subsection (1) a pursuit of a fishing vessel is not to be taken to be interrupted only because visual or non-visual contact was interrupted temporarily.

Release of detained fishing vessel and other seized property

157.—(1) Where any property, including a fishing vessel, is under the control of a fisheries officer because of the exercise by that officer of powers under section 134 or 141 (as they apply of their own force or because of any other provision of this Ordinance), the court may on the application of any person appearing to the court to have a sufficient interest therein direct that the property be released —

- (a) to the owner, charterer, operator or the master of the fishing vessel, in the case of a fishing vessel; and
- (b) in any other case, to the owner of the property or to the person from whose possession the property was seized, or from whose control the property was removed,

on such conditions as the court thinks fit, which may include conditions as to the giving of security for payment of —

- (c) the value of the fishing vessel or other property if it is forfeited to the Crown by order of the court as a consequence of conviction of an offence under this Ordinance;

(d) the amount of any fines which the court considers, in the light of the facts reported by the Crown on the hearing of the application under this section, might be imposed in the event of it convicting the owner, charterer, operator or master of any relevant offence;

(e) in the case of an offence relating to the use of a fishing vessel, the cost of pursuit and arrest or detention of the fishing vessel and of bringing it to the port or other place at which it is detained; and

(f) such amount as, in the opinion of the court, represents the likely amount of the costs of the prosecution of any offence with which the owner, charterer, operator or master has been charged or with which the court is informed it is likely that such a person may be charged on a full indemnity basis, assuming a not guilty plea.

(2) For the purposes of this section, a reference to property includes a reference to fish, and property is to be taken to be under the control of a fisheries officer if any person is, in relation to that property, subject to the direction of the fisheries officer.

Protection of fisheries officer from liability

158.—(1) No fisheries officer who does any act under this Ordinance or omits to do any act required by this Ordinance shall be under any civil or criminal liability as a result of that act or omission on the ground of want of jurisdiction or mistake of law or fact, or on any other ground, unless he has acted or omitted to act in bad faith or without reasonable cause.

(2) The Crown may not be held directly or indirectly liable for an act or omission of any such fisheries officer unless the officer has himself incurred liability for the act or omission.

Fish receiver permits

Holder of fish receiver permit to give information etc

159.—(1) A fisheries officer may, by written notice given to the holder of a fish receiver permit, require him —

(a) to give the fisheries officer, within such reasonable time as is specified in the notice, such return or information in relation to fish received by the holder of the permit as is specified in the notice; and

(b) to verify any such return or information by statutory declaration.

(2) Regulations under section 223 of this Ordinance may make provision —

(a) requiring holders of fish receiver permits to make and keep accounts and other records in respect of fish received by them; and

(b) requiring such persons to give returns or information in relation to fish received by them, not being returns or information mentioned in subsection (1).

Offences in relation to returns by holders of fish receiver permits

160. A holder of a fish receiver permit commits an offence if he refuses to or fails to give a return or information required under section 159 or under regulations made for the purposes of that section.

Enforcement generally

Offences

161.—(1) A person commits an offence who —

(a) being the holder of a fishing licence, high seas fishing licence, overseas master fishing licence, scientific permit or fish receiver permit, contravenes a condition of that licence or permit or a provision of a temporary order;

(b) being the holder of a fishing licence, high seas fishing licence, scientific permit or fish receiver permit, causes or permits a person acting on his behalf to contravene a condition of the licence or permit or a provision of a temporary order;

(c) being a person acting on behalf of the holder of a fishing licence, high seas fishing licence, scientific permit, or fish receiver permit, contravenes a condition of the licence or permit or a provision of a temporary order;

(d) makes or purports to make a record, or furnishes or purports to furnish a return, relating to a matter specified in section 91 knowing that the record or return contains a statement in respect of that matter that is false or misleading in a material respect or being reckless as to whether the record or return contains a statement in respect of a matter that is false or misleading in a material respect;

(2) Subsection (1) (and the remainder of this section so far as it relates to that subsection) applies whether the contravention occurs inside or outside the fishing waters.

(3) A prosecution for an offence under this section may be commenced at any time within 4 years after the commission of the offence.

Breach of condition or requirement

162. Where no other offence is provided by this Ordinance in respect of the contravention in question, a person who contravenes a condition or requirement imposed by the Director in respect of any consent, approval, authority, or certificate issued or granted under this Ordinance (except a condition or requirement to pay a sum of money) commits an offence under this section.

Obstruction of fisheries officers

163.—(1) A person commits an offence who —

(a) resists or obstructs, aids, abets, incites or encourages any other person to resist or obstruct any —

(i) fisheries officer in the execution of his powers or duties;

(ii) person assisting a fisheries officer in accordance with section 142; or

(b) uses threatening language or behaves in a threatening manner towards any —

(i) fisheries officer executing his powers or duties; or

(ii) person assisting a fisheries officer in accordance with section 142; or

(c) fails to comply with any lawful requirement of any fisheries officer;

(d) provides to any fisheries officer any particulars that are false or misleading in any material respect; or

(e) personates or falsely claims to be a fisheries officer or a person lawfully assisting a fisheries officer.

(2) A person who refuses to allow any fisheries officer or any person assisting a fisheries officer in accordance with section 142 to exercise any of the powers conferred on that fisheries officer or person by this Ordinance shall be deemed to be obstructing that fisheries officer or person.

Removing fish from traps, etc

164. A person commits an offence who, not being a fisheries officer acting in the course of his duties as such, within the fishing waters removes a fish from a net, trap or other equipment for the taking of fish unless he is the owner of the net, trap or other equipment or is acting with the authority of the owner.

Persons not to receive fish in certain circumstances

165.—(1) A person commits an offence who, not being the holder of a fish receiver permit, receives, otherwise than for his private or domestic use, fish from a person who he knows, or has reason to suspect, is engaged in commercial fishing.

(2) An offence under subsection (1) is not committed by a person who receives fish as a servant or agent of the holder of the fish receiver permit.

Power of court to make banning order

166.—(1) Where a court convicts a person of an offence under section 161(1) (a), (b), (c) or (d), the court may, in addition to any penalty it imposes in respect of that offence, order that the person convicted shall not, during such period as the court determines, but not exceeding 3 years, be on a fishing vessel within the fishing waters with the intention of engaging in commercial fishing whether on his own account or as the servant or agent of any other person.

(2) Where a court convicts a person of an offence under section 161(1) (a), (c), (d) or (e) or sections 136, 137 or 138 involving a Falkland Islands fishing vessel it may, in addition to any penalty imposed in respect of that offence prohibit that person from being on any Falkland Islands fishing vessel outside the fishing waters for the purposes of commercial fishing during a period specified by the Court, but not exceeding 3 years.

Using fishing vessel for fishing in fishing waters: strict liability offence

167.—(1) A person who, at any place within the fishing waters uses a fishing vessel for fishing commits an offence unless there is in force in respect of that fishing vessel a fishing licence or scientific permit authorising the use of the fishing vessel at that place.

(2) It is not a defence to a prosecution brought under this section for the defendant to show that he did not know that he was within the fishing waters or at the place in question.

Offence of deliberate use of fishing vessel for fishing in fishing waters

168.—(1) A person commits an offence under this subsection if—

(a) he intentionally uses a fishing vessel within the fishing waters;

(b) the use of the fishing vessel is for fishing and the person either knew that it was being so used or was reckless as to that fact; and

(c) the fishing vessel is at a place in the fishing waters at the time of the use and the person either knew or was reckless as to that fact.

(2) No offence is committed under subsection (1) if the defendant shows that a fishing licence or scientific permit was in force authorising the use of the fishing vessel at the place in the fishing waters in question for the species of fish for which it was fishing.

(3) It is not a defence to a prosecution under subsection (1) for the defendant to show that he did not know that he was at a place within the fishing waters.

Having fishing vessel equipped with nets etc: strict liability offence

169.—(1) A person commits an offence who at a place within the fishing waters has in his possession or charge a fishing vessel, nets, traps or other equipment for fishing unless —

(a) the use, or presence, of the fishing vessel at that place is authorised by a fishing licence;

(b) the fishing vessel's nets, traps or other equipment for fishing are stowed in such manner that they are not readily available for fishing or in such manner as may be prescribed by regulations under section 223(1); or

(c) the use of the fishing vessel for scientific research purposes in that area is authorised under a scientific permit; or

(d) the fishing vessel, nets, traps or other equipment for fishing is or are being used for recreational fishing purposes;

but it is a defence for the defendant to prove that the fishing vessel was at the time of the alleged offence transiting the fishing waters without fishing therein.

(2) It is not a defence to a prosecution for an offence under subsection (1) for the defendant to show —

(a) that he did not know that he was at a place within the fishing waters; or

(b) that he had no intention of fishing within the fishing waters.

Fishing in internal waters other than with a fishing vessel

170.—(1) Subject to sub-section (2), a person commits an offence who, when not authorised to do so by a fishing licence or scientific permit, fishes in the internal waters other than with a fishing vessel.

(2) It is a defence to a prosecution for an offence under subsection (1) for the defendant to prove that the fishing was undertaken with a view to the catch being consumed only in the Falkland Islands.

Possession of nets etc in internal waters other than upon a fishing vessel

171.—(1) Subject to subsection (2), a person commits an offence who, other than as is authorised by a fishing licence or scientific permit, in the internal waters has in his possession nets, traps or other equipment for fishing other than upon a fishing vessel.

(2) It is a defence to a prosecution for an offence under subsection (1) for the defendant to prove—

(a) that the nets, traps or other equipment for fishing in his possession were in his possession with a view to the catch taken thereby being consumed only in the Falkland Islands or

(b) that he had some reasonable excuse for being in possession of the nets, traps or other equipment for fishing at the time and place in question.

Using vessel outside fishing waters to support illegal fishing in fishing waters

172.—(1) A person (“the supporter”) commits an offence if —

(a) the supporter uses a vessel (“the support vessel”);

(b) the support vessel is outside the fishing waters; and

(c) the use of the support vessel is directly in support of, or in preparation for the use of a fishing vessel (other than the support vessel) by a person in the fishing waters in contravention of sections 167, 168 or 169.

(2) For the sake of avoidance of doubt it is declared that —

(a) a fisheries officer outside the fishing waters (but not in the territorial sea of another country) may exercise powers under section 141 in relation to the support vessel and any person on the support vessel whom the officer has reasonable cause to believe has committed an offence under this section; and

(b) the requirements of section 156 accordingly apply in relation to the pursuit of vessels used for the commission of offences to which subsection (1) of this section relates.

(3) A fisheries officer may exercise powers under section 141(2)(a) in relation to the support vessel as if the support vessel were in the fishing waters.

Forfeiture by court order

Forfeiture

173.—(1) Where a court convicts a person of an offence under sections 127(2), 136, 137(1), 138(1), 168(1) or 170(1), whether or not the court orders that person to pay a fine it shall order the forfeiture of such of the following as are relevant in the circumstances of the case —

(a) any fishing vessel used in the commission of the offence, in so far as the same may not already be forfeit to the Crown under section 175 or subsection (2) of this section;

(b) the nets, traps or equipment used in the commission of the offence;

(c) fish on board any fishing vessel involved in the commission of such an offence;

(d) the proceeds of sale of any such fish;

(e) where a person convicted of the offence owns any Individual Transferable Quota or Provisional Quota, that Quota,

unless the court for special reasons relating to the offence announced in open court otherwise orders.

(2) Where a court convicts a person of an offence under sections 161, 169(1) or 171(1), the court may order the forfeiture of all or any of such of the following as may be relevant in the circumstances of the case —

(a) nets, traps or equipment on board a fishing vessel or in possession of a person convicted of an offence under section 171(1) in relation to which the offence is committed at the time of the offence;

(b) fish on board that fishing vessel at that time or in relation to which the offence is committed; and

(c) the proceeds of the sale of any such fish.

(3) Any property, including fish, ordered by a court to be forfeited becomes the property of the Crown.

(4) Notwithstanding that a court has under subsection (1) ordered the forfeiture of any Individual Transferable Quota or Provisional Quota, any Catch Entitlement generated by that Quota in the fishing period current at the time of the forfeiture is not affected by the forfeiture.

Disposal of fishing vessel forfeit by order of a court

174.—(1) Any fishing vessel, nets, traps, equipment or fish forfeit to the Crown under section 173 shall, subject to subsections (2) and (3), be dealt with in such manner as the Governor may direct.

(2) Where the Governor is satisfied that at the time of the court's order for forfeiture of the fishing vessel concerned it was subject to a mortgage to a third party securing payment of a sum of money, the Governor shall order that the fishing vessel shall be offered for sale.

(3) Nothing forfeited to the Crown by order of the court under section 173 may be sold or otherwise sold to the previous owner or to any person associated or connected with the previous owner.

(4) For the purposes of this section —

(a) a mortgage is a mortgage to a third party if it is a mortgage to a person who is not a person who is a person who is associated or connected with the previous owner;

(b) a person is connected with the previous owner if under section 208 read with section 210 of the Taxes Ordinance 1997 he would be treated as an associated or connected person in relation to the previous owner.

(5) Where a fishing vessel forfeited to the Crown under section 173 is sold the proceeds of sale shall be applied —

(a) in repayment or discharge of the costs and expenses incurred by the Crown in or in connection with the sale;

(b) in payment or discharge of any third party mortgage of the fishing vessel,

and the balance shall be paid into the Consolidated Fund.

Automatic forfeiture of things used in certain offences

Automatic forfeiture

175. The following things are forfeited to the Crown —

(a) any nets, traps or equipment which were used in the commission of an offence under sections 168 or 169 or were on a fishing vessel used in an offence under any of those provisions at the time of the commission of that offence;

(b) any fish involved in the commission of an offence under any provision mentioned in paragraph (a) or on a fishing vessel described in paragraph (a) at the time of any of the offences mentioned in that paragraph.

Dealing with things as automatically forfeited

Application of sections 177 to 181

176. Sections 177 to 181 set out rules about a thing that a fisheries officer seizes under sections 134 and 141(2)(j) because —

(a) the thing is forfeited under section 175; or

(b) the fisheries officer has reasonable grounds to believe that the thing is forfeited under section 176.

Notice of seizure

177.—(1) The fisheries officer shall give written notice of the seizure of the thing to the person who was the master of the fishing vessel immediately before the seizure or whom the fisheries officer has reasonable grounds to believe was the master of the fishing vessel immediately before the seizure.

(2) If the fisheries officer cannot conveniently give the notice to the required person in person, he may give written notice of the seizure of the thing in such manner as he considers is most likely to bring the matter to the attention of the owner of the thing.

(3) The notice shall —

(a) identify the thing;

(b) state that the thing has been seized;

(c) state that the thing will be condemned as forfeited unless the owner of the thing or the person who had possession, custody or control of the thing immediately before it was seized gives to the Director within 30 days a written claim for the thing; and

(d) specify the address of the Director.

Thing condemned if not claimed in time

178.—(1) A thing is condemned as forfeited to the Crown 30 days after notice of seizure of the thing has been given under section 177 unless —

(a) within those 30 days the owner of the thing or the person who had possession, custody or control of it immediately before it was seized gives to the Director a written claim for it; and

(b) the claim sets out an address for service upon the claimant.

(2) A person may claim the thing even if it has been destroyed or disposed of before the claim was made.

Dealing with a claim for thing

179.—(1) If a notice of claim is given in accordance with section 178 —

(a) an officer may retain possession of the thing without commencing any proceedings for the condemnation of the goods; and

(b) the Director may serve notice upon the claimant stating that the thing will be condemned if the claimant does not institute proceedings against the Crown within 2 months of the date of the notice to recover the thing or for a declaration that the thing is not forfeited.

(2) A notice under subsection (1) shall be sent by pre-paid post to the address specified under section 178(1)(b) or by delivering the notice or causing it to be delivered to the claimant personally.

(3) A notice may be given under subsection (2) even if the thing has been released under section 157.

Condemnation of thing if it is claimed

180.—(1) This section applies if the Director gives the claimant a notice under section 179 about instituting any proceedings to recover the thing or for a declaration that the thing is not forfeited.

(2) The thing is condemned as forfeited to the Crown 2 months after notice under section 179 is given if the claimant does not institute proceedings against the Crown for recovery of the thing within 2 months of the notice.

(3) Where proceedings against the Crown are instituted within 2 months of the notice, the thing is condemned as forfeited to the Crown if, at the end of the proceedings there is not —

(a) an order for the claimant to recover the thing;

(b) an order for the Crown to pay the claimant the proceeds of sale of the thing if it has been sold before the end of the proceedings;

(c) an order for the Crown to pay the claimant the market value of the thing at the time it was disposed of or destroyed, if it is to be disposed of or destroyed before the end of the proceedings; or

(d) a declaration that the thing is not forfeited.

(4) For the purposes of subsection (3), if the proceedings go to judgment, "the end of the proceedings" means the end of the period for lodging an appeal against a judgment, if no appeal is lodged within that period, or when the appeal lapses or is finally determined, if an appeal is lodged against the judgment within that period.

(5) Proceedings relating to the thing may be instituted or continued even if it is disposed of or destroyed.

(6) If the court hearing the proceedings decides that it would have ordered the thing to be delivered to a person apart from the fact that the thing had been disposed of or destroyed, the court shall order the Crown to pay the person an amount equal to the proceeds of the sale of the thing, if it has been sold before the end of the proceedings, or the market value of the thing at the time it was disposed of or destroyed, if it has been disposed of or destroyed before the end of the proceedings.

Dealing with thing after it is condemned

181. If the thing is condemned as forfeited to the Crown it shall be dealt with or disposed of in accordance with the directions of the Governor.

Prohibition of fishing activity in case of re-offending

182.—(1) If any person is convicted within a period of 7 years of —

(a) two or more grave offences committed on separate occasions; or

(b) three or more offences committed on separate occasions one or more of which is a grave offence and one or more of which is a serious offence,

the court shall, in addition to any other penalty it imposes, order —

(i) that the person forfeit any licence, permit or approval obtained under this Ordinance; and

(ii) that the person be prohibited for a period specified by the court not being less than 2 years and not exceeding 5 years, commencing on the date of the most recent conviction from doing any of the following —

(aa) holding any Quota, Catch Entitlement, licence, permit or approval obtained under this Ordinance; or

(bb) engaging in fishing;

(2) A person who contravenes or fails to comply with an order made under subsection (1) commits an offence.

(3) In this section —

(a) "grave offence" means an offence punishable on conviction by a fine exceeding the maximum of Level 11 on the standard scale;

(b) "serious offence" means an offence punishable on conviction by a fine exceeding the maximum of Level 7 on the standard scale but not exceeding the maximum of Level 11 on the standard scale.

Enforcement action prevails over admiralty action

Seizure or forfeiture has effect despite admiralty proceedings

183.—(1) The seizure, detention or forfeiture of a fishing vessel under this Ordinance has effect despite all or any of the following events —

(a) the arrest of the fishing vessel;

(b) the making of an order for the sale of the fishing vessel by the court; and

(c) the sale of the fishing vessel under an order made by the court,

in proceedings within the admiralty jurisdiction of the Supreme Court.

(2) Subsection (1) has effect regardless of whether the seizure, detention or forfeiture or the event that was the basis for the seizure, detention or forfeiture occurred before or after the arrest or making of the order for sale.

Observer programme

Observer programme

184.—(1) The Director may establish an observer programme for the purpose of collecting reliable and accurate information for fisheries research, fisheries management, and fisheries enforcement.

(2) The Director may appoint any person employed in the Department of Fisheries to be an observer for the purposes of the observer programme under subsection (1) of this section, and an observer so appointed has all the powers of an observer under sections 186 and 188.

(3) The Director may place any observer appointed under this section on any vessel to observe fishing and the trans-shipment, transportation, and landing of fish.

(4) An observer may collect any information on fisheries resources, fishing (including catch and effort information), the effect of fishing on the aquatic environment, and the transportation of fish including —

(a) the species, quantity, size, age and condition of fish taken;

- (b) the methods by which, the areas in which, and the depths at which, fish are taken;
- (c) the effects of fishing methods on fish;
- (d) all aspects of the operation of any fishing vessel;
- (e) processing, transportation, trans-shipment, storage, or disposal of any fish;
- (f) any other matter that may assist the Director to obtain, analyse, or verify information for the purposes of fisheries research, fisheries management, and fisheries enforcement.

(5) No fisheries officer or any person with the powers of a fisheries officer shall be appointed under subsection (2) of this section.

Director to give notice of intention to place observer on fishing vessel

185.—(1) Before placing any observer on a fishing vessel, the Director shall give the owner, charterer, operator or master of the fishing vessel, reasonable notice of his intention to place an observer or observers on the fishing vessel.

(2) Upon receipt of a notice given under subsection (1), no person shall cause or allow the fishing vessel to which the notice relates to put to sea without having on board the number of observers specified in the notice given under that subsection.

(3) Any person who contravenes subsection (2) commits an offence.

(4) For the purposes of this section, the term “reasonable notice” means such notice as is reasonable in all the circumstances, or such other period or type of notice as may be agreed between the Director and the owner, charterer, operator or master, on or after which the fishing vessel is not to put to sea without having on board the specified number of observers.

Powers of observers and obligations of persons on fishing vessels carrying observers

186.—(1) The owner, charterer, operator and master of any fishing vessel on which an observer is placed shall allow the observer, at any reasonable time, having regard to the operations of the fishing vessel, to —

- (a) have access to the fishing gear and the storage and processing facilities on the fishing vessel;
- (b) have access to any fish or aquatic life (including seabirds and protected species) on board the fishing vessel;
- (c) have access to the bridge and the navigation and communications equipment of the fishing vessel;
- (d) have access to the logs and records of the fishing vessel, whether required to be carried and maintained by or under this Ordinance or otherwise;

- (e) receive and transmit messages and communicate with the shore and other fishing vessels;
- (f) take, measure, and retain samples or whole specimens of any fish or aquatic life (including seabirds and protected species) caught;
- (g) store samples and whole specimens on the fishing vessel, including samples and whole specimens held in the fishing vessel's freezing facilities.

(2) Every person on board a fishing vessel on which there is an observer commits an offence, who—

- (a) fails to provide reasonable assistance to enable the observer to exercise powers under subsection (1) of this section; or
- (b) hinders or prevents the observer exercising those powers.

Food and accommodation to be provided for observers

187.—(1) The owner, charterer, operator and master of any fishing vessel on which an observer is placed shall, free of charge, provide the observer with —

- (a) food and accommodation;
- (b) access to and use of adequate cooking and toilet and washing facilities to a standard approved or prescribed by the Director; and
- (c) access without unreasonable restriction to telecommunications facilities enabling the observer to make official communications.

(2) A person commits an offence who contravenes subsection (1) of this section.

Supervision by observers of trans-shipments, dumping of fish and operation of conversion factors

188.—(1) If an observer is on board a fishing vessel —

- (a) from which, or to which, any fish are trans-shipped;
- (b) from which any fish subject to the quota management system are returned to or abandoned in the sea;
- (c) in respect of which any conversion factor certificate may be or has been given under section 90(3) of this Ordinance; or
- (d) which is taking or has taken fish outside the fishing waters,

the master of the fishing vessel or, in the case of trans-shipment, the master of each fishing vessel, shall provide such information, and shall allow the observer to carry out such inspections

(including sampling and measuring) of the fishing vessel, any fish, taken, processed, trans-shipped, or landed, and documents, as the observer may require for the purpose of —

(e) observing the trans-shipment, abandonment, or return to the sea;

(f) collecting information on the method of processing, and performance of the fishing vessel in undertaking such processing, in order to determine or monitor any conversion factor;

(g) observing the fishing activities of the fishing vessel and the landing and disposal of its catch; or

(h) taking, measuring and retaining samples or whole specimens of any fish or aquatic life (including seabirds and protected species) caught.

(2) An observer may take and make copies of such records, documents or information as the observer may require for the purposes of subsection (1).

(3) An observer may store in the fishing vessel's freezing facilities such samples and whole specimens of any fish or aquatic life (including seabirds and protected species) as the observer may require for the purposes of subsection (1).

(4) A person commits an offence who contravenes subsection (1).

PART VIII MISCELLANEOUS AND GENERAL

Levy and collection of levy

Levy

189.—(1) Subject to subsection (2), the Governor may by regulations made under this subsection impose a levy —

(a) in respect of any fishery specified in such regulations;

(b) upon every company incorporated in the Falkland Islands holding Individual Transferable Quota or Provisional Quota;

(c) providing for the proceeds of such levy less the costs of collection to be paid over, when received, by the Crown to the Falkland Islands Fishing Companies Association; and

(d) requiring that the proceeds of any such levy may only be expended for such purposes as shall be specified in such regulations.

(2) No regulations may be made under subsection (1) in respect of any fishery unless companies holding the majority of the Quota in that fishery have by ballot approved those regulations in draft.

(3) The amount of levy is such amount as is prescribed and the regulations may provide for the payment of an amount of levy to be made by instalments and, subject to subsection (4), each instalment is due and payable at a time ascertained in accordance with the regulations.

(4) If the regulations provide for the payment of an amount of levy to be made by instalments and an instalment is not paid at or before the time due for payment of the instalment, the whole of the amount of levy unpaid becomes due and payable at that time.

(5) If an amount of levy remains unpaid after the day on which it becomes due for payment, there is payable to the Crown by way of penalty, in addition to that amount of levy, an amount calculated at the rate of 15% per annum upon the amount of the levy from time to time remaining unpaid, to be calculated from the time when the amount of levy became payable.

(6) Any levy that is due and payable and any amount payable under subsection (5) may be recovered by the Crown as a civil debt due to the Crown.

(7) Any levy payable by virtue of regulations made under this section is payable in addition to, and not in substitution for, any fee payable under this Ordinance.

Supplementary to section 189

190.—(1) Regulations made for the purposes of section 189 may prescribe the amount of, or method of calculating the amount of, levy imposed by reference to a matter specified in the regulations, being a matter relating to the fishing concession and, without prejudice to the generality of the foregoing, may be made by reference to one or more of the following matters —

(a) the nature or class of the concession;

(b) where the levy is imposed in respect of Individual Transferable Quota or Provisional Quota, the turnover, profit or capital employed in the company owning it;

(c) where the concession relates to the use of a fishing vessel —

(i) the size or tonnage of the fishing vessel, measured as prescribed, or the power of the fishing vessel's main engine;

(ii) the quantity or kind of equipment permitted by the licence to be carried on the fishing vessel for the purpose of taking, processing or carrying fish;

(iii) the limit upon the quantity of fish, measured as prescribed, that the licence authorises to be taken or processed with the use of the fishing vessel or carried by the fishing vessel, if any;

(iv) the kind of fish that the licence authorises to be taken or processed with the use of the fishing vessel or carried by the fishing vessel;

(v) the method by which the licence authorises fish to be taken, processed or carried; and

(vi) whether or not the fishing vessel will be engaged in taking fish pursuant to a fishing right.

(2) Regulations made for the purposes of section 189(1)(b) may prescribe the amount of, or method of calculating the amount of levy imposed by a reference to a matter specified in the regulations.

The Association

Falkland Islands Fishing Companies Association

191.—(1) There is hereby established a Falkland Islands Fishing Companies Association (hereinafter called “the Association”).

(2) The Association is a body corporate with perpetual succession, may sue or be sued in its corporate name, may hold real and personal property in that name and may employ such person or persons as it sees fit for the purpose of its functions.

(3) The functions of the Association are —

(a) to represent the interests of its members;

(b) to fund or carry out such fisheries-related research as may be agreed by the members of the Association;

(c) such other functions as may, at the request of the Association or of his own motion, be prescribed by an Order made by the Governor under this paragraph.

(4) Any company incorporated in the Falkland Islands the name of which is registered on an Individual Transferable Quota Ownership Register as owning Individual Transferable Quota in any fishery (hereinafter called “an eligible company”) is entitled to be, but is not compelled to be, a member of the Association.

(5) An eligible company becomes a member of the Association upon notifying the Association in writing that it wishes to be a member of the Association and remains a member of the Association until the earlier of —

(a) its ceasing to be an eligible company;

(b) its resigning membership of the Association by notice in writing addressed to the Secretary of the Association.

(6) The Association shall appoint —

(a) a Chairman and Vice-chairman from among the directors of companies which are members of the Association; and

(b) a Secretary.

(7) The Association shall have such rules not inconsistent with the foregoing subsections as are determined by its members but such rules shall prescribe —

(a) the functions of the Chairman and Vice-chairman of the Association and the manner in which and intervals at which they shall be elected;

(b) the functions of the Secretary of the Association;

(c) the procedure at meetings of the Association;

(d) that books of account shall be kept in respect of the Association's income and expenditure and that they shall be audited;

(e) that an annual general meeting shall be held of members of the Association and that the audited accounts of the Association shall be laid before and approved at such annual general meeting.

Offences

Using false document or making false statement

192.—(1) A person commits an offence who knowingly, for the purpose of obtaining any benefit under this Ordinance —

(a) makes any false or misleading statement;

(b) omits any information,

in any communication, application, record or return prescribed or required under this Ordinance.

(2) A person commits an offence who knowingly, for the purpose of obtaining any benefit under this Ordinance —

(a) uses, deals with or acts upon; or

(b) causes any other person to use, deal with or act upon,

any communication, application, record or return prescribed by or required under this Ordinance which is false.

Provisions in relation to offences

Conduct of directors, servants and agents of body corporate

193.—(1) Where, in proceedings for an offence under this Ordinance, it is necessary to prove the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his actual or apparent authority and that the director, servant or agent had the state of mind required for the offence.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of a body corporate within the scope of his actual or apparent authority shall be deemed for the purposes of a prosecution for an offence under this Ordinance to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to prevent that conduct.

(3) Where, in proceedings for an offence under this Ordinance, it is necessary to prove a state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show that the conduct was engaged in by a servant or agent of the person within the scope of his actual or apparent authority and that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than the body corporate by a servant or agent of the person within the scope of his actual or apparent authority is to be deemed for the purposes of the prosecution for an offence under this Ordinance to have been engaged in also by the first-mentioned person unless the first-mentioned person shows that he took reasonable precautions and exercised due diligence to prevent the conduct.

(5) A reference in subsection (1) or (3) to the state of mind of the person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and his reasons for that intention, opinion, belief or purpose.

(6) A reference in this section to a director of a body corporate includes —

(a) a person in accordance with whose instructions the corporation normally or usually acts; and

(b) a member of the board or other controlling body of any statutory corporation.

(7) A reference in this Part —

(a) to engaging in conduct includes a reference to failing or refusing to engage in conduct;

(b) to an offence under this Ordinance, without prejudice to the generality of the effect of the definition of "this Ordinance" in section 3, is declared to include a reference to an offence created by regulations under this Ordinance.

(8) This section has effect without prejudice to section 195.

Criminal liability of owners, operators, charterers and masters

194.—(1) Where an offence under this Ordinance is proved to have been committed in relation to a fishing vessel or any fishing operation undertaken by a fishing vessel, the owner, charterer, operator and the master of that fishing vessel shall each be deemed to have committed that offence and may be proceeded against in respect of that offence and convicted and sentenced in respect of it accordingly.

(2) Except where it is specifically provided by this Ordinance to the contrary, it is not a defence to a prosecution for an offence under this Ordinance for the defendant to prove that he had no knowledge of the act or omission giving rise to the commission of the offence or that the defendant had no reasonable means of preventing the commission of the offence.

Liability of directors and officers of bodies corporate

195.—(1) Where an offence under this Ordinance is proved —

(a) to have been committed with the consent or connivance of any director, secretary, manager or other similar officer of a body corporate convicted in respect of that offence, or any person who was purporting to act in any such capacity; or

(b) the director, secretary, manager or other similar officer, or any person who was purporting to act in any such capacity,

he as well as the body corporate has committed that offence, and may be proceeded against and sentenced in respect of it accordingly and for the sake of avoidance of doubt his liability to be so sentenced includes, subject to section 203, liability to be sentenced to imprisonment for any term provided for in respect of that offence, even though the body corporate could not be so sentenced.

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Presumption as to owner, charterer, operator or master of a fishing vessel

196. In any proceedings for an offence under this Ordinance an allegation made in an information as to the identity of the owner, charterer, operator or master of a fishing vessel at any time shall be presumed to be true unless the contrary is proved.

Unavoidable bycatch

197.—(1) Notwithstanding any other provision of this Ordinance, a person lawfully takes fish if he takes it as the inevitable consequence of the taking of other fish under the authority of and in accordance with a fishing licence.

(2) A person who takes fish which he is not permitted under the authority of and in accordance with a fishing licence to take shall within 48 hours of so doing inform the Director in writing that he has done so, giving particulars of the species and weight of the fish concerned and of the location at and the fishing vessel with which he took the fish.

(3) A person who contravenes subsection (2) commits an offence.

Evidence

198.—(1) In any proceedings for an offence under this Ordinance, an allegation contained in the information or complaint that —

(a) the defendant was at a particular place at the time of the alleged offence;

(b) the fishing vessel, aircraft or other thing referred to in the information or complaint was at a particular place at the time of the alleged offence; or

(c) fishing engaged in by or with a fishing vessel in relation to which a fishing concession was in force at the time of the alleged offence was commercial fishing;

is to be treated as prima facie evidence of that fact.

(2) A certificate under the hand of the Director —

(a) that, at a time or during a period specified in the certificate, a fishing vessel specified in the certificate was, or was not, a Falkland Islands fishing vessel;

(b) that, at a time or during a period specified in the certificate, an area of water specified in the certificate was, or was not, part of the fishing waters;

(c) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the owner of Individual Transferable Quota, Provisional Quota or Catch Entitlement, specified in the certificate;

(d) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a fishing licence that was in force authorising the use of a fishing vessel specified in the certificate for fishing in an area of the fishing waters, or a specified fishery, specified in the certificate;

(e) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a scientific permit that was in force authorising the

use of a fishing vessel specified in the certificate for scientific research purposes in an area of the fishing waters, or a fishery, specified in the certificate;

(f) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of an overseas master fishing licence that was in force authorising the person to be in charge of a fishing vessel being used for fishing in an area of the fishing waters, or a fishery, specified in the certificate;

(g) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a fish receiver permit that was in force authorising the person to receive fish from a person engaged in fishing in a fishery specified in the certificate;

(h) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a fish receiver permit that was in force,

shall in a prosecution for an offence under this Ordinance be prima facie evidence as to the matter stated therein unless the contrary be proved.

(3) The Director, on giving a certificate under subsection (2) that the person was the holder of Individual Transferable Quota, Provisional Quota or Catch Entitlement or of a licence or permit granted under this Ordinance may additionally, in the certificate, certify that conditions specified in the certificate were the conditions to which the fishing right, licence or permit, as the case may be, was subject and, if he does so, the certificate is, for the purposes of any prosecution for an offence under this Ordinance or the regulations, presumed to be correct unless the contrary is proved.

Copies of accounts, records, returns, etc.

199.—(1) A copy of any account, record, return, or information required to be kept, completed, or provided under this Ordinance that purports to be certified by the Director as having been kept, completed, or provided (as the case may require), at or within or in relation to any specified time, date, period, or place, shall be sufficient evidence, in the absence of proof to the contrary, of the fact that the account, record, return, or information was so kept, completed, or provided.

(2) Any copy of a record or other document taken by a fisheries officer, or any copy of such a copy, shall, subject to subsection (3) of this section, be admissible, to the same extent as the original record or document and of any transactions, dealings, amounts, or other matters contained in the record or the document.

(3) A copy of any account, record, return, or other document referred to in subsection (1) or subsection (2) of this section (including a copy of such a copy) shall be admissible in evidence only if —

(a) the prosecutor or an agent of the prosecutor serves on the defendant, or the defendant's agent or legal practitioner, not less than 4 weeks before the hearing at which it is proposed to tender the copy in evidence —

- (i) notice of the prosecutor's intention to tender the copy in evidence; and
 - (ii) a copy of the copy which is to be so tendered; and
- (b) the court has not, on the application of the defendant made not more than 14 days after receipt of the copy referred to in paragraph (a) of this subsection, ordered, not less than 7 days before the hearing (or such lesser period as the court in the special circumstances of the case thinks fit), that the copy is inadmissible as evidence in the proceedings.
- (4) The court shall not make an order under subsection (3) of this section unless it is satisfied that there is reasonable doubt as to —
- (a) the accuracy of the information contained or referred to in the document; or
 - (b) the validity of the document.

Service of summons and other documents

200.—(1) The service of any summons or other document in or in relation to any proceedings for an offence under this Ordinance upon an agent for service shall be as effectual for all purposes as if the summons or other document had been served upon the person in respect of whom he is the agent for service.

(2) In subsection (1) "agent for service" includes a person named pursuant to sections 41(4)(b) or (5), 42(2)(b) or (3).

Punishment of offences

201. Schedule 3 to this Ordinance has effect for the purpose of prescribing the manner in which offences against the provisions of this Ordinance mentioned in that Schedule are punishable on conviction.

Matters to be taken into account in sentencing

202. In sentencing any person for an offence under this Ordinance of which that person has been convicted the court shall, in addition to any other matters, take into account —

- (a) the difficulty of detecting and apprehending persons committing offences under the provisions of this Ordinance and bringing them to justice;
- (b) the need to discourage others from committing like offences.

Imprisonment of foreign persons

203.—(1) In the absence of an agreement to the contrary made —

- (a) between the Government of the Falkland Islands and the government of another country;
- or

(b) the Government of the United Kingdom, on behalf of the Falkland Islands, and the government of another country,

the court shall not have power, notwithstanding that it would otherwise have such power, to sentence a person to a term of imprisonment in respect of an offence under Part VII or Part VIII of which it has convicted him or impose any sentence other than a fine upon him, unless he is —

- (a) a British citizen;
- (b) a British Overseas Territories citizen;
- (c) a person having Falkland Islands status; or
- (d) a person holding a permanent residence permit.

(2) If, but for subsection (1), a person could have been sentenced to a term of imprisonment, the person shall be liable to a fine not exceeding the maximum of Level 10 on the standard scale, if that is greater than the maximum fine he would otherwise have been liable to be ordered to pay.

Powers of court as to costs of prosecution and as to forfeiture of security

204—(1) On convicting a person of an offence under this Ordinance the court may, in addition to any sentence and any order it makes for forfeiture of any property it imposes on that person, order that person —

- (a) to pay the costs of the prosecution;
- (b) if the offence of which the person was convicted was an offence under sections 127(2), 136, 137(1), 167, 168(1), 169(1) or 172(1) to pay the whole or any part of the costs of —
 - (i) pursuit by a fisheries patrol vessel or vessels of the fishing vessel concerned in the offence;
 - (ii) any fisheries patrol vessel accompanying the fishing vessel concerned in the offence from the point at which it was arrested to the place in the Falkland Islands at which it was detained;
 - (iii) detaining the fishing vessel in the Falkland Islands from the time of its arrival there, following arrest or detention, until the date on which it was released by the court under section 157.

(2) Where —

- (a) the offence of which the person was convicted is an offence mentioned in subsection (1)(b);

(b) the person convicted of that offence is the owner of the fishing vessel concerned in that offence,

the court shall make an order against the owner of such of the kinds referred to in subsection (1)(b)(i), (ii) and (iii) as are relevant in the circumstances of the case unless the court, for special reason to the contrary related to the circumstances of the offence or offences, announced in open court, sees fit not to do so.

(3) For the purposes of an order under subsection (1)(b)(i) or (ii), the costs of a fisheries patrol vessel shall be calculated on a daily basis and calculated pro rata in relation to part of a day, and shall incorporate the following elements —

(a) if the vessel is on charter to the Crown in right of its Government of the Falkland Islands—

(i) the daily charter rate for that vessel in accordance with the lease, sublease or agreement for hire of the vessel;

(ii) if the lease, sublease or hire agreement is on a bareboat basis, the aggregate wages or salaries of the crew and any fisheries officers or other persons engaged aboard the vessel for the purposes of this Ordinance;

(b) if the vessel is owned by the Crown in right of its Government of the Falkland Islands —

(i) such amount as the court is satisfied represents the fair depreciation of the vessel;

(ii) the aggregate wages or salaries of the crew and any fisheries officers or other persons engaged aboard the vessel for the purposes of this Ordinance; and

(c) the cost of fuel consumed, unless that cost is included in the daily charter rate of a vessel chartered by the Crown.

(4) The costs referred to in subsection (1)(b)(iii) include the following —

(a) the amount of any part of harbour dues which would be payable if the fishing vessel were voluntarily present at the place at which it is detained;

(b) any watch reasonably maintained in relation to the safety of the vessel or preventing its escape.

Power of court if forfeiture order cannot be made

205.—(1) If —

(a) the court convicts the owner of a fishing vessel of an offence referred to in section 173(1)(a); and

(b) if the fishing vessel had been at a port or harbour in the Falkland Islands the court would have made an order of a kind referred to in section 173(1)(a); but

(c) the fishing vessel is not at a port or harbour in the Falkland Islands,

the court may make an order under subsection (2) of this section.

(2) An order under this subsection is an order that the owner of the fishing vessel shall pay to the Crown any one or more of the following —

(a) such sum as the court specifies as being, in the opinion of the court, the value of the fishing vessel;

(b) such sum as the court specifies as being, in the opinion of the court, the value of any nets, lines or other fishing gear aboard the fishing vessel at the time of the offence;

(c) such sum as the court specifies as being, in the opinion of the court, the value of all or any fish aboard the fishing vessel at the time of the offence.

(3) Where —

(a) the court makes an order under subsection (2);

(b) the owner has provided security pursuant to section 157 in relation to the release by the court of the fishing vessel prior to trial,

the court shall order —

(i) that such security shall not be released until any fine it may have ordered the owner to pay, and all sums which the court has, under section 204(1) or subsection (2) of this section, ordered the owner to pay have been paid;

(ii) that unless all sums referred to in paragraph (i) are paid within 21 days, or such greater period as the court may allow, the security shall be realised and applied in payment in the following order of —

(aa) the fine, if still unpaid;

(bb) sums ordered to be paid under subsection (2), if still unpaid;

(cc) any sum ordered to be paid under section 204(1), if still unpaid;

(dd) any balance to the owner.

Detention etc of fishing vessel pending payment

206.—(1) If the court has ordered the owner of a fishing vessel —

(a) on conviction of an offence to pay a fine;

(b) to pay any sum under section 204(1),

and the fishing vessel is, at the time of such an order, in a port or harbour in the Falkland Islands, the Director shall cause that fishing vessel to be detained until such sum or sums is paid in full, whereupon he shall forthwith release the fishing vessel.

(2) If at any time after 21 days or such greater period not exceeding 90 days as the court may allow from the making of an order of a kind to which subsection (1) refers the sum or sums mentioned therein remain in whole or in part unpaid, the court shall, on the application of the Attorney General or by a person authorised by him, order that the fishing vessel and all stores, fuel, lubricants, apparatus, fishing gear and fish thereon is forfeit to the Crown, whereupon they are so forfeit and shall be dealt with in such manner as the Governor may direct.

Right of appeal in respect of order under section 204(1) or section 205(2)

207.—(1) An owner of a fishing vessel aggrieved by an order under section 204(1) or section 205(2) may appeal to the Supreme Court against that order in the same way as if it were an order to pay a fine made on conviction of an offence under this Ordinance.

(2) On the determination of an appeal under subsection (1), the Supreme Court may —

(a) confirm the order;

(b) vary the order in such manner as it sees fit; or

(c) quash the order and make any order consequential thereon,

and may make such order in relation to the costs of the appeal as it thinks fit.

(3) If an appeal under subsection (1) has been made and remains undetermined —

(a) no step shall be taken to give effect to any order under section 204(1)(b);

(b) no application shall be made under section 206(2),

until such time as the appeal has been determined.

Administrative penalties

Administrative penalties

208.—(1) This section —

(a) applies in respect of an alleged offence under Part VI or Part VII that carries a penalty of a fine not exceeding the maximum of Level 10 on the standard scale;

(b) does not apply in respect of an alleged offence if an information or charge has been laid in respect of the alleged offence.

(2) The Director may with the consent of the Attorney General cause notice in writing, in the approved form, to be served on a person if the Director has reasonable cause to believe that —

(a) an offence to which this section applies may have been committed by that person;

(b) having regard to all the circumstances relating to the alleged offence, it is minor; and

(c) having regard to the previous conduct of the vessel and of that person, it would be appropriate to impose a penalty under this section.

(3) A notice given under subsection (2) shall —

(a) contain —

(i) the date and nature of the alleged offence;

(ii) a summary of the facts on which the allegation that an offence has been committed is based, which summary is sufficient to fully and fairly inform the person of the allegation against him; and

(iii) any other matters (other than previous convictions) that the Governor considers relevant to the imposition of a penalty; and

(b) be endorsed with a statement setting out the provisions of this section and the next two following sections.

Right to require that offence be dealt with by court

209.—(1) Within 28 days after a notice under section 208 is served on a person, the person may, by a notice in writing in the approved form served on the Director, require that any proceedings in respect of the alleged offence be dealt with before a court.

(2) No further proceedings may be taken under section 208 by the Director if —

(a) a person gives notice in accordance with subsection (1); or

(b) the person does not, within 28 days after a notice under section 208 is served on him, admit the offence in accordance with subsection (4) of this section.

(3) Nothing in this section prevents —

(a) the subsequent laying of an information or charge in respect of the alleged offence;

(b) the conviction of the person of the offence by a court; or

(c) the imposition of a penalty under an enactment, or forfeiture under this Ordinance, on such a conviction.

(4) A person upon whom a notice under section 208 has been served who does not require that any proceedings in respect of the alleged offence be dealt with before a court may, by notice in writing served on the Director within 28 days after the notice under section 208 is served on him—

(a) admit the offence; and

(b) make submissions to the Director as to the matters the person wishes the Governor to take into account in imposing a penalty under section 210.

Amount of administrative penalty

210.—(1) If under section 209(4) the person admits an offence, the Governor may, after taking into account any submissions made by the person under that section, impose on that person a monetary penalty not exceeding one-third of the maximum monetary penalty to which the person would be liable if the person were convicted of the offence by a court.

(2) If the Governor imposes a penalty on a person under this section in respect of an offence, the Governor shall cause a notice in writing, in the approved form, of the particulars of the penalty to be served on the person.

(3) A person on whom a penalty is imposed under this section shall pay the amount of the penalty to the Crown within 28 days after the notice of the penalty is served on the person in accordance with subsection (2).

(4) Notwithstanding subsection (3), a penalty that has been imposed under this section is recoverable by the Crown, from the person on whom it has been imposed, in the same manner as a fine is recoverable on conviction for an offence by a court.

(5) Where a person admits an offence under section 209(4), no information or charge may be laid against that person in respect of the offence.

Administrative provisions

Director to compile statistics

211—(1) The Director shall cause to be compiled, from returns furnished under this Ordinance and from other sources, statistics in relation to such matters as the Governor may direct him.

(2) The Director if so directed in writing by the Governor, shall —

(a) publish in such manner as the Governor may direct; or

(b) make available to or supply to any person specified by the Governor,

such statistics mentioned in subsection (1) as are specified by the Governor.

Electronic transmission

212.—(1) The Director may approve for the purposes of this Ordinance the transmission of accounts, records, returns, transactions, information, notices, objections, requests, applications or other documents provided for under this Ordinance by means of electronic transmission.

(2) An approval under subsection (1) —

(a) may relate to any person or any one or more classes of person;

(b) may relate to any one or more classes of accounts, records, returns, transactions, information, notices, objections, requests, applications or other documents;

(c) shall not relate to anything a person transmits or is required to transmit to the Director under sections 24, 26, 28, 30 or 31.

(3) In subsection (1), “transmission” in relation to any thing includes sending or delivering that thing, and in that subsection and this “any thing” includes any document of any kind whatsoever.

Compensation for acquisition of property

213.—(1) Subject to subsection (2), the Crown shall pay adequate compensation to any person from whom under the operation of this Ordinance any property is acquired other than by way of forfeiture pursuant to this Ordinance.

(2) Subject to the Constitution, no compensation is payable where any provision of this Ordinance provides that no compensation is to be payable.

(3) Unless the Crown and the person from whom the property is acquired agree on the amount of the compensation to be paid to that person, the Crown or that person may apply to the Supreme Court to determine the amount of such compensation to be paid to him, and the jurisdiction of the Supreme Court under this subsection excludes the jurisdiction of all other courts and tribunals except the Court of Appeal on appeal from the Supreme Court.

(4) Any damages or compensation recovered by any person or any other remedy given in proceedings begun otherwise under this section shall be taken into account in assessing compensation payable in proceedings under this section and arising out of the same event or transaction.

(5) In this section, “property” and “adequate compensation” have the same meaning as they do for the purposes of section 7 of the Constitution.

Recovery of compensation paid and costs in case of fraud

214.—(1) If any sum has been lawfully paid out of public money as compensation for any loss occasioned by fraud on the part of any person causing or procuring that person to be registered as the owner of any Individual Transferable Quota or Provisional Quota or as a mortgagee of such

Quota, as the case may be, by virtue of any dealing with or transmission from a registered owner, the amount of that compensation shall be deemed to be a civil debt due to the Crown from the person or persons legally responsible for it and may be recovered accordingly.

(2) In any action or proceedings for recovery of a debt due under subsection (1), the court may, for the purposes of that action, determine on the balance of the probabilities who is legally responsible for the fraud.

Transfer of duties and functions in relation to Registers

215.—(1) The Governor may by Order transfer any function of the Director in relation to the compiling, maintenance, upkeep, and correction of any Register provided for by this Ordinance to —

(a) another public officer; or

(b) a company incorporated and having its principal place of business in the Falkland Islands.

(2) An Order under subsection (1) shall —

(a) specify the rights of the Crown in relation to information and data received, held or generated in relation to the performance or exercise of the functions, duties or powers; and

(b) provide that the information and data specified in the Order is the property of the Crown.

(3) A public officer or company specified in an Order made under subsection (1) shall have and shall exercise in accordance with this Ordinance the functions of the Director transferred to him or it by that Order.

(4) Subject to subsection (3), the Governor may give a written direction to any public officer or company to whom a function has been transferred in relation to any Register in respect of the exercise by it of any specified function.

(5) The Governor has no power under subsection (4) to give any direction in respect of a specific application or in relation to a specific person.

(6) The Governor shall —

(a) send a copy of any direction under subsection (4) to the public officer or company to which it is addressed; and

(b) cause it to be published in the *Gazette*.

(7) The Governor may by Order under this subsection revoke or amend an Order under subsection (1) if he is satisfied that the public officer or company to whom or which any function of the Director was transferred by the Order has —

- (a) failed to comply with any provisions of the Order as to the performance of the functions transferred;
 - (b) failed to comply with any direction given under subsection (5);
 - (c) is not operating in accordance with the provisions of this Ordinance;
 - (d) is insolvent or likely to become insolvent;
 - (e) falsified any entry in any Register to which the Order relates or wilfully failed to make any entry he or it ought to have made in any such Register;
 - (f) so far as relates to any register, any contract made between the Crown and any company for the compiling, upkeep, maintenance and correction of the Register pursuant to an Order under subsection (1) has expired; and
 - (g) if the Order under subsection (1) provides for the functions of the Director in relation to a Register to be performed by another public officer, at any time if the Governor considers that those functions should be performed by another person.
- (8) Before revoking or amending by Order under subsection (7) any Order made under subsection (1), the Governor shall, subject to subsection (9), give the public officer or company concerned 21 days' notice in writing of his intention to do so, specifying the ground or grounds on which he contemplates doing so.
- (9) The Supreme Court may on application by the Governor under this subsection (and if it sees fit, *ex parte*) abridge the period of notice required to be given by the Governor under subsection (1) or, if in the opinion of the Court the urgency of the matter justifies so doing, dispense altogether with the giving of such notice.

Transfer of property rights

216.—(1) If an Order under section 215(1) expires or is revoked by an Order under section 215(7), the Governor may transfer to the Crown —

- (a) by notice in writing to the company to which the Order under section 215(1) relates any property of that company (including intellectual property) that is necessary for the performance or exercise of the functions for which the company is or was responsible under the Order made under that provision; and
 - (b) by notice in writing to any person other than that company, any rights and obligations of that company under any agreement or arrangement (including an employment contract) with that person that relate to the performance or exercise of those functions, but a notice under this paragraph cannot be served unless a notice has been, or is at the same time served on the company referred to in this paragraph.
- (2) The Governor shall send the company a copy of a notice given under subsection (1)(b).

(3) A notice under subsection (1) shall not take effect until at least 30 days after it is served and shall contain the following information —

(a) the date on which it is intended that the notice under subsection (1) shall take effect;

(b) a statement that the company or other person on whom the notice is served may within 21 days of the receipt of the notice apply to the Supreme Court for an order that the notice shall not take effect;

(c) a statement that unless the company or person makes an application of the kind referred to in paragraph (v) of this subsection, a notice under paragraph (a) of this subsection will take effect on the date specified in the notice under that paragraph;

(d) a statement that if the company makes an application to the Supreme Court of the kind referred to in paragraph (b) of this subsection and that application is dismissed, the notice under subsection (1)(a) will take effect on the later of —

(i) the date specified in the notice as the date on which it is intended to take effect; and

(ii) the date on which the application to the Supreme Court is dismissed;

(e) that if the notice takes effect so as to transfer property, rights or obligations, the company will be entitled to such compensation —

(i) as may be agreed between it and the Crown; or

(ii) in default of such agreement, such compensation as is fixed by the Supreme Court under section 213; and

(f) in the case of a notice under paragraph (b) of subsection (1), a statement of the effect of subsection (4) of this section.

(4) A notice under paragraph (b) of subsection (1) shall not take effect —

(a) at all if a notice under paragraph (a) of that section to a company which is the employer of the person upon whom the notice under subsection (1)(b) was served is dismissed by the Supreme Court;

(b) on a date earlier than the later of the date on which such a notice under para (a) of subsection (1) takes effect and the date specified in the notice under paragraph (b) of subsection (1);

(c) at all, if the Supreme Court sets aside the notice under paragraph (b) of subsection (1) on the application of the person on whom it was served.

(5) On a notice under subsection (1) taking effect the property, rights and obligations to which it relates vest in the Crown.

Right of application to Supreme Court

217.—(1) A company or person upon whom a notice under section 215(1)(a) or (b) has been served may within 21 days of the service of such a notice apply to the Supreme Court for an order setting aside that notice or such part of it as is specified in the application.

(2) The Supreme Court on an application being made under subsection (1), unless it is satisfied that the transfer of any property, rights or obligations is necessary for the performance of the functions for which the company is or was responsible, shall —

(a) set aside the notice; or

(b) set aside such part of the notice that relates to that property or those rights or obligations.

(3) If a notice under section 216(1)(a) or (b) has taken effect and the company or person upon whom it was served and the Crown do not within 42 days of the date on which the notice takes effect agree the amount of the compensation to be paid by the Crown for any property, rights or obligations transferred to the Crown pursuant to section 216(5), the person or company may apply to the Supreme Court to order such amount of compensation to be paid in respect thereof as appears to the Supreme Court to be fair and adequate in all the circumstances of the case, and the Supreme Court shall have power to make such an order.

(4) On determining an application under this section the Supreme Court may make such order in respect of the costs of the application as it sees fit.

(5) The parties may agree that, instead of an application being made to the Supreme Court under subsection (3), the matter shall be submitted to arbitration under the Arbitration Act 1996 in its application to the Falkland Islands by an arbitrator appointed —

(a) by agreement between the Governor and the person or company having the right to apply to the Supreme Court under subsection (3); or

(b) in default of such agreement, by the Chief Justice.

Powers of Director when false or misleading information given

218.—(1) The Director may amend or revoke all or any part of a licence, permit, approval or authority given under this Ordinance, or a registration completed under this Ordinance (the “specified action”) if —

(a) he is satisfied that false or misleading information was material to the giving, making or completion of the specified action;

(b) he is satisfied that the specified action was given, made or completed on the basis of that information;

(c) he gives notice in writing of his intention to amend or revoke the specified action to whichever, in the circumstances of the case, is appropriate of —

(i) the holder of the licence, permit, approval or authority ; or

(ii) the person in relation to whom the decision was made or the registration was completed;

(d) the notice is accompanied by a statement of the Director's reasons for the proposed revocation or amendment;

(e) the Director gives the person to whom the notice is given a reasonable opportunity to make representations in relation to the proposed revocation or amendment; and

(f) the Director considers any such representations before putting into effect the amendment or revocation.

(2) An amendment or revocation under subsection (1) is put into effect by giving notice in writing to whichever is appropriate, in the circumstances of the case, of —

(a) the holder of the licence, permit, approval or authority; and

(b) the person in relation to whom the decision was made or the registration was completed.

Requirement for additional information

219.—(1) The Director may require an applicant or a person who makes a request under this Ordinance to provide such additional information or evidence as the Director considers necessary on reasonable grounds to enable him to consider the applicant's application or request.

(2) The Director may require any such information or evidence to be given by way of a statutory declaration.

Official secrecy

220.—(1) The Director and every other person (including members of the Committee or of the Commission) having any official capacity or being employed in the administration of this Ordinance shall regard and deal with all documents and information coming into his possession in the course of his duties and which relate to the income or items of income of any company owning any Individual Transferable Quota or Provisional Quota or otherwise to its business affairs as confidential and shall not otherwise than in the pursuance of his duties for the purposes of this Ordinance, or with the authority of the Governor, communicate any such document or information, or any part thereof, to any other person.

(2) A person who contravenes subsection (1) commits an offence.

Giving of notices and service of summons and other documents

Giving of notices etc

221.—(1) Except as otherwise specified in this Ordinance, if under this Ordinance any notice or other document is to be given, served on, or furnished to any person, that notice or other document may be —

(a) given to the person personally;

(b) sent by registered post addressed to the person at the person's usual or last known place of business or abode;

(c) except in the case of any notice or document to be given or served in the course of or for the purpose of any proceedings for an offence under this Ordinance, sent by post to the person, or any other person authorised to act on the person's behalf, at that person's usual or last known place of business or abode;

(d) except in the case of any notice or document to be given or served in the course of or for the purpose of any proceedings for an offence under this Ordinance, sent by electronic transmission to the person, or any other person authorised to act on the person's behalf, at that person's or other person's usual or last address, and for the purposes of this paragraph —

(i) "electronic transmission" means any transmission of information sent electronically; and includes any transmission sent by facsimile, electronic mail, or electronic data transfer;

(ii) "address" means a facsimile address or an electronic mail address.

(2) Any notice or other document so sent by post or registered post shall be deemed to have been given, served or received 7 days after the date on which it was posted, unless the person to whom it was posted proves that, otherwise than through that person's fault, the notice or document was not received.

Service of summons and other documents

222. The service of any summons or other document in or in relation to any proceedings for an offence under this Ordinance upon an agent for service shall be as effectual for all purposes as if the summons or other document had been served upon the person in respect of whom he is the agent for service.

Regulations, repeals and savings

Regulations

223.—(1) The Governor may make regulations, not inconsistent with this Ordinance, prescribing all matters required or permitted by this Ordinance to be prescribed or necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Ordinance.

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations—

(a) providing that offences against the regulations shall be punishable on conviction by such fine, not exceeding the maximum of Level 6 on the standard scale as is specified in the regulations in respect of that offence;

(b) providing for the remission or refund of any levy, fee or charge payable under any provision of this Ordinance and of any penalty in relation to any such levy, fee or charge payable under this Ordinance;

(c) exempting persons either in specified circumstances or generally from the need to obtain a permit for recreational fishing with a fishing vessel;

(d) regulating, authorising or prohibiting the taking or possession of any fish of any stock or species;

(e) regulating, authorising or prohibiting the taking or possession of fish from any area;

(f) regulating, authorising or prohibiting the taking or possession of fish at any time or for any period;

(g) regulating or prohibiting the taking or possession of fish smaller, or larger, than a specified size;

(h) regulating or prohibiting the taking or possession of fish that is in any specified condition or exhibits specified physical characteristics;

(i) regulating or prohibiting the return of fish to any waters;

(j) regulating or prohibiting any method of fishing;

(k) regulating or prohibiting the possession or use of any kind of gear, equipment or device used for, or related to, fishing;

(l) regulating or prohibiting the use of fishing vessels or fish carriers;

(m) regulating the number or weight of any fish that may be taken or possessed, whether by reference to any period or on any other basis whatsoever, and prohibiting the taking or possession of any number or weight of fish that exceeds the specified maximum number or weight;

(n) regulating the methods, equipment and devices to be used to process fish, and prohibiting the processing of fish otherwise than by a specified method or methods or by use of specified equipment or devices;

- (o) regulating the methods by, or the circumstances under which, fish may be held, stored, conveyed or identified, including the use of any containers, marks or labels;
- (p) providing for the imposition and recovery of fees in relation to such matters as are specified in the regulations;
- (q) providing for the marking of nets, traps and other equipment used by fishing vessels for taking fish—
 - (i) in the case of Falkland Islands vessels whether within the fishing waters or on the high seas; and
 - (ii) in the case of non-Falkland Islands vessels, within the fishing waters;
- (r) providing for the marking of Falkland Islands fishing vessels;
- (s) providing for the sale or disposal of unclaimed nets, traps or other fishing equipment found in the fishing waters;
- (t) providing for the reporting of the position of vessels the use of which is authorised by a fishing concession;
- (u) without prejudice to paragraph (t)—
 - (i) providing for the establishment and operation of a Fisheries Monitoring Centre whether in the Falkland Islands or elsewhere, in relation to Falkland Islands fishing vessels wherever they may be and non-Falkland Islands fishing vessels in the fishing waters;
 - (ii) requiring Falkland Islands fishing vessels, or Falkland Islands fishing vessels of a length equal to or greater than that specified in the regulations, at all times wherever they may be, and non-Falkland Islands fishing vessels at all times while licensed to fish in the fishing waters whether such vessels are for the time being within such waters or not, to have on board a functioning satellite-tracking device; and
 - (iii) containing such provision as to the operation of satellite-tracking devices and the data to be transmitted thereby and otherwise in relation thereto as may be necessary or convenient;
- (v) providing for the furnishing of information relating to persons on board a fishing vessel that is in the fishing waters, being a fishing vessel the use of which is authorised by a fishing concession, or on board a Falkland Islands fishing vessel engaged in fishing outside the fishing waters;
- (w) providing for measures to be taken by fishing vessels to prevent or mitigate mortality or injury of birds and mammals as a result of the carrying out of any fishing operation;

(x) prescribing the purposes for which a levy imposed under section 189(1)(b) may be expended by the Association;

(y) revoking any regulations which continue in force by virtue of section 224(2).

(3) Regulations made under this section may provide that any contravention of a provision of such regulations specified therein for the purpose shall be punishable on conviction by such fine not exceeding the maximum of Level 12 on the standard scale as may be specified therein.

Repeals and savings

224.—(1) The Fisheries Ordinances 1986-1991, the High Seas Fishing Ordinance 1995, the Fishing (CCAMLR) Ordinance 1999 and the Fishing (CCAMLR)(Amendment) Ordinance 2002 are repealed.

(2) Notwithstanding subsection (1) —

(a) any licence granted under any of the Ordinances repealed by subsection (1) which was in force immediately before the commencement of this section shall, subject to this paragraph, continue in force until it expires or 12 months from the commencement of section 130 of this Ordinance, whichever is the earlier, as if it had been granted under section 130 of this Ordinance on the same terms and conditions, but may be cancelled in the same way as if it had been so granted;

(b) any regulations made under any of the Ordinances repealed by subsection (1) which were in force immediately before the commencement of this section shall, in so far as they are not inconsistent with this Ordinance, continue in force until they are revoked by regulations made under section 223 of this Ordinance.

SCHEDULES

SCHEDULE 1

PROVISIONS OF CONSERVATION OF WILDLIFE AND NATURE ORDINANCE APPLYING IN THE FISHING WATERS

Sections 1 to 7, 10 to 12, 18 and Schedule 1.

SCHEDULE 2

(section 16)

FISHERIES

Description of Fishery	Species	Dates within which fishery operates	Whether Provisional Quota can be granted
Finfish	All finfish species with the exception of Skate (<i>Rajidae</i>) and Toothfish (<i>Dissostichus eleginoides</i>)	1 January – 30 June	YES
Squid – Jig or Trawl	<i>Illex argentinus</i> and <i>Martialia hyadesi</i>	15 February – 15 June	YES
Squid	<i>Loligo gahi</i>	1 March – 14 April	NO
Skate	All species of Skate (<i>Rajidae</i>)	1 January – 30 June	YES
Squid and Restricted Finfish	<i>Illex argentinus</i> , <i>Martialia hyadesi</i> , all Finfish species except Hake (<i>Merluccius spp.</i>), Skate (<i>Rajidae</i>) and Toothfish (<i>Dissostichus eleginoides</i>)	1 March – 31 May	YES
Surimi – Restricted Finfish	Blue Whiting (<i>Micromesistius australis</i>) Hoki (<i>Macruronus magellanicus</i>)	1 January – 30 June	YES
Restricted Finfish	All finfish species except Hake (<i>Merluccius spp.</i>) Skate (<i>Rajidae</i>) and Toothfish (<i>Dissostichus eleginoides</i>)	1 January – 30 June	YES
Toothfish – Longline	Toothfish (<i>Dissostichus eleginoides</i>)	All year	NO
Skate	All species of Skate (<i>Rajidae</i>)	1 July – 31 December	YES
Squid	<i>Loligo gahi</i>	15 July – 30 September	NO
Finfish	All finfish species with the exception of Skate (<i>Rajidae</i>) and Toothfish (<i>Dissostichus eleginoides</i>)	1 July – 31 December	YES
Restricted Finfish	All finfish species except Hake (<i>Merluccius spp.</i>) Skate (<i>Rajidae</i>) and Toothfish (<i>Dissostichus eleginoides</i>)	1 July – 31 December	YES

SCHEDULE 3

Manner in which offences under this Ordinance are punishable

Offences under the provisions of this Ordinance mentioned in the first column of the following Table are punishable on conviction in the manner specified in the third column of that Table. A reference to a Level in that column is to be construed as a reference to a fine not exceeding the maximum of that Level on the standard scale.

Table

Provision	Description of offence	Penalty
section 5 (3)	Failing to hand in warrant card	Level 5
section 26(6)	Failing to make application for renewal of registration upon Individual Transferable Quota Eligibility Register without having notified Director under section 31(2) of non-eligibility	Level 5
section 30(6)	The like offence in relation to failure to make application for refusal of registration upon Provisional Quota Eligibility Register	Level 5
section 32(4)	Failing to supply documents in accordance with section 32(1) or section 32(3)	Level 5
section 36(1)	Making false statement or supplying document containing false statement in connection with application under sections 24(1), 26(2) or 28(1)	Level 10 and imprisonment for 2 years
section 44(8)	Using fishing vessel with overseas master who does not have overseas master fishing licence	Level 8
section 45(4)	Contravening prohibition under section 45(2)	Level 6
section 45(5)	Employing as master person prohibited under section 45(2)	Level 9 and imprisonment for 6 months
section 46(1)	Trans-shipping or exporting fish without licence under section 46(3)	Level 8
section 47(8)(a)	Receiving fish without permit	Level 6
section 47(8)(b)	Failing to provide information or to verify it	Level 6
section 50(2)	Master failing to facilitate boarding or co-operate with inspection of fishing vessel	Level 5
section 54(3)	Failing to notify change in characteristics of fishing vessel as required by section 54(2)	Level 9 and imprisonment for 6 months
section 86	Making etc. false entry in Register or producing document falsely purporting to be copy of or extract of document lodged for registration etc.	Level 10 and imprisonment for 2 years
section 92(7)	Contravening any provision of section 91 as to disposal of fish	Level 8

section 93(4)	Contravening any provision of sections 93(1), (2) or (3) as to purchase or acquisition of fish	Level 8
section 95(3)	Unlawful possession by fish farmer of fish for sale	Level 7
section 115(1)	Unreasonably refusing as witness before Commission to take oath or affirmation or failing or refusing to answer question	Level 6
section 115(2)	Unreasonably refusing to produce document to Commission	Level 6
section 117(2)	Publication of any evidence, document etc in contravention of direction by the Commission	Level 6
section 118	Failure to comply with summons to attend before Commission as witness	Level 6
section 122	Obstructing or hindering Commission	Level 8
section 127(2)	Falkland Islands fishing vessel fishing on high seas without licence	Level 12 and imprisonment for 3 years
section 131(4)	Contravening section 131(3) (duty to notify change of owner, charterer or operator of fishing vessel in respect of which high seas fishing licence held)	Level 7
section 132(2)	Failure without reasonable excuse to provide information etc. as to high seas fishing	Level 8
section 136	Unlawful possession of fish on Falkland Islands fishing vessel on high seas	Level 11 and imprisonment for 30 months
section 137	Falkland Islands fishing vessel unlawfully on high seas when equipped for fishing	Level 11 and imprisonment for 30 months
section 138(1)	Falkland Islands fishing vessel unlawfully fishing in another country's waters	Level 12 and imprisonment for 3 years
section 139(4)	Visit by non-Falkland Islands vessel contrary to section 139(2) or (3)	Level 8
section 161(1)(a)	Contravening condition of fishing concession, fish receiver permit or overseas master fishing licence or of temporary order	Level 8
section 161(1)(b)	Holder of fishing concession or fish receiver permit causing or permitting person acting on his behalf to contravene condition of concession or permit or temporary order	Level 8
section 161(1)(c)	Person acting on behalf of holder of fishing concession, or fish receiver permit contravening condition of concession or permit or temporary order	Level 8
section 161(1)(d)	Making false or misleading record or return in relation to a matter specified in section 90	Level 8

section 162	Breach of condition or requirement of licence, permit etc where no other penalty provided	Level 6
section 163(1)	Resisting or obstructing a fisheries officer; using threatening language or behaviour to a fisheries officer; failing to comply with a lawful requirement of a fisheries officer; providing false or misleading particulars to a fisheries officer; personating or falsely claiming to be a fisheries officer	Level 9 and imprisonment for 6 months
section 164	Removing fish from traps etc.	Level 6 and imprisonment for 3 months
section 165	Receiving fish other than for private or domestic purposes from a commercial fisher, other than by holder of fish receiver permit	Level 8
section 167	Using fishing vessel in fishing waters without licence: absolute offence	Level 11 and imprisonment for 6 months
section 168	Deliberate unlawful use of fishing vessel in fishing waters	Level 12 and imprisonment for 3 years
section 169	Unlawful possession of nets, traps or other equipment for fishing on fishing vessel within fishing waters	Level 11 and imprisonment for 30 months
section 170	Fishing in internal waters other than with a fishing vessel	Level 8 and imprisonment for 12 months
section 171	Possession of nets etc in internal waters other than upon a fishing vessel	Level 8 and imprisonment for 12 months
section 172	Using boat outside fishing waters to support illegal fishing in fishing waters	Level 12 and imprisonment for 3 years
section 182(2)	Prohibited person re-offending	Level 12 and imprisonment for 3 years
section 186(2)	Failing to provide reasonable assistance to observer or hindering or obstructing observer	Level 8
section 187(2)	Failing to provide food or accommodation etc to observer	Level 8
section 188(4)	Failing to provide information to observer or allow observer to carry out inspections	Level 8
section 192(1)	Using false document or making false statement to obtain benefit under the Ordinance	Level 8 and imprisonment for 2 years
section 192(2)	Using or causing another to use, deal or act upon false communication etc.	Level 8 and imprisonment for 2 years

section 220(2) Breach of secrecy

Level 6 and
imprisonment
for 6 months

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